



**The Protection of  
War-Affected Children:  
Securing Children's Rights  
in the Context of Armed Conflict**

**Report of the First Hearings**

**Colchester, U.K.  
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# REPORT OF THE FIRST HEARINGS ON THE PROTECTION OF WAR-AFFECTED CHILDREN: SECURING CHILDREN'S RIGHTS IN THE CONTEXT OF ARMED CONFLICT

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- Besnik Kajtazi**, Board member of Prishtina Post-Pessimists (5 April, 2000) at page 30
- David Nyheim**, Director, Forum for Early Warning and Early Response, (6 April, 2000) at page 37

# Acknowledgments

Special acknowledgments to the members of the Tribunal, Judge Joyce Aluoch, Judge Hélio Bicudo, Judge Emmanuel Cassimatis (President), Judge Adam Lopatka (who was unavailable to attend) and Judge Vicha Mahakun, for their exhaustive work at the First Hearings on the Protection of War-Affected Children as well as for their continued dedication and support of children's rights.

Special thanks to Dr. Judith Ennew, Tribunal Rapporteur, for her commitment and expansive expertise and skills in preparing the *Report on the Protection of War-Affected Children: Securing Children's Rights in the Context of Armed Conflict*. Dr. Ennew has organised an extensive and complicated amount of information into a readable and comprehensive report. In addition, we thank the Children in Armed Conflict Unit, Children's Legal Centre and the University of Essex for their collaborative support in preparing and implementing the First Hearings. Further, thanks to the witnesses for bringing such valuable testimonies before the Tribunal. This wealth of knowledge and experience provided the means for enriching and enlightening deliberations to take place.

Special acknowledgment to the team of professionals and volunteers of the International Bureau for Children's Rights, and in particular to Pamela Teitelbaum, for their efforts and dedication in planning, coordinating and implementing the First Hearings of the International Tribunal for Children's Rights on the Protection of War-Affected Children.

The results of these Hearings, in the form of conclusions and recommendations, have been achieved with the intention of using them as a primary tool for furthering the international children's rights agenda, advocating and acting against the tragic violations of children's rights during all stages of armed conflict.

**The Bureau would like to take this opportunity to express its appreciation of the generous financial support by the Government of Canada through the Department of Foreign Affairs and International Trade.**

Convention Governing the Specific Aspects of Refugee Problems in Africa (1974)

Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)

American Convention on Human Rights (1978)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (“The Beijing Rules”)

African [Banjul] Charter on Human and Peoples’ Rights (1986)

International Conference of the Red Cross 1986: Resolution IX (Protection of children in armed conflicts)

International Conference of the Red Cross 1986: Resolution XX (Assistance to children in emergency situations)

Inter-American Convention to Prevent and Punish Torture (1987)

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1988)

Convention on the Rights of the Child (1989)

Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict (2000)

African Charter on the Rights and Welfare of the Child (1990)

Declaration on the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, San Remo, 7 April 1990

Declaration of Turku (1990)

The Addis Ababa Document on Refugees and Forced Population Displacements in Africa (1994)

Resolution on the Plight of African Children in Situation of Armed Conflicts (1996)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)

Guiding Principles on Internal Displacement (1998)

Rome Statute of the International Criminal Court (1998)

Hague Appeal for Peace Declaration on the Use of Children in Armed Forces and Armed Groups (1999)

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)—ILO Convention 182

Maputo Declaration on the Use of Children as Soldiers (1999)

Organization of African Unity CM/Dec.482(LXX) Decision on the “African Conference on the Use of Children as Soldiers” (1999)

Montevideo Declaration on the Use of Children as Soldiers (1999)

Security Council Resolution 1261 (1999)

Declaration by the Nordic Foreign Ministers Against the Use of Child Soldiers (1999)

Berlin Declaration on the Use of Children as Soldiers (1999)

IACHR Recommendation Against the Recruitment and Participation of Children in Armed Conflicts (1999)

## A NOTE ABOUT THE REPORT OF THE FIRST HEARINGS ON THE PROTECTION OF WAR-AFFECTED CHILDREN

The main impetus behind the creation of the International Bureau for Children's Rights (IBCR) in 1994 was the *Convention on the Rights of the Child* (CRC), which was adopted by the United Nations General Assembly on November 20, 1989 and came into force on 2 September 1990. The IBCR achieves its mandate by implementing programs that utilise a rights-based approach; whereby children are subjects of human rights under international law and children's rights are based in the universality of human rights, which pertain equally and inalienably to 'all members of the human family' (Preamble to the CRC).

Recognising that children's rights as set out in the CRC should be 'implemented' – by which is meant that these entitlements should be made real to all children rather than remaining in the realm of ideals and goals – the IBCR instituted and maintains the coordination of a unique mechanism in the form of the International Tribunal for Children's Rights. It is a *bona fide* court comprised of a Bench of five judges of different nationalities representing the five regions of the world. Establishing a neutral forum, the Tribunal intervenes through public hearings held in various parts of the world. The Tribunal hears testimonies from international child rights specialists and distinguished experts in the fields of international humanitarian and human rights law, psychiatry, field monitors and programming professionals, academics, representatives of NGOs, trans-national and government agencies and the like. Children and youth are also heard from as experts based on their own knowledge and experience.

This innovative approach has created a synergy of information, knowledge and practice. It has also generated an extensive and well-grounded accumulation of recommendations aimed at preventing children's rights violations and at rehabilitating children who have been affected. An important aspect of successfully achieving these objectives is recognising the vital working relationships between NGOs and government agencies who have developed an expertise or unique understanding of the identified issues.

As was noted by the International Tribunal for Children's Rights in its *Global Report: The International Dimensions of the Sexual Exploitation*, published following a cycle of Hearings held in Paris (1997), Fortaleza, Brazil (1998) and Colombo, Sri Lanka (1999), the text of the *Convention on the Rights of the Child* contains two major conceptual innovations which provided guiding principles for the deliberations and recommendations of the Tribunal. The first is that the principle of the 'best interests of the child' should be the guiding principle in 'all actions concerning children' (Article 3 (1)). The second is that the views of children should be 'given due weight in accordance with the age and maturity of the child' (Article 12 (1)).

In 1999, the IBCR commenced a new cycle of interventions on the Protection of War-Affected Children. Over the years, a considerable number of international and regional instruments pertaining to humanitarian and human rights law have been developed to protect civilian population in times of armed conflicts. The *Convention on the Rights of the Child*, for one, dictates that children must be protected from the different forms of abuse that wars facilitate. The new Optional Protocol to the Convention on the Rights of the Child on the involvement of

children in armed conflicts (adopted by the United Nations General Assembly in January 2000) further protects children from directly participating in armed conflict. Nevertheless, the rules of war remain challenged in modern day conflicts and child victims are subject to long-term mental and physical trauma such as malnutrition, landmines, becoming refugee and internally displaced persons, being separated from their parents, becoming head of their households, sexual abuse and rape, torture and the like.

Responding to the need to protect these children through its rights-based programs, and again using the innovative consultation process of the International Tribunal for Children's Rights, the IBCR coordinated the *First Hearings on the Protection of War-Affected Children* held in Colchester, England in April 2000. These Hearings, which were funded in part by the Government of Canada through the Department of Foreign Affairs and International Trade, and organized in collaboration with the Children and Armed Conflict Unit (University of Essex, U.K.), marked a turning point for the IBCR. The involvement of children and youth in the Hearings has always been a goal, although this was not attempted in the first series of Hearings. Thus the involvement of young people from Northern Ireland giving evidence in a case study during the Colchester Hearing in April 2000 was a new feature. Not only does this respect the provisions of Article 12 of the CRC, but it adds to the knowledge being concentrated on at the Hearings while at the same time allowing for the perspective of young people to be treated as equal to that of adults. After all, as the Tribunal itself noted: "*children are the experts*".

As you will see in this report, in examining the existing body of humanitarian and human rights law and the protection it offers to children in situations of armed conflict, as well as their implementation, the Tribunal has had to face, and propose solutions to, the a number of challenges, including those associated with the full implementation of the CRC in times of armed conflict.

This current issue of the report from the First Hearings is a second edition. It follows from the first edition published in December 2000 and from the concrete feedback and further requests for this publication. A second edition was rendered necessary to ensure wider distribution of this report and establish it as a broader-based advocacy tool for all actors of the global community.

In the meantime, the IBCR and its Tribunal will move forward with its 2001-2002 program, with the generous financial support of the Government of Canada through the Canadian International Development Agency, and continue to prepare for the next Hearings on the Protection of War-Affected Children. Capitalising on the successful outcomes of the First Hearings and the relationship building that was accomplished with the participating NGOs, the next Hearings will likely cover such topics as the proliferation of small arms, humanitarian intervention, family reunification, peace education and prevention, child soldiers and child refugees.

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PART 1

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INTRODUCTION AND  
BACKGROUND

# PART 1. INTRODUCTION AND BACKGROUND

In 1999, the international community celebrated the tenth anniversary of the adoption of the *Convention on the Rights of the Child* (CRC) by the General Assembly of the United Nations. This is the first international, legally binding instrument to guarantee the full range of human rights to children. The CRC recognises that children are members of the global community and should thus be able to enjoy the same rights as adults, while making provision for the particular vulnerabilities of developing minds and bodies.

Children had not been left out of earlier human rights law, which acknowledged in many documents that they are especially vulnerable and therefore require extra protection as well as specific provision for their survival and development. Children were mentioned in the UN *Universal Declaration of Human Rights* of 1948, in Article 25 (2), which states that ‘Motherhood and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection’. Other Declarations and Covenants of both the United Nations and other international bodies, such as the European Social Charter, echoed this shared concern regarding protection. The 1959 UN *Declaration of the Rights of the Child* stated in its preamble that ‘mankind owes to the child the best it has to give’ and interpreted this in a series of protections, benefits and priorities. In addition, international humanitarian law treaties have recognised the special vulnerability of children, for example in situations of armed conflict.

The first global charter protecting the rights of children, as a distinct group was a Declaration of the League of Nations, made in 1924 and known as the *Declaration of Geneva*. It was proposed and drafted originally by Eglantyne Jebb the founder of both the Save the Children movement and the International Peace Union. Nevertheless, this brief Declaration was based on ideas of child welfare, rather than child rights, assuming that children require adult protection in order to ensure the exercise of their rights. These ideas persisted through the re-drafting of the Declaration during the lifetime of the League of Nations, as well as in the 1959 UN *Declaration of the Rights of the Child*. Thus children continued to be seen as objects of international human rights law and not as subjects of rights.

A major change in attitude of the world community was catalysed by the activities of the United Nations International Year of the Child in 1979. Following this, the United Nations Commission on Human Rights began to consider a proposal of the Polish government for a Convention on the Rights of the Child. Ten years later, after a

long drafting period, the Convention was adopted by the United Nations General Assembly. It is unique among human rights documents, because it contains in one document, provisions not only for Civil and Political Rights, but also for Economic, Social and Cultural Rights.

In the decade since it was adopted the CRC has had three main effects:

- Children are seen as subjects of rights, with their own ideas and opinions;
- Children are seen as people who contribute to society, rather than objects of concern or passive victims; and finally,
- More and better information is sought about all aspects of children’s lives.

A further outcome has been the development of a wide range of new, supplementary international human rights agreements concerning children. These include optional protocols to the CRC itself, on sexual exploitation and on children affected by armed conflict. In addition, Convention 182 adopted by the 1999 International Labour Conference on ‘worst forms’ of child labour<sup>1</sup> and the 1997 UN Convention on anti-personnel<sup>2</sup> mines have both been the subject of widespread debates that would almost certainly not have taken place without the stimulus of the CRC. Other less well-known, international agreements that were drawn up for children during the 1990s expand the rights provided for children in the spheres of justice (Beijing & Riyad Rules), adoption (Hague Convention) and education (Jomtien Declaration).<sup>3</sup>

Because it has been ratified by almost all United Nations member states, the CRC is more effective than previous human rights treaties. It is now impossible for research, policy-making or programming concerning children to proceed without using the CRC as the guiding framework.

## 1.1 From indignation to action: The International Bureau for Children’s Rights

Despite the almost universal acceptance of the CRC, children’s rights continue to be violated or not achieved. According to UNICEF, although many millions of children are now healthier, better nourished and have greater access to better quality education than ever before in history, ‘a number of goals remain out of reach for hundreds of millions of children throughout the world.’ The problems faced by

1. ILO Convention 182, *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, adopted by the 87th Session of the International Labour Conference, 17:06:1999 (not yet in force).

2. *Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction*, 18 September 1997 (United Nations).

3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*) Resolution 40 / 33 29 November 1985, 96th plenary session; United Nations Guidelines for the Prevention of Juvenile Delinquency (*The Riyadh Guidelines*) GA res 45/112 (December 14, 1990); Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption (Convention #33); *The World Declaration on Education for All and the Framework for Action to Meet Basic Learning Needs*, adopted at the World Conference on Education for All, held at Jomtien, Thailand, from 5 to 9 March 1990

children are not new. Throughout history they have been exploited, abused and victimised by adults. Yet, as UNICEF points out, the causes are ‘more widespread and profoundly entrenched than they were even a decade ago.’<sup>4</sup> Thus the International Labour Organisation estimates that some 250 million children work in conditions that violate both Article 32 of the CRC and the provisions of ILO international treaties.<sup>5</sup> The general public’s increasing awareness of violations of children’s rights, particularly with respect to sexual exploitation and rising reports of children’s sufferings in situations of armed conflict, has led to indignation and calls for action.

The International Bureau for Children’s Rights is an international non-governmental organisation incorporated in Canada, which was established in 1994 to respond to the need to turn indignation about violations of children’s rights into action and to promote increased compliance with the international instruments designed to protect them. The Board of Directors of the Bureau consists of humanitarians and experts from various regions of the world as well as from diverse backgrounds. Regular activities are co-ordinated by a six-member Executive Committee. The General Secretariat, based in Montreal, provides the professional and logistical support required for the operation of the Bureau.

The objectives of the International Bureau for Children’s Rights are to:

- Ensure that children’s rights are respected in accordance with the principles set out in the CRC;
- Denounce, condemn and publicise any situation which contributes to the continuation of children’s suffering and violation of their rights;
- Intervene on high priority issues affecting children’s rights internationally;
- Raise awareness and urge citizens and governments to take responsibility for the violations of children’s rights;
- Call for concrete action to ensure the welfare and protection of children;
- Recommend action, facilitate co-operation within the international community and mobilise efforts at all levels.

The Bureau has developed the International Tribunal for Children’s Rights, a unique intervention mechanism for conducting enquiries and proposing practical solutions to specific violations of children’s rights.

The first cycle of Public Hearings, held from 1997 to 1999, focused on issues relating to the international dimensions of sexual exploitation of children. The outcome and follow-up activities from these Hearings included a meeting in Madrid, for the fifteen member States of the European Union, hosted in November 1998 by the Government of Spain, with the objective of developing

## Mission Statement

The Bureau’s mission is to protect, defend and promote the rights and welfare of all children in every corner of the globe.

amendments to regional and national laws guaranteeing better protection for child victims of sexual exploitation. The University of Pennsylvania, in co-operation with the Bureau is conducting a research project on child trafficking between Canada, Mexico and the United States. Working closely with the United Nations, the Bureau has set up a Working Group to draft international norms for the protection of child victims and witnesses in criminal cases. The Tribunal’s recommendations resulting from the first cycle of Hearings have been submitted to the UN and, on November 23rd 1999, a Global Report of these recommendations was published with the support of UNESCO.

In addition to its specifically international work, the Bureau is involved in Canadian programmes that include awareness rising and co-operation projects with members of the travel industry. The Bureau is working with the Royal Canadian Mounted Police and the Sûreté du Québec to fight child pornography and sex tourism.

The Bureau is also involved in an initiative organised in Canada known as the Children and Armed Conflict Working Group of the Canadian Peacebuilding Co-ordinating Committee; is participating in a network of Canadian organisations working for children’s rights; and is taking part in a series of conferences and youth activities commemorating the first decade of the CRC.

The International Bureau for Children’s Rights has already begun to follow-up on the First Hearings on the Protection of War-Affected Children. The IBCR and Cantilevers-peacemedia (CPM), a civil society peacebuilding and conflict transformation publication forum, have become partners in an effort to respond to the declarations and recommendations (Section 3) of this report. The CPM publication entitled, *Rites of Peace: Responding to the Rights of Children in Armed Conflict*, in line with the IBCR mission, is seeking to broaden the understanding of the issues affecting children’s rights in the context of war. The Tribunal’s conclusions and recommendations are highlighted throughout the publication. They are linked to each article, creating a framework whereby the process of advocacy strongly supports the best practices expressed through the articles. The *Rites of Peace* collaborative project will see the production of an effective and accessible publication, facilitating the sharing of experience, key challenges and best practice cases in response to these critical issues amongst diverse sectors of society.

4. UNICEF, 1999, *The State of the World’s Children 2000*, New York, UNICEF, p. 8.

5. Chief among these are Convention 138 on the Minimum Age for Admission to Employment (1974) and Convention 182, on the Elimination of the Worst Forms of Child Labour (1999) supra note 1.

## 1.2. The International Tribunal for Children's Rights

The Tribunal is best described as a moral court rather than a formal, judicial institution. Although it is concerned with investigating situations in which children's rights are violated, the Tribunal cannot formally incriminate, prosecute or punish those responsible. The judges have no powers beyond those of persuasion on the basis of the conclusions and recommendations they make in their reports.

The Hearings offer an opportunity for public testimony, for sharing experiences and views, in both oral and written form and for monitoring important issues about the rights of children around the world. They aim to:

- Raise the awareness of citizens, governments, organisations and corporations about their responsibilities in light of the principles set forth in the CRC;
- Recommend measures that will insure the well-being and protection of children;
- Encourage co-operation between all members of the international community.

The Hearings have a flexible format within overall guidelines (Appendix D). The Tribunal consists of judges chosen by the Selection Committee of the International Bureau for Children's Rights, who are appointed for the duration of a cycle of Hearings, including production of the related Hearing's Reports and the final Global Report. They are internationally recognised eminent judges from the five major regions of the world recommended by their peers to the Selection Committee and then selected by the Committee on the basis of specified professional and personal criteria. Candidates submit a letter of interest, a resumé, and supporting documentation to the Selection Committee, whose decision is communicated in writing to the applicant.

### 1.2.1. Identification of themes

The choice of theme for the Hearings was based on a broad-based international consultation with children's rights organisations and an investigative research process. The Bureau is able to identify priority areas and then select the main theme to establish the topic for a series of Hearings. In 1995, an international survey of more than 240 organisations clearly identified the international dimensions of the sexual exploitation of children as the first issue that should be addressed by the Bureau. Thus the first series of Hearings (1997-9) tackled this topic, while the protection of war-affected children was identified in the same manner as the theme of the second cycle of Hearings (1999-2002).

### 1.2.2. Child and youth participation

The involvement of children and youth in the Hearings has always been a goal of the Bureau, although this was not attempted in the first series. Thus the involvement of young people from Northern Ireland giving evidence in a case study during the Colchester Hearings in April 2000 was a new feature. The Bureau takes the view that child and youth involvement in the Tribunal adds to the knowledge being

#### The International Tribunal for Children's Rights

#### Lessons from the first series of Hearings (1997-9)

- The desire to improve children's welfare is universal;
- A moral court has power;
- Civil society is developing new strengths in the fight to achieve children's rights.

concentrated on at the Hearings, while at the same time allowing for the perspective of young people to become a dominant force in the process. Age, experience and ability may determine whether children and youth will be involved as witnesses in any particular Hearing. The Bureau works with recognised, locally-based NGOs or CBOs to identify child and youth witnesses. In the case of the Colchester Hearings, the youth<sup>6</sup> who appeared as witnesses were selected from among those who work with their peers and with younger children providing a broader insight than might have been the case if they had only given testimony on personal experiences.

### 1.2.3. Conclusions and recommendations

The final phase of a cycle of Hearings is the completion of a Global Report. This report is a combination of the findings, conclusions and recommendation of the Hearing's Reports within the thematic cycle. In addition to being published and widely distributed, this Report is presented to the International Bureau for Children's Rights, which then decides what follow-up measures will be taken. One of the primary aims of the Bureau is to advocate for the wide acceptance of the Report of conclusions and recommendations, which encourages recognition on the part of both civil society and governments of their ability to collaborate in bringing about positive change. The Tribunal provides preventative, educational, and corrective conclusions and recommendations. The Bureau is equipped to challenge international norms by using these in the form of programmes and activities, as well as in legal analyses of international children's rights instruments and the actions of governments. This ensures that these measures can be accessed and responded to by the widest possible range of agencies, including governments, NGOs, and media.

6. The youth witnesses from Northern Ireland who were present at the Colchester Hearings were selected by Marie Smyth, Director of the Community Conflict Impact on Children — INCORE. She played an integral part in the co-ordination of the *Case study of the situation in Northern Ireland as expressed by youth*. She was also a witness at the Hearings.

### 1.3. Hearings on the Protection of War-Affected Children (1999-2002)

Despite international legislation adopted over the last 25 years, armed conflict places children in situations where they have no security, no stable family structure, no access to food or proper drinking water or to education or health services, no home to go to, and in many cases no hope. In addition to wars between nations, the number of internal conflicts has increased since the end of the Cold War, bringing with them gross violations of children's rights. International treaties have been adopted to deal specifically with the protection of war-affected children yet many countries fail to comply with these laws. The safety of children internationally is a concern stemming from the violent nature of conflicts currently being waged, the prolonged impact resonating from them and because warring factions are now targeting children as part of their strategy.

The concern of child rights advocates does not stop when the war ends; the aftermath of war also affects children's lives. Peace processes tend to be neither peaceful nor smooth processes. It may often take longer to rebuild war-torn political, social and cultural infrastructures than to wage a conflict. Some children live out their childhood and young adult lives entirely within phases of conflict and peace building without ever experiencing a period of security and well-being.

During the cycle of Hearings on the Protection of War-Affected Children, the International Tribunal for Children's Rights is working to identify organisations responding to issues affecting children in armed conflicts as well as regional processes that promote children's rights and welfare. The Tribunal's Bench assesses the immediate and primary problems facing children before, during and after conflict based on testimonies by expert witnesses from international agencies, local organisations, including children and youth, lawyers, academics, and advocates, all of whom have expertise in or experiences related to children's rights.

An important aim of these Hearings is to encourage an understanding of underlying causes, to share ideas and to initiate and encourage dialogue that can lead to solutions. An important factor in achieving these objectives is to recognise the vital working relationships with non-governmental organisations (NGOs), community-based organisations (CBOs), government agencies and international organisations that have developed expertise in and understanding of children's rights. Building networks and knowledge through this process will enable efficient follow-up activities to complement existing working policies and programmes.

The current cycle of Hearings on the Protection of War-Affected Children of the International Tribunal for Children's Rights covers a range of issues related to children

in situations of armed conflict through which their basic human rights, protected under the CRC and other international instruments, are being violated. In order to determine the best preventative methods to promote compliance by state and non-state actors of international mechanisms set out to protect children, the Hearings provide a setting in which new strategies can be created and the best interests of children are paramount. Each of the Hearings within this current cycle focuses on a particular set of concerns:

#### ***First Hearings – Exploring International Standards Relating to Children Affected by Conflict, Colchester, England, April 2000***

The First Hearing under the current mandate focused on the rules set by international conventions, standards and law, reviewing their application to children in zones of conflict. The goal was to determine how effective or ineffective current instruments are with respect to the violation of children's rights.

#### ***\*Second Hearings – Understanding the Conflict Children Face: An Investigation of the Immediate Challenges in Pre-, During and Post - Conflict Periods (Bosnia)***

The Second Hearings on the Protection of War-Affected Children will target issues relating to internal conflicts. The Hearings will examine the effectiveness of the international principles and norms as they are implemented and relate to programmatic practice on the ground dealing with children being targeted, exploited and traumatised by internal conflicts. For example, the proliferation of landmines and small arms will be given serious consideration by the Tribunal through expert testimonies on the impact of these tools for warfare on children throughout all stages of armed conflict, during and after. The Hearings will also focus on the impact and outcomes of international humanitarian interventions resulting from conflicts on sovereign nations. Further, the examination of current activities to strengthen international agendas will be given priority as they relate to the protection of all children's rights and well-being as needing consideration above political objectives of warring factions. Finally, the Bench will hear testimonies from specialists of conflict mediation and resolution in order to discern the best practical methods to respond to the needs and rights of children.

#### ***Third Hearings – Children Running from Conflict: The Plight of Refugee and Internally Displaced Children (Africa)***

The Third Hearings on the Protection of War-Affected Children will include testimonies on the difficult situation of child refugees and Internally Displaced Persons (IDP). War leaves many children homeless and orphaned. Some flee the country for safer lands, either with their families or

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\* The future Hearings of the International Tribunal for Children's Rights are currently in the process of being determined. Previously it was decided that two more Hearings would complete this cycle on war-affected children. The Bureau is now assessing the needs and priorities of this process and will determine whether one or two more Hearings will be required to complete the global report.

## **No place for Children**

Some 300,000 children and young people are estimated to be involved in wars at present, killing and dying for causes they may barely understand. The actual numbers and age range of these children are unknown since data is either not kept or not disclosed by the governments or armed groups in conflict situations. What is clear is that, despite the large and growing body of opinion that combat is no place for children of any age, children continue to be sacrificed in this way.

**UNICEF, 1999, *The Progress of Nations*, p.7.**

unaccompanied. The CRC stipulates that children have the same rights as adults to a nationality and an identity. These Hearings will focus on the rights of refugee or internally displaced children. The Tribunal will work with existing law and recommendations from IOs and NGOs to determine how international law can be implemented more effectively as a tool and to assist in developing priorities for sustainable prevention of migratory populations and the protection offered these children.

### **1.4. War-affected children: The main issues**

Armed conflicts set the stage for endless violations to children's rights, including their right to be safe from physical harm, to develop fully, to enjoy physical and mental health, to an education and to play. The very institutions and social structures that aim to protect children and promote their rights are often those hardest hit by war.

The characteristics of modern warfare make it particularly dangerous for children. In the first place, over the past half century, open international warfare, which is at

least partially governed by the Geneva Conventions, has given way to a myriad of internal conflicts in which the distinction between combatants and non-combatants seems to be increasingly blurred. Many of these conflicts are claimed on the basis of distorted and obscure ideas of 'ethnicity'. As the enemy is defined through identification of 'the other', children often come to be perceived as enemies-in-the-making, to be exterminated, or they themselves develop attitudes of enmity towards groups and individuals perceived as alien. These internal conflicts also tend to take place in countries where infrastructures are already weak and rapidly become unusable because of strategies that may deliberately target schools and health centres. Thus children who are not actually caught up in fighting may still be unable to enjoy their rights to provision of the basic needs for survival and development.

Perhaps the most significant aspect of modern conflict is the rise in civilian casualties. In the 1914-18 World War, only five percent of casualties were civilian. This increased tenfold to 50 percent in the 1939-45 World War, while the Vietnam War two decades later was marked by 80 percent civilian casualties. Moreover, it is claimed that 'Out of the 20 million killed in the 150 armed conflicts between 1945 and 1982, the majority of deaths [were] women and children.' Between 1985 and 1995, according to one source, 'internal armed conflicts... led to 1.5 million child deaths, 4 million children disabled as a result of war wounds and 5 million children living in refugee camps to escape conflicts.'<sup>7</sup> According to another source, 2 million had been killed in the same period, with 6 million seriously injured or permanently disabled, many by landmines.<sup>8</sup> Over the subsequent half-decade, conflicts have multiplied and intensified with the result that the topic of war-affected children has risen to the top of the international child rights agenda.

## **Children Affected by Armed Conflict: Quantitative and Qualitative Changes**

Over the last decade, 2 million children have been killed in conflict situations, over 1 million have been made orphans, over 6 million have been seriously injured or permanently disabled and over 10 million have been left with grave psychological trauma.

At the present moment, there are over 20 million children who have been displaced by war within and outside their countries. Some 300,000 young persons under the age of 18 are currently being exploited as child soldiers around the world. And approximately 800 children are killed or maimed by landmines every month.

There has been a qualitative shift in the nature and conduct of warfare.

**General Assembly, Fifty-fourth session Agenda item 12, 1 October 1999, A/54/430, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, p. 6, paras 10,11,12**

7. Geraldine Van Bueren, 1995, *The International Law on the Rights of the Child* at 328

8. Machel Report, *The impact of armed conflict on children*, Report of the Expert of the Secretary General, Ms Graça Machel, submitted pursuant to the resolution adopted by the General assembly A/RES/48/157 to the Fifty-first session of the United Nations General assembly, (A/51/306 and Add.1) at 1 para 2.

Children affected by armed conflict may be:

- Injured or killed;
- Uprooted from their homes and communities;
- Internally displaced or become refugees;
- Deprived of basic needs such as shelter, food and medical attention;
- Orphaned or separated from their parents and families;
- Subjected to sexual abuse and exploitation;
- Victims of trauma as a result of being exposed to violence;
- Deprived of education and recreation and positive development to become productive citizens.

In addition to the dangers to child civilians, concern is also expressed about child combatants. Surveys have shown that volunteers below the age of 18 years are accepted into government and rebel groups in at least 62 countries.<sup>9</sup> Article 38 of the CRC makes an exception to the definition of childhood as under the age of 18 years, and makes 15 the minimum permissible age, but an Optional Protocol that, among other things, raises this age to 18 years, was adopted by the UN General Assembly in May 2000. It is also clear that many child soldiers do not volunteer but are forced to join military groups, using means that vary from abduction to offering basic shelter and food to destitute orphans. Pressure from NGOs concerned about child soldiers persuaded the International Labour Conference in 1999 to add child soldiers who have been forcibly or under compulsion recruited to the definition of the ‘worst forms’ of child labour in ILO Convention 182.<sup>10</sup>

In addition to action and advocacy by NGOs, the United Nations system has responded to this crisis by setting up the Office of the Special Representative of the Secretary General for Children and Armed Conflict in 1997. This followed the ground-breaking report of Graça Machel, entitled *Impact of Armed Conflict on Children*, which was submitted to the General Assembly in 1996, providing the first comprehensive overview of the situation.<sup>11</sup> This report concluded that ‘Whatever the causes of modern-day brutality towards children, the time has come to call a halt’ and demanded that ‘children simply have no part in warfare. The international community must proclaim this attack on children for what it is – intolerable and unacceptable.’<sup>12</sup>

## 1.5. The state of the law: Rights of war-affected children

In addition to being the century in which children increasingly suffered as the result of armed conflict, the twentieth century was also characterised by the development of both humanitarian and human rights law. Moreover, the past hundred years has been characterised by new

perspectives on children and childhood. Ideas about the special rights of children to protection from harm have been combined with a growing understanding of children’s contribution to society as actors and the need to take their views into consideration in decisions made on their behalf. The balance between protection and participation with respect to children is mediated by the duties and responsibilities of adults.

International humanitarian law is the body of international law that governs the conduct of armed conflict. It sets out the rules for what is permissible during hostilities and includes the Geneva Conventions of 1949 as well as the Additional Protocols of 1977. In so far as it applies to children, humanitarian law emphasises their vulnerability and the need to protect them from the harmful effects of armed conflict, yet it pays little attention to the special needs of children, who are included within the overall idea of the vulnerable civilian population. The age of children envisaged in the Geneva Conventions is implicitly somewhat younger than 18 years of age. Articles 77 and 78 of the Additional Protocols do focus specifically on the protection of children. They forbid recruitment of persons under the age of 15 years to take direct part in hostilities, as well as dealing with the arrest, detention, internment and evacuation of children in situations of armed conflict.

It is evident from the increasing toll of death, injury and suffering that humanitarian law is insufficient to protect children from the effects of armed conflict. Yet the provisions relating to armed conflict in Articles 38 and 39 of the CRC also appear to be inadequate, even if they were to be fully implemented. These Articles do not impose an absolute duty on states to ensure the care and protection of children during hostilities, nor do they raise the age for recruitment into armed forces or make any advance on the standards of protection afforded by humanitarian law.

The Committee on the Rights of the Child<sup>13</sup> chose the topic of armed conflict for its first day of thematic discussion; following which, the Committee recommended the drafting of an Optional Protocol on the recruitment of children to armed forces (adopted by the UN General Assembly in May 2000). Nevertheless, most children caught up in hostilities are not combatants. The Committee did not make any firm recommendations for the protection of child civilians, but did propose that a UN study should be made of the topic. Following this, Graça Machel was appointed as the expert to lead the study<sup>14</sup>, which among other things resulted in the mandate for a UN Special Representative on the Protection of Children and Armed Conflict. Both the Machel Report and the mandate for the Special Representative make it clear that ‘in relation to children humanitarian law and human rights law can no longer be seen as distinct bodies of law.’<sup>15</sup> (For further details see Appendix E).

9. UNICEF, 1999, *The Progress of Nations*, p. 7.

10. ILO Convention 182, supra note 1.

11. Machel Report, supra note 8.

12. Ibid, at 1 para 5.

13. Hereinafter the Committee

14. Supra note 8.

15. Geraldine Van Bueren, supra note 7 at 349.



# PART 2

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THE HEARINGS ON  
THE PROTECTION OF  
WAR-AFFECTED  
CHILDREN

## PART 2. THE HEARINGS ON THE PROTECTION OF WAR-AFFECTED CHILDREN

The International Bureau for Children's Rights recognises the support and valuable collaboration of the Children in Armed Conflict Unit of the University of Essex in making possible the first Hearings cycle on war-affected children, which was held at the University in Colchester, England in April 2000.

The members of the Tribunal at these Hearings were Lady Chief Justice Joyce Aluoch (Kenya), Judge Helio Bicudo (Brazil), Judge Emanuel A. Cassimatis (United States of America) and Judge Vicha Mahakun (Thailand). Judge Adam Lopatka (Poland) was unable to attend because of a prior commitment. The Tribunal members elected Judge Cassimatis as the President of the Tribunal for the First Hearings. The Rapporteur was Dr. Judith Ennew (United Kingdom) – see Appendices A-C for The Agenda for the Hearing, together with biographical notes on the Judges and witnesses).

In his introduction of the members of the Tribunal at the start of the proceedings, the President reminded those present that the objectives of these Hearings were to examine existing humanitarian and human rights law to ascertain:

- Whether the degree of protection provided to children in situations of armed conflict by these bodies of law is sufficient, and if not, why not and what measures might be taken to improve the situation;

- Whether the implementation of these instruments is sufficient and adequate, and if not, why not and what can or should be done to improve implementation.

He also reflected on the new role that can be played by the institutions of civil society, by elaborating the meaning of a 'moral court' imbued with the authority of justice, which can reflect the growing global outrage at the desperate situations in which children are placed because of modern forms of warfare. The conclusions and recommendations of the Tribunal thus will contribute to the movement to convert this outrage and indignation from words into action, thus fulfilling the aims of the International Bureau for Children's Rights. Following an introductory session, the evidence was given under three thematic headings:

- Compliance with and Obligation to International Standards Protecting Children in Armed Conflict;
- Monitoring the Implementation of International Standards;
- Advocacy and Action for the Protection and Prevention of War-Affected Children.

In addition, three presentations were given at lunchtime during the three days of the Hearings. These are summarised in this Report in separate boxes within the text.

### The Children in Armed Conflict Unit University of Essex

*The Unit was established to carry on the work of Graça Machel, the former UN expert on the impact of armed conflict on children. The Unit enables and encourages better defence and protection of children's lives by analysing current deficiencies and abuses and actively promoting the implementation of existing international standards. In addition the Unit works to identify and disseminate information on good practice and keep the issue of children in armed conflict high on the public agenda.*

*The objectives of the Unit are to:*

- *Carry out situational analyses;*
- *Disseminate the results;*
- *Keep the issue of the impact of armed conflict on children on the public agenda;*
- *Train a wide variety of professionals in working with children and protecting them in the juvenile justice system;*
- *Develop culturally appropriate pre-trial diversion and restorative justice schemes that are community based and obviate the need for detention of child offenders;*
- *Develop protection mechanisms for vulnerable children, including mediation schemes that enable social welfare agencies to promote the best interests of children and hear their opinions, as well as establishing formal fostering schemes;*
- *Build the capacity of local NGOs;*
- *Assist international agencies in child rights based programme planning and delivery.*

## 2.1. Introductory evidence

### **Overview of issues associated with war-affected children:**

*Keynote Address by Chetan Kumar, NGO Liaison Officer representing Olara Ottunu, Special Representative of the Secretary-General for Children and Armed Conflict.*

Mr. Kumar began by extending the greetings of Olara Ottunu, Special Representative of the Secretary-General for Children and Armed Conflict to the Tribunal and referring to the recent *Conference on Children's Rights in the New Millennium*, organised by the Bureau in Montreal in November 1999, which had been attended by Mr. Chetan Kumar as the representative for Mr. Ottunu. Based on this experience, the Special Representative not only sent his good wishes but also wished to convey his excitement about the innovative approach taken by the Bureau, which he expects to contribute to strengthening existing norms and instruments. The Special Representative also wished to communicate his hope that a co-operative plan of action would result from the Hearings through the synergism created between all actors in this field.

Mr. Kumar then sketched the parameters of the main issues and broad areas of work undertaken by the Special Representative.

Referring in particular to the CRC, and the *Optional Protocol on the Involvement of Children in Armed Conflict*, as well as ILO Convention 182, he stated that international human rights instruments are not as effective as they might be in protecting children in conflict situations. The CRC, he stated, may be the most ratified instrument in human rights law, but it is also the most violated. The same lack of implementation applies to international humanitarian law, including the Geneva Conventions and what Mr. Kumar referred to as the 'strongly worded', 'landmark' UN Security Council Resolution 1261 of August 1999.

The Office of the Special Representative has invested time in analysis and suggestions in response to two main aspects related to implementation. The first of these concerns the uneven judicial process, including enforcement by States Parties and other international bodies. The second is the need to accept and understand how international norms relate to local cultures, including systematic identification of local mechanisms, perhaps at the community level, that

would help the process of implementation. Mr. Kumar cited the example of the way traditional courts in Rwanda have been supported by indigenous healing processes, with respect to both the administration of justice and the rehabilitation of combatants and victims.

The challenges identified by the Office of the Special Representative are threefold:

1. The need to know the underlying reasons why parties to conflicts, who routinely violate the rights of children, act in this way, together with means for preventing such violations, perhaps by raising awareness of children's rights;
2. Identification of competent bodies to report on and monitor violations as well as compliance options that might work; for example, inducements (a place at the bargaining table) or sanctions. In the latter case, it is also necessary to monitor the effects of sanctions, especially on children. The preferred option would be to sanction points of origin (resource base) not the point of impact (children);
3. Meeting the challenge of mitigating the impacts of conflicts on children. This would include:
  - (a) Conflict-related trauma;
  - (b) Peaceful co-existence for generations that have grown up through conflict;
  - (c) Systematically making children the priority in peace processes.

In considering these challenges, the Office of the Special Representative uses two main principles. In the first case, concern for children should be central and in the second, the community level is regarded as the most important sphere of operation. Both principles imply that children are subjects of rights and potential citizens, rather than objects of concern and/or victims. This means that those involved in peace keeping operations should be aware of child rights issues and how to work with children. Mr. Kumar referred to the appointment of Child Protection Advisors mandated by the Security Council in Sierra Leone, Kosovo and East Timor. In each instance, NGO assistance on the ground is crucial to

### **Mandate of the Special Representative for Children and Armed Conflict**

- Public Advocacy to build greater awareness and to mobilize the international community for action;
- Promoting the application of international norms and traditional value systems that provide for the protection of children in times of conflict;
- Undertaking political and humanitarian diplomacy and promoting concrete initiatives to protect children in the midst of war;
- Making the protection and welfare of children a central concern in peace processes and in post-conflict programmes for healing and rebuilding.

General Assembly, Fifty-fourth session Agenda item 12, 1 October 1999, A/54/430, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, p.5, para. 2.

## All Children, All Rights

Article 38 [of the CRC] specifically expresses the situation of children in armed conflict... However, all other articles of the Convention are relevant. In fact, there is no derogation clause in this Convention, it applies in its entirety also in times of war or emergency. The child has a right to a family environment, to go to school, to play, to get health care and adequate nutrition – also during armed conflict. The principles of the Convention are valid as well: that all children without discrimination should enjoy their rights, that the best interest of the child be a primary consideration of decisions, that the rights to life, survival and development be protected.

**Thomas Hammarberg, former member of the Committee on the Rights of the Child,  
quoted by Carolyn Hamilton in evidence to the Tribunal**

create awareness of the international supports and instruments available. However, the most important level is the community, which brings with it the realisation that rather than bringing in therapeutic healing methods from outside, peace and reconciliation processes should use the creative resilience of the community and the children, integrating this into a comprehensive approach. Thus, psychological support would be complemented by, for example, credit schemes, which may be required in order to prevent child soldiers who return to their communities from becoming child labourers.

The Special Representative conceives of ‘outreach’ to children as individuals who need assistance in order to develop into productive citizens. This means that children must be active participants whose voices are genuinely listened to. Thus the Special Representative suggests interventions based on child participation approaches such as those developed by the Child-to-Child network and Voice of Children projects. With respect to local capacity, Mr. Kumar pointed out that when communities emerge from conflict there is never a complete vacuum. Some traditions and values will have survived, both positive and negative.

### *Questions to Chetan Kumar*

Questions from the Tribunal to Mr. Kumar concentrated on details of the Optional Protocol. On the question about whether or not there is an agency to monitor the implementation of the Optional Protocol, Chetan Kumar replied that there are three aspects to monitoring the Optional Protocol. In the first place, there is the rule of the Protocol itself, that armies must not recruit persons under the age of 18 years, together with the question of how to monitor non-state actors, which are mentioned in the Optional Protocol. The second issue is how this Protocol can ensure compliance: what kinds of incentives can be used with different agencies. The final issue is what alternatives can be used in the field of relief and assistance. Different rules apply to states and to armed groups as well as the military schools, which present a problem. Nevertheless the Optional Protocol is a step towards universal standards in this area. With

respect to Security Council Resolution 1261, he stated that it is regarded as a landmark because it is comprehensive and also because this had been the first time the ‘language of rights’ had been used by the Security Council. This Resolution essentially focuses on the actions of parties to conflicts and the role of the international community in managing conflict, with respect to peacekeeping as well as through assistance. Regarding the limitations of the CRC, he underlined the fact that the Committee on the Rights of the Child has no power to set, or implement, sanctions for non-compliance by States Parties.

### **P**reserving the rights of civilian children in armed conflict: *Testimony of Carolyn Hamilton, Director, Children in Armed Conflict Unit, Children’s Legal Centre, Essex University*

Carolyn Hamilton began her testimony by explaining that she would address two issues: the rights that should be protected, and who should be responsible for preserving them. In the first case, she suggested that it is necessary to accept that in situations of conflict, especially in complex emergencies, children’s rights cannot all be preserved to their full extent: ‘Conflict disrupts communities, it disrupts services and it disrupts family life and the services the state provides to children. Yet there is no reason why states should not strive to implement rights to the fullest extent of their ability under the obligations placed on them by Article 4 of the CRC. ‘The fact of conflict,’ she stated ‘should not be an excuse in and of itself for non-implementation.’

At a conference in Amsterdam in 1994, Thomas Hammarberg insisted that, although Article 38 of the CRC focuses specifically on children in armed conflict, all other articles remain relevant.<sup>16</sup> This highlights two current points of view. In the first it is stated that there should be a continued expectation of the implementation of the CRC as a whole. The second claims that this is unrealistic in times of armed conflict when survival is the priority. Dr. Hamilton suggested that the true answer probably lies between these two polarities. It is necessary to consider conflict as taking place along a continuum between very acute and low

16. Thomas Hammarberg, “Children as Zones of Peace: What Needs to be Done,” Aldrich and Van Barda (eds.), 1994

intensity. In times of what is called ‘complex emergency’ (when children are in the midst of the combat) it may be unrealistic for the state and/or other agencies to do more than attempt to ensure the right to survival. At the centre of the fighting, the struggle to preserve life, to move people to safety and to ensure that they have food, shelter and basic health care may completely absorb all the energies and capacities of those involved. At such times, the rights to leisure, and even the right to education, are not matters of equal concern. Yet such situations are generally of relatively brief duration even though UN agencies and NGOs seem to regard them as extending over a considerable period during which only ‘survival’ rights, such as food, shelter and basic health care, can be addressed.

Nevertheless, while recognising the difficulties inherent in a truly complex emergency, the full implementation of rights is essential for children if their life chances and opportunities are not to be foreclosed or permanently affected. Dr. Hamilton expressed the opinion that the difficulty lies in achieving an acceptable balance, illustrating these statements with the example of the war in Kosovo, where large scale population displacement began in 1998 and some estimates indicated that by July of that year, one quarter of the population had been displaced with children representing between 55 and 63 percent. Two months later, the lowest estimate of the number of internally displaced persons was 120,000. UNICEF and OXFAM put the number at 250,000 and the United States Defence Ministry at 300,000, while on October 1 of that same year USAID provided an estimate of 534,000. Child mortality and morbidity figures rose during this period. Meanwhile children were not in school, often confined to their homes or, if they were in school, the conditions were very difficult and overcrowded. In other words they had no rights. Conflict continued until late March 1999. A year later, stated Dr. Hamilton, many children were still displaced with no permanent homes, some living in tents with all the inevitable consequences of conflict, including economic deprivation.

From March 1998 to June 1999, assistance efforts concentrated on providing services within a complex emergency. UN agencies and other bodies concentrated on securing food and shelter rather than children’s rights to education, play or any other rights contained in the CRC.

Dr. Hamilton asserted that these agencies could and should have provided these other rights. The reasons they did not do so, she suggested, were multifaceted. Leaving aside the issue of funding, she claimed that the main reason for this failure was that relief agencies are driven by an ethos of

assistance, rather than being based on rights. When staff of the Children in Armed Conflict Unit were in Kosovo carrying out an assessment of children’s rights, they enquired about whether people had a copy of the CRC and what they knew about it. Dr. Hamilton told the Tribunal that:

*Only one agency, and that did not include UNICEF, had a copy of the Convention. Virtually none had received training on the Convention, its remit and interpretation. Whilst a considerable number held themselves out as aware of children’s rights, in reality they didn’t know what this meant. This lack of awareness and understanding had a profound effect on their programming.*

Dr. Hamilton suggested that survival should be the sole aim only in short-term crisis situations: ‘The implementation of children’s rights should not wait for the development teams of an NGO or UN agency to arrive in the area. They should be part and parcel of the planning for children in armed conflict, even in areas of complex emergency.’ About one quarter of the children in Kosovo were caught up in the fighting between March 1989 and March 1999, but they were rapidly moved from the centre of the fighting, mostly living in a stable place for a number of months. During that period and certainly from July 1998 onwards, suggested Dr. Hamilton, there was no reason why the implementation of their rights should not have been assured, despite the difficulties and tensions of their situation. Yet, in July 1998 nothing other than basic survival services was offered to children over the age of 13 years. All programmes targeted children of compulsory school age except that, ironically, they did not include educational provision. Thus she came to the conclusion that children’s rights had been violated despite the fact that it was realistic to expect the state to implement them.

The next question considered by Dr. Hamilton was who is responsible for the preservation of children’s rights in the absence of a functioning state, or if the state is the aggressor. The international community cannot do the same job of implementation as a fully functional state might do or in the sense normally understood by the term. She concluded that humanitarian law is not a route by which children’s rights can be protected. Yet there are problems in taking the alternative strategy of allocating responsibility on the ground to a single international agency. The example of internally displaced persons is a case in point. The UN High Commission for Refugees (UNHCR) cannot take on any more than a restricted role in their welfare for fear that this

#### **Article 4 of the UN Convention on the Rights of the Child**

*States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.*

*With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.*

might compromise its ability to protect refugees. The UNHCR is the only body that has the capacity to do this. The International Committee of the Red Cross bases its action on humanitarian law rather than human or children's rights, and its remit of neutrality may be limiting. UNICEF does not have the capacity, skills and perspective for child rights. The UN High Commission for Human Rights is not funded to meet the operational capacity required. Thus an additional body that takes a rights-based approach to assistance is required.

Dr. Hamilton asserts that a rights-based approach needs to permeate all activities in conflict situations, but

### **Refugee or Displaced Person?**

There are those who argue vociferously that the UNHCR should stick to its original remit: that by seeking to protect internally-displaced persons they compromise their ability and effectiveness to protect refugees. I would submit that, from a child's angle, this argument is unattractive and unsustainable.

To a child, it makes no difference to their situation whether they have managed to cross a border or not. Their needs for protection arise largely from conflict, and what they need is good old fashioned protection: protection that will enhance and implement not only their right to survival, but also their right to equal opportunity.

The only organisation that has the capacity and the experience to undertake this task at present is the UNHCR and if they do not they leave a vacuum: no other body has the organisational capacity to do so.

#### **Carolyn Hamilton: Testimony to the Tribunal**

especially in programmes involving children. She provided further examples from Kosovo. In the first, she referred to the fact that clothing for 300,000 children aged 13 to 18 years was not provided and there was no vocational training for this age group. Although the CRC defines a child as being under 18 years of age there was no provision for children over 13 years of age. Likewise, sticking rigidly to the reconstruction rules for schools meant that there were no schools available in the short term.

Dr. Hamilton recommended that the development of a rights-based approach in all conflict situations should be a priority for all agencies, backed up by regular, analytical training on children's rights provided by the NGO sector. In addition, a child co-ordination unit should be established to take responsibility for integrating work with children in each area of armed conflict. Such a unit should have authority,

based in the lead agency, be well funded, experienced and knowledgeable, with strong management skills to ensure accountability. This should cater to all children in the age range 0-18 years, with a range of programmes, a child rights approach taken by all agencies and children's rights implemented to the greatest extent that is feasible: 'We can't protect children from the impact of armed conflict, but we could certainly do more than at present to limit the impact and move a long way to a better preservation of their rights.'

**?** *Questions to Carolyn Hamilton from members of the Tribunal*  
In response to a question from the Tribunal on what would provide the greatest support to implementation of the CRC, Carolyn Hamilton replied that in her opinion the greatest need is for training in awareness of children's rights. This training would strengthen initiatives of all international bodies, including among donor bodies, so that they understand better what the CRC requires of them.

## **2.2. Compliance With and Obligation to International Standards Protecting Children in Armed Conflict**

### **2.2.1. Existing weaknesses in mechanisms enforcing obligation by non-governmental armed groups to international standards and norms**

**Lack of accountability and obligations of non-governmental armed groups:** *Testimony of Raffael Vonivier, Senior Researcher, Institute for Security Studies, South Africa*

Mr. Vonivier first drew the attention of the Tribunal to definitional problems generated by the idea of 'non-governmental armed groups'. The primary problem is that their importance in reality is far greater than their strength in law, because international law tends only to consider the rights and obligations of two types of entity: states and international organisations. In contrast, armed groups that are well known and may even control large territories in quasi-governmental fashion - such as UNITA, RENAMO, RUF, Sendero Luminoso, UCK, PKK, FARC and LTT - have no proper legal personality. Likewise they cannot be party to instruments such as the Optional Protocol to the CRC. This is a growing problem, because the vast majority of armed conflicts are now internal, with a state fighting against one or several armed opposition groups, while some armed groups engage in warfare against each other.

The second problem is the actual definition of a non-governmental armed group. Mr. Vonivier drew attention to the working definition proposed by Rachel Brett and Margaret McCallin: 'Groups which are armed and use force to achieve their objectives and which are not under state control.'<sup>17</sup> Although this definition works in practice in most situations, Brett herself admits that it poses certain difficulties, including:

17. Brett, Rachel and McCallin, Margaret, *Children: The Invisible Soldiers*, Radda Barnen (Save The Children Sweden), 1998

- The parameters of the term ‘armed’: will any form of weapon, such as machetes, be a sufficient criterion or must firearms be used?
- The size and structure of a group thus defined: a partial answer can be found within the 1949 Geneva Conventions.
- Some opposition groups are clearly outside state control, but others, as in Colombia and Northern Ireland, fight with the government or at least against the armed opposition group.

In addition, the objectives of the group need to be considered. Some groups have purely political aims, but others fund their goals through criminal activities.

The final problem is that child soldiers are increasingly recruited and employed in conflicts on all continents by non-governmental armed groups. Nevertheless, Mr. Vonivier drew the Tribunal’s attention to the fact that despite being outside state control and not party to international treaties, non-governmental armed groups are still subject to certain rules of obligation and accountability.

In the first place, customary humanitarian law entails rules that are universally applicable. In addition, some parts of statutory law are applicable to non-governmental armed groups. Unlike human rights law, which is only considered to be applicable to governments, the written rules of international humanitarian law are broader, because they address all parties to a conflict and impose equal obligations on them all. Mr. Vonivier mentioned two articles in particular:

- Article 77 of Additional Protocol to the 1949 Geneva Conventions, relating to the protection of victims of international armed conflicts, which states at paragraph 2:

*The parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.*

### **What is an ‘Armed Group’?**

...dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted military operations and to implement [the] Protocol.

**1949 Geneva Conventions, Additional Protocol II, Article 1 paragraph 1.**

Non-governmental armed groups are not free to misbehave in the eyes of the law.

### **Raphael Vonivier: Evidence to the Tribunal**

- Article 4 of Additional Protocol II to the 1949 Geneva Conventions, relating to the protection of victims of non-international armed conflicts, which states at paragraph 3:

*Children shall be provided with the care and aid they require, and in particular: [...] c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces nor allowed to take part in hostilities; d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub paragraph c) and are captured.*

It is interesting, Mr. Vonivier pointed out that this Article seems to take it for granted that the minimum age stipulation will be violated. It is difficult to apply Additional Protocol II because of the need to meet six cumulative conditions.

Human rights law also makes some provision for regulating the activities of non-governmental armed groups, which are specifically mentioned in Article 4 of the Optional Protocol to the CRC. Yet two questions remain unsolved: How will States Parties cope with the disparity between recruitment at 15 years for government forces and at 18 for non-governmental armed groups and how can non-state entities be obliged by the international community to respect human rights law provisions, which apply only to states? Nevertheless, it is important that the Optional Protocol does place States Parties under obligation to take all feasible measures to prevent recruitment and use of people under 18 years of age by armed groups – not only by confronting the groups but also by establishing legal measures to prohibit and criminalise such practices. This could also prove useful in combating recruitment from an ethnic diaspora in another state as well as addressing cross-border recruitment, from refugee camps for example.

Mr. Vonivier expressed the view that it is not unrealistic to expect the international community put pressure on supporters and sponsors of non-governmental armed groups. All such groups have sponsors both inside and outside the country providing substantial political, logistical, military, intelligence and financial aid. It is also not unthinkable that non-governmental armed groups might solemnly declare that they would abide by treaties and allow NGOs or a new international body to verify their compliance. Mutual agreements between a state and a non-governmental armed group are also possible.

With respect to accountability, Mr. Vonivier drew

## Non-Governmental Armed Groups: Provisions of the Optional Protocol to the CRC

Article 4 [...]

2. Armed groups, distinct from the armed forces of a State, should not under any circumstances, recruit or use in hostilities persons under the age of 18 years;
3. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of all legal measures necessary to prohibit and criminalize such practices.

the Tribunal's attention to the need to translate both international humanitarian law and international human rights law into domestic legislation. In the latter case, the adoption of the Statute of the International Criminal Court in 1998 represents an important step forward, because Article 8 makes it an international crime to recruit children under 15 or to use them in hostilities, whether national or international, governmental or non-governmental. Nevertheless, the Statute still lacks over 80 percent of the ratifications necessary for it come into force, and in many countries major legislative changes will have to take place before ratification can be achieved – changes that would take at least two years 'even with the best will in the world.' A short-term option would be to try to induce external supporters of non-governmental armed groups to limit their support if children are recruited and used. In addition, children themselves and their parents might be induced to resist the practice: 'The perpetrators would thus be face to face with their own angry people.'

Mr. Vonivier concluded his testimony by expressing the view that it is unlikely that states will give away the privilege of being considered alongside international organisations as the only subjects of international law. Thus he recommended that states should be encouraged to achieve the highest international standards of compliance with international law and to publicise this in order to put pressure on non-governmental armed groups to also comply.

### *Questions to Raphael Vonivier*

The Tribunal's questions to Raphael Vonivier concerned the role of the international community and in particular the International Criminal Court. The International Criminal Court, although not yet in force has universal principles and scope, applying to both perpetrators and victims.

Mr. Vonivier reiterated the points made in his evidence about limits on the role of the international community. He stressed the role played by the International Committee of the Red Cross through its neutrality and also stated that non-governmental armed groups can acquire political weight and credibility in their own countries and from the international community by adhering to international humanitarian law.

During interventions from other witnesses, Nevena Vuckovic Sahovi, from the Yugoslav Child Rights Centre stated that even governments do not know their responsibilities under the CRC and asked what has been done to raise awareness among non-governmental armed groups. Mr. Vonivier replied that non-governmental armed groups are aware of their responsibilities – and can give plausible

answers that conceal or falsify the age of child soldiers. The idea that children should not fight wars is universal. Kathy Vandergrift, from World Vision Canada, commented that, in the experience of World Vision, many governments do not wish to draw attention to their own violations of child rights by denouncing violations by non-governmental armed groups.

### **In an area of armed conflict: The status of Palestinian children's rights in Israeli Occupied Territory:**

*Testimony of Khaled Quzmar, Lawyer, Defence for Children Inter-national-Palestine Section, Israeli Occupied Territory*

Mr. Quzmar introduced himself as a lawyer working in a legal aid programme in Occupied Palestinian Territory who has witnessed first-hand the harmful effects of armed conflict on children. The organisation for which he works is Defence for Children International – Palestine Section (DCI/PS), which was established in 1992 as an independent Palestinian non-governmental organisation and is an affiliate of Defence for Children International, based in Geneva. DCI/PS aims to promote and protect the rights of Palestinian children. It provides legal aid and representation, advocacy and social support for Palestinian children, especially those who are arrested and tortured by Israeli authorities. More than 2,500 such cases have been pursued and a complementary project providing counselling and rehabilitation was established in 1995.

Mr. Quzmar referred to the killings, imprisonment, torture, curfews and beatings experienced by Palestinian civilians during over 30 years of Israeli occupation. Between 1987 and 1993, he stated, 23,000 children were wounded as the result of the use of live plastic and rubber-coated bullets, or tear gas, or through beatings. Despite the Peace Process that was put in place in 1993, children continued to be arrested and detained by the Israeli army for committing what are termed security offences. In 1999, the DCI/PS legal program dealt with 202 cases of Palestinian minors arrested, detained or imprisoned by the Israeli Military Authority, an increase of 113 over the number in 1998. In addition, in the absence of a democratic state with a coherent legal system, children's rights are also violated by the Palestinian National Authority. Mr. Quzmar stated that, despite international human rights and humanitarian instruments, several of which have been signed and/or ratified by Israel, Palestinian children 'continue to endure gross violations of their most basic rights'. He claimed that this highlights a number of weaknesses in international law, foremost among which is broad and diffuse nature of international instruments.

Although this may be necessary to achieve a broad-based consensus so that instruments can be ratified by many nations and come into force, it allows States Parties to interpret the provisions as they see fit, and not according to the spirit in which the legislation may have been drafted.

Article 43 of the Hague Convention of 1907, and Article 64 of the Fourth Geneva Convention of 1949 impose certain duties on an occupying power. These are based on the principle that the occupier is not the sovereign authority in the territory and cannot make any changes to the law and administration except those necessary on a temporary basis for military purposes. Occupying powers are obliged to retain and comply with local laws. Yet, since 1967 Palestinians have consistently been arrested, detained and tried within the Israeli Military Court system. This situation has continued almost unabated since the beginning of the Peace Process and continues to involve Palestinian minors. Mr. Quzmar stated that, contrary to the provisions of Article 40 of the CRC, there are no juvenile courts, no specifically trained juvenile judges, no probation officers and no special police officers who can deal with the interrogation and detention of children. The difference between children and adults with respect to the law relates to sentencing and not to procedure.

The Israeli government has ratified the CRC (August 4, 1991) but has not yet submitted a report to the Committee on the Rights of the Child in accordance with its obligation under Article 43. DCI/PS believes that Palestinian children are subject to the rights of the CRC according to Article 2 (1), which stipulates that 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction...'. Under Israeli Military Order 132, Palestinian children are regarded as adults once they have reached the age of 16 years, unlike Israeli children who must reach the age of 18 years before attaining adult status. This affects the sentencing and place

### Israeli Military Authority Violations of the Rights of Palestinian Children in Connection with 'Security' Offences of 1998-9

Year	Killed	Injured	Arrested
1998	14	340	490
1999	4	102	420

Statistics of Defence for Children International –  
Palestinian Section, quoted in evidence  
by Khaled Quzmar

of imprisonment of Palestinian children in conflict with Israeli Military law. Mr. Quzmar stated that DCI/PS records show that juvenile prisoners are not separated from adults, do not have regular family visits or access to lawyers, have their education disrupted, are subjected to interference and personal assault, and are given inadequate medical treatment. The DCI/PS Counselling and Rehabilitation Programme deals with the negative educational and psychosocial impacts of these violations of children's rights.

#### *Questions to Khaled Quzmar*

The Tribunal's questions concentrated on issues of clarification regarding the relationship between the state of Israel and the Palestinian Authority. A member of the Tribunal requested further information regarding the status of a Palestinian armed force, to which Mr. Quzmar responded, there is still no such body as Palestine is not a state but a territory under the military occupation of Israel. Other members of the Bench requested more information about legal procedures and the jurisdiction of Israeli and Palestinian courts, especially referring to the juvenile courts.

## **A COMMITMENT TO CHILDREN**

The new Millennium brings our thoughts on the human condition into focus. We have always brandished the standards of justice, equality and sharing. Across time and across continents, discussions are increasing, commitments are multiplying and declarations are sounding forth. The intention is to build a better world, and efforts to do so are seen as proof of 'shared humanity'.

And yet, despite all our technological progress we are confronted daily by human suffering, which reveals the indifference, and even the complicity, of the very people whose responsibility it is to govern our global village and work towards improving the well-being of its inhabitants.

In coming years we must all speak out - time and time again - about children: speak of their suffering, decry the injustices of which they are victims, tell of the realities of their lives. And, together with others who believe in children, families and rights, we must find solutions.

## **SUMMARY LUNCHTIME PRESENTATION**

Ten years after its adoption, the CRC is the most widely ratified international human rights instrument and yet, in most parts of the world, children still suffer countless and repeated violations of their most basic rights. The 10th anniversary of the adoption of the CRC by the UN in 1989 was not a time to celebrate but rather for reflection and discussion, on the successes and shortcomings of the past and the challenges that still lie ahead. The Bureau will continue in its mission to work towards the implementation of this vital tool as well as towards a greater and wider understanding of the CRC by adults and children alike. On behalf of the Board of Directors, the staff of the Bureau and our partners, I should like to assure the children of the world that our efforts will increase tenfold, to ensure that their rights are respected regardless of their place of origin, race, culture, sex or religion.

Summary of lunchtime address by Judge Andrée Ruffo, President, International Bureau of for Children's Rights, 4 April, 2000

### 2.2.2. Weaknesses in mechanisms enforcing compliance by States Parties to international conventions

#### **I**mproving implementation of the Convention on the Rights of the Child and UN Security Council

**Resolution 1261:** Testimony of Kathy Vandergrift, Senior Policy Analyst in Advocacy and Government Relations, World Vision, Canada

Kathy Vandergrift opened her testimony by stating that World Vision advocates a comprehensive strategy to address the issue of war-affected children in order to:

- Prevent the involvement of children in armed conflict;
- Protect children from the impact of armed conflict when it does occur;
- Promote children-focused, post-conflict reconciliation and reconstruction;
- Promote the active participation of children and their families at every stage.<sup>18</sup>

Her evidence concentrated on the need for better mechanisms to implement and enforce international human rights and humanitarian law in this field. She began by reporting on her attendance at a recent consultation of international NGOs and UN agencies in New York, which had focused on effective implementation of Security Council Resolution 1261, at which the Executive Director of

Humanitarian agencies said loud and clear that they cannot and will not be a substitute for concrete political action by the UN and the Security Council. 'We are tired,' said some, 'of being the fig leaf' to cover the lack of political will within the international community to deal with difficult situations. Others protested against being the balm for the conscience of the world's political leaders.

**Kathy Vandergrift, Senior Policy Analyst in Advocacy and Government Relations, World Vision, Canada**

UNICEF and the UN Special Representative had both given presentations. She drew the Tribunal's attention to the fact that suggestions from this two-day meeting will contribute to a report being prepared by the UN Secretary General, which was due to be submitted to the Security Council in July 2000. These suggestions will also be incorporated into the ongoing advocacy work of the NGOs involved. Successful implementation of these resolutions, which cover prevention, protection and post-conflict reintegration, will require co-operation between young people, community groups, inter-

national NGOs, UN Agencies and the Security Council. A key aspect of the consultation had been the strong opinion expressed by humanitarian agencies that assistance aid is no substitute for concrete political action by UN agencies and the Security Council.

Ms. Vandergrift stated that, according to her experience over several years in this field, she sensed 'a growing impatience with lack of concrete political action, while the number of children impacted by war grows instead of decreasing'. This impatience is accompanied by a stronger insistence that reporting of violations should be improved and that action should be taken as a result. At the consultation<sup>19</sup> after New York, NGOs renewed their commitment to support people who speak up for the rights of children and called to account those who remain silent in the face of systematic violations, such as the silence on Sudan and Chechnya. At the Oslo Diplomatic Conference in 1997, NGOs had called for the development of country-specific strategies: 'in New York last week the NGOs were determined to focus on specific situations in solidarity, because the UN family is letting children down.'

Ms. Vandergrift then drew attention to aspects of prevention, protection and reintegration that she considered to be of particular interest to the Tribunal. With respect to prevention, she stated that, despite progress made through the adoption of the Optional Protocol, which may lead to reduction in the use of children soldiers once it comes into force, it is equally important to provide concrete alternatives to military service for young people. The young people who are susceptible to recruitment include unaccompanied children, street children, minority youth and poor children. Investment in child development and family support would address the needs of these groups. This would include higher priority and better resources, especially for adolescents, on the part of the World Bank, donor countries and commercial investors. In addition, Ms. Vandergrift expressed the view that States Parties cannot be accountable to the Committee on the Rights of the Child if the International Monetary Fund (IMF) is determining their use of resources. Thus, the IMF should be held accountable in such cases and perhaps child impact assessments should be carried out and made public.

Ms. Vandergrift then turned to the topic of protection. Although the CRC is widely ratified and comprehensive, the mechanisms for its implementation are 'among the weakest for international human rights instruments.' Ms. Vandergrift cited the reporting period of five years, which is a relatively long proportion of the 18 years of childhood, as well as the fact that the Committee on the Rights of the Child is under-resourced and has few powers to ensure enforcement. World Vision, together with

18. Ms Vandergrift referred the Tribunal to the World Vision publication *The Right to Peace*.

19. Referred to at the beginning of Kathy Vandergrift's testimony as the recent consultation of international NGOs and UN agencies in New York, which had focused on effective implementation of Security Council Resolution 1261.

other NGOs, has made the following suggestions to address these problems:

- Strengthen early warning systems, monitoring the situation of children at risk in conflict-prone countries, and use diplomatic initiatives through country embassies to address violations of the rights of children;
- Establish a children-focused early intervention scheme to monitor and report on systematic violations of the rights of children. Leaders of parties in conflict might find it difficult to object to the presence of a team that focuses only on children;
- Establish a sub-committee of the Committee on the Rights of the Child to investigate immediately complaints of violations that threaten the survival of, or inflict permanent damage on, children during armed conflict together with appropriate action through other UN channels, such as the Security Council;
- Include violations of children's rights in the States Parties reports on the agenda of the Human Rights Commission, which has a higher profile than the Committee on the Rights of the Child and reviews country reports every year;
- Develop a reporting system that is user-friendly and includes a report-back function to ensure that action is taken;
- Improve the UN reporting system;
- Take steps to prosecute serious violations for children's rights under international instruments that have stronger enforcement provisions than are found in the CRC. These include the *Convention against Torture* and the *Convention on the Elimination of All Forms of Discrimination against Women*, instruments relating to refugees and the *OAU African Charter for the Rights and Welfare of the Child*;
- Improve states parties' reports under relevant instruments.

Ms. Vandergrift also reported on tensions between human rights organisations and humanitarian agencies over the correct way to deal with human rights abuses. Human rights organisations accuse humanitarian agencies of failing to report human rights abuse because they fear being deported. This fear is valid. In addition, humanitarian agencies tend not to have the training or the time to file reports on violations. Humanitarian agencies, for their part, complain that reporting violations does not always lead to action and that this leaves people exposed to greater risk.

Ms. Vandergrift stated that 'few people have high expectations for serious action by the Security Council because national interests determine the agenda'. NGOs are pressing for children's issues to be included in country reports to the Security Council and for more frequent presentations by the UN High Commissioner for Human Rights during deliberations of specific country reports. NGOs have also asked questions about the potential of

## Implementation

Five years is a long time in the life of a child whose very survival is threatened by the impact of war. In general the peace and security tools we have available leave a big gap between moral persuasion on the one hand and sanctions, with their negative impacts on children, on the other hand.

### **Kathy Vandergrift: Evidence to the Tribunal**

developing criteria for determining when the situation of children's rights becomes critical. Ms. Vandergrift stated that some accounts of violations made by UN workers are not followed up as the result of political decisions at higher levels, without any public accountability. She suggested that the Tribunal might like to investigate this claim.

With respect to all these points, Ms. Vandergrift suggested that the Tribunal consider the development of more effective mechanisms for prosecution of violations of children's rights, without waiting for the Statute of Rome to come into force and set up the International Criminal Court. She concluded that a more robust set of measures is needed, with power to enforce provisions of international treaties that goes beyond moral persuasion. But, she warned that a balance should be achieved, to ensure that mechanisms 'are less blunt than sanctions, which often hurt children and should not be used in the early stages of a conflict.'

Finally, on the topic of reintegration, Ms. Vandergrift drew the attention of the Tribunal to four key issues:

- The importance of incorporating child-specific components in peace agreements as well as in demilitarisation, demobilisation and reintegration. There are still many lessons to learn about how to implement these plans with the active participation of young people and local communities;
- More attention is being paid to child soldiers than to child victims in some war-affected areas;
- Education is not given the key role that it might have, especially in funding. Education is not just a development issue; it needs to be provided to the maximum feasible extent in all emergencies, through appropriate means such as non-formal community-based programmes.
- Special attention must be paid to the need to provide alternative economic incentives, so that children are not forced into taking part in armed conflict out of economic necessity.

In conclusion, Ms. Vandergrift stated that there is no scarcity of proposals made by community-based organisations. What is lacking is the political will to take the issue of war-

affected children seriously. A second challenge is to ensure that the rhetoric of protecting children is matched with the necessary resources. In some cases economic incentives might be considered to ensure compliance with international standards. Finally, Ms. Vandergrift emphasised the importance of listening to local and youth voices and taking them into account in planning. Young people, she stated, are quick to see the hypocrisy of the adult world when their comments are either ignored or used within adult agendas. Local communities, including their young people, are caught in a dilemma because of the mixed messages they receive from the developed world.

### Questions to Kathy Vandergrift

In reply to questions from the Tribunal, Kathy Vandergrift confirmed that although the intention seems to have been to set the minimum age for recruitment at 18 years, a compromise was reached resulting in the different ages set for governments and non-governmental armed groups. In addition, she stated, the low level of accountability for governments is a weakness of the Optional Protocol. She stated that family reunification is a key component of Article 7, but added that for implementation, field co-ordination through a lead agency would be vital. Although the ICRC is mandated in this respect, in practice it does not always lead on the ground

### **Convention on the Rights of the Child: Non-compliance by States Parties during conflict:**

*Testimony of Françoise Hampson, Professor, Faculty of Law, University of Essex*

Françoise Hampson commenced her testimony to the Tribunal by commenting that the CRC is often assumed to be the last word on anything to do with children. She suggested to the Judges that the CRC may be given too great a prominence, and it is worthwhile reflecting on what this instrument can and cannot do. It has, for example, no derogation clause, which means that there are no circumstances of its provisions that do not apply – with the exception of reservations expressed by States Parties when they ratify. Thus the CRC applies without exception in times of war and public emergencies. This particular point can be considered as both a strength and a weakness – a strength because it makes it possible to use Article 38 in the context of the entire range of rights provided in the CRC, but a weakness because humanitarian agencies assume that the CRC covers all eventualities.

There are two elements missing from the text of the CRC. It provides neither for the right of individual petition nor for general comments. In fact, Professor Hampson contended, the CRC is not particularly helpful in confronting and evaluating cases of non-compliance by states parties. She suggested that, instead of starting with the text of the CRC as is usually the case, it is more helpful to begin by considering the problems armed conflict causes for children:

- Disruption of education;
- Separation from family and community;
- Being surrounded by traumatised adults who can no longer afford protection or emotional support;
- Health and survival risks; and
- Marginalisation of children.

Moreover, the Committee on the Rights of the Child cannot punish violators, but has developed a role that:

- Monitors the situation and implementation of children's rights;
- Is proactive, reacting to information about the non-achievement of rights and suggesting and negotiating improvements;
- Engages in dialogue with States Parties, rather than taking a confrontational stance;
- Encourages a holistic approach to the CRC through promoting the connections between rights;
- Insists that rights should be prioritised within the framework of the CRC;
- Requests child impact assessments.

One success of the Committee has been its dialogue with non-governmental organisations, even though NGOs are often competitive and hostile to each other and fail to realise that they need specific kinds of information in order to make their case. NGOs that work on issues connected to the CRC are usually not accustomed to the way human rights work and do not present their information in the correct form.

Professor Hampson asserted that the CRC could not be blamed for the Committee being unable to carry out functions that do not lie within its provisions. It is not a binding instrument. It does not provide the basis for either criminal or civil proceedings and the Committee cannot establish the facts in cases of violation. Nevertheless, if the Committee cannot carry out these functions some other body could and should be able to do so.

The Committee can ensure that preventative measures are in place and also comment on the proportion of budgetary resources allocated to children. However, this tends to be in the context of competing civil claims on the fiscal budget and is not referred to in the case either of armed conflict or of a repressive regime that spends a disproportionate amount on internal security. Yet it would be possible in conflict situations for the Committee to encourage good practice. It would also be possible under the terms of the CRC for the Committee to promote the role of donor and peacekeeping states, as well as the protection of NGOs by third party states. Thus, for example, all states involved in peacekeeping operations could be enjoined to train their forces in the special skills and the powers available for working with children, as well as what policies to adopt with respect to violations of children's rights. Donor states should also be pressed to regard recreation, education

The Committee on the Rights of the Child is credible – but no one takes them seriously.

Françoise Hampson, Evidence to the Tribunal

and vocational training as integral components of emergency relief operations, especially for adolescents.

In other words, Professor Hampson stated in her conclusion, it is important to identify precisely what the Committee on the Rights of the Child can do, and to ensure that these functions are indeed carried out. The various instruments of international humanitarian and human rights law should be regarded as tools performing different tasks. To cover the full range of tasks necessary for the preservation of children's rights, protection and welfare in armed conflict, it is necessary to identify all the relevant tools, and make sure that all agencies are aware of the tools, tasks and remit of other bodies. Unrealistic expectations of what it is possible to achieve using the CRC are obstacles to the fulfilment of children's rights.

#### *Questions to Françoise Hampson*

The Tribunal requested further information about the relationship between the Commission on Human Rights and the Committee on the Rights of the Child. Françoise Hampson replied that the problem is that the Commission is a political body, composed of representatives of states who are unlikely to want to be seen to make statements that are against the interests of children. It is also unlikely to take the role of passing judgements on or condemning states. Its best use is to make 'ringing declarations' about good ideas that everyone is in favour of. In order to ensure compliance with international instruments it is necessary to have a body of independent experts. The CRC makes concrete suggestions about good practice and could put pressure on donor states to change their funding policies for emergencies but this does not happen, in all probability because members of the Committee on the Rights of the Child 'have not thought of it'. In any case, it is important to identify and use the correct instrument – and the CRC cannot cover all eventualities. For example, crimes of universal jurisdiction, such as targeting schools for destruction during civil strife, can be tried in other states: 'There are plenty of tools, but you need to use the right one for the job'.

Sylvia Ladame (ICRC) asked for clarification on different applications of the CRC in times of peace and war. Françoise Hampson said that some provisions could be modified within established parameters. Thus, once it is recognised that an armed conflict exists, then international humanitarian law applies.

**M**onitoring the implementation of the Optional Protocol: *Testimony of Rory Mungoven, Programme Co-ordinator, Coalition to Stop the Use of Child Soldiers*  
Rory Mungoven began by commenting that, from previous testimony, the Tribunal would have developed good understanding of the scope of the child soldiers problem – an estimated 300,000 children under 18 engaged in combat in more than 30 countries of the world, a figure that would be even higher if legal and illegal recruitment into peacetime armies were taken into account. Mr. Mungoven stated that his evidence would provide supplementary observations on some of the conceptual and methodological challenges of implementation:

- This is a global problem. While media attention has focussed on Africa, no region is exempt.
- This is not just a problem of rebel groups. The Coalition to Stop the Use of Child Soldiers estimates that most child soldiers are actually in government armed forces, although most of the very youngest are in armed groups. However, this is without taking into account para-military forces, militias and civil defence units. The British Army continues to recruit large numbers of 16 and 17 year-olds and deploy 17-year olds into combat. Seventeen-year-old soldiers fought in the Falklands and Gulf wars as well as in Kosovo – and a surprising number have been killed, both in training and active service.
- The issues being discussed raise conceptual questions concerning the problems about who is a child, because authorities assume that childhood ends around the age of 12 or 13 years and, based on these accounts, say 'We have no child soldiers'.
- There is a mistaken tendency to treat conscription, forced recruitment and voluntary recruitment as separate and distinct categories. Although a voluntary peacetime army is different to forcibly recruited rebel groups, these should be thought of as a continuum. The lines are often blurred through misinformation, indoctrination, economic inducements and lack of employment alternatives.
- The image of 'boys with guns' obscures the problem of girl soldiers, in addition to the many other indirect ways in which children participate in conflict as spies, messengers, scouts, porters and sex workers. It also obscures the non-combat hazards to children, including punishments, training regimes, health issues, drugs and sexually transmitted diseases such as HIV/AIDS.
- The focus on children killing or being killed in combat underrates the broader impact of the problem of the effects for other children, who fall under suspicion and become targets, and the impacts on families and communities.
- It is also necessary to be aware of definitional problems. Frequently, child soldiers are just the extreme end of a

spectrum of militarisation in society, which might, for example, include militias in the United States or Hindu extremist groups in India.

- Finally, it is necessary to see the child soldier problem as dynamic and in constant flux, which partially explains why it is difficult to give exact numbers for child soldiers.

Mr. Mungoven stated that, although attention is increasingly paid to child soldiers, in research as well as in programmatic interventions, major problems and ambiguities remain in international law. In addition to the somewhat slow progress towards an Optional Protocol, there have been other important developments in international law in this area:

- The *African Charter on the Rights and Welfare of the Child* sets 18 as the age for all recruitment and participation;
- The statute for the new International Criminal Court defined the conscription or enlistment of children under 15 years of age or their use in hostilities as a war crime and crime against humanity, applying to government armed forces and non-state actors alike;
- ILO Convention 182 includes forced military recruitment under 18 among the worst forms of child labour;
- The UN Security Council, in its first ever thematic debate on a subject of this kind passed Resolution 1261;
- The UN Secretary General set a new policy for UN peacekeepers specifying 18 years as a minimum age with a preference for 21.

The Optional Protocol is not as strong as the Coalition to Stop the Use of Child Soldiers would like it to be, and has some significant shortcomings and loopholes. Nevertheless, it is a significant step forward by setting 18 as a minimum age for participation in armed conflict – although this is qualified by requiring states to take ‘all feasible measures’ instead of ‘all measures’ and specifying that the minimum age applies only to ‘direct’ participation in conflict. A step forward is that the Optional Protocol requires states to raise their minimum age for voluntary recruitment to at least 16 and preferably 18 years, requiring them to ‘lock in’, meaning they cannot easily and unilaterally lower their recruitment age. Moreover, the Protocol requires specific safeguards for voluntary recruitment, such as proof of age and parental consent. It addresses non-state actors, calling on them to stop all recruitment and use of children under 18 years (unfortunately applying a double standard to opposition groups that governments were not willing to accept themselves). A further disadvantage is that the Optional Protocol allows states to make reservations, which is unfortunate in an ‘optional’ instrument. Yet, the consensus nature of the text together with the almost universal ratification of the CRC means the new standard should command wide acceptance. Even the United States has

ensured that it will be able to sign the Optional Protocol, without having ratified the CRC.

Mr. Mungoven stated that, in his opinion, it was clear from the final stages of negotiation that there would be no political will to reopen debate on the Optional Protocol, despite the strong support of many governments for a straightforward ban on recruitment under the age of 18 years. This prevented the use of other negotiating channels, as had been the case with respect to international legislation on landmines. The goal now is to secure universal ratification of the Optional Protocol with a clear majority of states ‘locking in’ at 18 years for all forms of military recruitment. Work will also be necessary on national legislation and with the Committee on the Rights of the Child to ensure strict interpretation of clauses such as ‘all feasible measures’.

It is also important to remember that international legal standards are just one band in the spectrum of action; from prevention, to demobilisation, to rehabilitation and reintegration of former child soldiers. With this in mind, the Coalition has embarked on a new phase of activity, aimed at a global research program, including more comprehensive and holistic research on the dynamics of the problem in particular countries and the possibilities for:

- Effective and preventative action;
- Building public awareness, pressure and support;
- Including campaigns directed at other governments and non-state actors;
- Campaigning for ratification of the Optional Protocol and changes in national law;
- Seeking the incorporation of Optional Protocol principles in regional charters and alliance arrangements;
- Mainstreaming the issue in donor agency programmes;
- Policy, definitional work including documenting and sharing best practice;
- Mainstreaming the child soldiers issue in peace and security dialogues;
- Building the capacity of NGOs to undertake effective programmatic interventions.

#### Questions to Rory Mungoven

In response to questions from the Tribunal, Mr. Mungoven commented on the evolution of a dialogue approach within human rights monitoring, such that states have positive actions to take to achieve rights, rather than having to defend themselves against accusations of violations. In this sense, Article 4 of the Optional Protocol can be seen as an inducement for States Parties to make concrete legislative and practical changes.

**Statement on behalf of the International Committee of the Red Cross:** *Testimony of Sylvia Ladame, Lawyer, International Committee of the Red Cross, Division for Policy and Cooperation within the Movement*

Giving evidence to the Tribunal on behalf of the International Committee of the Red Cross (ICRC), and drawing attention to the tragic conditions and suffering inflicted on children involved in armed conflict, Sylvia Ladame outlined current activities and future plans of the ICRC with respect to war-affected children. In the field, the ICRC takes concrete measures to ensure protection and assistance to all children including:

- Protection and registration of unaccompanied children;
- Family reunification;
- Conveying personal messages between family members separated by conflict;
- Searching for missing persons;
- Monitoring conditions for those in detention;
- Providing food, medical care, treatment and rehabilitation;
- Helping to restore health-care systems;
- Ensuring that children continue to receive education;
- Arranging for the repatriation of children, where necessary.

The protection of unaccompanied children begins with their identification and the search for parents and relatives, finishing where possible with family reunion. With respect to children who have been arrested or detained as a result of armed conflict, the ICRC pursues its work of negotiation, seeking their liberation, asking for them to be separated from adults in detention, and also seeking means of family reunification. ICRC actions are founded on the principle of ensuring respect for international humanitarian law for each child.

### Far Reaching Consequences

Children are often not mature enough to be able to distinguish between forms of violence that are not prohibited by the law and custom regulating warfare and war crimes. In a warped environment they may lose all notion of the distinction between good and evil, between proper conduct and criminal behaviour. They are capable of performing the most heroic deeds but can also commit the most appalling crimes, in particular if they are induced to do so by adults, which unfortunately is all too often the case.

**Sylvia Ladame: Evidence to the Tribunal**

### Weaknesses in the Optional Protocol

How can one determine if a child soldier has been recruited voluntarily or not? One should not forget that in many contexts, it is very difficult to provide any proof of age for children.

**Sylvia Ladame: Evidence to the Tribunal**

Ms. Ladame stated that the ICRC approach to child soldiers is to define them as war victims, rather than combatants or criminals, whatever acts they may have committed. This is based on respect for humanitarian law, which is the foundation for respect of human rights law. The ICRC fully endorses the objective of banning the recruitment of children below 18 years of age, to which end the International Red Cross and Red Crescent Movement has prepared a Plan of Action. Resolution 2C of the 26th International Conference of the Red Cross and Red Crescent, held in Geneva in December 1995, recommended that:

*[...] parties to the conflict refrain from arming children under the age of 18 years and take every feasible step to ensure that children under the age of 18 years do not take part in hostilities.*

This appeal was renewed by the 27th Conference in 1999, at which governments expressed their support for the objectives of the Plan of Action.

The ICRC has also supported the process leading to the adoption of the Optional Protocol to the CRC. Nevertheless, Ms. Ladame stated that the ICRC notes certain weaknesses in the text of the Optional Protocol and other international legislation:

- The obligation imposed on states to prevent participation in hostilities should have been made more absolute and should have covered indirect participation;
- The protection provided against forced recruitment is weakened by the provision that permits voluntary recruitment below the age of 18 years;
- The exception applying to military schools makes it possible for the age limit to be circumvented;
- The regulation of the behaviour of non-state actors by states in internal conflicts is a moral rather than legal obligation;
- Criminal repression under domestic law is likely to be ineffective because those who take up arms against a government are already exposing themselves to severe legal penalties;
- Non-state actors are unlikely to feel bound by norms that are different from those imposed on states.

Ms. Ladame ended with the recommendation that civil society should work towards greater respect for the standards of international humanitarian and human rights law as they apply to children.

### ? Questions to Sylvia Ladame

In response to the questions of the Tribunal, Ms. Ladame commented on the increased dangers for and involvement of children in modern forms of warfare and the need for civil society to take an active role. Economic and structural inducements to join armed groups can influence children to join voluntarily. They are often sent to the front line 'because they are fearless', to which Abubacar Sultan, Director of *Wana Sonana* in Mozambique, later added that, in Sierra Leone it is said that 'child soldiers eat less and fight more.'

With respect to the increase in voluntary recruitment of children, Rory Mungoven commented that studies have shown that abuse of children and their families by the state is the dominant reason for enlistment into armed opposition groups. A further comment by Katherine Foster, AGP, Department of Foreign Affairs of the Government of Canada, referred to the use of military schools in the United States to 'keep children off the streets', and, as Ms. Ladame concurred, to 'get a good education also' even though they are ready targets and ready to fight. Other witnesses also pointed to the particular vulnerability of children to certain kinds of weapon, for example rubber bullets, which might not injure an adult as badly as they have been shown to injure, and kill, children. Françoise Hampton raised a question about whether Article 35 of Protocol 1 to the Geneva Conventions, which entails that states have to conform to international humanitarian law applies when they develop new weapons. Could the ICRC envisage that this Article be used to ensure that states positively take into account the specific effects of weapons on children as a matter of course?

The Tribunal then turned the questioning to the issue of children who have killed in the course of armed conflict being tried in a military court or for war crimes. Ms. Ladame referred to the fact that crimes committed under the age of 18 cannot be punished by the death penalty, according to international law. Françoise Hampton commented that persons under 18 years who take direct part in hostilities should be treated as combatants, or otherwise they might run the risk of being defined as 'criminals who fight'.

## 2.3. Monitoring the Implementation of International Standards: International Co-operation and Global Security

### **P**roliferation of small arms and the impact on children in armed conflict: *Testimony of Sarah Meek, Senior Researcher, International Alert, UK.*

Ms. Meek began by thanking the International Bureau for Children's Rights for initiating this process of hearings on this important issue. She stated that her evidence would be largely based on work carried out by Geraldine O'Callaghan of BASIC<sup>20</sup>. In addition, Ms. Meek stated that she would focus on three key areas, which in her opinion are important for understanding why small arms have become an increasing concern as well as how they affect the lives of children in armed conflict:

- The reasons why small arms present a particular problem;
- The ways in which small arms affect children both during conflict and in post-conflict situations;
- Existing and potential means of reducing the impact of small arms on children.

Small arms are weapons that are designed for personal use. They range from handguns and revolvers to assault rifles and machine guns. The increasingly wide availability of these weapons is recognised as a challenge for national and international security, but most of all their misuse affects human security. Small arms can make crime more violent and conflict more lethal. They also contribute to fostering a culture of violence within societies and make the violent resolution of conflicts more likely. Ms. Meek stated that there are estimates of up to 500 million legal and illegal small arms in circulation globally. The number of weapons gives some indication of the enormity of the challenge in trying to control these weapons.

The wide availability of small arms is due to their relatively low cost compared to larger conventional weapons systems, as well as to their robustness and their durability. In addition to the over-production of small arms for domestic needs or existing purchasers, efforts to control small arms are also hindered by the recycling of existing stocks of weapons from one conflict to another as well as into civil society. As the controls that placed restrictions on the arms trade during the Cold War have broken down, small arms are more easily available to anyone who has the money to purchase them.

Ms. Meek drew attention to the misuse of small arms, particularly when children are intentionally targeted during conflict or when they become victims of post-conflict crime and violence, including family violence. Modern conflict has the most severe effects on the poorest and most vulnerable in society. The nature of war – and the weapons used in war – has made it easier to use children as soldiers.

20. British and American Security Information Council

A generation ago, battlefield weapons were too heavy and bulky for children to carry easily. Modern guns are lighter, smaller and more portable, making children more attractive as both supply carriers and fighters.

### A Close Connection Between 'Small Arms' and Small Soldiers

The UN Special Representative for Children and Armed Conflict has noted that 'there is a strong link between the accessibility of small arms and light weapons and the victimisation of children. The proliferation of these weapons has made it possible for very young children to be the perpetrators of violence'.

#### **Sarah Meek: Evidence to the Tribunal**

Thus the impact of small arms on children in armed conflict can be both direct and indirect. The direct effects result in children being fatalities and casualties of war (targeted or accidentally); and child soldiers, either voluntary recruits or forced labour, being coerced under threat into support roles for combatants and becoming victims of violence and violent crime. The indirect effects include restricted or prevented access to school, health care and social services, internal displacement, becoming refugees, and loss of family structures and support.

Ms. Meek referred to an International Committee of the Red Cross study on arms availability and the situation of civilians in armed conflict, which found that respondents to a questionnaire sent to its field workers thought that:

- 70% of civilians and 38% of children possess weapons;
- Civilians are targeted with assault rifles on a weekly basis (60% of respondents);
- Arms are used against civilians for criminal or coercive purposes (85% of respondents), on a weekly basis (60%).

She stated that in her opinion there is a lack of empirical information on how arms impact on children in conflict and post-conflict situations. In South Africa, for example, the number of firearms injuries among persons under 19 years of age increased in the Cape Town metropolitan region by 35% between 1992 and 1996, a period during which weapons availability increased. By 1996, firearms had become one of the top four causes of death among children and youth in the Cape Town region.

Ms. Meek drew the Tribunal's attention to a number of measures that could be adopted. An important consideration when considering measures to reduce the proliferation of small arms is that, in addition to restricting the supply of arms, we must also look at the need to change the way in which communities view violence and violent conflict and the use of small arms. As controls are improved over the legal trade in small arms in general, making the

trade more accountable to human rights principles and making trade more transparent – this should have an effect on reducing the proliferation of small arms. However, the challenge of existing stocks and illegal small arms remains. Currently there is no international control regime for small arms, although the United Nations is taking forward a conference process that should result in a *Programme of Action*, outlining concrete steps to be taken. One suggestion is that the international community should try to limit access to small arms for those countries or groups most likely to violate humanitarian law. Other proposals have been:

- To instil humanitarian principles in the general population;
- To increase the training of combatants in international humanitarian law (something the ICRC already does);
- To ensure personal security without resorting to armed conflict based on the premise that insecurity can often be a factor driving the demand for weapons.

During post-conflict phases several other steps could be considered, including:

- Demobilisation, disarmament and reintegration programmes focused on working with the children used as soldiers and directed at giving them the education and skills they need;
- Putting in place national legislation and regulations that criminalises the possession of illegal firearms and restricts civilian possession of firearms.

She also suggested that civil society could play a role at national and international levels in raising awareness about the problem of small arms and children and working on creative solutions. In doing so, making a plea to those working on children and on small arms to consider ways in which to co-operate to strengthen the message. The small arms community has formed the International Action Network on Small Arms, which might be a focus for work with the existing children and armed conflict networks.

Ms. Meek ended by quoting the statement of the UN Secretary General on small arms from the *Millennium Report*: words alone do nothing to prevent the ongoing slaughter of innocent people. Dialogue is critical but we must match 'the rhetoric of concern' with the substance of practical action.

#### **Questions to Sarah Meek**

In response to questions raised by the Tribunal, Ms. Meek gave details of the main suppliers of small arms. The manufacturers of small arms form a very strong lobby, which means that banning producers would require a long-term strategy. With respect to the legal trade, the main suppliers are the five permanent members of the UN Security Council. The weapons concerned are not necessarily accounted for when they reach the destination, so some do enter the illegal

trade. Central and Eastern European countries have been mentioned in reports as supplying weapons to UNITA against international sanctions. Those countries include Bulgaria and the Ukraine. Essentially any country that does not guarantee the end user of its weapons has the potential to be used in the illegal trade.

Marie Smyth, Director of the Community Conflict Impact on Children project at INCORE in Northern Ireland, and a witness who testified at the Hearings suggested that the developed world, particularly the United States, is playing a significant role by reproducing an ideology of arms use to which developing countries can aspire. She suggested that INGOs might play a role in countering this by promoting ideas of ethical trading in arms. Ms. Meek replied that some developed countries are hypocritical in having heavily armed police forces and deploys armies in various parts of the world but still telling other countries how to behave, as in the case of the United States, which is the origin of the Mexican gun control problem. The ethical trade issue is a huge problem and it may be that ethical trading policies are not attainable, and it might be queried if ethics are possible in the arms trade.

Following a query from Kathy Vandergrift regarding successful local level projects to reduce the demand for small arms, Ms. Meek responded by saying that some African countries have adopted creative approaches. She cited clan-based pilot projects in Somalia that have developed single armouries in villages for overnight storage of arms, so that a secure home environment is created, in which women are strong in maintaining the project. She also mentioned cross-border police collaboration in Mali to prevent arms smuggling in the face of danger from big smuggling cartels. Liberia also has civil society education projects to stop people from even touching guns should they come across them. Local level examples such as this need to be made replicable by community-based organisations in other countries.

Paige Wilhite, researcher with Amnesty International Americas Programme, asked about the possibility of the UN being lobbied by the NGO community to become involved in more effective disarmament programmes. Ms. Meek replied that disarmament is a process of political negotiation and is not often implemented despite demobilisation and rehabilitation clauses in agreements.

### **Implementation of international law**

No two armed conflicts are the same. Therefore, only general rules apply to each conflict situation. For the rest, many different inter-national law provisions have to be used.

**Nevena Vuckovic Sahovic: Evidence to the Tribunal**

### **The role of national NGOs in protecting children in armed conflicts:** *Testimony of Nevena Vuckovic Sahovic, Director, Yugoslav Child Rights Centre, Serbia.*

Nevena Vuckovic Sahovic introduced herself to the Tribunal as a native of Belgrade who runs the research and education components of the Yugoslav Child Rights Centre in Serbia and has an interest in strengthening civil society. She told the Tribunal that while the eyes of the world were on Kosovo during the conflict in early 1999, little attention was paid to the plight of children in the territory of the Former Yugoslav Republic (FRY). Many were killed, others wounded, left without parents, displaced, hungry, deprived of education and emotionally disturbed. During the conflict, the Yugoslav Child Rights Centre was unable to function normally because its activities might have been viewed as 'unpatriotic'. The work was reduced to co-ordinating with other NGOs in distributing emergency supplies and to providing psycho-social assistance. For three months, the Centre relocated to Budapest, Hungary and ran a project called 'Invisible Refugees' which targeted children among the 50,000 refugees who had fled FRY for fear of bombings, mobilisation or the regime in Belgrade. At least half were children under 18 years of age.

'Invisible Refugees' was planned over a seven-day period and provided alternative pre-school and school activities. The children and the programme staff all benefited. The staff learned how to work with a 'non-obvious situation of invisible refugees, dispersed around a big city, alone and scared, without any idea how to make it through the day'. Ms. Vuckovic Sahovic suggested to the judges that the model used could be replicated in similar situations. The children were not 'dragged into psychological treatment' but worked with on a day-to-day basis, using their 'endless free time and developing their creativity.' As a result of this experience, some conclusions were reached regarding the role NGOs might play in protecting children's rights in times of armed conflict:

- During armed conflict the relationship between government and NGOs based in civil society is not easy, and NGOs may have better relationships with the government of an external power;
- It is a wise strategy for international NGOs to work through local partner NGOs, since their staff know the environment;
- It is essential to communicate with children in their mother tongue;
- Professional staff in local NGOs may have limited skills for use in emergency situations, especially in planning and management. This is particularly true of societies in transition to market economies;
- Any activity must be based on adequate needs assessment, which may be easier and quicker in collaboration with other NGOs and, where possible, governments;

- While activities in the field are essential, the risks for both children and staff must be assessed;
- Documentation, monitoring and evaluation are vital for learning how to work in new and challenging situations;
- It is important to share experiences, perhaps by organising consultations once the emergency is over.

### ? Questions to Nevena Vuckovic Sahovic

In response to questions from the Tribunal and interventions from other witnesses, Ms. Vuckovic Sahovic replied that there are many NGOs in FRY which are frequently seen as anti-government and operate in a hostile environment. One reality that has to be dealt with is poverty, which impacts on armed conflict. It is ironic that human rights discourse is not able to advocate violence to remove a dictator from power.

### Helping the children of Bosnia: What works – and what doesn't work: Testimony of Peggy Barry,

*Advocate for children's rights, USA*

Peggy Barry began her testimony by pointing to the inter-relationships between intergovernmental and non-governmental organisations and questioning the existence of a separate NGO sector. She also stated that the existence of large numbers of NGOs working in Bosnia, where the concept of NGO was virtually unknown before the war, has 'caused problems, in duplication of services and in general confusion.' In 1998, 332 international NGOs were working in Bosnia, two thirds of which had been registered after the end of the war, dealing not only with the provisions of immediate basic needs but also with longer term consequences of conflict.

A crucial criterion for successful NGO work in post conflict situations, Ms. Barry told the Tribunal, is for international non-governmental organisations to seek and to create local, sustainable NGOs. This is best achieved through planning that includes a minimum number of external staff from the outset.

Ms. Barry gave examples of a number of local NGOs that have absorbed the goals of the parent INGOs, interpreting them according to local cultural norms and then becoming autonomous:

- The Paris-based organisation Médecins du Monde was already involved in Bosnia when the war began supplying medicines and medical services. Research carried out by Médecins du Monde psychologists in 1994 identified the adolescents of Sarajevo as a particularly vulnerable group in terms of mental health, and a local institutional response was put in place in the same year. The Duga (Rainbow) Centre was funded by the European community with 100 percent local staff and administered by a Bosnian board of directors that was trained to carry out its responsibilities by another international NGO, the New Bosnia Fund.

In partnership with UNICEF, Médecins du Monde has

### A Separate NGO Sector?

In Albania last year, much of the food delivered by the World Food Programme, a UN body, was distributed by NGOs. A quarter of Oxfam's 1998 budget was given by the British government. World Vision US, which advertises itself as being the world's 'largest privately funded Christian relief....organisation,' collected \$55 million worth of goods in 1998 from the American government. Médecins Sans Frontières, the Nobel peace prize winner, received 46% of its income from government sources. And the Red Cross estimates that NGOs distribute more money than the World Bank.

### Peggy Barry: Evidence to the Tribunal

also developed sixteen projects serving a total of 250 children to respond to the problems of children with 'mental retardation'. Once again, international staff has provided training, and all of the caregivers and teachers are local.

- The Jesuit Refugee Service identified a need among the 800 children who have lost limbs due to landmines. Once a prosthetic limb is fitted the children have no aftercare or follow-up. Teams that are gradually becoming all Bosnian in composition now make regular home visits to 250 such children.
- 'Wings of Hope' has been carrying out successful work with war-affected children in areas of the country frequently neglected by NGOs. Ms. Barry stated that the reasons for their achievements include: Clearly stated, flexible goals; careful selection of local staff, with attention to ethnic sensitivity; not stigmatising traumatised children by separating them from their peers; paying particular attention to the readjustment needs of returnee children; and emphasising multi-ethnic values;
- Project Hope, an INGO with an office in Sarajevo, has used this as a springboard to start a variety of projects with partner organisations in other parts of the country, based on locally identified problems and solutions.

Ms. Barry used the experience of Save the Children UK to illustrate the obstacles that may be put in the way of an INGO and how to solve them. An initial approach to the authorities to establish training in children's rights for police was turned down. In response to this, Save the Children approached the Ombud office set up as a result of the Dayton Agreement.<sup>21</sup> With the intervention of this local institution a five-day training course was designed and held at a retreat outside Sarajevo. Working with local professionals, the police 'gradually lost the feeling that they were being told they were doing their job wrong, and began to realise that they were being empowered to provide help for their communities in new ways.'

Ms. Barry stated that the Ombud Office was a good

21. The Bosnian Peace Agreement was initialled in Dayton on 21 November 1995 and signed in Paris on 14 December 1995.

## A Bosnian Example

A friend of mine of Serbian background, who has taught in Sarajevo for many years, was reading a traditional story to her class of 10-year-olds when one of them spoke up 'That's a Croatian story. I don't want to hear that!' She was startled, thinking it was some sort of aberration, and even amusing. But when she told her colleagues about it, she was jolted to find that they saw nothing strange in it, and certainly nothing funny. She felt something very important had been lost.

### **Peggy Barry: Evidence to the Tribunal**

source of information about how INGOs are viewed by independent professionals within Bosnia. She reported their opinion that:

- There is considerable geographical disparity in the delivery of humanitarian aid, which can result in waste;
- INGOs tend to stick to a single source of information or local broker;
- Staff recruitment policies are not sufficiently rigorous; and,
- International staff prefer to live in cities, especially Sarajevo, which contributes to geographical disparities in aid provision.

With respect to implementation of the CRC, Ms. Barry stated that the two organisations most involved are the Office of the Ombud and the Helsinki Committee for Human Rights. Both of these organisations report that the most serious violations of children's rights are related to education. These include violence and deliberate provocation by teachers based on ethnic divisions. But the most serious problem is that thousands of children are not enrolled in

school, particularly the most socially and physically disadvantaged. Curricula are politicised and school fees are charged, but it is difficult for civil society to intervene.

### ? *Questions to Peggy Barry*

The Tribunal asked Ms. Barry about the role of NGOs in Bosnia with respect to unaccompanied children and children in prisons. She replied that there are many NGOs in this field, with different aims and uncoordinated programmes. It is not usually possible to know which organisation is carrying out what activities, and in many cases the NGOs are simply responsive rather than having any worked out philosophy or strategy. Programmes for orphans vary according to the ethos and background of the organisation and what happens to orphans often depends on where they are found. Orphans find it difficult to recover property to which they are entitled by inheritance: 'Ownership is a nightmare, not just because of the conflict but also because of the history of collective ownership. Nobody knows who anything belongs to.'

Ms. Barry's responses to questions from other witnesses also described the lack of co-ordination mechanisms and the failure of government to control the activities of NGOs because of lack of power, resources and planning.

Interventions from participants also touched on the issue of the appropriateness of some of the interventions used, particularly with respect to psychological trauma. It was suggested that models developed from non-conflict trauma situation should not be applied to war-affected children, and that Western models of counselling are not suitable for use in cultures that interpret trauma differently and use models of healing rather than cure. Ms. Barry agreed that counselling needs to be non-threatening and culturally appropriate.

## **VIOLATIONS OF CHILDREN'S RIGHTS IN KOSOVA – THE PRISHTINA POST-PESSIMISTS**

In September 1989, as part of the policy to 'Serbianise' education in Kosova, Serbian police barred Kosovar Albanian children and youth at gunpoint from entering state schools and universities. Months later primary schools were segregated, with walls or grilles dividing the area for Serb pupils, including laboratories and equipment, from the much larger numbers of ethnic Albanians, for whom overcrowding meant schooling in up to four shifts, sometimes even at night. Secondary schools were closed to Kosovar Albanian children, for whom lessons were arranged in houses, garages and basements often without the most basic equipment. The publishing houses for schoolbooks in their language were closed down and pupils had to depend entirely on notes taken during lessons.

Kosovar Albanians set up their own, unofficial schools financed largely by the Albanian diaspora. But this apartheid-style education meant that, for the majority of Kosovar Albanians, lessons were driven underground for almost a decade and led to hatred between children of different ethnic backgrounds. During periods of armed conflict school buildings were occupied by Serb forces and NATO bombings led to schools being burned. UNICEF estimates that 45% of schools in Kosova were either totally destroyed or seriously damaged during the war.

## **SUMMARY LUNCHTIME PRESENTATION**

Post-Pessimists groups are associations of children and youth that aim to build bridges of understanding and friendship between young people of different backgrounds. Post-Pessimism has developed into the only multi-ethnic youth movement with autonomous groups in several Balkan countries. The name implies a rejection of pessimism, but a cautious approach to optimism in which the guiding principle is 'If we cannot be friends, we must try at least not to be enemies.' The movement enables children and young people to meet each other across ethnic boundaries through camps, art clubs, journalism and sociology groups. In addition to international meetings and publications the Prishtina Post-Pessimists have organised campaigns, lobbied politicians and participated in efforts to rebuild and reorganise the country in the post-conflict period, accomplishing the greatest number of projects among the groups in the movement. Membership includes both Serbs and Albanians. The achievements of this group have led to receipt of the Global Peace and Tolerance Award for Social Activism at the UN New York headquarters on 16th November 1999.

***Besnik Kajtazi, Kosovar, Student at the University of Essex and Board member of Prishtina Post-Pessimists***

## 2.4. Case study of the situation in Northern Ireland as expressed by youth experts

The moderator and facilitator of this session was Marie Smyth, Director, Community Conflict Impact on Children (INCORE) who began by providing an overview of the consequences for children and young people of political violence in Northern Ireland. This was followed by evidence in response and elaboration from youth representatives Peter Bryson, Linda O’Neill, Colin Brown and James Dunbar.

There had been sporadic insurrections and violence since the Northern Ireland state was formed in 1921 through the annexation of the northern six counties of Ireland, with ongoing violence (The Troubles) between 1969 and 1994, and sporadic outbreaks ever since. The majority of the 3,700 deaths occurred between 1972 and 1977. In a total population of 1.6 million this means that an estimated 7,000 people live in nuclear families in which someone has been killed as a result of the conflict. Estimates of injuries vary from the official figure of 40,000 to 123,000 and the number of people permanently disabled as a result is not known. The majority of deaths are males (91%) between 15 and 35 years of age. Main causes of death are shooting and those responsible have been largely members of paramilitary organisations, with republicans (Catholic) outnumbering loyalists (Protestant) in this as in the number of victims. Among children under the age of 18 years and young people aged between 19 and 25 years, the greatest number of those killed have been civilians.

Ms. Smyth stressed that family and communities had been disrupted and displaced, and that segregation is increasing and deepening in both rural and urban areas. She told the Tribunal that there are ‘two worlds’ in Northern Ireland. For the middle class, conflict is an option. But for those who live in poor communities, characterised by unemployment and economic deprivation, there is no choice. The impact on family life can be seen in the degree of ‘self-medication’ with alcohol and medical drugs, with the result that children are frequently caring for adults as well as for other children. She described children as being in ‘survival mode’ having learned how to manage the threat of violence in their everyday lives, with low levels of expectation about the future.

Ms. Smyth stated that children are both visible and invisible. At the level of street conflict activity, they are visible and have their own strategies. But they are also invisible in political life and their voices are not heard.

Peter Bryson reiterated to the Tribunal that children learn to manage the threat of violence, which he said has been ‘normalised’: ‘like a steadily dripping tap’. Yet, until four years ago, there had been no public voice for children. Linda O’Neill said that it is difficult to challenge the ‘normal’ influence of community and equally difficult to mix with young people from opposing communities. According to Colin Brown, young people feel that they cannot express their own opinion because of the fear of violence. Young

Status	Age in years	
	Under 18	19-25
Northern Ireland civilians	253	366
Republican paramilitary	62	156
British Army	54	284
Unknown	15	14
Loyalist paramilitary	14	31
Non Northern Ireland civilians	5	31
Northern Ireland security forces	5	126
Non Northern Ireland security forces	54	11
<b>Total</b>	<b>408</b>	<b>1019</b>

Deaths of children and young people as a consequence of political violence in Northern Ireland 1989-1994

**Marie Smyth: Evidence to the Tribunal**

people are ‘taking the easy way out’, using drugs and alcohol or simply saying ‘I don’t want anything to do with it’ and failing to face up to the problem. James Dunbar confirmed that children have no choice but to ‘go with The Troubles’. As a member of the 20% minority Roman Catholic community, he said that he feels he lives his life ‘in a goldfish bowl’, in which his opportunities for leisure, shopping, libraries and pubs are severely limited.

Peter O’Neill drew the attention of the Tribunal to the problems conflict cause for education. Schools and colleges do not address the problems. The education system is characterised by segregation not only along religious lines, but also along lines of class, gender and ability. In education statistics, school failure is correlated with the more segregated areas. Social deprivation is revealed in the fact that 26% of children receive school meals. By the age of eight years, children already have the survival skills necessary to distinguish by sight between Catholic and

By the time they are 12 or 13 years old, “cross-community” has become a bad word. A lot of baggage from the past 13 years has not been dealt with. There is nowhere neutral for you to be.

**Linda O’Neill: Testimony to the Tribunal**

Protestant. Despite the facts that girls have made advances and now outperform boys at all levels of education, there is a high incidence of educational failure, leaving school with no qualifications, especially among working class boys. Curriculum approaches that try to promote democracy and a culture of peace have largely failed. Although higher education is integrated in theory, in practice it is segregated along religious lines, especially in teacher training.

James Dunbar then pointed out that only seven percent of young people in his Roman Catholic community go to the local university, and that those who do enter tertiary education suffer insulting behaviour from other students. The result is that most young people leave school at the age of 16 with no qualifications, or have to go to university elsewhere, which is more costly. Linda O’Neill, from the same community stated that children who go to an integrated school, where Protestant and Catholic children are mixed, are then ‘hassled’ by people in their own community. The result is that they make friends across the religious divide when they are in school, but cannot continue with these friendships outside school. There is little in the way of choice of educational opportunities so that by 15 years of age, young men already have their options closed. Peter Bryson added that schools have been thought of as providing ‘an oasis of calm’ but they cannot really cope with what is happening in the wider community.

Colin Brown reiterated the point that those from the working class suffer most: ‘Too many rich people in the community take the credit for work that is done by people who get their hands dirty’. There is considerable funding available for work in a closed community, but it is difficult to obtain. Donors will give funds for leisure centres, but are currently ending support for youth workers.

### ? *Questions to the Northern Ireland witnesses*

In response to questions from the Tribunal, the Northern Ireland witnesses replied that change would take three decades, provided that ‘the peace holds’. Employment is a major problem. Previous traditions of father-to-son transmission of jobs have been lost and there is no tradition of continuing education, so those who leave school without qualifications are likely to remain unqualified all their lives. Some improvements are occurring in educational opportunities, but the pace is slow.

The young witnesses stated that the individual factors that had helped them to ‘beat the odds’ and take control of their own lives included:

- Having to grow up quickly and take responsibility for their younger siblings;
- Taking a positive approach rather than accepting the role of victim;
- Having positive role models;
- Being given opportunities to get out of Northern Ireland and see what life is like, in places where peace rather than war on the street is normal.

### **T**he legal and human rights impact of the conflict in the North of Ireland from a child’s perspective: *Testimony*

*of Paddy Kelly, Director, Northern Ireland Legal Centre*  
Paddy Kelly began her testimony by drawing the Tribunal’s attention to the duration of the conflict in Northern Ireland, which has entailed an impact on successive generations of children. She also emphasised that this has been a low-intensity conflict, so that the impact on children was not as severe as that experienced in some other parts of the world such as Rwanda. Northern Ireland does, however, serve as a case study with respect to low-intensity conflicts of long duration, in which the impact may be harder to name and the damage, consequently, harder to repair.

The nature of the conflict has called into question the very existence of the state. The effects have ranged from loss of life, through serious injury, imprisonment of children or their parents, to relatively mundane questions such as where children buy their sweets. The conflict has been, and to some extent still is, all consuming. It affects people’s day-to-day decisions: ‘Where our children live, where they socialise, who they socialise with, what school they go to, where they play, what leisure facilities they visit. While for many on all sides the focus for 30 years was literally, and still is, on survival.’

Other factors to be borne in mind are the relatively small size of the population (only 1.5 million, of which nearly a third are children), the small geographical area and the close-knit nature of both rural and urban communities. Ms. Kelly emphasised that this brings the conflict ‘very close to home’. There is no knowing how many children have lost parents, brothers, sisters, friends, neighbours or other significant people in their lives as a result of the conflict. It is also likely that a considerable percentage of the child population of three generations has personally known someone who was killed or injured during the conflict. From a child’s perspective, much still remains to be documented.

Children and children’s rights organisations were very disappointed at the lack of consultation with children and young people throughout the peace process.

**Paddy Kelly: Testimony to the Tribunal**

## Children and Young People in the Belfast Agreement<sup>22</sup>

It is recognised that victims have a right to remember as well as to contribute to a changed society. The achievement of a peaceful and just society would be the true memorial to the victims of violence. The participants particularly recognize that young people from areas affected by the Troubles face particular difficulties and will support the development of special community-based initiatives based on inter-national best practice.

Ms. Kelly expressed the view that it is highly regrettable that, until recently, there has been relatively little focus on the impact of the conflict on children from a legal and human rights perspective. Children have really only begun to come into focus through the combination of the peace process, the development of a children's rights culture and the monitoring of the implementation of the CRC.

Prior to 1968, a large percentage of children growing up in nationalist communities were subjected to discrimination on religious grounds. Society was segregated between Protestants, living mainly in unionist/loyalist communities, and Catholics, living generally in nationalist/republican communities. Discrimination directly and indirectly impacted on children's lives, with respect to housing, jobs, where facilities such as leisure facilities, roads, hospitals, universities were located, and the resources allocated by government to the development of different areas. In effect those who ran the state, both in government and the civil service, were almost entirely drawn from one community with the inevitable consequences that brings and the impact on children. In addition, even before the start of this current phase of conflict, the police in Northern Ireland were drawn almost entirely from one community, as were those in the prosecution service and the judiciary. This had obvious implications for the administration of criminal justice including the juvenile justice system. The net result of this was that 'a very sizeable minority of the population' in the North of Ireland were not stakeholders in the state and indeed, were actively alienated from it. This was as true for children as for adults.

Ms. Kelly told the Tribunal that during the conflict, both state and non-state players violated the rights of children in Northern Ireland. The range of direct violations spanned the full spectrum of rights from the denial of the right to life, through physical integrity to harassment, and the operation of the criminal justice system (including the conditions of imprisonment and the right to a fair trial), the operation of emergency legislation, the use of plastic bullets, and socio-economic rights. She noted that, in addition to children themselves being killed, the murder of a parent or significant person in the child's life by both state and non-state players, impacted significantly on possibly thousands of children in Northern Ireland denying them the right to family life.

With respect to the 123 child deaths arising from the action of the state, Ms. Kelly drew the Tribunal's attention to the fact that there have been only prosecutions in respect of two incidents, one involving two young people aged 17 and 18 years, and the other involving an 18 year-old. Both cases involved the British Army and the soldiers involved were released after serving a very short period of time and readmitted into the army. No member of the police force has ever been convicted in respect of the death of a child. She stated that the use of rubber and plastic bullets has been of particular concern to human rights organisations. These have been used against members of both the Catholic and Protestant communities. Of the 17 people murdered by these weapons, eight were children aged between 10 and 15 years. No police or soldiers have been charged with respect to these children's deaths despite the fact that in the majority of cases, they were killed in non-riot situations.

Ms. Kelly informed the Tribunal that four cases were currently before the European Court in Strasbourg, involving a total of 13 murders by state forces during the conflict. The issue before the Court is the state's failure to protect the right to life, inadequacies of remedies and failure to investigate properly.

According to research cited by Ms. Kelly, carried out by the Committee on the Administration of Justice, a human rights organisation, over one quarter of all young people aged 17 to 19 in Northern Ireland feel they have been harassed in some way by the security forces. Nearly half of those who perceive themselves as Catholics believe they have been harassed but there are also indications of growing levels of harassment of Protestant young people. Very few young people register an official complaint and there is a lack of confidence in the system for investigating complaints against the police and army. Ms. Kelly stated that, in her opinion, this reflects on the unacceptability of the current police force to the vast majority of the Catholic community in Northern Ireland, which now constitutes approximately 43 percent of the population.

Ms. Kelly then drew the attention of the Tribunal to the incidence of 'joy riding', which is very prevalent in the main urban areas of Northern Ireland. Joyriding is the stealing and dangerous driving of cars for thrills, generally by young people. The reaction of non-state players to joy riders has been to engage in punishment attacks on those

22. The Northern Ireland Assembly was established as part of the Belfast Agreement reached at the multi-party negotiations on Friday 10 April, now commonly referred to as the 'Good Friday Agreement'. This quotation is from page 18 Paragraph 2.

believed to be guilty of offending. In her opinion, more effective and acceptable policing would reduce the incidence of joy riding, which in turn would reduce the pressure from the community for paramilitary punishment beatings. A number of deaths and injuries have been caused to joy riders by the police and army firing into, or ramming, the cars they were driving. Human rights organisations have also received a number of reports about young people engaged in joy riding and other activities who have been offered immunity from prosecution and otherwise pressurised into becoming informers. Succumbing to the pressure to inform could have very serious consequences for young people, given that during the conflict, the 'penalty' extracted by non-state players for informing was, in some cases, death.

A further issue to which Ms. Kelly drew the attention of the Tribunal was the right of children to maintain contact with their parents. During the conflict, a number of prisoners were held in jails in England. This meant that it was difficult, and in some cases impossible for the children to visit their parents. There have been reports that those travelling from Northern Ireland to visit prisoners in England, including children, were detained at points of entry under the Prevention of Terrorism Act and, on occasion, arrived after long journeys only to discover their parent had been moved without notice to another prison. In addition, concerns were raised that children whose first language was Irish were not allowed to communicate with their imprisoned parent in their own language.

An additional rights violation mentioned by Ms. Kelly was that, during the 1970s and 1980s, a significant number of juveniles arrested for conflict related offences were given indeterminate sentences and were held at the Secretary of State's pleasure. This use of indeterminate sentences for children caused concern to a number of human rights organisations. Under emergency legislation, which still applies despite the cease-fires and peace process, children as young as 10 year old can be held for up to seven days. Although children are entitled to legal representation there is no absolute right to this in the first 48 hours of detention. In addition there is no entitlement to have a legal representative present during interviews.

In addition to the impact of state violence on children and young people, Ms. Kelly drew the Tribunal's attention to the estimated 268 children killed by non-state players in bombings and shootings. Some of those children were killed in England, the best known being a bomb in the town of Warrington that killed two young boys. The statistics from investigations leading to convictions for the deaths of children as the result of the actions of non-state players, and by implication the state's action in protecting children's right to life during the conflict, are not accessible. Consequently the adequacy of state protection for children and young people's rights to life from violation by non-state players

during the conflict is difficult to determine. Many young people have been injured by non-state players over the last 30 years. In addition to sustaining injuries as a result of being caught in military actions perpetrated by non-state players, many children have sustained serious injuries as a result of 'punishment' attacks for what is deemed to be anti-social behaviour. These attacks involved the use of baseball bats, hammers and guns. Children who sustain injuries from these attacks may be left with serious long-term damage. It has been argued by those living in the communities where these attacks take place, that such attacks are a response to the young people's anti-social behaviour because communities (both Catholic and Protestant) have no confidence in the police force.

Ms. Kelly pointed out that, despite the peace process, emergency legislation still applies, plastic bullets are still being used, children are still being subjected to horrific punishment beatings, there is ongoing harassment of children by the security forces and there has still been no closure on the subject of those children who have been killed by the state. There is little understanding of how to protect children's rights in a divided society where the spectre of violent conflict is ever present. Ensuring that the protection of human rights reaches internationally recognised human rights standards is crucial to guaranteeing children's rights. She stated that it is therefore encouraging that in October 2000, the European Convention on Human Rights would be incorporated into the domestic legislation of Great Britain and Northern Ireland. The incorporation will force courts to take cognisance of rights protected under the Convention together with the associated body of case law. This should have a significant effect on the range of children's rights issues including some arising directly as a result of the conflict.

In addition, the Northern Ireland Act, which is the legislative embodiment of the Belfast Agreement,<sup>23</sup> includes a number of provisions that could have a significant impact on children's rights, including dealing with the legacies of the conflict and ensuring the protection of children in either a post-conflict situation or in the event of renewed conflict. In addition, under this same Act, the first Human Rights Commission in Western Europe was established. The Commission has the power to undertake investigations, to advise and assist individuals and to take cases involving law and practice. Ms. Kelly told the Tribunal that, in practical terms, this means that if the Human Rights Commission decided that there was a denial of children's rights in respect of a particular area of children's lives, then the Commission could undertake an investigation or work to bring about a change in the law. The Commission also has the power to assist a child in individual cases relating to human rights.

A unique and potentially far-reaching provision of the Northern Ireland Act, which will have a significant impact on the protection of children's rights in a divided

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23. *Supra* note 22.

society, is the equality provisions, which entail that every public authority in Northern Ireland must consider the impact of new policy on a range of constituencies, including children.

As part of the Belfast Agreement, a Commission (known as the Patten Commission) was established to examine policing and make recommendations as to what a new police service would look like. This reflected the role played by the police both before and during the conflict and the fact that it was widely recognised that the current police service did not comply with internationally recognised standards including being representative of the community it served.

It is regrettable that despite the extensive consultative process in which the Commission was engaged, input from young people was not sought. The recommendations included only a couple which were child specific. These recommendations have yet to be implemented and consequently it remains to be seen how far they will go towards addressing this element of the conflict. However, Ms. Kelly told the Tribunal that children's rights organisations regret that the Patten Commission did not recommend either an end to the use of plastic bullets or the suspension of emergency legislation being applied to children.

Ms. Kelly reported that it is the belief of children's rights organisations in Northern Ireland that to secure full protection for children in a post-conflict situation, as well as to ensure that the importance of children and their special needs are recognised, a Ministry for Children should be established at the heart of government. This would guarantee that the unique implications for children would be taken into account in the development of all policies and strategies.

Finally, Ms. Kelly stated that, on a very pragmatic level one of the most obvious ways to guarantee children's rights in any society, and especially in a divided society, is adequate, non-discriminatory funding of services for children.

## **Evidence in response and elaboration from youth**

**Representatives:** *Peter Bryson, Linda O'Neill, Colin Brown and James Dunbar*

Youth representatives emphasised several points in Paddy Kelly's testimony. James Dunbar underlined the effects of the threat of constant violence on children and young people, leading sometimes to suicide and suicide attempts. At the other extreme, Linda O'Neill drew attention to the fact that street violence reduces children's right to play and recreation in the areas around their homes. Colin Brown affirmed the lack of faith in policing from both sides of the community. Peter Bryson highlighted the need for attention within government structures to the particular needs of children, such as a Minister, Commissioner or Ombud for children, so that it is clear 'where children stand in the polity.'

### **?** *Further questions to the Northern Ireland witnesses*

The Tribunal further received information from Ms. Kelly about the inadequacy of the juvenile justice system in Northern Ireland, such as the low age of criminal responsibility and the lack of appropriate secure accommodation for child offenders. But Ms. Kelly informed them that detailed information about the possible over-representation of Catholic children in the juvenile justice system is not available.

Interventions from other witnesses and observers included comments that considerable pro-active work is necessary to mitigate the long-term effects of protracted, low intensity conflict. The youth witnesses also provided information about their experiences of good practice in rehabilitation programmes. They highlighted in particular the positive effects of international youth exchanges and visits, which led to considerable discussion. Linda O'Neill described her own experience of improved self-esteem, as the sense of helplessness and apathy was challenged by one such visit. Moreover, she drew the Tribunal's attention to the fact that positive outcomes are more likely from exchanges and other activities that are not specifically related to The Troubles, and do not include overt counselling.

We have come a long way since the first child to die in the conflict, nine year old Patrick Rooney was killed on 14 August 1969 by the police. We have come a long way but we cannot become complacent. We still have a long way to go to address the human rights legacy of the conflict, to ensure the rights of all children during the peace process and enshrine mechanisms, which will protect them in a post conflict society.

### **Paddy Kelly: Testimony to the Tribunal**

## 2.5. Advocacy and Action for the Protection and Prevention of War-Affected Children

### 2.5.1. *The role of the international community as defined by international standards*

**Peace building and human security issues:** *Testimony of Katherine Foster, AGP, Department of Foreign Affairs and International Trade, Government of Canada*

Katherine Foster told the Tribunal that the purpose of her testimony was to situate the response of the Government of Canada to the topic of war-affected children within the context of the national human security agenda. This strategy has been multifaceted. The first response has been political advocacy in supporting the Office of the Special Representative, particularly in the role of raising awareness among both state and non-state actors employing children as combatants. In addition, during Canada's period on the UN Security Council, the issue of war-affected children was a key element in Canadian initiative, with particular respect to promoting protection of civilians during conflicts. The Council has now adopted two resolutions on these topics. Canada also strongly supports the inclusion of child protection specialists in UN peacekeeping operations as well as strengthening technical and professional capacity on child rights among peacekeepers.

Ms. Foster pointed out that those charged with peacekeeping functions are increasingly confronted with child soldiers and other war-affected children in the course of their work. Canada is exploring ways of addressing this new reality. Some options that could be contemplated are including training in child rights and how to work with war-affected children in pre-deployment military training as well as collaboration between military personnel and NGOs. Ms. Foster informed the Tribunal that Canada and Norway are developing a training module that might be used to enhance the awareness, knowledge and expertise of peacekeepers who face the challenge of dealing with children in conflict zones.

Canadian strategy also includes working to improve international legal instruments as well as to ensure compliance with existing humanitarian norms and standards protecting children. To that end, Canada had been supporting the work of developing the Optional Protocol to raise the age of recruitment to armed forces, for example by providing resources to the International Coalition to Stop the Use of Child Soldiers. Canada is also working with other committed governments to bring the rights and needs of children in armed conflict to the fore in a variety of regional and sub-regional organisations, such as the Organisation for Security and Cooperation in Europe, the Organisation of American

A strong partnership between governments and civil society can make an enormous difference.

**Katherine Foster: Testimony to the Tribunal**

### **The Role of the Military**

Pre-deployment military training might include courses on child rights and on how to deal with war-affected children during peace support operations. Military personnel might work with NGOs to assist affected children.

#### **Katherine Foster: Testimony to the Tribunal**

States and the Economic Community of West African States. Canada is also committed to development and peacebuilding projects funded by the Canadian International Development Agency to rebuild schools and meet basic human needs, as well as working with NGOs and local communities to reintegrate child victims and child soldiers through education, disarmament, reunification, sports and skills training.

Ms. Foster referred to the lesson learned in the campaign against the use of anti-personnel mines of the importance of recognising the contribution of civil society. Within Canada, a joint Committee on War-Affected Children has brought together NGOs and the Government of Canada to share experiences and resources and 'chart a common strategy for the future'. She reported that this Committee is proving effective in forging partnerships with various sectors of Canadian society, including further recognition of the importance of child and youth participation in improving their own security and life situations. In addition, Canada has taken up the challenge of the Machel Report to host a conference bringing together stakeholders from all major regions of the world at a Conference in September 2000.<sup>24</sup>

#### **Questions to Katherine Foster**

In response to questions from the Tribunal, Ms. Foster defined 'human security agenda' as a term relating to a broad range of issues related to concern about and attention to civilians in situations of armed conflict. She also referred to the Government's recognition that rehabilitation projects and programmes should be evaluated to establish what works and what does not work, and also to the need to avoid duplication of efforts.

Ms. Foster replied to Marie Smyth's question about the potential for the Canadian Government to have influence on these issues within Commonwealth circles, by stating that the approach tends to be region by region rather than global. She also responded to a question from Kathy Vandergrift about the contradiction that may occur when advocacy oriented NGOs lobby a government with which they are otherwise in partnership. Children and their rights, she stated, should always be regarded as more important than any difficulties in this interface.

In reply to a query from Samuel Doe, Director of the West African Network of Peacebuilders and a witness who also testified at the Hearings, regarding what Canada is doing to prevent conflict, Ms. Foster said that the Government tries to establish early-warning indicators in all programmes, seeking ways to break the cycle of violence through working in peace processes. She pointed to the

24. *International Conference on War-Affected Children*, September 10-15, 2000, Winnipeg, Canada.

## Promoting a Culture of Peace

Although the modern rules of war seek to protect non-combatants, especially children, from harm, this has become impossible to do in practice. While serving the needs of the most vulnerable populations, humanitarian actors must bear witness to this dark truth and seek to promote an anti-war agenda, also called a culture of peace.

### Christopher Lowry: Testimony to the Tribunal

importance of finding ways to involve children and youth in all these areas.

**Please pull the baby out of the fire – The endgame of protecting children in armed conflict:** *Testimony of Christopher Lowry, Programme Director, More Than Bandages Program, Médecins sans Frontières, Canada*  
Mr. Lowry began his evidence by making a distinction between ‘good’ and ‘bad’ soldiering. The latter in his view is characterised by practical inability to protect children from the effects of war, based in collective political attitudes. Illustrating his point by reference to the seventeenth-century English satirist, Mandeville, he suggested that:

*In our efforts to protect children from war we may be working in this grey moral territory where, although we are all naturally concerned to be perceived as kind to children, our ruling elites and governments consider war to be a legitimate, useful and often profitable option.*

The conclusion reached in his evidence is that war cannot be waged in such a way that it harms adults rather than children,

particularly given that children are traumatised by harm to their adult caregivers and it would be impossible to target only ‘those adults who have no deep caring relationships with any children. If children cannot be protected from war, the only realistic response is to seek means of promoting an anti-war agenda that will renounce the idea that war is a legitimate political tool. Thus, he claimed, international humanitarian law should not seek to regulate war but to establish that it is ‘an illegitimate, criminal option’.

### ? Questions to Christopher Lowry

Mr. Lowry responded to queries and interventions from the Tribunal and other witnesses about possible ways of bringing about a culture of peace, with suggestions for innovative research topics to shed light on the question, including:

- The political economy of war;
- The structural underpinnings of conflict and violence;
- The potential of institutional reform for bringing about peace;
- Community processes that generate healing after conflict.

## CONFLICT ANALYSIS, PLANNING AND IMPACT ASSESSMENT

There are four main challenges in conflict analysis. Policy is rarely based on hard evidence, response tends to be poorly co-ordinated with limited sustainability and it is difficult to assess the impact of interventions. The solution to these problems lies in finding better analytical tools, methods of developing integrated responses and improving research methods.

One aim of analysis is to identify the factors that generate both conflict and peace. It is now recognised that facts need to be separated from perceptions of different stakeholders, who often have competing agendas, and that methodological considerations require further attention.

Integrated responses are difficult to developing in the context of sectorial planning, especially given

## SUMMARY LUNCHTIME PRESENTATION

the diverse objectives of various stakeholders. It is important to recognise the potential of establishing a division of labour between sectors and actors as well as adopting a common framework of analysis and objectives.

On the positive side, there is a noticeable trend towards evidence-based policy with a greater, more realistic emphasis on ownership and sustainability. Nevertheless, significant co-ordination problems exist. At worst, planning that has no factual basis and failure of agencies to cooperate not only wastes resources, but may actually do more harm than good.

**Summary of the lunchtime address by David Nyheim, Director, Forum for Early Warning and Early Response, 6 April 2000**

## 2.5.2. Measures needed to protect children against all forms of participation in armed conflict

### Studying children's understanding of political violence:

*Testimony of Lynne Jones, Senior Research Associate, Centre for Family Research, University of Cambridge*

Lynne Jones gave the Tribunal an account of the context in over a decade of work in the Balkans beginning before the period of armed conflict and ethnic violence, during which she had worked in Croatia, Bosnia and Slovenia. Her testimony focused on a psychiatric research project with *Medécins Sans Frontières*, which had caused her to question the way mental health is approached in situations of armed conflict. Her over-riding concern was the general absence of 'children's voices' in research in this field, the assumptions made by adults about children's needs and perceptions and the influence of this lacuna on funding and project design. In the research she reported to the Tribunal, she had studied children from both sides of the conflict, concentrating on detailed files from a total of 40 families in the town of Gorazde over a twelve-month period. After this, she had returned to Kosovo for a further year to establish paediatric and mental health services.

The illustrative example that Dr. Jones interwove with her evidence concerned 15-year-old 'Alban', a Kosovar Albanian boy from an extended family in a poor, rural area. In 1998 during an attack on his community by Serb forces, Alban hid in a forest with his father, brother and cousins, but they were caught, stripped, beaten and tortured. Dr. Jones expressed that for no particular reason that she knew of based on Alban's communication with her, the police allowed Alban to escape leaving him to wander, lost and alone in the woods for three to four days. When he was found, his mother described him as being 'like a baby', needing everything done for him.

Although Alban's behaviour might be taken as a symptom on mental illness, Dr. Jones pointed out that in this case regression could also be described as a 'healthy choice' because it resulted in the care that he needed. She stated that, in her experience, sophisticated tests that rely on Western cultural concepts are not always necessary for identifying severely traumatised children, whose symptoms are obvious. The fears expressed by war-affected children are rational responses to reality. It is thus not rational to use the practices of conventional psychotherapy as a substitute for basic security. Yet governments and powerful international bodies seem to use humanitarian aid and psychotherapeutic interventions for victims as 'a stop to public opinion', rather than addressing the root causes of conflict.

In this context, Dr. Jones also questioned the conventional use of terms such as 'innocence' and 'neutrality' by the international aid community with respect to children in armed conflict. In the first place, children are not necessarily perceived as innocent by other combatants. In Kosovo, for example, Albanian babies were viewed as

'demographic terrorists' who had to be eliminated. At the same time, children themselves may not wish to be seen as necessarily neutral. They may take an active role in armed struggles, and this should be addressed by those involved in protection programmes.

In the next stage of his story, Alban escaped from the massacre of the remainder of his family and lived for three months 'on his wits', learning and using the skills of survival. At the end of this period, he could be described as mentally healthy because the experience had restored to him the sense of his own strength. Dr. Jones emphasised that this was not an isolated incidence, claiming that between 60 and 80 percent of children are not traumatised (in the sense of being made 'psychologically unwell') by war.

Dr. Jones then passed to the meaning of 'trauma', which she asserted, is a term borrowed by mental health from the physical sciences. She suggested that it is now being used to found a rationale for service provision by establishing medical and pathological reasons for intervention on behalf of victims, rather than intervening in political situations in order to prevent or stop conflict itself. After returning to his family, Alban became ill and unhappy once again. Dr. Jones suggested that this was related to family anxiety about losing their temporary home with no alternative shelter available. Following the deaths of his father and older brother, Alban was the man of the family, yet he was unable to solve this problem.

In this case, Alban's apparent symptoms of traumatic reaction can be interpreted not as the irrational response of a child victim but rather as rational and healthy responses to impossible situations. Dr. Jones emphasised that to say this is not to denigrate mental health but to suggest that it is important to address it correctly. Mental health problems are best addressed through non-mental health interventions, which are based not on the assumption of pathology but rather on the provision of human rights to basic needs, justice, the rule of law, security and attention to the problems of lost official identity documents.

### ? Questions to Lynne Jones

The Tribunal questioned Dr Jones about the 20 percent of children who are traumatised by their involvement in conflict asking if they were perhaps in a different environment, or if there were gender differences. Dr. Jones answered that the children were all from the same town of 40,000 inhabitants, whose experiences of conflict were broadly the same. The children who presented clinical symptoms of trauma tended to be those who were already vulnerable to mental health problem before the conflict, or to be those who had 'lost everything'. There were differences between boys and girls in that the latter might be more open about their symptoms. There was no evidence in her research data to indicate that girls are weaker in this respect.

Samual Doe commented that he had heard these arguments about traumatisation before, yet the symptoms he has seen do indicate that the Western medical condition does

exist. He asked if perhaps the definition is the problem and suggested that a new term may be needed. He affirmed the importance of using community mechanisms to address the problems of rehabilitating children but also asked if trauma is a medical phenomenon or a social reality. In response, Dr. Jones stated that the term 'trauma' is meaningless because it refers both to an event and to the reaction to an event. It is as problematic as the term 'stress'. Using a concrete example, she pointed out that a child who has nightmares, which are used to diagnose traumatic stress, may or may not have a problem. The meaning given to 'nightmares' varies not only between cultures but also between people. The person presenting the symptoms of nightmares 'has a say in the topic' and the most important question then is 'what can we do about it'.

Abubacar Sultan, referred to the case of Mozambique, where child soldiers from non-governmental armed groups had been captured by the government, put in prison, displayed to the media and 'proved to be traumatised'. He also referred to the use of foreign psychologists using foreign-based tests that proved the same, and recommended psychotherapeutic cures, despite the fact that the increasing numbers of traumatised children identified could not be treated by the one clinical psychologist in Maputo. In his experience, he stated, when the checklists of clinical rating scales were discarded it could be seen that the trauma was really the lack of parents, homes and belonging. Thus the most effective and most appropriate therapeutic intervention had turned out to be a family tracing system.

## **P**ossibilities and challenges for restoring child soldiers: *Testimony of Samuel Gbaydee Doe, Director, West Africa Network of Peacebuilding, Ghana*

Mr. Doe began with greetings from the West Africa Network for Peacebuilding (WANEP) and personal testimony from his experiences of the Liberian Civil War in 1990. While walking around a slum community during a cease-fire, he had watched the slow death of a skinny boy of about seven years who had been apparently abandoned by his parents. This experience had caused him to pledge himself to work for peace in Africa. He added to this the testimony of a boy called Osuman from Sierra Leone, in which he had modified the language and added a 'poetic treatment'.

On the basis of these stories, Mr. Doe then turned to the question of how to 'repair and restore' the children affected by armed conflict. He pointed to the particular problems in Africa after the end of the Cold War, with expectations that the cessation of conflict between great powers would bring peace to African countries being replaced by the realities of fratricidal wars. He emphasised the involvement of ordinary civilians in such warfare, 'Their fields are poisoned with landmines, villages razed to the ground, families disintegrated and sometimes destroyed completely. Children are dying because of starvation, abandonment and the lack of basic health care'.

In the case of children such as Osuman, the processes and challenges of restoring a child soldier are four-fold - Demobilisation, Rehabilitation, Reintegration and Re-socialisation. In his testimony Mr. Doe dealt with the challenges posed by the first two of these stages.

The process of removing children from active combat sets the stage for return to civilian life and provides an opportunity to assess the number of combatants returning to civilian life and the psycho-social effects that communities must be aware of. Referring to the claim of a study by Rachel Brett and Margaret McCallin that demobilisation of child soldiers cannot be successful, Mr. Doe provided several explanations. In the first place, the usual handling of demobilisation by military authorities does not take into account the specific nature of new forms of combat. This leaves NGOs with only a small role and they may be deliberately prevented from being part of the process. Mr. Doe stated that rebel leaders do not usually have adequate records of the combatants who fought on his side - they try and determine those children who are community members first and soldiers second - those which simply disappear into community settings once the fighting ceases is difficult. Therefore, communities are the best place to identify former combatants.

In the case of children, many rebel leaders will not admit to using them as soldiers and conceal information. In the third place, rebel leaders tend to discourage their fighters from demobilising because the line between war and peace is indistinct.

According to the Brett and McCallin study, Mr. Doe stated, only one successful demobilisation of child soldiers has been recorded, that of 600 Liberian children out of 'at least 8,000 child soldiers'. This occurred through a large-scale community awareness programme using drama, songs, with the active involvement of community leaders and mass media. During that time, he had been the Curriculum Chairman of the Centre for the Study of War Trauma and Children in Liberia, an organisation sponsored by UNICEF. Many counsellors and social workers trained at the Centre were sent to rural and urban communities to mobilise a welcome for children returning home and to provide temporary shelters for children who could not trace their families or were unwilling to return to them. Children who had refused to go through the demilitarisation process with the United Nations Observers Mission in Liberia (UNOMIL) were encouraged to work with local NGOs and community leaders.

Mr. Doe defined rehabilitation as 'a process of healing the psychological, social and spiritual traumas afflicted on victims of traumatic events.' He emphasised the damage done by the public nature of some violence in recent conflicts, committed within the community 'safety net' which is the source of the individual's values and sense of trust. This tends to reduce both victim and perpetrator to a state of insecurity, which can lead to the use of narcotics, in order to escape reality.

## 'Testimony of Osuman'

Let the heavens listen and the Earth remain still. I call on all within and high above the Universe to assemble; for I have a claim to make. I want to make my case before the human and universal conscience, that immutable and perfect judge. Heard by History, the undisputed Board of Jury, I know I will be vindicated.

My name is Osuman. I was born in Kanda, in Sierra Leone. Sierra Leone is a state at the edge of Africa. They say the stones beneath the soil where I was born are not only precious, they are the ultimate gift that symbolises love. Everyone loves them!<sup>25</sup>

I am the only child of my parents. My father, they say, was a wealthy man, at least by definition of our village. Everyone spoke about how kind he was. Every child in our town called him 'Papa Thousand'. He earned his name from his generosity. When he was asked for help he would give nothing less than a thousand Leone (about US\$1). Children would stream to his house for food and to watch television. When I was born eleven years ago, the entire town celebrated with my parents. In every quarter, they spoke about how I was God's gift to my parents for their kindness towards all, was the gift from the Ancestors to fulfil the joy of my parents. The celebrations marking my naming ceremony were the grandest our village had ever known. I saw the pictures and heard the story from the people of my village.

Have you heard about the care the only child of an African couple receives. Beautiful will be the least I can say because of the lack of an appropriate word. I was pampered with any and everything a child in my world could imagine.

War broke out when I had just turned five years. People spoke of the war and how the fighters were horrible. Some of the fighters came from our town. No one knew the motive behind the war. Some said they were fighting to liberate all children and youths. They want to liberate me! I did not understand what that meant because I thought I was living at peace with my parents. My Big Father (the oldest brother of my father) was the chief of our town. Others said the war was about the precious stones in our town while others thought the fighters were after the Government in the big city.

Before long, our town was attacked and people were being killed everywhere. We were not spared. My parents and I were commanded out of our house that Saturday night. It was between day and night. There was crying and wailing everywhere. They asked my father for money, which he gave readily. After they took the money one of them said, 'Let us zero the man.' Bang! Bang! My parents were shot before me. I saw my father fight so desperately for life. He wanted so much to live. He wanted to see his son grow to be a man. My mother lay still in a pool of blood. I was crying and the men whisked me away. I was sent to their training base. At six years old I was trained to fire a gun. They also taught me how to spy on the enemy, and how to hide in the bush.

When I was seven years old they sent me to fight. My first assignment was in my own town. My 'Big Father' was still there. He, they said, had re-buried my parents and had honoured them with a big feast. They sent me with some big fighters. When we entered the village, they arrested my Big Father and asked me to cut off his two ears. They gave me a knife and commanded that I cut off the ears of my Big Father otherwise they would cut off mine. While my Big Father looked on, I chopped off his two ears and away we went. That was the beginning of my long and horrid journey.

I am eleven years old now. Five years of my life was characterized by cutting limbs, killing, raping and drug abuse. Here I am. I cannot trace my relatives. I beg for food in the streets of Freetown. Even if I find my relatives, who will want to take a child like me?

Here is my case. Oh Heaven and Earth! My innocence was exploited, my development was violently suppressed, my identity contaminated almost irreparably; my parents and anything that gave me a sense of safety was annihilated. What crime did my parents commit that justify such violations? What crime did my ancestors commit that I am paying for today?.....The adults of the Earth are guilty. Guilty for commission, omission and/or complicity.

**Slightly abbreviated from oral and written evidence of Samuel Gbaydee Doe**

25. This reference is to the diamond trade in Sierra Leone, which finances conflict in many parts of Africa.

Thus the first challenge of rehabilitation is to restore the sense of safety through family and community caring. He asserted that no rehabilitation can be complete unless meaningful community is restored. Where entire villages and communities have been destroyed, the challenge is to create new security for children. Where communities have been damaged by internal conflict resources for community conflict are necessary in parallel with the rehabilitation of children. One obstacle to full rehabilitation and the restoration of a sense of security and safety is the fact that many wars in which children and community are involved do not have a clear ending, so that anxiety remains entrenched.

The second challenge to rehabilitation is combating the post-traumatic stress disorders that affect children. Mr. Doe referred to his work as a psychological counsellor at the Liberia Opportunities Industrialisation Centre in 1991, when a mental status examination was conducted on 65 child fighters, all of whom showed signs of different degrees of traumatic disorder. Two symptoms that rated highly were permanent alert and intrusion. The former leaves children watchful and suspicious of people and objects, with psychosomatic reactions that include constant head, body and stomach pains, hypertension and ulcers. Fear may degenerate into paranoia and guilt and lead to suicide. Intrusion is a condition characterised by preoccupation with past traumatic events, with symptoms that include hallucinations, nightmares, startle reactions, re-enactment and depression.

The third challenge to rehabilitation is that even children as young as eleven years-old may have been exposed to hard drugs, but skills in dealing with this are not available in the countries in which these conflicts have taken place.

Identity crisis is the final challenge. Children are given new names by the warlords for whom they fight. In traditional African societies, naming ceremonies are 'the single most important social mechanism through which one's individuality and identity are established. Names provide markers of expectation in the community. Consequently, if a boy is renamed 'General Crazy' or 'Dirty Ways', this provides him with a way he is supposed to act. When the war is over and this name no longer has any meaning, he will be 'bereft of identity'.

Mr. Doe concluded his evidence by pointing out that the best solution to the problem is the prevention of war, which in itself poses a challenge to the international community to confront those agencies that promote wars in developing countries for their own economic gain. But he also provided a note of hope by emphasising that traditional modes of ritual healing in Africa have provided a way in which communities can find a meaningful path out of despair.

#### Questions to Samuel Doe

The Tribunal and other witnesses engaged Mr. Doe in a discussion of the question of whether child combatants are a part of traditional African culture. Mr. Doe's opinion was that

they are not and that it must be recognised that child soldiers are part of current reality in Africa. It was pointed out that children were regarded as legitimate combatants in decolonisation struggles and that referring to African history is not appropriate when over half the population of Sub-Saharan Africa was born after 1970.

Mr. Doe responded to a query from Christopher Lowry about the use of traditional healers to recover lost identity by stating that, although precise rituals did not exist for this culture, other rituals have been adapted to serve this purpose. He described rituals of atonement and cleansing through which combatants are reintegrated into their former communities: 'Ritual answers the unanswered questions.'

The questions then turned to the tradition in many Sub-Saharan African societies of exacting a death penalty as retribution for killing another human being. Mr. Doe stated that in his opinion this was not an acceptable option, especially for children. Yet there is a question, as Lynne Jones pointed out, of ensuring that children do understand and see that justice must be done, without involving them in the judicial process of trial, punishment and retribution. 'Accountable processes,' Mr. Doe agreed, 'do not have to be legal'.

#### **The role of community-based NGOs and action programmes dealing with children in armed conflict:**

*Abubacar Sultan, Director, Wona Sanin, Mozambique*  
Abubacar Sultan began his testimony by reminding the Tribunal that Mozambique is one of the few cases in which conflict has ended, a relatively successful cease-fire has held so that democratic elections within a multiparty system have taken place. The phases of conflict were all low intensity, with very little direct contact between the two sides. The rebel forces aimed to destabilise the government by their actions and the government was too weak to mount counter-attacks. Thus the rebels focused on attacking civilians and destroying the health and education infrastructures and instituting terror. This would have affected children in any case, but in fact children became the particular target of the rebels forces.

Dr Sultan told the Tribunal that children were abducted and taken to the camps of the rebel forces (RENAMO) mostly undergoing a series of traumatic events, in which the worst seemed to be the first experience of their parents being attacked and unable to protect them. The loss of home and family appeared to have been the key events remembered by children among all their experiences. Children also seem to have remembered their first long walk to the rebel base camps.

Within the camps, Dr Sultan reported, girls were involved in camp life alongside boys. Girls were seen as a potential source of income, through bride price, so that they outnumbered boys in RENAMO camps. They were unable to run away and provided domestic and sexual services for soldiers. If they became pregnant they might be forced to kill

Vulnerability is a permanent burden.

### Abubacar Sultan: Testimony to the Tribunal

their babies because of the fear that their crying might reveal the camp location. Children were involved as combatants on both sides, more than half being under the age of 15 years when recruited.

When the war ended, the first tendency was to heal traumatised children. Through a successful family tracing programme 20,000 children were reunited with their families, although this would have been a relatively small proportion, if UNICEF estimates of 300,000 unaccompanied children are correct. The family tracing programme built on previous experiences of the ICRC and of Save the Children UK in Cambodia. It took place over a period of two years and supplemented the informal community-based system for family reunification.

On the basis of this experience, Dr. Sultan commented on the role of international NGOs in post-conflict situations. He stated that the response is often based on good will, but that NGO staff do not spend time to understand the cultural context and make appropriate assessments of children's needs. He stressed that counselling programmes based on Western models have negative effects: 'The government is still trying to solve the problems caused by trauma counselling that established a stigmatised category of "mad kids"'. He also criticised these NGOs for working in geographical areas that were easy to reach, where donors could visit and photograph activities. Therefore, resources did not reach other areas.

A further post-conflict problem highlighted by Dr. Sultan was the absence of children from the peace process. Government and rebel forces both tended to hide child soldiers. After the cease-fire, he stated, the peace

process was conducted in ways the UN regarded as appropriate, with the result that children were forgotten in the development and rebuilding process. In addition to the conflict, communities had been further affected by natural disasters such as flood, those worst affected by war were also worst affected by natural disaster.

### ? Questions to Abubacar Sultan

Answering questions from the Tribunal, Dr. Sultan stated that the war has not caused an increase in the street children phenomenon in Mozambique, but rather that this problem has been exacerbated by the inappropriate actions of NGOs. Other witnesses agreed on the basis of their own experiences with Dr Sultan's comments about the tendency of international NGOs to place projects in easy-to-reach areas and to lurch from one issue to another according to the current donor concerns and fashions in child welfare. Many witnesses stressed that a more appropriate alternative is to train local NGOs.

## 2.5. Closing presentation by the President of the Tribunal

The President began his closing remarks by thanking everyone concerned in organising and realising the Hearings. He emphasised in particular the contribution of young people, stressing that the Tribunal recognised the importance of listening to young people and acknowledging their expertise.

Finally, the President stated that, despite the distressing nature of some of the testimony, the message of the Hearings was optimism and a 'passionate belief in the perfectibility of people'. He stated that the Tribunal had already come to a clear consensus that the full body of international humanitarian and human rights law should be brought to bear on the issue of children in armed conflict, and expressed the hope that the recommendations of the Tribunal would be a genuine contribution to the process of moving from ratification to full implementation.

# PART 3

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## CONCLUSIONS AND RECOMMENDATIONS

## PART 3. CONCLUSIONS AND RECOMMENDATIONS

In preparing their *Report of the First Hearings on the Protection of War-Affected Children*, which concentrates on securing children's rights in the context of armed conflict, the Tribunal considered the evidence provided by witnesses under three main themes:

- i. Compliance with, and obligation to international standards protecting children in armed conflict;
- ii. Monitoring the implementation of international standards;
- iii. Advocacy and action for the protection and prevention of war-affected children.

In relation to these topics, the Tribunal heard testimony on:

- weaknesses in mechanisms enforcing obligation by non-governmental armed groups to international standards and norms;
- weaknesses in mechanisms enforcing compliance by State Parties to international conventions;
- international co-operation and global security;
- protecting children from armed conflict;
- the role of the international community as defined by international standards; and,
- measures needed to protect children against all forms of participation in armed conflict.

Particular attention was given in the Judges' deliberations to the importance of listening to the views and hearing the experiences of children and young people, as exemplified by the much-appreciated testimony of the young people from Northern Ireland. The Tribunal took into consideration a wide range of international humanitarian and human rights instruments (Appendix E) but also reflected on the role that might be played by national laws in implementing the provisions of such instruments. It was recognised that there are many unresolved conflicts and contradictions inherent in the implementation of international humanitarian and human rights law.

The Tribunal recognised the key role of the benchmark Graça Machel Report as well as the challenges it represents. In addition, the Judges acknowledged the importance of UN interventions, in particular the establishment of the Office of the Special Representative of the Secretary General for Children and Armed Conflict, and the adoption of Resolution 1216 of the Security Council. The evidence drew attention to the historical novelty of current conflicts and their effects on children. In this context, the Tribunal was struck by the need for control of the production and distribution of small arms, by the child rights implications of complex emergencies and by the need for attention to the needs of children in low-intensity, protracted conflicts, peace processes and post-conflict situations. The Tribunal also noted testimony on the need for conflict prevention. Mindful of Albert Einstein's reported comment

that it is not possible simultaneously to work for peace and prepare for war, the Tribunal emphasised the need to develop an overall culture of peace, in preference to monitoring uncertain and inconclusive 'peace processes'.

One concern expressed by the members of the Tribunal during their deliberations was the appropriate and adequate use of existing international legislation. In particular, the Judges took note of the fact that requirements are being imposed on the CRC to perform some functions, or defend certain rights, which cannot be found in the text. In addition, evidence from legal experts made it clear that the powers provided to the Committee on the Rights of the Child through Article 43 of the CRC are neither strong nor precise. The Committee cannot establish the facts nor punish violations of the rights set out in the CRC. The Committee has established an admirable role that balances engaging in dialogue with States Parties together with taking a proactive stance on certain issues. Yet, especially in view of the almost universal ratification of the CRC as well as the relatively prompt reporting of States Parties, the Committee is not provided with sufficient human, material and technical resources and could be overwhelmed by the sheer volume of work. Moreover, a proposition to increase the number of members of the Committee from 10 to 18 has yet to be implemented.

The Tribunal also took into consideration future opportunities for protecting children affected by armed conflict. In the case of the Optional Protocol to the CRC on the involvement of children in armed conflict as well as the Rome Statute of the International Criminal Court, the Tribunal felt that there is no need for governments to wait for such legislation to come into force before they take action on raising the age for recruitment into armed forces to 18 years. The international community cannot protect children's rights unless States Parties pass and implement appropriate domestic legislation. This does not have to lag behind the ratification and coming into force of universal legislation. Domestic law could be in place beforehand, in order to smooth the ratification process.

### 3.1. Overview of the issues

Before making their conclusions and recommendations, the members of the Tribunal identified certain cross-cutting themes that occurred frequently within the provided testimonies; and which, like the principles and provisions of international law, guided their decisions.

The four cross-cutting themes all bear a relationship to certain key human rights prescriptions:

- (a) The first issue is the recognition that rights cannot be secured without governance;
- (b) The second is that children are subjects of rights whose opinions must be taken into consideration in all decisions made on their behalf;

- (c) The third is that practical steps towards implementation of rights can only be fully successful if their indivisibility is assured; and finally,
- (d) The Tribunal regards monitoring to be a crucial aspect of implementation.

### 3.1.1. *Security is the first priority*

Many witnesses stressed that security is indispensable to the achievement of human and children's rights. Rule of law is the handmaiden to security, providing stability and protection of human and children's rights. When security and the rule of law are in place, justice can be realised, so that the necessity to resort to conflict as a means of achieving goals is significantly reduced, if not eliminated. Moreover, the Tribunal noted evidence suggesting that restoration of the security of family care, financial support and shelter are the first prerequisites for repairing the psychological trauma children experience as they are involved in armed conflict.

It was also clear from much of the evidence at the Hearings that physical security is contingent on economic exigencies, whether these are related to national poverty or the unequal distribution of resources. The Tribunal felt strongly that it is necessary for the international community to confront the political economy of war as well as the root causes of structural violence. In this respect, it is important to counter the sources of economic support for non-governmental armed groups as well as to seek ways of preventing donors from providing military aid and other resources to participants in armed conflicts affecting children. This would include consideration of the effects of financial bodies such as the World Bank and International Monetary Fund. While searching for potential actors in this field, the Tribunal discussed the need to advocate among non-threatened states and other bodies to take a leadership role in preventing and ending both national and international conflicts.

With respect to all these aspects, the Tribunal urges all responsible bodies to be mindful of the effects of social exclusion, marginalisation and segregation on children, and appeals for the establishment of routine child impact studies, whether or not these are related to ongoing conflicts.

### 3.1.2. *Children are experts*

The Tribunal considers that it is false to make a distinction between the evidence of 'children' and 'experts', for two reasons. In the first place, as the International Bureau of Children's Rights has always pointed out, children are subjects of rights, which include the right to have their opinion taken into account and the right of free expression (CRC Articles 12 and 13). In the second place, children and youth are involved in armed conflict both as civilians and combatants. Through undergoing these experiences, they often acquire skills of danger management, as well as developing their own knowledge and opinions about both war and peace. Not to listen to children's and youth accounts and views amounts to repression of their voices and culture.

Therefore, the Tribunal wishes to promote a perspective on children and young people affected by armed combat that views them as potential citizens rather than victims, and includes meaningful inclusion as stakeholders within governmental discussions on both conflict and peace.

Allied to this, the Tribunal wishes to see the special needs of developing citizens treated as a mainstream issue in all questions related to peace and conflict. In particular, this implies the routine collection of children-focused information, as well as consideration of children and youth in all planning, programmes and policies. Given evidence revealing that younger children tend to be the focus of attention, the Tribunal also identified a need to address the rights of adolescents and youth with equal attention.

### 3.1.3. *A holistic approach*

The holistic approach to children affected by armed conflict adopted by the Judges, follows from the principle that rights are indivisible and consists in using the full body of both international human rights law and international humanitarian law, whether established by statute or custom. Testimony from the Hearings consistently referred to the way aid and humanitarian organisations may neglect certain rights in situations of complex emergency. This leads the members of the Tribunal to make two observations:

- It is necessary to balance survival rights and other rights in different conflict situations. Whereas survival may at times be the first consideration, the periods during which this is the priority tend to be short lived, and other rights, such as education and recreation must be fulfilled as soon and as thoroughly as possible;
- Continuity and quality of education are key elements in children's rights in any situation and education also plays a crucial role in preventing conflict as well as rehabilitation and peace building in post-conflict situations.

### 3.1.4. *Monitoring*

The extent to which rights are violated or achieved, the adequacy of instruments and mechanisms for implementation, as well as the establishment of good practice, can only be known and put to use in policy formation if satisfactory monitoring takes place. Yet monitoring children's rights in conflict is bedevilled by information problems. Definitions are poor, sometimes conflicting and often not applied. Data is poor and tends to focus on households or heads of households, rather than on children. The Tribunal recognises the need for better information in this area, as well, supports the idea of utilising trained peacekeepers<sup>26</sup> for better securing children's rights. However, it is also concerned with what seems to be little attempt to audit and evaluate the activities of NGOs and other agencies, the extent to which they cooperate, and the reportedly uneven distribution of humanitarian aid and other programmes.

26. i.e. Child protection advisors during peacekeeping operations.

## 3.2. Conclusions: Violations of Children's Rights

Perhaps the most significant of all aspects of the Report of the Tribunal is the inadequacy of both the provisions and mechanisms for enforcement of the large body of international humanitarian and human rights legislation that should be protecting children from the harmful effects of armed conflict. An overall violation of the principles of these laws is the failure sufficiently to legislate for the rights and needs of those developing human beings who are caught up in, or even targeted by, armed conflicts for which they bear no responsibility.

The Hearings of the International Tribunal for Children's Rights constitute a moral court, and the Tribunal cannot establish the truth or make judgements on specific cases. Nevertheless, the Tribunal prepares a Report containing its conclusions and recommendations based on testimonies presented. On the basis of the testimonies heard at this First Hearing on The Protection of War-Affected Children, it is the concluding judgement of the International Tribunal for Children's Rights that the following child rights, contained in international treaties and covenants in force at the time of the Hearings, have been violated:

- Children are not afforded special protection in times of armed conflict

Article 38 (1) & (4) CRC: Children under the age of 15 years are given insufficient protection as a special group of civilians in armed conflicts: This is also a violation of the Universal Declaration of Human Rights 25(2); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), the Additional Protocol I (1977), Chapter II, especially Article 77 (1 & 3), and Additional Protocol II, Chapter IV. In this context, the Tribunal also noted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (UN General Assembly, 1974).

In addition, children may be the specific targets of aggression. It is the nature of modern warfare that civilians are often targeted, and in many countries more than half the population is less than 18 years of age. Services of particular importance for fulfilling children's rights, such as health, education and recreation, are specifically targeted for disruption. Where conflict is low-intensity and long-term, this can mean that educational opportunities are unavailable, inaccessible or inadequate for the entire duration of many children's childhood.

Thus Article 2 CRC may be violated. Discrimination may be practised against children because they are children or because they belong to a particular ethnic or religious group. Because modern forms of warfare, particularly conflicts that take place within national borders, frequently include elements of what has come to be called 'ethnic

cleansing', children may be defined as 'demographic terrorists' and targeted for extermination, which not only violates their right to life under all human rights laws, but also brings into play the *Convention on the Prevention and Punishment of Genocide* (1948)

- Children are recruited into armed forces as combatants and combat support personnel

Article 38 (2) & (3) CRC and Additional Protocol to the Geneva Convention, Article 77 (1 & 2) forbid the recruitment of children under the age of 15 years into armed forces, and States Parties are also obliged to take 'all feasible measures' to ensure that people of this age do not take a direct part in hostilities. Yet it appears that children are frequently combatants or take a direct part as support personnel and that the ease with which small arms are available and can be used or carried by children encourages these practices. The abduction and forced recruitment of children into non-governmental armed groups also seems to be commonplace, which is contrary to the provisions of ILO Convention 182.

In addition, mindful of the general tendency of the international community to consider all recruitment into armed forces, whether governmental or non-governmental, to be non-voluntary under the age of 18 years<sup>27</sup>, the Tribunal wishes to draw attention to widespread violation of the universal recognition that children have no part as combatants in armed conflicts of any kind.

The Tribunal also notes that, based on witness testimony, it is important to be mindful of the traditional African practices of not using children as soldiers prior to periods of claiming independence from colonial powers. In this context, the disturbing tendency of some authorities to claim that African tradition has always used children as soldiers is based on false premise and is contrary to the provisions of the *African Charter on the Rights and Welfare of Children* Article 22, and the principle of preserving the positive, while eliminating the negative, aspects of culture on the continent (Articles 11 and 21).

- Children are sexually abused and exploited

The Tribunal heard evidence that Article 34 of the CRC is violated in situations of armed conflict.

- Children are subject to torture in both specific and broader senses of the term

The Tribunal also heard of many cases in which children were subjected to torture, cruelty, and inhuman or degrading treatment and punishment revealing violations of CRC Article 37 (1), Universal Declaration Article 5, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (as well as regional instruments).

27. See for example in Appendix E Optional Protocol to CRC (2000); OAU African Charter on the Rights and Welfare of the Child (1990); Hague Appeal (1999); Montevideo Declaration (1999); Berlin Declaration (1999)

Reports that child soldiers are forced to kill their own family members as part of their initiation as child soldiers are of particular concern.

In this respect, children are also subjected to unlawful invasion of their privacy and integrity, in violation of CRC Article 16, Universal Declaration Article 12.

- Children's education is negatively affected

In general violation of Article 28 of the CRC, as well as various articles of the *Optional Protocols to the Geneva Conventions*, continuing and/or restoring educational services may be given insufficient priority, not only by governments but also by humanitarian and aid agencies.

In addition, in violation of Article 30 CRC, children may be denied access to education that is culturally appropriate, or be denied education through discrimination that is in violation of Article 2 CRC. Insufficient attention is paid to peace education, whether in times of peace or times of war, in violation of Article 29 CRC, and Universal Declaration Article 26 (2).

- Children are deprived of the right to recreation and leisure

In violation of CRC Article 31, children's development is impaired by the destruction of recreation facilities, the reduction of opportunities for play and recreation, and the failure of humanitarian and aid agencies to provide services because of inappropriate emphasis on survival services.

- Rehabilitation is insufficient and often inappropriate

Children affected by war, whether as victims or combatants do not always receive the rehabilitation services to which they are entitled under CRC Article 39. This can include imposition of external models of restoration and reintegration, which violate their rights to respect for their culture under CRC Article 30.

- Humanitarian aid is not always a priority, not professionally supervised or coordinated, and unevenly distributed

The failure of the responsible agencies to consider the rights of children as mainstream activities and to coordinate and monitor the impact of their activities on children can amount to discrimination against certain groups of children, who do not live in the area covered by aid agencies (CRC Article 2). It can also be the case that there are violations by omission of children's right to receive appropriate standards of care (CRC Article 3c) to the maximum of available resources (CRC Article 4).

It should be noted that in coming to these conclusions, the Tribunal has tended not to refer to regional instruments, although children's rights (as children and as civilians) under the provisions of many of regional instruments have undoubtedly been violated in specific cases, as revealed in the testimony given at the Hearings.

### 3.3. Recommendations

Bearing in mind the conclusions with regard to violations of children's rights and the broad themes identified within the evidence, the Tribunal makes the following recommendations:

#### 3.3.1. *International standards protecting children in armed conflict*

- a) International criminal procedures should be put in place to prosecute crimes against humanity in cases of recruitment and use of child soldiers, as well as the physical and sexual abuse of children during hostilities;
- b) A non-proliferation treaty for small arms should be developed;
- c) Address issues concerning the extent to which children who have committed criminal offences as combatants during the course of armed conflict are subjected to criminal procedures or are answerable to war crimes tribunals;
- d) With the adoption of the Optional Protocol to the CRC on Involvement of Children in Armed Conflict<sup>28</sup> States Parties should amend their domestic legislation before ratifying, and for those who ratify before such amendment there should be a maximum time limit set within which amendment should take place;
- e) The Security Council of the UN should be urged to impose immediate sanctions on all persons, groups and governments that fail to protect children's rights in situations of armed conflict, whether by commission or omission.

#### 3.3.2. *Monitoring the implementation of international standards*

In order for children's rights to be monitored:

- a) It is necessary to deal with the contradictions caused by different age groupings used for different purposes in different instruments and by various agencies;
- b) Key terms relating to children in armed conflict must be defined and definitions agreed and adhered to by all relevant parties;
- c) All those responsible for the production and use of information about children affected by armed conflict must be responsible for using the most accurate information available, avoiding the use of exaggerated numbers and exploitative case studies;

d) Child impact studies should be a routine function of governments, or in the absence of governmental resources of appropriate inter governmental and non-governmental organisations;

e) The activities of NGOs should be independently audited and evaluated;

f) The activities of NGOs should be widespread throughout a particular country, not just focused on achieving objectives in city centres;

g) All responsible persons working with international organisations, including members of peacekeeping forces should be trained in children's rights, with particular reference to collecting information on and reporting violations.

#### 3.3.3. *Advocacy and action*

a) Programmes and policies for children affected by armed conflict should take a holistic approach to child rights, including particularly:

- Involving children and youth;
- Balancing survival rights with other rights issues;
- Observing the principle of the 'best interests of the child';

b) Documentation of independently evaluated examples of 'best practices' in programmes directed at war-affected children should be encouraged so that replicable models can be developed, particularly for immediate use in emergency situations;

With respect to long-term, low-intensity conflict, existing models that include drop in centres and international exchanges that do not exclusively focus on war should be explored and documented;

c) Policy makers and programme design should recognise that most of the mental health problems of conflict exposed children can best be addressed by non-mental health services, apart from housing and food security, these services include justice, rule of law and overall physical security;

d) The key role of communities and local cultures should be recognised, particularly with respect to:

- Community regulation of non-governmental armed groups;
- The use of traditional practices and values with respect to the rehabilitation, reintegration of child soldiers and other war affected children.

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28. Adopted by the General Assembly of the UN in May 2000

This should include finding ways to support, train and inform communities, especially with respect to international norms and standards;

- e) The importance of education should be recognised:
- Pressure should be put on authorities not to close schools too readily unless children are in direct danger;
  - The re-establishment of educational services that have been disrupted should be a priority;
  - Education in all countries should aim to develop a culture of peace.
- f) In low intensity, long term conflicts, where communities become segregated, ‘magnet’ schools should be established, providing standards of education so excellent that parents will support their children’s attendance across sectarian boundaries;
- g) Training issues at all levels. All responsible persons working with international organisations, including members of peace-keeping forces, should be trained in children’s rights, with particular reference to:
- Protection of children’s rights;
  - Observing the principle of the ‘best interests of the child’;
  - Listening to the views of children and young people;
  - Appropriate ways of working with traumatised children;
  - The special factors involved in demobilising child soldiers.

#### **3.3.4. *The role of the international community***

- a) International enforcement and monitoring bodies should be more effective. In particular:
- Increased resources should be put at the disposal of the Committee on the Rights of the Child, including raising the number of members from 10 to 18;
  - Developing and supporting the role and responsibilities of Child Protection Advisors in war zones.
- b) The unequal distribution of humanitarian aid and other programmes in conflict zones should be addressed through the development of cooperative action plans and strategies to implement international treaties, that include clear leadership and coordination for one appropriate agency;
- c) All action plans and peace process should have an automatic provision for involving children and young people. This must include all sectors of society and not just a limited group;
- d) An accurate knowledge base of information about the political economy of war should be developed, with particular attention to the financing of non-governmental armed groups;
- e) Systematic, independent evaluation of all interventions, whether by IGO/INGO/NGO/government should be established, building on the key principle of the ‘best interests of the child’ and including children and young people in the evaluation process.



# APPENDICES

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APPENDICES A - E



# Appendix A

## Agenda for the First Hearings of the International Tribunal for Children's Rights on The Protection of War-Affected Children: Securing Children's Rights in the Context of Armed Conflict

### MONDAY APRIL 3, 2000

### OPENING RECEPTION

- 13:00 – 17:30 Preparatory Sessions  
19:30 – 21:00 Opening Reception
- Andrée Ruffo, President; International Bureau for Children's Rights, Canada
  - Professor Ivor Crewe, Vice-Chancellor, Essex University, England
  - Ms. Carolyn Browne, Foreign Office, Human Rights Department, United Kingdom
  - Mr. Chetan Kumar representing Olara Ottunu; Special Representative of the Secretary-General for Children and Armed Conflict, United Nations

### TUESDAY APRIL 4, 2000

- 08:00 – 09:00 Registration & Welcoming of Participants  
09:00 – 09:15 Official opening statement by the President of the Tribunal  
09:15 – 09:45 Overview of issues associated with war-affected children:  
Keynote Address by Chetan Kumar representing Olara Ottunu, Special Representative of the Secretary-General for Children and Armed Conflict  
09:45– 10:15 Preserving the rights of civilian children in armed conflict: Testimony of Carolyn Hamilton, Children in Armed Conflict Unit, Children's Legal Centre, Essex University  
10:15 – 10:30 Questions to Chetan Kumar and Carolyn Hamilton from members of the Tribunal  
10:30 – 10:45 Interventions by other participants  
10:45 – 11:00 coffee break

#### First Theme:

#### **Compliance with and Obligation to International Standards Protecting Children in Armed Conflict**

#### ***Session One: Existing weaknesses in mechanisms enforcing obligation by non-governmental armed groups to international standards and norms***

- 11:00 – 11:30 Lack of accountability and obligations of non-governmental armed groups:  
Testimony of Raffael Vonivier, Senior Researcher, Institute for Security Studies, South Africa  
11:30 – 12:00 In an area of armed conflict: The status of Palestinian children's rights in Israeli Occupied Territory: Testimony of Khaled Quzmar, Lawyer, Defence for Children International-Palestine Section, Israeli Occupied Territory  
12:00 – 12:30 Coffee break  
12:30 – 12:45 Questions to Raphael Vonivier and Khaled Quzmar from members of the Tribunal  
12:45 – 13:00 Interventions by other participants  
13:00 – 15:00 Lunch (Guest Speaker: Andrée Ruffo, President, International Bureau for Children's Rights)

### First Theme (continued):

#### **- Compliance with and Obligation to International Standards Protecting Children in Armed Conflict**

#### **Session Two: *Weaknesses in mechanisms enforcing compliance by States Parties to international conventions***

- 15:00 – 15:30 Improving implementation of the Convention on the Rights of the Child and UN Security Council Resolution 1261: Testimony of Kathy Vandergrift, Senior Policy Analyst in Advocacy and Government Relations, World Vision, Canada
- 15:00 - 15:10 Questions to Kathy Vandergrift from members of the Tribunal
- 15:10 - 15:20 Interventions by other participants
- 15:20 - 15:50 Convention on the Rights of the Child; non-compliance by State Parties during conflict: Testimony of Françoise Hampson, Professor, Faculty of Law, University of Essex
- 15:50 - 16:00 Questions to Françoise Hampson from members of the Tribunal
- 16:00 - 16:10 Interventions by other participants
- 16:10 - 16:25 coffee break
- 16:25 - 16:55 Monitoring the implementation of the *Optional Protocol*: Testimony of Rory Mungoven, Programme Co-ordinator, Coalition to Stop the Use of Child Soldiers
- 16:55 - 17:05 Questions to Rory Mungoven from members of the Tribunal
- 17:05 - 17:15 Interventions by other participants
- 17:15 - 17:45 Testimony of Sylvia Ladame, International Committee of the Red Cross, Division for Policy and Cooperation
- 17:45 - 17:55 Questions to Sylvia Ladame from members of the Tribunal
- 17:55 - 18:05 Interventions by other participants

### **WEDNESDAY APRIL 5, 2000**

### Second Theme:

#### **Monitoring the Implementation of International Standards**

#### **Session Three: *International co-operation and global security: protecting children from armed conflict***

- 09:30 – 10:00 Proliferation of small arms and the impact on children in armed conflict: Testimony of Sarah Meek, Senior Researcher, International Alert, UK.
- 10:00 – 10:30 The role of national NGOs in protecting children in armed conflicts: Testimony of Nevena Vuckovic Sahovic, Director, Yugoslav Child Rights Centre, Serbia.
- 10:30 - 10:45 Questions to Sarah Meek and Nevena Vuckovic Sahovic from members of the Tribunal
- 10:45 - 11:00 Interventions from other participants
- 11:00 – 11:15 coffee break
- 11:15 – 12:00 Helping the children of Bosnia: What works - and what doesn't work: Testimony of Peggy Barry, Advocate for Children's Rights, USA
- 12:00 - 12:15 Questions to Peggy Barry by Members of the Tribunal
- 12:15 – 12:30 Interventions by other participants
- 12:30 – 14:00 Lunch (Guest Speaker: Besnik Kajtazi, Kosovar Student at the University of Essex and Board member of Prishtina Post-Pessimists)

**Case study of the situation in Northern Ireland as expressed by youth experts: Moderator/Facilitator: Marie Smyth, Director, Community Conflict Impact on Children (INCORE)**

14:00 – 14:15	Overview of the Situation in Northern Ireland: Testimony of Marie Smyth
14:15 – 14:30	Evidence in response and elaboration from youth representatives: Peter Bryson, Linda O’Neill, Colin Brown and James Dunbar.
14:30 - 14:45	Questions from members of the Tribunal
14:45 - 15:00	Interventions from other participants
15:00 – 15:30	coffee break
15:30 - 16:00	The legal and human rights impact of the conflict in the North of Ireland from a children’s perspective: Testimony of Paddy Kelly
16:00 – 16:15	Evidence in response and elaboration from youth representatives: Peter Bryson, Linda O’Neill, Colin Brown and James Dunbar.
16:15 – 16:30	Questions from members of the Tribunal
16:30 – 16:45	Interventions by other participants

**THURSDAY APRIL 6, 2000**

**Third Theme:**

**Advocacy and Action for the Protection and Prevention of War-Affected Children**

***Session Five: The Role of the International Community as Defined by International Standards***

09:30 – 10:00	Peace building and human security issues: Testimony of Katherine Foster, AGP, Department of Foreign Affairs and International Trade, Government of Canada
10:00 – 10:15	Questions to Katherine Foster from members of the Tribunal
10:15 - 10:30	Interventions by other participants
10:30 – 11:00	coffee break
11:00 – 11:30	Please pull the baby out of the fire: The endgame of protecting children in armed conflict; Testimony of Christopher Lowry, Director, More Than Bandages Program, Médecins sans Frontières, Canada
11:30 – 12:00	Questions to Christopher Lowry from members of the Tribunal
12:00 – 12:30	Interventions by other participants
12:30 – 14:00	Lunch (Guest speaker-David Nyheim, Director, Forum for Early Warning and Early Response, UK)

***Session Six: Measures Needed to Protect Children Against all Forms of Participation in Armed Conflict***

14:00 – 14:30	Studying children’s understanding of political violence: Testimony of Lynne Jones, Senior Research Associate, Centre for Family Research, University of Cambridge
14:30 - 14:45	Questions to Lynne Jones from members of the Tribunal
14:45 - 15:00	Interventions by other participants
15:00 – 15:30	Possibilities and challenges for restoring child soldiers: Testimony of Samuel Gbaydee Doe, Director, West Africa Network of Peacebuilders – Ghana
15:30 - 15:45	Questions to Samuel Doe from members of the Tribunal
15:45 - 16:00	Interventions by other participants
16:00 - 16:30	Coffee break
16:30 – 17:00	The role of community-based NGOs and action programmes dealing with children in armed conflict, Abubacar Sultan, Director, Wona Sanin, Mozambique.
17:00 – 17:15	Questions to Abubacar Sultan from members of the Tribunal
17:15 – 17:30	Interventions by other participants
17:30 – 17:45	Closing Presentation by President of the Tribunal

## Appendix B

### Members of the Tribunal for the Hearings on The Protection of War-Affected Children: Securing Children's Rights in the Context of Armed Conflict

After graduating from the Kenya School of Law and the University of Nairobi with an LL.B., **Judge Joyce Aluoch (Kenya)** worked as a District, Resident and Senior Resident Magistrate from 1974-1982 respectively. She has since been a High Court Judge for more than seventeen years. During this time, she has presided over many cases involving the welfare of children displaced as a result of armed conflicts. In addition, Lady Justice Aluoch has considerable experience in cases involving the custody, the right to property and rehabilitation of war-affected children, in particular, those who have been orphaned as a result of armed conflict. In 2000, Lady Justice Aluoch was appointed by the Honourable Chief Justice of Kenya to be the presiding Judge of the first Family Court of Kenya. She has been actively involved in community and international organisations for many years. Currently she retains the position as National Chairperson for the Kenya Girl Guides Association, as a member of the Prestigious Olave Baden Powell Society. Further, she helped to found the International Women Judges Association and today acts as chairperson for its program and planning committee. Locally, she chairs the Kenya Women Judges Association. She has been invited to present papers at many international conferences such as the International Planned Parenthood Federation's conference where she focused on reproductive health issues, for the International Judges Association, at the African Women Judges conference, at a World Bank Meeting on Eastern Africa where she presented on Gender and Law, and many others.

**Judge Helio Bicudo** graduated in law from the University of Sao Paulo, Brazil, and worked as a District and then Public Attorney until 1979. Under the Carvalho Pinto Government he acted as the Head of the Civil House of the State of Sao Paulo, as well as of the Ministry of Finance, and was later appointed Interim Minister of Finance. Under the Luiza Erunda administration he was named Secretary of Judicial Affairs of the Mayor of the State of Sao Paulo. Dr Bicudo currently presides over the National independent Court Against Child Labour and is a founding member of the Justice and Peace Commission of the State of Sao Paulo. He is the Co-ordinator of the Santos Dias Human Rights Centre of the State of Sao Paulo and a member of the Teotonio Vilela Human Rights Commission, as well as the Counsellor of the Abrino Foundation for Children's Rights. Dr Bicudo was elected Federal Deputy of the Labour Party in 1990 and re-elected in 1994. In recognition, he has been credited for three constitutional amendments dealing with the structure of the police and judiciary, as well as the reorganisation of the penitentiary system. In the international sphere, Deputy Bicudo has also been a Judge in the Permanent Court of the People concerning the Violation of the Basic Rights of Children in Trento, Macerata and Naples, and also represented the Government of Brazil at the International Court against Child Labour in Mexico City, 1996. He is the First Vice-Chairman of the General Assembly of the Inter-American Commission on Human Rights as well as being the Commission's Rapporteur on Children's Rights. In 1975 he was awarded the *Sobra Pinta Human Rights Medal*, by the Pontifica Universidade Catolica-MG, and has received the National Human Rights Prize of the National Human Rights Movement of Brazil. Dr Bicudo is the author of various books and studies, including in the field of human rights.

**Judge Emanuel A. Cassimatis** graduated in law from Pennsylvania State University and practised as a lawyer in the United States of America until 1978. Throughout his career he has served the community as a volunteer, including being the former President and Director of the United Community Services of York County and a Board Member of the Children's Growth and Development Clinic. Judge Cassimatis was first elected to the Court of Common Pleas in Pennsylvania for a term of ten years beginning in 1978 and has been a Senior Judge since 1996. His assignments have included the Juvenile Court, the Civil Court and the adult Criminal Court. Judge Cassimatis is a member and former President of both the Pennsylvania Conference of State Trial Judges and the Pennsylvania Juvenile Judges Commission. He has also been Chairman of the Safe Kids Initiative and Convener of the Juvenile Justice Policy Group in his home State of Pennsylvania. Currently, Judge Cassimatis is a member of the Juvenile Advisory Committee of the Pennsylvania Commission on Crime and Delinquency and its Victim Services' Advisory Committee. He is the founder and current Co-Chairman of the York County Youth Commission, a community organisation that promotes dialogue, cooperation and improvement of delivery systems and prevention on issues affecting children and families.

**Judge Adam Lopatka** graduated from the School of Law and Economics in Poland as Master of Law and later received a Doctorate in Law. In 1968 he became professor and in 1973 professor *ordinarius* at the Institute of Law Studies of the Polish Academy of Sciences. He was elected Deputy Dean at Poznan University in 1962 and Dean of the School of Law and Administration in 1964. From 1969 to 1987, Professor Lopatka was Director of the Institute of Law Studies of the Polish Academy of Sciences, and from 1979 to 1981 he presided over the Polish Jurists Association. He was elected to the *Seym* (Polish Parliament) in 1976 and again in 1980. In 1982, he was appointed to the *Seym* as the Minister of Religious Affairs, serving in this capacity until he was appointed First President of the Supreme Court of Poland in 1987. In the international field, Judge Lopatka represented Poland before the United Nations Commission on Human Rights where, in 1982, he submitted the Draft Convention on the Rights of the Child, in the capacity of Chairman and Rapporteur (1979-1989) of the Working Group that drafted the United Nations Convention on the Rights of the Child. Currently, Judge Lopatka is Chair of the general theory of law at the University of Commerce and Law in Warsaw and is a member of the Committee of Political Sciences at the Polish Academy of Sciences, as well as of the International Institute of Human Rights in Strasbourg, the International Academy of Comparative Law, the International Association of Philosophy of Law and Social Philosophy, and the Academy of Social Sciences of the Russian Federation. He has been awarded the degree of Doctor *Honoris Causa* by the University of Gainesville Florida in the United States of America.

**Judge Vicha Mahakun** is the Deputy Chief Justice of the Central Juvenile and Family Court in Thailand as well as being Chairman of the Public Relations Committee of the Juvenile and Family Justice System. Since being appointed to this position in 1994, Judge Mahakun has promoted the reform of the Juvenile and Family Justice System, working with the Government of Thailand and non-governmental organisations to improve training and treatment programmes in juvenile detention institutions to ensure that all rehabilitation efforts are made in the 'best interests of the child', according to Article 3 of the UN Convention on the Rights of the Child. Judge Mahakun is also Chairman of Children's Protection Centres, a non-governmental organisation supported by UNICEF Thailand Country Office that is dedicated to the protection of children in rural areas. This organisation has trained more than 700 volunteers, including young community leaders, as advocates and protectors of children's rights. Judge Mahakun has now been appointed to the Supreme Court of Thailand and as the President of the Institute for Juvenile and Family Justice Development - the first juvenile and family justice training centre in Thailand.

The rapporteur to the Tribunal, **Dr Judith Ennew**, has been an activist and researcher on children's rights issues since 1979, specialising in the field of street and working children. She is currently a researcher in the Center for Family Research at the University of Cambridge and Visiting Fellow in the Department of Social Anthropology at Goldsmith's College, University of London. She was recently elected to the Academy of Learned Societies in the Social Sciences.

# Appendix C

## Biography Notes of Guest Speakers First Hearings on the Protection of War-Affected Children: Securing Children's Rights in the Context of Armed Conflict Wivenhoe House Hotel, University of Essex, Colchester, UK 03-06 April 2000

**Peggy Barry (USA)** has been living in Sarajevo since January 1998, when her husband was asked to be Chief of Mission of the Organisation for Security and Cooperation in Europe (OSCE), for Bosnia and Herzegovina. Through thirty-five years of life in the US Foreign Service, she was a teacher of and an advocate for children in many locations and situations, including street children in Jakarta and orphans in East Timor. During her years in the US, she taught at a school for emotionally disturbed teenagers in Washington, DC. In Sarajevo, she has been involved with two major projects: finding markets in the US for the products made by Bosnian refugee women; and, at the request of the wife of the Croatian member of the Presidency, to chair a committee to work for the prevention of domestic violence toward children.

**Colin Brown (Northern Ireland)** grew up in a working class Protestant in Belfast. He still lives in this community which is one of the Protestant communities that has been worst affected by the conflict. He has experience of the impact of the Troubles on his own and other children and young people's lives.

**Peter Bryson (Northern Ireland)** is a Programme Co-ordinator with Save the Children Fund in Northern Ireland. He is currently involved in developing young person focussed work with communities across Northern Ireland that have seen the worst effects of inter-community violence. His work involves promoting the participation of young people in society, the rights of children in the context of conflict, enabling cross-cultural learning and understanding and facilitating young people to explore their own identity.

**Professor Ivor Crewe (England)** was appointed Vice-Chancellor at the University of Essex in December 1995. He was appointed to the Department of Government of the University in 1971, and served as Director of the ESRC Data Archive from 1974 to 1982, head of the Department of Government from 1984 to 1988 and Pro-Vice-Chancellor from 1992 to 1995. Mr. Crewe has written on British politics, especially, parties and public opinion, for many years. He directed the British Election Study from 1973 to 1981 and edited the British Journal of Political Science from 1977 to 1982 from 1984 to 1992. His books include *Decade of Realignment*, *Electoral Change in Western Democracies*, *British Parliamentary Constituencies* and *The British Electorate 1963-1987*. With Anthony King he has recently completed *SDP: the Birth, Life and Death of the Social Democratic Party*, which was published in December of 1995. He is a frequent commentator on elections and party politics and is currently doing research on the impact of party leaders in the way people vote.

**James Dunbar (Northern Ireland)** is a project worker with young men, mostly 18-25 years old. He works with young men in deprived areas in the Craigavon area that also suffer sectarian tension and conflict. He also volunteers in a local drop-in centre working with young men and women aged 13-21 years

**Samuel Gbaydee Doe (Ghana)** is the Executive Director of the West Africa Network for Peacebuilding. He holds a Masters of Arts degree in Conflict Transformation from the Conflict Transformation Program of Eastern Mennonite University. Mr. Gbaydee Doe is presently an instructor of the Caux Scholars Program (CSP) of Moral Re-Armament in Caux, Switzerland. The CSP offers month-long training in Conflict Transformation and Applied International Studies to college students internationally selected. He has also taught a course, Ethnic Identity and

Conflict Transformation, at the Summer Peacebuilding Institute of Eastern Mennonite University. Mr. Gbaydee Doe since 1991 has worked extensively in West Africa, particularly in Liberia and Sierra Leone, where he applies his interest in social reconciliation with emphasis on reintegration and re-socialisation of former child soldiers. As Executive Director of WANEP, Mr. Gbaydee Doe is one of the promoters of the concept of Collaborative Peacebuilding in West Africa.

**Carolyn Hamilton (England)** is a Reader at the University of Essex and the Director of the Children's Legal Centre. She is one of the co-Directors of the Children and Armed Conflict Unit. She provided one of the Study Papers for the UN Study on the Impact of Armed Conflict on Children (the Machel Study) and helped launch the report in the UK. She has served as an expert to the UN Crime Prevention Branch on juvenile justice and was a member of the UK Advisory Board for submission of the UK Second Report to the Committee on the Rights of the Child. She has worked in a number of countries affected by armed conflict, including Kosovo, North Ossetia and Turkey. She is also currently working in Russia to implement new juvenile justice initiatives.

**Françoise Hampson (England)** is a Professor of Law at the University of Essex and in the Human Rights Centre. She is co-Director, with Carolyn Hamilton, of the Children and Armed Conflict Unit. She is a member of the UN Sub-Commission on the Promotion and Protection of Human Rights. She is on the steering committee of the ICRC for the study on the customary international law of armed conflicts. She contributed a report on international humanitarian law and the protection of children in conflict for the Machel Study.

**Paddy Kelly (Northern Ireland)** is a Barrister by profession. She was involved in the establishment of the Children's Law Centre and is currently its Director. After practising as a Barrister, Paddy worked for a number of years with voluntary sector organisations, including Gingerbread and Save the Children. She is currently Chair of Putting Children First, an umbrella organisation established to promote children's rights in the post-Belfast Agreement political dispensation. Paddy sits as a Commissioner on the Human Rights Commission.

**Dr. Lynne Jones (United Kingdom)** is a Senior Research Associate at the Centre for Family Research at the University of Cambridge in England. She recently completed her specialist training in child psychiatry. Her recent NHS job was as senior registrar on the in patient adolescent unit at Douglas House, Cambridge. Over the past 15 years, she has been actively involved with peace and human rights NGOs of various kinds, particularly those involved in Eastern Europe and Central America. Since 1989, she has divided her time between humanitarian aid work, primarily in the Balkans, conflict resolution training, research, and NHS child psychiatry. She worked for six months for Médecins sans Frontières, setting up and running psychiatric service for Gorazde in Bosnia. From 1998-99 Dr. Jones worked full time in Kosovo running emergency child and family health services for Child Advocacy International (CAI). Since 1999, she has been the medical director of a CAI project to establish a child psychiatry service in Kosovo, funded by the US office of Population, Refugees and Migration. Dr. Lynne Jones recently received an Order of the British Empire for her research and humanitarian work for the mental health and well-being of children in war zones, especially in the Balkans. Many congratulations to Lynne who richly deserves this honour.

**Besnik Kajtazi (Kosova)** is a student and is currently working with the Children's Legal Centre at the University of Essex. In Kosova, Besnik worked as a journalist for the biggest Albanian-daily newspaper *Koha ditore*. He trained as a radio-journalist at the BBC World Service in Bush House, London. Besnik has also worked on Media Projects of the international organisations in Kosova during the armed conflict. As a member of the Board of the youth organisation *Post-Pessimists* of Prishtina, winners of the UN Global Award for Peace and Tolerance in 1999, Besnik has been invited to speak at many conferences and workshops; the University of Trondheim at the Thematic Student Festival as well as the follow-up Festival this past March. He has been the main speaker in workshops for the peace process in Kosova for Peace and Conflict Studies at the University of California, and at the European Conference on Child Rights at the University of Girona in Spain. Besnik has also been an active participant and speaker at the International Meetings of the Post-Pessimists Movement.

**Chetan Kumar (UN Representative)** recently joined the Office of the Special Representative of the Secretary General for Children in Armed Conflict as a Programme Officer at the United Nations Headquarters in New York. From 1995-1999, Mr. Kumar was Senior Associate at International Peace Academy (IPA), an independent, non-partisan, inter-national institution located in New York and dedicated to promoting the prevention and settlement of armed conflict between and within States. In 1996, he received a PhD in International Relations from the Department of Political Science at the University of Illinois at Urbana-Champaign, where he was an associate of the University's Program in Arms Control, Disarmament, and International Security. At IPA, Chetan Kumar played an active role in designing, and in conducting IPA's training seminars on peacemaking and peacekeeping for senior policy makers, and in conducting research on peacebuilding.

**Sylvia Ladame (Switzerland)** works with the International Committee of the Red Cross, Division for Policy and Cooperation within the Movement. She is in charge of the 'dossier' on children in conflict situations. She first worked with the ICRC as a jurist before becoming a lawyer at the Geneva Bar and later a judge for children and Deputy Head of the Services for Protection of Youth, also in Geneva. After spending some years in the commercial sector in New York, she returned to work with the ICRC in 1993.

**Christopher Lowry (Canada)** directs More Than Bandages, a new MSF-Canada program of resources and training to promote creative approaches to psycho-social rehabilitation of war-affected children. He is an internationally recognised specialist in the protection and promotion of children's health and rights with experience as a development program manager, media producer and writer. Mr. Lowry has written papers for publication by WHO, UNICEF, UNDCP, CIDA, US A.I.D., and Netherlands Ministry for Foreign Affairs. As a senior consultant for the Canadian International Development Agency (CIDA), he recently completed a Survey of Canadian Programming for Children Affected by Armed Conflict. As Director of Educational Media for Street Kids International (1988-1997), he directed the production and distribution of cross-cultural animated adventure cartoons to teach street children about life skills, AIDS, sexual health and substance abuse that are now in twenty-five languages, being used in over one hundred countries. His Karate Kids project won the 1993 Peter F. Drucker Award for Canadian Non-Profit Innovation.

**Sarah Maguire (England)** is the Human Rights Specialist with the Conflict and Humanitarian Affairs Department of the Department for International Development. Previously practising at the Bar in criminal defence, refugee and family law. Recent experience of conflict situations includes Sierra Leone, Sri Lanka and Kosovo.

**Sarah Meek (England)** joined International Alert in 1999. She previously was senior researcher on arms control at the Institute for Security Studies in South Africa, which has undertaken a significant amount of research on small arms related issues and has a programme which focuses on the abuse of children in armed conflict. She previously worked in the United Nations Department of Disarmament Affairs. She has written extensively on arms control issues. She holds an MA in International Policy Studies.

**Rory Mungovern (England)** is the Programme Co-ordinator for the Coalition to Stop the Use of Child Soldiers.

**David Nyheim (England)** is the Director of the Forum on Early Warning and Early Response (FEWER). He has held a range of policy and research positions in the European Commission, University of London, and University of Louvain where he worked on humanitarian preparedness and disease control issues. Mr. Nyheim is trained in political economy (McGill University), medical sciences (Louvain), and epidemiology (LSHTM). His publications cover violence against displaced women, conflict prevention best practice, and human rights and disease control.

**Linda O'Neill (Northern Ireland)** is a youth support worker working in a deeply sectarian interface area. She has previously worked as a detached youth worker with young people aged 9 – 18 who do not use available resources. She currently works with young people on single identity issues on one side of the division in Northern Ireland in the hope that this may lead to their greater participation in their own communities which in turn may prepare them for contact with the other community in Northern Ireland.

**Peter O'Neill (Northern Ireland)** is the Manager of the NUS-USI Northern Ireland Student Centre, the umbrella body for Student's Unions in Northern Ireland which encompasses the services provided by both the National Union of Students UK (NUS) and the Union of Students in Ireland (USI). Formerly, he worked for the Law Centre, Northern Ireland and the Belfast Centre for the Unemployed. He has contributed to a wide range of initiatives in conflict transformation and tertiary education provision, notably through the Northern Ireland Higher Education Council and Further Education Consultative Committee. A former President of Queen's University Students' Union, he recently completed a MSc degree programme in European Integration studies and has authored a number of publications including *Promoting and Managing Diversity in Tertiary Education*, *The Student Community Relations Handbook* and a manual on conflict transformation strategies for European youth organisations. He is an associate lecturer at the University of Ulster and a member of the BBC (N. Ireland) Broadcasting Council and the Structural Committee of the Community Relations Council (N. Ireland). NUS-USI delivers a wide-ranging student community relations programme, funded by the European Union, and facilitates a number of student exchange programmes with South African and USA partner organisations.

**Khaled Quzmar (Israeli Occupied Territories)** is a lawyer at the Defence for Children International/Palestine Section (DCI/PS), as well as Coordinator of the DCI/PS Legal Program. Since joining the organisation in 1995, Quzmar has been responsible for representing Palestinian minors detained, arrested, and tried before the Israeli Military Courts in the West Bank, in addition to conducting visits to detention centres and prisons. Quzmar graduated with a BA in Law from the University of Oran, Algeria, in 1987. After completing two years of training in the Occupied West Bank, Quzmar spent six years representing Palestinian political prisoners. Quzmar has been an active member of various working groups for draft legislation to be submitted to the Palestinian Legislative Council, including the Labour Law, the Bar Association Law, and the Judge's Law. In addition, he has been involved in efforts to establish a juvenile justice system in the Palestinian Territories, which will safeguard the rights of Palestinian children. Quzmar is a member of the Palestine Bar Association as well as a member of the Board of Trustees of Addameer Prisoner Support Center in Ramallah, West Bank.

**Andrée Ruffo (Canada)** has been a judge at Quebec's Juvenile Court since 1986. Before her appointment, Judge Ruffo practised as a lawyer in child protection, from 1974-1986. In addition, she has been a Professor of law and is the author of several articles and books on the topic of children's rights. Judge Ruffo is a renowned spokesperson and an active advocate of children's rights both in the Canadian and international context. Judge Ruffo founded the International Bureau for Children's Rights in 1994, responding to the growing need for advocacy on behalf of children and the protection of their rights nationally and globally.

**Marie Smyth (Northern Ireland)** is a Research Fellow at INCORE, The Initiative on Conflict Resolution and Ethnicity of the United Nations University and the University of Ulster. She currently holds the position of Project Director of the Community Conflict Impact on Children, a two-year investigation on the experiences and effects of Northern Ireland's Troubles on children and young people in Northern Ireland. Previously, she founded and directed The Cost of the Troubles Study, a 30-month investigation into the effects of the so-called 'Troubles' on the population of Northern Ireland.

**Abubacar Sultan (Mozambique)** Abubacar Sultan was National Director of Save the Children Federation (SCF) – Mozambique's Project on Children of War, a counselling program working to heal child-soldiers forced to serve in Mozambique's civil war. Abubacar trained over 500 workers in 50 of Mozambique's worst war-torn areas in community-based therapy methodologies. He also wrote a manual to facilitate the training. In addition, Mr. Sultan conducted seminars to sensitise the army and the police to children's issues, and personally reunited children with their parents by flying into war zones to trace missing relatives. His project reunited more than 4,000 children with their families. Currently, Abubacar is working with the Foundation for Community Development, headed by Mozambique's former First Lady, Graça Machel. Called *Wona Sanana*, his new initiative combines community education with the gathering of data on the welfare of children and aims to promote improved policies on children's rights.

**Kathy Vandergrift (Canada)** Kathy Vandergrift is Senior Policy Analyst in Advocacy and Government Relations at World Vision Canada. She also chairs at the Canadian NGO Working Group on Children and Armed Conflict. She is a member of the Organising Committee for an International UN-NGO Consultation on Effective Implementation of Resolution 1261 on Children and Armed Conflict, being held in New York just prior to the Tribunal in Colchester. Prior to joining World Vision, Kathy worked as a policy advisor to government leaders at the federal and municipal level in Canada.

**Raffael Vonovier (South Africa)** joined ISS on secondment from the Swiss Ministry of Foreign Affairs in October 1999. He is a researcher at the Africa Early Warning Program (AEWP) and at the Arms Management Program (AMP). He was a legal adviser (international humanitarian law) at the Swiss Ministry of Foreign Affairs in Berne and was posted at his country's Delegation to the OECD in Paris. Prior to that he was a delegate for the International Committee of the Red Cross in Mozambique and Nigeria and a legal adviser (doctrine) at the ICRC Headquarters in Geneva. Raffael holds a degree in law from Lausanne University, Switzerland.

**Nevena Vuckovic Sahovic (Former Yugoslav Republic)** completed her postgraduate studies in international law at Belgrade University Law School, and is at present in the final stages of Ph.D. studies on the subject of international legal protection of the right of the child. Since 1999, Ms. Vuckovic Sahovic has been the coordinator of the Balkan Child Rights Initiative regional project based in Budapest, Hungary. The project is aimed at building an active network of child rights organisations of the countries of the South and Eastern Europe. In addition, since 1997, she is the Director of the Research and Education Program at the Yugoslav Child Rights Centre. From 1992 to 1993, Nevena Vuckovic Sahovic worked as a senior advisor on international aspects of the protection of human rights at the Ministry for Human and Minority Rights of the SFR of Yugoslavia. From 1985 to 1992, she worked as a senior advisor at the Ministry of Foreign Affairs of Serbia for the implementation of international conventions and agreements in the Republic of Serbia. Nevena is Project Director of the Belgrade Center for Human Rights "Rights of the Child in Yugoslavia", as well as Member of the Human Rights Council of the Belgrade Center for Anti-War Action.

# Appendix D

## Rules of Procedure for Tribunal Hearings

Although the International Tribunal for Children's Rights is a moral court and does not abide by strict procedural rules, a number of procedural guidelines have been developed over the years to ensure the smooth progress of the Hearings. They can be summarised as follows:

1. The Tribunal is comprised of five Members, or Judges, from five different continents, chosen by the Selection Committee in accordance with the *Policy on the Selection Procedure of Candidates suitable for the Tribunal*. Members of the Bench are appointed for all three (or more, as the case may be) Hearings to be held on a given topic, including the rendering of the Tribunal's Judgements and the Global Report. Throughout the public hearings, the Rapporteur of the Tribunal assists the Members of the Tribunal.
2. The Rapporteur of the Tribunal is assigned to the Members of the Tribunal for the duration of the Hearings. His or her role is to assist them in all manners relevant to the execution of their mandate. In particular, the Secretary of the Tribunal must record all names and titles of those who appear before the Tribunal to testify, as well as a summary of the testimony. Furthermore, the Rapporteur reports to the Members of the Tribunal on relevant activities and events that surround the Hearings. At the end of the Hearings, the Rapporteur of the Tribunal will provide Members of the Bench with the support and advice needed for the preparation of the Tribunal's Judgement. Furthermore, he or she will act as liaison between the Members of the Tribunal and the Bureau, ensuring that the Judgement is completed in time for the publication of the Bureau's annual report.
3. A President of the Tribunal is elected by his or her peers, prior to the opening of the Hearings. Generally speaking, the President will be responsible for the orderly progress of the Hearings, from beginning to end. In particular, he or she must:
  - (a) At the beginning of every session, deliver an opening statement, thereby welcoming all participants and officially opening the Hearing of the International Tribunal for Children's Rights;
  - (b) Invite witnesses to give testimony according to the programme. If for some reason, a witness is late or simply not present at the appointed time, another will be called without delay, and time will be made available, at the end of that session, for the postponed testimony;
  - (c) With the help of the Secretary of the Tribunal, ensure that the time limits for each session are not exceeded;
  - (d) At the end of the last session, present concluding remarks to the participants and officially closes the Hearings of the International Tribunal for Children's Rights.
4. Before testifying before the Tribunal, witnesses first have to be asked to do so by the President of the Tribunal or, in his or her absence, by another Member of the Tribunal.
5. Once on the stand, each witness is awarded time to express his or her views, opinions, concerns and experiences (or those of his or her government, group or organisation) on the case or issues under review.
6. When a witness has concluded his or her testimony, time is allowed for Members of the Tribunal to ask questions and/or demand further explanations from the witness. As time permits, other witnesses and members of the audience may be invited to share their comments and/or questions on the issue at hand.
7. The International Tribunal for Children's Rights strongly encourages expert witnesses to submit a written brief summarising their presentation. These written briefs should be deposited before the Tribunal at the earliest possible time, so that the Members of the Tribunal can take them into consideration for the preparation of their Judgement.

# Appendix E

## International and Regional Instruments

Please Note: The following list of legal instruments was taken from the table of contents of the Tribunal Members' resource package that was provided to them prior to the commencement of the First Hearings on the Protection of War-Affected Children. They are listed in chronological order. Any Additional or Optional Protocols have been listed under the instrument it relates to.

Universal Declaration of Human Rights (1948)

American Declaration of the Rights and Duties of Man (1948)

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field — "First Convention" (1949)

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea — "Second Convention" (1949)

Geneva Convention relative to the Treatment of Prisoners of War — "Third Convention" (1949)

Geneva Convention relative to the Protection of Civilian Persons in Time of War — "Fourth Convention" (1949)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts — Protocol I (1977)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts — Protocol II (1977)

[European] Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Convention relating to the Status of Refugees (1951)

Protocol relating to the Status of Refugees (1966)

Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples (1965)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Civil and Political Rights (1966)

Optional Protocol to the International Covenant on Civil and Political Rights (1966)

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

International Covenant on Economic, Social and Cultural Rights (1966)

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968)

## CONTACT INFORMATION



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Special thanks to Dr. Judith Ennew, Tribunal Rapporteur, for her commitment and expansive expertise and skills in preparing the *Report on the Protection of War-Affected Children: Securing Children's Rights in the Context of Armed Conflict*. Dr. Ennew has organised an extensive and complicated amount of information into a readable and comprehensive report. In addition, we thank the Children in Armed Conflict Unit, Children's Legal Centre and the University of Essex for their collaborative support in preparing and implementing the First Hearings. Further, thanks to the witnesses for bringing such valuable testimonies before the Tribunal. This wealth of knowledge and experience provided the means for enriching and enlightening deliberations to take place.

Special acknowledgment to the team of professionals and volunteers of the International Bureau for Children's Rights, and in particular to Pamela Teitelbaum, for their efforts and dedication in planning, coordinating and implementing the First Hearings of the International Tribunal for Children's Rights on the Protection of War-Affected Children.

The results of these Hearings, in the form of conclusions and recommendations, have been achieved with the intention of using them as a primary tool for furthering the international children's rights agenda, advocating and acting against the tragic violations of children's rights during all stages of armed conflict.

**The Bureau would like to take this opportunity to express its appreciation of the generous financial support by the Government of Canada through the Department of Foreign Affairs and International Trade.**

Convention Governing the Specific Aspects of Refugee Problems in Africa (1974)

Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)

American Convention on Human Rights (1978)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (“The Beijing Rules”)

African [Banjul] Charter on Human and Peoples’ Rights (1986)

International Conference of the Red Cross 1986: Resolution IX (Protection of children in armed conflicts)

International Conference of the Red Cross 1986: Resolution XX (Assistance to children in emergency situations)

Inter-American Convention to Prevent and Punish Torture (1987)

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1988)

Convention on the Rights of the Child (1989)

Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict (2000)

African Charter on the Rights and Welfare of the Child (1990)

Declaration on the Rules of International Humanitarian Law Governing the Conduct of Hostilities in Non-international Armed Conflicts, San Remo, 7 April 1990

Declaration of Turku (1990)

The Addis Ababa Document on Refugees and Forced Population Displacements in Africa (1994)

Resolution on the Plight of African Children in Situation of Armed Conflicts (1996)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997)

Guiding Principles on Internal Displacement (1998)

Rome Statute of the International Criminal Court (1998)

Hague Appeal for Peace Declaration on the Use of Children in Armed Forces and Armed Groups (1999)

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)—ILO Convention 182

Maputo Declaration on the Use of Children as Soldiers (1999)

Organization of African Unity CM/Dec.482(LXX) Decision on the “African Conference on the Use of Children as Soldiers” (1999)

Montevideo Declaration on the Use of Children as Soldiers (1999)

Security Council Resolution 1261 (1999)

Declaration by the Nordic Foreign Ministers Against the Use of Child Soldiers (1999)

Berlin Declaration on the Use of Children as Soldiers (1999)

IACHR Recommendation Against the Recruitment and Participation of Children in Armed Conflicts (1999)