

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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