

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.