

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 Hearings 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 years²⁷, 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)