

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