

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.

Preserving 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.¹⁶ 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