

PART 3. CONCLUSIONS AND RECOMMENDATIONS

In preparing their *Report of the First Hearings on the Protection of War-Affected Children*, which concentrates on securing children's rights in the context of armed conflict, the Tribunal considered the evidence provided by witnesses under three main themes:

- i. Compliance with, and obligation to international standards protecting children in armed conflict;
- ii. Monitoring the implementation of international standards;
- iii. Advocacy and action for the protection and prevention of war-affected children.

In relation to these topics, the Tribunal heard testimony on:

- weaknesses in mechanisms enforcing obligation by non-governmental armed groups to international standards and norms;
- weaknesses in mechanisms enforcing compliance by State Parties to international conventions;
- international co-operation and global security;
- protecting children from armed conflict;
- the role of the international community as defined by international standards; and,
- measures needed to protect children against all forms of participation in armed conflict.

Particular attention was given in the Judges' deliberations to the importance of listening to the views and hearing the experiences of children and young people, as exemplified by the much-appreciated testimony of the young people from Northern Ireland. The Tribunal took into consideration a wide range of international humanitarian and human rights instruments (Appendix E) but also reflected on the role that might be played by national laws in implementing the provisions of such instruments. It was recognised that there are many unresolved conflicts and contradictions inherent in the implementation of international humanitarian and human rights law.

The Tribunal recognised the key role of the benchmark Graça Machel Report as well as the challenges it represents. In addition, the Judges acknowledged the importance of UN interventions, in particular the establishment of the Office of the Special Representative of the Secretary General for Children and Armed Conflict, and the adoption of Resolution 1216 of the Security Council. The evidence drew attention to the historical novelty of current conflicts and their effects on children. In this context, the Tribunal was struck by the need for control of the production and distribution of small arms, by the child rights implications of complex emergencies and by the need for attention to the needs of children in low-intensity, protracted conflicts, peace processes and post-conflict situations. The Tribunal also noted testimony on the need for conflict prevention. Mindful of Albert Einstein's reported comment

that it is not possible simultaneously to work for peace and prepare for war, the Tribunal emphasised the need to develop an overall culture of peace, in preference to monitoring uncertain and inconclusive 'peace processes'.

One concern expressed by the members of the Tribunal during their deliberations was the appropriate and adequate use of existing international legislation. In particular, the Judges took note of the fact that requirements are being imposed on the CRC to perform some functions, or defend certain rights, which cannot be found in the text. In addition, evidence from legal experts made it clear that the powers provided to the Committee on the Rights of the Child through Article 43 of the CRC are neither strong nor precise. The Committee cannot establish the facts nor punish violations of the rights set out in the CRC. The Committee has established an admirable role that balances engaging in dialogue with States Parties together with taking a proactive stance on certain issues. Yet, especially in view of the almost universal ratification of the CRC as well as the relatively prompt reporting of States Parties, the Committee is not provided with sufficient human, material and technical resources and could be overwhelmed by the sheer volume of work. Moreover, a proposition to increase the number of members of the Committee from 10 to 18 has yet to be implemented.

The Tribunal also took into consideration future opportunities for protecting children affected by armed conflict. In the case of the Optional Protocol to the CRC on the involvement of children in armed conflict as well as the Rome Statute of the International Criminal Court, the Tribunal felt that there is no need for governments to wait for such legislation to come into force before they take action on raising the age for recruitment into armed forces to 18 years. The international community cannot protect children's rights unless States Parties pass and implement appropriate domestic legislation. This does not have to lag behind the ratification and coming into force of universal legislation. Domestic law could be in place beforehand, in order to smooth the ratification process.

3.1. Overview of the Issues

Before making their conclusions and recommendations, the members of the Tribunal identified certain cross-cutting themes that occurred frequently within the provided testimonies; and which, like the principles and provisions of international law, guided their decisions.

The four cross-cutting themes all bear a relationship to certain key human rights prescriptions:

- (a) The first issue is the recognition that rights cannot be secured without governance;
- (b) The second is that children are subjects of rights whose opinions must be taken into consideration in all decisions made on their behalf;