PROTECTION IN PRACTICE

The protection of children’s rights in situations of armed conflict
UNICEF Experience in Burundi

Ben Majokoduami
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Ben Majekodunmi
1999
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ACKNOWLEDGEMENTS

Dedicated to my grandmother, Chief Nora Majekodunmi (née McLaughlin), MBE

Very special thanks to my dear colleague and friend Lillian Bigayimpunzi for her ideas, energy, dedication and friendship, and to Michel Sidibe, Tony Carvalho, and Harold Randall, for their encouragement, support and initiative, and to all other staff in UNICEF Burundi for their warm welcome and brave efforts in an environment of continuing armed conflict, personal insecurity, and tremendous suffering.

Warm acknowledgement is made of the child rights protection work conducted by Iain Levine for UNICEF in Sudan over several years, and for subsequent work in New York for UNICEF and Amnesty International. Iain’s efforts and conviction have helped to ensure that child and human rights protection work is continually moved forward.

Warm thanks to Bo Viktor Nylund, whose past and continuing contributions to the protection of children’s rights help ensure that progress in Burundi is but one element of a larger UNICEF effort, and for his enthusiasm and many ideas and comments which have contributed to the present study. Many thanks also to Jean Claude Le Grand and to Ray Torres for their own efforts and valuable comments on draft manuscripts.

Special thanks to Nigel Cantwell who created the opportunity for the study to be written, and for his many invaluable ideas and comments, his inexhaustible patience, care, understanding, concern and vision for the future. Warm thanks are owed, in addition, to all staff at UNICEF’s Innocenti Research Centre, in Florence.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AFDL</td>
<td>Alliance des Forces Democratiques pour la Liberation du Congo-Zaïre</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>CEDC</td>
<td>Children in Especially Difficult Circumstances</td>
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<td>CNDD</td>
<td>Conseil National pour la Defense de la Democratie</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRD</td>
<td>Child Rights Dynamic</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of Congo - former Zaïre</td>
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<tr>
<td>DPKO</td>
<td>The United Nations Peacekeeping Operations</td>
</tr>
<tr>
<td>ECHO</td>
<td>European Community Humanitarian Operation</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization [of the United Nations]</td>
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<tr>
<td>FDD</td>
<td>Forces pour la Defense de la Democratie</td>
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<td>FRODEBU</td>
<td>Front des Democrates du Burundi</td>
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<td>HRFOB [UN]</td>
<td>Human Rights Field Operation to Burundi</td>
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<td>HRFOR [UN]</td>
<td>Human Rights Field Operation to Rwanda</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>MSF</td>
<td>Médecins Sans Frontières</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OCHA</td>
<td>Office of the Coordinator of Humanitarian Affairs</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>SRSG</td>
<td>Special Representative of the Secretary General</td>
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<td>UAC</td>
<td>Unaccompanied Child</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<tr>
<td>UPRONA</td>
<td>Parti de l’Union et du Progres National</td>
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<td>WFP</td>
<td>World Food Programme</td>
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<td>WHO</td>
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EXECUTIVE SUMMARY

In 1997, UNICEF Burundi appointed two Child Protection Officers; Ben Majekodunmi, an international staff member, and Lilian Bigayimpunzi, a national. Ben and Lilian were the first appointees of this kind in UNICEF. When Ben Majekodunmi left Burundi, the UNICEF Innocenti Research Centre invited him to share his experiences and expand on their possible implications, as part of its efforts to build capacity within UNICEF for the practical implementation of children’s rights.

This publication by Majekodunmi flags up the issues that he and Bigayimpunzi encountered in their work, ranging from the positioning of child protection within the UNICEF field office to the sheer logistical problems of transport and communications. It will be of use to future Child Protection Officers, providing a short-cut through the initial method-building process. Above all, it aims to contribute to an improved understanding of child rights in situations of armed conflict.

Majekodunmi points out that significant progress was made by the Child Protection Officers and their colleagues in laying the groundwork for child rights protection in Burundi, chiefly in encouraging the Government to produce its initial report on implementation of the Convention on the Rights of the Child. Good contacts were made with the relevant ministries, provincial governors and judicial authorities. Child rights committees were established, and the Child Protection Officers were also able to develop solid contacts with national and international NGOs and with other UN agencies.

However, such progress has not always resulted in improved respect for children’s rights. Majekodunmi’s departure cut activities with international NGOs and UN agencies, making it impossible to continue regular protection monitoring and reporting. The national Protection Officer was obliged to divide her time between protection work and other activities, and financial restrictions limited activities.

Three key challenges are stressed

- The need for a clear definition within UNICEF of its protection mandate and objectives and for a protection methodology based on this definition.
- The need for a common UN approach to child rights protection.
- Better integration of UNICEF child rights protection into an overall UN protection of human rights.

Key issues facing the Child Protection Officers in Burundi

The tasks of the Protection Officers were not clearly defined. A methodology was needed, but its establishment required monitoring of the situation of child rights across the country according to carefully defined criteria. UNICEF’s lack of a countrywide field presence meant that much child rights protection work had to be conducted through partners, and months were devoted to developing relationships to establish methodologies for joint protection efforts – an essential, but slow process. Had a pre-defined protection methodology already existed, the work would have progressed more rapidly.

The Protection function was located within the Information programme and was seen as part of this programme, because both functions were cross-cutting. This made sense, allowing a single financial structure and Programme Head to manage two different but related activities. One drawback was that the Child Protection Officers were called upon to undertake information assignments.

Despite efforts on all sides, the Protection Officers made limited progress in introducing a protection approach to UNICEF Programmes. Programme Officers needed practical suggestions from the Protection Officers, which, in turn, meant that the Protection Officers needed a real understanding of the work of each programme. This defeated one of the main objects of conducting protection through UNICEF programmes, which should be informed by child rights thinking and capable of maintaining this thinking in all programme activities.

Majekodunmi calls for training workshops for all Programme staff on children’s rights, other relevant elements of human rights and international humanitarian law, and on protection methodology. And UNICEF Protection staff should themselves become familiar with the work of each UNICEF Programme.

Work with UN partners went well. Communication with UNHCR Protection Officers and OHCHR Human Rights Observers led to rapid and efficient collaboration. The main limit on UNICEF’s protection through these partners was one of UNICEF’s own resources. UNHCR and OHCHR had up to 15 staff members specializing in protection or general human rights and UNHCR had a large field presence and considerable resources. UNICEF had two protection staff, who were often assigned non-protection activities.

Government and NGO partners were eager to collaborate, but contacts often took time and new initiatives had to be carefully explained and then cleared through each partner’s respective hierarchy. The chief limitation on progress in this area was the heavy workload and lack of time faced by the Child Protection Officers. Government partners were particularly positive, offering UNICEF’s Child Protection Officers a certain ‘access’ not always available to members of other organizations. NGOs were willing to participate in UNICEF’s proposed Child Rights Protection Network and reporting process.

Implications for UNICEF/UN protection of child rights

UNICEF provides the strongest UN basis for child rights protection in the field. Its moral mandate, coupled with the universal nature of
child rights, provides a firm basis for protection activities, so that UNICEF is less dependent on specific mandates. This allows, for example, access to prisons. Majekodunmi argues that this role also raises questions about potential contradictions between UNICEF’s development mandate (requiring close relationships with national governments) and a rights protection approach. How can UNICEF pursue its development objectives and conduct active protection at the same time?

He recommends that UNICEF’s protection should be focused not only on developing its own protection efforts but also on strengthening those of key UN partners. UNICEF should, he says, advocate for the presence of UN human rights field operations in countries where child rights are at risk, ensuring that child rights are integrated into these operations. UNICEF should also take the lead on creating greater awareness of the Child Rights Dynamic - the series of factors thought to have an influence on the child rights situation in a particular country - and in creating a common perspective for UN Child Rights Protection.

The Child Rights Dynamic

The Child Rights Dynamic (CRD) is a series of factors influencing the child rights situation in a particular country. Majekodunmi calls for a Child Rights Dynamic analysis to identify the causes of violations and key partners for child rights, and to act as a standard UN protection tool.

Ideally, every UN agency functioning in a situation of conflict would refer to the country CRD document on a systematic basis. If every UN agency were to refer to the same analysis of the situation on children’s rights, taking into account the role of all the UN components, overall UN protection of child rights would improve significantly. Information for a CRD analysis would be carefully selected to cover four areas: respect for children’s rights, characteristics of the conflict and physical environment, groups of people and organizations, and community characteristics.

A common perspective for child rights

UNICEF can not do it all on its own. A key element of UNICEF’s protection role must therefore be to encourage the protection role of partners who can address those points – to create a common perspective. Majekodunmi suggests practical ways of achieving this:

Shared field offices (outside capital cities). Organizations such as OHCHR and UNICEF could either rely on the field presence of partners, or each agency could provide for a certain number of field presences to be shared by a partner. A UNICEF Protection Officer could travel to a particular region and base themselves at the local UNHCR office, for example.

Co-ordinated funding of UN Rights Protection. UNICEF Country Offices should take the lead on co-ordinating funding proposals for child rights protection, pooling the requirements of partner organizations. Agency HQs and donors would see that UN human rights efforts were linked and complementary.

Common rights training for UN personnel. Trainers from different UN agencies should provide training on the human and child rights perspectives of these different agencies.

Common rights and mandate training for Protection / Human Rights Officers. Training should be provided on the mandates of each UN agency from a protection perspective. This would cover international human and child rights law and would highlight the complementary nature of different mandates, finding areas of possible overlap and cooperation.

Joint UN Human Rights Protection Field Guides. These should be developed for the use of staff from UN agencies with related mandates. The Guides would cover the human rights that fall within the mandates of the various agencies, the links between the different rights violations and their possible solutions, and the mandates and structures of the different UN agencies. They would also focus on the ways in which different UN agency mandates complement each other in practice, with examples of coordination and complementary strategies used in the past.

Rights Impact Studies. Each UN agency should conduct a study of the likely impact of its activities on human rights, child rights and women’s rights, to be updated every six months. These would be circulated among different agencies to develop a combined understanding on the overall UN impact on rights.

Making the best use of human resources. Career management structures must be developed to break down the divisions between UN agencies and facilitate the transferral of junior and mid-level staff from one UN structure to another, possibly through a system of secondments.

Secondments. While secondments are already common practice for senior level staff, they should be extended to more junior staff. It is essential that the UN build up a professional human rights protection capacity at mid and junior levels. This should involve cross-agency personnel management.

Regular coordination between UN agency personnel departments. This would ensure that staff members with a good record from one agency can be recommended for a post with a partner agency. Rosters of available staff should be exchanged between personnel officers and relevant desk officers and there should be regular meetings between these staff.

Inter-agency Desk Officer cooperation. Desk Officers and others
should undertake working “internships” with partner organizations. Desk Officers from different agencies responsible for the same countries should meet regularly to coordinate the UN response to human rights concerns shared by each of the agencies.

**Strengthening the role of OHCHR**

**UNICEF presence in OHCHR field offices / creation of OHCHR Child Rights Officers.** UNICEF could help to provide training for OHCHR Human Rights Officers working on children’s rights. These staff members could, for example, work in daily partnership with a UNICEF Protection Officer.

**OHCHR Human Rights Officers within each UN agency.** OHCHR could place Human Rights Officers as integral members of partner agencies in many different countries. They could assist these agencies in maintaining a specifically human rights perspective on the situation they are addressing. They could help to ensure that each agency shared the same human rights perspective with its partners, providing a human rights liaison mechanism between each element of the UN’s work in the region.

**A small OHCHR component within every major UN field presence.** Alternatively, the OHCHR could establish a small component of Human Rights Officers, perhaps two or three, in every country where the UN is addressing a situation of armed conflict. While functioning as OHCHR staff members, they would be supported administratively and logistically by a partner UN agency already established in the country.

**Out-of-country UN mechanisms**

They are in a position to put pressure on the violators of rights but are physically and intellectually distant from the scenes of these violations. Ideally, a structure should exist through which UNICEF Protection Officers in a country in conflict can rapidly communicate information on child rights abuses to appropriate UN out-of-country mechanisms.

The International Criminal Court needs a preventive rights protection function, with all parties in a conflict made aware that their acts may lead to their being called to account. UNICEF and other organizations must encourage the publication of international human rights and humanitarian laws towards combatants, and provide information on the existence of the ICC.

Majekodunmi reaches three main conclusions -

- UNICEF should have the principal role in leading an initiative for practical UN protection of children’s rights
- UNICEF’s protection should be distinct from that offered by partner agencies
- UNICEF cannot fully protect children’s rights on its own. Its protection must focus not only internally on the organization’s own protection capacity, but also externally on the child rights protection role of governments and partners in situations of conflict.

**Policy decisions are needed within UNICEF**

Majekodunmi argues for a definition of child rights protection objectives, strategies and methodology. UNICEF must define whether or not its approach is to be one of protection of children’s rights, as opposed to the protection of children. At some point in this process, the organization must set aside adequate resources for a protection initiative to be launched.

**UNICEF must work with NGOs and Government partners**

There is a need to establish systematic child rights training and the development of a basic methodology for protection through partners. UNICEF has already initiated the training process with humanitarian principles courses – these need to be elaborated upon in line with UNICEF’s own protection methodology and then discussed with NGO and government partners.

**UNICEF must work with UN partners**

Above all, there is a need to develop a UN child rights protection capacity, embracing UN agencies and UN structures. Again, protection methodologies, procedures and capacity need to be developed through cooperation among the UN agencies. The development of a UN capacity to protect child rights should be part of a wider strategy to protect human rights – the OHCHR has a particularly important role to fill.

UNICEF can help by initiating a common UN approach to the protection of children’s rights in situations of armed conflict, showing what can be done on a wider human scale.

**Child participation is essential**

Finally, protection activities, in urgent situations of armed conflict, should involve children in important decisions that will drastically affect their future, and should always focus on a child’s best interests. At a minimum, those working towards child rights protection should spend as much time with the child beneficiaries of their work as possible. Protection Officers should spend time with children wherever they are found, in the streets, in the parks and markets, in the camps, in health centres and hospitals, and in their homes.
Administrative structure in Burundi

Provinces: The country is divided into 15 Provinces, each with a provincial Governor and administration.

Communes: Each Province is divided into a number of communes.

Cellules: Each Commune is divided into cellules.

Collines: Each cellule is made up of a number of collines (hills).
1. INTRODUCTION

ARMED CONFLICT AND CHILDREN

Armed conflicts destroy children’s lives. The changing nature of warfare has turned their homes and villages into battlefields, with today’s wars fought inside States, rather than between them. Millions of civilians, many of them children, find themselves the innocent bystanders and, indeed, the intended targets of violence. In the war of 1914-1918, civilians accounted for an estimated 5 per cent of those killed. By the time of the Korean war that figure had risen to 80 per cent. Today, civilians are thought to account for 90 per cent of war victims. Around half of the casualties are children.1

Those who do survive the violence may lose their lives as a result of its wider impact. The normal structures of society which help protect children from physical and emotional harm – families, communities, hospitals, schools, water supplies, transport – are undermined or destroyed. Children may die from the illnesses caused by the lack of clean drinking water or exacerbated by the lack of primary health care. As food supplies become scarce, malnutrition leaves children vulnerable to a whole range of diseases, from pneumonia to measles. As their homes and towns become uninhabitable, they join the hundreds of thousands forced to leave their communities to seek shelter and safety far from home. Living in the squalid and overcrowded conditions of an internally displaced persons (IDPs) camp they are vulnerable to cholera epidemics, to diarrhoea, to malaria, to death from the cold, or any other of a long list of risks to which they would not normally be exposed.

When parents die their orphaned children are deprived of their chief source of emotional and physical protection within a family. They may suffer from psychological trauma related to the violence and displacement through which they have lived. The child victims of rape and other physical abuse may, in the future, also have to cope with the social stigma attached to the violations that have been inflicted upon them. Adolescents frequently take on the sole responsibility of caring for large families, for finding shelter, food, water, and clothing, carrying burdens that are physically and emotionally too heavy for them.

Beyond these more obvious violations of child rights there are others, less visible but also significant. The erosion of armed conflict will often lead to a breakdown in administrative and other government provided services. Pensions may no longer be paid, registers of property ownership are destroyed, records of births are no longer kept, government savings schemes disappear. The breakdown of these services can be described as a part of the “secondary effects of armed conflict”2, which themselves lead to violations of basic child and human rights and which, in the long term, have serious repercussions for children.

The inability to register a birth and subsequently obtain proof of the nationality of a child can have very serious repercussions for the child and his or her parents or guardians. In many countries proof of nationality is required for a child to be eligible for free, or at least subsidised, education and health services, and for travel documents and access to certain jobs. Above all, it establishes the child as a citizen – as ‘belonging’ to a society and country. Some young unaccompanied children in the Great Lakes region, orphaned or otherwise separated from their parents, do not even know which country they come from. After several years in refugee camps in Eastern Zaire, surrounded by Rwandans speaking Kinyarwanda, Burundians speaking Kirundi, and Congolese speaking Lingala, their vocabulary may be a mixture of all three languages, making it impossible to even identify their country of origin.

Children without birth certificates whose fathers have been killed may not be able to acquire a nationality in countries where nationality is still passed from father to child. Given that most displaced and refugee children are cared for by a mother, sister or other women, such laws are a major obstacle to a child’s right to a nationality. This is just one of the implications of the breakdown of services that occurs during armed conflict.

The displacement of a civilian population can be part of a deliberate and long-term strategy by armed forces, designed to undermine its future potential. If it prevents children from attending school the outlook is bleak, not only for the individual children, but also for society as a whole. Where displacement lasts for up to eight years, and without adequate humanitarian assistance, children aged between three and eight at the beginning of the conflict effectively miss their entire primary education. They may never again have the chance to recover those years. A population group – racial, linguistic, religious, social, or other – that is prevented from gaining access to basic primary school education can never aspire to significant administrative or political representation within its country. The group’s lack of representation in turn may condemn following generations to a life of exclusion from social and economic standing.

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3. As defined in Article 2.1 of the International Covenant on Civil and Political Rights.
In this way, the “future” that children represent becomes a key element in today’s conflicts. In many cases the belligerents believe that they are fighting for a land or a way of life they feel is “theirs” and their objectives go beyond mere military victory.

The children who survive such conflicts may continue to suffer from their impact well into adulthood, through physical and emotional trauma, through their lost years of development, or through its lingering effects, such as the loss of nationality and citizenship. Armed conflict changes lives irreversibly. Several characteristics of armed conflicts with regard to the respect of children’s rights can be highlighted:

- armed conflicts can jeopardise the rights of an entire population and can create an environment in which virtually all the rights of almost all children are violated or threatened
- armed conflicts can last for many years, often with different levels of intensity. Conflicts have been more or less continuous in Afghanistan for almost 20 years, in Angola for more than 30 years, and in Burundi for six
- the impact of violations of child rights through conflict can last long after the end of the conflict itself through psychological or physical trauma, and through the complete destruction of national infrastructures.

**BURUNDI**

In Burundi, protracted internal conflict between Government forces and armed opposition groups has imposed severe hardship on civilians since 1993. Over one million people have been displaced as refugees, or internally within the country, and an estimated 200,000 people have been killed. While the immediate conflict has led to many child rights violations, these are symptomatic of more profound stress within Burundian society.

The United Nations Children’s Fund (UNICEF) had been analysing and responding to the crisis through programmes to protect their well-being, from health care to education. Examining an analysis of the country situation and its background in 1996, however, Michel Sidibe, UNICEF Representative in Burundi, realised that a child rights protection approach was essential to address the many complex problems faced by children.

Michel decided to appoint two Child Rights Protection Officers, one international and one national, the first of their kind in the UNICEF family. I was delighted to accept the international post and arrived at the UNICEF office in Bujumbura in early 1997 to meet my national colleague Lillian Bigayimpunzi and take on this immense challenge.

Our first job was to explain why we were there. UN Human Rights staff were naturally intrigued by our presence and by the possible linkages to their work. The greatest surprise was within the UNICEF office itself, where some colleagues equated ‘Protection Officer’ with ‘Security Officer’, and thought we were there to protect them from physical harm!

From the outset, our role was to act as focal points for UNICEF’s protection work, rather than take sole responsibility for protection.

The distinction is important, emphasising the holistic nature of child protection, which reaches into so many disparate areas and goes beyond the mandates and expertise of any one staff member or UNICEF initiative. We were the coordinators of a protection approach for UNICEF as a whole – although during certain activities, such as visits to detention centres, we conducted a more specific protection role ourselves.

The UNICEF protection initiative in Burundi differed from previous UNICEF child rights strategies applied in other countries, which had focused, most notably, on punctual action in favour of “Children in Especially Difficult Circumstances”. In particular, Lillian and myself sought to develop a “human rights” perspective on the situation of children, and to analyse the respect of child rights within this larger context. From the outset, our emphasis was on developing protection through UNICEF programmes and partners.

And, as UNICEF never works in isolation, the basis for this partnership was already well-established.

The development of protection in Burundi faced many obstacles, due in part to the gravity of the armed conflict and humanitarian problems in the country, but mainly due to the fact that there was no pre-defined methodology or process upon which practical protection might be based. Despite these frustrations, we were able to develop a methodology that is as valid today as it was in 1997. We were, in a way, laying the foundations. These are now in place, waiting for others to arrive and begin the building process.

While trying to define a child rights protection methodology, this document argues that UNICEF’s specific nature of protection should be distinct from versions applied by several partner organisations. UNICEF does not have the same protection prerogatives as, for example, the High Commissioner for Human Rights (OHCHR) or the International Committee of the Red Cross (ICRC), and UNICEF’s role in implementation of the Convention on the Rights of the Child does not benefit from the same status, defined in internationally ratified legal instruments, as that, for example, of the United Nations High Commissioner for Refugees (UNHCR).

In contrast, UNICEF does have a very positive and unique relationship with host governments across the world, and a strong relationship with populations. While this close relationship with States may seem to contradict UNICEF’s introduction of an active child rights protection role where States are directly or indirectly responsible for violations, it actually offers a novel form of protection.

This document argues that UNICEF’s efforts to protect children’s rights in situations of conflict are dependent upon two key factors:

- the definition of suitable protection methodology
- the strengthening of overall UN capacity for practical child rights protection – with UNICEF providing the principal elements.

*Ben Majekodunmi*

*July, 1999*
2. OVERVIEW

2.1 ARMED CONFLICTS AND CHILD RIGHTS

Armed conflicts create the worst possible environment for the protection of rights. The high number of victims of human rights abuse and the wide range of rights that are violated, force those providing protection to define stark priorities in terms of the rights violations to be addressed and the groups who will receive protection and other assistance. In many conflict situations entire national populations suffer from violations of their most basic rights, as in Rwanda in 1994. Armed conflicts may limit physical access to vulnerable groups of the population, so that it may not even be possible to assess the material needs of populations or to identify the rights violations of which they are victims.

Identifying the perpetrators of child rights violations, and then holding them accountable and preventing further violations can sometimes prove impossible. In the absence of an independent or functional national judicial system government perpetrators may benefit from impunity, while the members of opposition groups may be unidentifiable. Protection activities may be limited by the concerns of donors who refuse to fund anything other than emergency humanitarian aid, in the traditional “development versus emergency” contradiction.

To succeed in protecting children from the effects of armed conflict, the protection of child rights, by UNICEF or by any other organisation, must focus on protecting certain well-defined rights. These rights should be selected according to their substantive content, to their legal character, and according to their relevance to the specific situations created by armed conflicts. They must provide a legal justification for protection objectives and must be based on an appropriate mandate for the protecting organisation.

Section 2.2 examines the kind of child rights in need of protection during armed conflict, and the relevant laws and mechanisms that already exist for this purpose. Chief among these is the United Nations Convention on the Rights of the Child (CRC), the most widely ratified human rights treaty in history. There are implications for the training of United Nations staff engaged in child rights protection, who must be familiar with the relevant texts, particularly the CRC, which should be covered in future training manuals.

Analysis of the CRC and other elements of international law contributes to the gradual improvement of legal protection available to children. It can, however, appear somewhat redundant in the face of one overwhelming problem – the enforcement of that law.

The existing international laws must be applied in practice. One aspect of this practical application must certainly take place at an international political and diplomatic level, but it must, above all, take place within the countries and regions submerged in armed conflict.

Applying the CRC, for example, is the responsibility of national governments. However, the specific nature of situations of armed conflict requires a more active United Nations rights protection role, also examined in this section alongside the possible constraints upon such a role.

Above all, it is this practical protection which is crucial.

2.2 WHAT KIND OF RIGHTS?

Children as Victims of Conflict

The protection of child rights in armed conflict means the protection of children as the victims of that conflict. Child rights protection must focus on the rights that protect children from the consequences of violence. Some of these will concern basic survival; others will cover more long-term issues such as education. These rights are contained in numerous international human rights instruments – and the Convention on the Rights of the Child in particular – but also in some instruments of international humanitarian law.

One aspect of children’s rights protection concerns the protection of children as actual participants in the conflict, or in the violence surrounding the actual conflict, especially child soldiers, and others attached to armed forces. This requires a focus on a broader range of rights, including those related to: the minimum age of recruitment; the treatment of child prisoners of war; demobilisation; rehabilitation; and psychological trauma. There are also issues surrounding the rights of children who have participated in violence and/or other criminal acts, not as actual combatants in the armed conflict but as participants in generalised violence. The examples of acts committed by children in Rwanda in 1994 and in Sierra Leone in 1998 come to mind.

The distinction between child victims and participants is an arbitrary one. Any child caught up in armed conflict is a victim and an approach to the protection of children’s rights should not ignore this fact.

Children with Specific Needs

The rights in need of protection should include those that are relevant to specific situations or specific categories of children. In these cases, practical protection can call on particular international standards, beyond the main human rights instruments.

The situation of unaccompanied children (UACs) can be partly addressed, for example, through the application of refugee law and the new International Standards on Internal Displacement. Particular forms of rights protection may need to be applied to address gender-specific rights violations, for example, or the violations faced by children in conflict with the law as a result of the disruption of national judicial systems.

Children with disabilities will require particular protection, in part because the provision of special services upon which they may depend in times of peace break down, and in part because their disability – physical or other – may make them even more vulnerable to conflict than other children.

The difficulty in protecting such children in situations of conflict is only surpassed by the difficulties the faced by the children them-
selves. To imagine, for example, a blind unaccompanied child trying to find refuge in the middle of a conflict, is quite terrifying.

An analysis by the UN Special Rapporteur for Disability, Bengt Lindqvist, shows that, to be effective, the rights of children with disabilities during armed conflict must focus both on the empowerment of the child and on their environment. In practical terms this could mean a wheelchair so that they can get themselves to school, a ramp to give them access to the school building, and a school which can cater for their needs.

Civil, Political, Economic, Social and Cultural Rights

‘Protection’ cannot aim at anything less than a holistic approach to children in situations of armed conflict. Many human rights protection efforts in situations of armed conflict concentrate on violations of civil and political rights, such as the rights to life and to liberty. The violation of these rights often demands an immediate response and often initiates the protection effort in the first place. The 1997 United Nations investigatory mission into possible grave violations of human rights and international humanitarian law in the Democratic Republic of Congo is one example.

Civil and political rights may be the most obvious rights in need of protection during armed conflict. The most important point to emphasize with regard to children, however, is their state of continuing development. Armed conflict threatens every aspect of a child’s development, limiting for many years, and sometimes for ever, that child’s quality of life. Any effort to protect their rights must, therefore, focus on a wide range of rights which might be “civil and political” or “economic, social, and cultural”, and which, taken together, contribute to a child’s normal development.

UNICEF programmes already address a wide variety of children’s rights. UNICEF’s protection efforts should address a similarly broad range of rights essential to a child’s long term development.

The Rights of Those Caring for Children

The protection of children’s rights also implies the protection of the rights of those who care for them. The most obvious of these ‘groups’ of rights are the rights of women both in their role as mothers and as the people who typically take on the charge of protecting children – their own or those of other people – in situations of conflict.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and numerous Articles from the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, respectively, provide a basis of key rights which need to be protected in situations of conflict and which, by extension, support the protection of children’s rights.

2.3 EFFORTS TO PROTECT CHILDREN

International protection for children in armed conflict has taken a number of forms. (For a fuller discussion of the various concepts of protection and their implications, see the Annex “What does protection mean?” page 41.) Above all, a measure of protection has been administered through the provision of life-sustaining humanitarian assistance. UNICEF and other international organisations have largely concentrated on the provision of essential services through programmes of health, sanitation, water, food, and education. More recently some, including UNICEF, have started to advocate on behalf of vulnerable groups, particularly women and children. This advocacy has led, for example, to the creation of “Days of Tranquility” during which temporary cease-fires are organised with the express purpose of allowing humanitarian access to children in need.

Other elements of international protection have focused on general respect for human rights and the establishment of democracy. Human rights operations in Guatemala and Cambodia, for example, established during limited armed conflict, focused on these priorities. The International Committee of the Red Cross (ICRC) has always tried to ensure the protection of non-combatants. More recently UNICEF and other organisations have sought to provide protection through the defence of certain humanitarian principles – neutrality of humanitarian assistance, the sanctity of civilian populations – which are to be respected by all sides during conflict. Operation Lifeline Sudan, the cross-border inter-agency initiative to aid the people of southern Sudan, is just one example.

The risks that children face in armed conflicts are, however, too complex to be addressed exclusively through humanitarian or general “human” rights protection. To try and protect children through the provision of clean water or basic health care, for example, is to drastically limit the quality of protection afforded.

It is not sufficient to offer tons of food and plastic sheeting at great expense if the children for whom it is destined will be murdered with impunity, or forced to abandon this food and temporary shelter to continue moving, or deprived of a name, nationality and identity. Further, while efforts to protect groups such as child soldiers are of great value they should not draw attention from the less visible problems inflicted by armed conflict on all children.

The specific vulnerability of children requires a different approach to their situation from that which is taken towards adults. Successful protection must thus go beyond the defence of humanitarian principles, the provision of humanitarian assistance, or the protection of general human rights. It must focus on the specific rights of children themselves.

2.4 INTERNATIONAL LAW

The regimes of international law that may serve to protect the rights of children and other vulnerable groups in peacetime may not be applicable in situations of armed conflict. States can, and do, limit the application of certain elements of international human rights law. In contrast, international humanitarian law actually becomes applicable in conflict situations, providing a form of legal protection specific to armed conflict.

International Human Rights Law

International human rights law proclaims broad guarantees for the fundamental rights of all individual human beings, and in some cases...
groups of people, and may include both treaties and customary law. The main human rights legal basis for child rights protection is provided by the Convention on the Rights of the Child. All States that ratify these treaties are bound by them. Many of the rights contained in international human rights law treaties, such as the right to life, are widely accepted as part of international customary law and are considered to apply even to those States that have not ratified the relevant instruments. International human rights law is traditionally regarded as binding only upon States, but there is increasing acceptance of the notion that it may also be binding on some non-state actors.

While human rights law is always applicable, significant derogations are allowed in certain emergency situations, including armed conflict. The derogations available to governments are limited to certain rights, and to derogations under specific conditions.

**International Humanitarian Law**

International Humanitarian Law (IHL) as set out in the four Geneva Conventions of 1949 and the Additional Protocols of 1977, governs the treatment of combatants and civilians during times of armed conflict. It aims to ensure that the conduct of a conflict inflicts minimal human suffering, and limits the means and methods that may be employed by belligerents. International humanitarian law therefore reaffirms the principle that, in situations of armed conflict, those persons not directly participating in the hostilities must be treated humanely.

IHL applies specifically to situations of armed conflict and to acts committed by Governments and armed opposition groups (depending on their level of organisation). The International Committee of the Red Cross monitors compliance with humanitarian law, fulfilling an essential function in the protection of populations and in the possible protection of children’s rights.

IHL provides an important legal basis for the protection of children’s rights either directly, through the inclusion of specific rights in IHL instruments, or indirectly, through the rules for armed conflict and the conduct of combatants which demand respect for certain rights. The contradiction between the reality of armed conflict and the defence of certain human rights is such that humanitarian law is inherently a compromise, its practical nature providing guidance to belligerents and to those trying to protect children’s rights.

IHL offers a few basic humanitarian principles that relate to the conduct of a conflict. These include such ideals as humanity, neutrality and impartiality. Their fundamental relevance to the situation of children in armed conflict, combined with their simplicity is such that the principles are useful protection “tools”. Concerns about the gaps in IHL – most notably about its applicability in terms of persons bound, and about the situations in which it comes into force – have led to adoption of the Turku/Åbo Declaration of Minimum Humanitarian Standards (2/12/1990) and a United Nations Report on Fundamental Standards of Humanity. These standards, although not legally binding, go some way to filling the space that may be created in times of uncertain applicability of IHL. Used in conjunction with international human rights instruments, and the Convention on the Rights of the Child in particular, international humanitarian law thus offers an important base for rights protection work in situations of conflict.

### 2.5 Problem Areas

**Internal and Low Intensity Armed Conflicts**

Internal and “low intensity” armed conflicts are now the most common form of armed conflict in the world. They can create situations of such anarchy that almost all the mechanisms in place to protect child rights no longer function.

Women and children are the first victims of these conflicts, where the objectives of war often go beyond the acquisition of territory to the domination or complete removal of another group of the population. Such conflicts tend to involve low levels of technology, relying more on individual soldiers (including children) than on fighter planes and missiles.

The legal and practical uncertainty surrounding internal violence is often complicated by the participation of several armed groups, many of whom are unrecognised and unrepresented in the international political arena. This lack of official visibility is of particular concern, as these are the groups most likely to operate outside international standards of conflict. They function with relative anonymity, and the absence of any obvious hierarchy removes the sense of accountability for their acts. Such groups, often fighting without any uniforms or other distinctive clothing, are particularly liable to violate humanitarian laws of which they may not even be aware.

The blurring of the distinction between ‘civilians’ and combatants of this type makes it hard for humanitarian organisations to distribute aid only to civilians. A combatant who lays down his gun and picks up a hoe becomes, in the space of a second, a farmer and member of the surrounding community. International organisations can find themselves unwittingly embroiled in a conflict, making their job even harder. It can be equally difficult for government forces to distinguish between combatants and non-combatants, so that they become repressive in their contact with any civilian community they suspect of working with armed groups and from where these groups might actually recruit.

**A Situation of “Tension and Disturbance” or Armed Conflict?**

The level of legal protection available from IHL depends upon a number of factors, including the type of conflict – international or non-international – which will determine the respective applicability of Protocol’s I and II to the 4th Geneva Convention. Legal protection is typically more complete in the very rare situations of recognised international conflict. In internal armed conflicts the applicability of international law is sometimes restricted by concerns for national sovereignty. For IHL to be applicable at all there must, at a very minimum, be a recognised situation of armed conflict, a condition which typically causes problems where conflicts are internal – which applies to most, if not all, of the conflicts happening in the world today.

Protocol II, specific to internal conflict, only becomes applicable where the armed forces engaged in the conflict are organised, with a
command structure and internal discipline. States may be reluctant to recognise that opposition armed groups are indeed structured and operate with discipline, and the applicability of Protocol II may be excluded for political reasons.

Article 3, “common” to all of the Geneva Conventions does not impose the same restrictions as Protocol II, but requires nevertheless that a certain intensity of conflict exist. Below the level of an armed conflict a State may undergo a situation of “tension and disturbance”, sufficiently serious to justify its derogations from certain international human rights legal obligations, on the basis of public security, order or health. It remains a question of debate as to where exactly an internal situation of “tension and disturbance” justifying the derogation from the respect of certain human rights becomes an armed conflict which would allow the applicability of Common Article 3.

Protection of Refugees and Internally Displaced Persons (IDPs)

The Convention relating to the Status of Refugees and its Protocol of 1967 provide fundamental levels of legal protection to refugee children (and to refugees in general) in conflict situations, and are reinforced by regional legal instruments. Although there is no specific legally binding international instrument providing protection to internally displaced persons, a combined international effort - led by the Representative of the Secretary General for IDPs – has concluded with a Resolution by the Commission on Human Rights adopting “Guiding Principles on Internal Displacement” 6. The adoption of these guiding principles should provide an additional protection to children’s rights in situations of conflict.

2.6 THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

On November 20, 1989, after almost ten years of development, the United Nations Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly. As of April 1999, the Convention had been ratified by every nation except the United States and Somalia. This near universal ratification has been seen as a significant step forward for efforts to protect children from human rights violations. The CRC defines a comprehensive range of children’s rights, making specific reference to situations where those rights may be undermined. Article 38 refers, in particular, to the protection of children during an armed conflict. The relevant articles include:

● States Parties must respect the applicable rules of international humanitarian law and the participation of children in hostilities is addressed (Article 38).
● The protection of children from discrimination (Article 2).
● The child’s right to survival and development, requiring extra protection during conflicts (Article 6).
● The right to a name and nationality (Article 8).
● The protection of children separated from their families (Article 9 and 10), and provision for family tracing and reunification (Article 22).
● The protection of children who are refugees, or are seeking refugee status (Article 22).
● The protection of children from sexual exploitation (Article 34).
● The protection of children from torture, cruel, inhuman or degrading treatment or punishment (Article 37).
● The rehabilitation needs of children following conflict, and specifically to “physical and psychological recovery and social reintegration…” (Article 39).

● The protection of children in conflict with, or deprived of liberty under the law (Article 40).
● Civil and political rights with economic, social and cultural rights so that protection of one is linked to that of the other, again essential to the long-term protection of children. (Articles 13, 14, 15 and 26, 27).

But is the Convention effective? Since November 1989 armed conflicts have begun or continued in Afghanistan, Angola, Burundi, Chechnya, Colombia, Congo, the Democratic Republic of Congo (formerly Zaire), Guatemala, Iraq, Kuwait, Liberia, Rwanda, Sierra Leone, Somalia, Sudan, Sri Lanka, Uganda and the former Yugoslavia, to name but a few. In each of these conflicts, children have been the direct and indirect victims of rights violations.

In the 1994 genocide in Rwanda, a minimum of 500,000 people, many of them children, are thought to have been killed in the space of three months. In the former Yugoslavia, children have been raped and murdered, forcibly separated from their parents, and many continue to live in an atmosphere of fear and tension. Years of armed conflict in Sudan have stopped children reaching essential health services resulting in high mortality rates. In northern Uganda, the Lord's Resistance Army has kidnapped thousands of children. In Sierra Leone children have been recruited into armed forces and given orders to kill and maim civilians. In the new Democratic Republic of Congo a UN commission of enquiry has alleged that many thousands of Rwandan civilan refugees – including children – were murdered during the rapid take over of the country by the Alliance des Forces Democratiques pour la Liberation du Congo-Zaire (AFDL) in the first half of 1997.

The extent of rights violations, in so many forms and in so many different conflicts, prompts questions as to the practical relevance and value of the CRC. Indeed, the suffering of children in armed conflicts during the 1990s might seem to indicate that the adoption of the Convention has made little positive difference to efforts for the protection of children.

But the Convention’s development and ratification is not an empty victory. On the contrary, it offers a far more extensive form of protection than has hitherto been available. Events since November 1989 show that the fundamental weakness in the protection of children in armed conflict is now one of action in their favour – the Convention on the Rights of the Child needs to be applied in practice.

The Convention is an invaluable tool that must now be used as the foundation of a common “language” to communicate information on child rights to all the different actors concerned in rights protection. It is suitable for three key reasons:

● Its near-universal ratification makes it an ideal legal instrument to facilitate communication and action on child rights issues between States, between organisations and States, and throughout regions including several States.
● It is applicable in all types of situations. There are no derogations and no thresholds of applicability.
● The very significant involvement of NGOs in the development of the Convention, and the continuing use of the Convention as a central element of programming by the NGO community, will help international organisations to co-operate in rights protection in practice.

Adopted on 28 July 1951.
3. CHILDREN’S RIGHTS IN BURUNDI

3.1. RECENT HISTORY

To understand the basis for UNICEF protection in Burundi it is important to have some understanding of the country’s recent and complex history.

During the 20th Century Burundians have lived under a ‘national’ monarchy, German colonization, Belgian tutelage, nascent independent democracy, and military dictatorship. Roughly 85 per cent of the population are Bahutu (Hutu) and 15 per cent are Batutsi (Tutsi). A tiny minority of Batwa people are thought to make up less than one per cent of the total population.

The Tutsi minority has long held control of political, military, and economic power. Independence, gained from Belgium in 1962, was followed by several attempts at political power-sharing, but extremist Hutu politicians and Tutsi military officers have ensured that each attempt at control by moderate monarchs or legislatively elected prime ministers has ended in violence and failure.

A Hutu uprising in 1972 was put down with brutal repression by the Tutsi military and led to the alleged murder of 100,000 Hutu intellectuals and soldiers, in what was later dubbed a “selective genocide”.

Seizing power in a 1987 coup, Major Pierre Buyoya, a Tutsi, attempted to end the years of minority rule and move towards a non-ethnic and democratically elected government. A Hutu Prime Minister was appointed and presidential elections organised for 1993. To some surprise, both inside and outside the country, Buyoya and his Parti de l’Union et du Progrès National (UPRONA) lost the elections, and the Hutu candidate of the Front des Démocrates du Burundi (FRODEBU), Melchior Ndadaye, won. Buyoya had received 33 per cent of the vote indicating that not everyone had voted along ethnic lines, but was still far from the 65 per cent support given to the new President.

The President’s assassination in October 1993 by members of the Tutsi military, marks the beginning of the current crisis. Across the country, Hutu groups responded to the President’s murder by attacking Tutsis who fled from their homes to displaced camps closer to towns or military posts. Within a few days of the President’s assassination, the Burundian military hit back with a wave of brutal repression. It is estimated that up to 50,000 people had been killed by the end of October 1993.1

Around one million people fled. An estimated 500,000 Hutus left the country. Some went north into Rwanda - where they remained until that country’s eruption of violence in April, 1994. Others fled to eastern Zaire (now the Democratic Republic of Congo), while those in eastern and southern Burundi went to Tanzania. A further 500,000 people were displaced within the country.2

In early 1994 the Burundian National Assembly elected Cyriek Ntaryimana as the new President. A few weeks later, on 6 April, he died in the aeroplane explosion over Kigali that also killed Rwandan President Habyarimana.

In September 1994, the main political groups agreed that a new President, Sylvestre Ntibantunganya, could govern with the approval of a National Council. In subsequent months concerted efforts would be made by Tutsis extremists to remove Hutus from public office and from other senior positions. In Bujuumbura, Tutsi university students formed the extremist group “Sans Echec” (Without Failure). For months, the Sans Echec controlled Bujumbura after nightfall, setting up roadblocks and attacking predominantly Hutu neighbourhoods to drive out their populations.

Armed rebel groups of Burundian Hutus developed in parallel with political opposition groups based outside the country. Some exiled FRODEBU officials formed the Conseil National pour la Défense de la Démocratie (CNDD) and its armed wing, the Forces pour la Défense de la Démocratie (FDD). Other armed rebel groups - the Palipehutu and the Front pour la Libération Nationale - also emerged and began operating, like the FDD, from bases in the Eastern Democratic Republic of Congo (DRC) and in the Kibera and Nyungwe forest on the Burundi/Rwanda border.

Aided, perhaps, by the refugee remnants of the Rwandan Hutu army and Interahamwe militia of Zaire and Tanzania, the Burundian armed opposition gained force, attacking both the military and Tutsi civilians throughout Burundi. The rebels would often rely on the rural Hutu population for food, shelter and new recruits. While there may have been early support for the rebels from this population, this appeared to be waning by the end of 1996 and has continued to dwindle.

In July 1996, Major Buyoya led a coup d’état that was greeted with some optimism both inside and outside the country. Nevertheless, a coalition of regional leaders reacted by imposing complete sanctions on Burundi, allowing exceptions only for some essential humanitarian items. The embargo had little effect on the military or the better-off, but soon had an impact on the rest of the population and on humanitarian organisations, whose efforts to import supplies and equipment were hindered by the sanctions process.

As the rebels began to have a serious impact on security across the country, the Government initiated a strategy of “regroupment” of civilian populations in certain areas into camps. The objective was to empty the countryside in these “security zones” to isolate the rebels from their supply system, and make them easier to identify. The forced nature of the regroupment and the fact that it was applied, inevitably, only to Hutu members of the population, has led to many human rights abuses.

Oficially, people were ‘regrouped’ for their own protection. In

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2 Human Rights Watch, World Report 1995
practice, it made the civilian Hutu population the targets of attacks by Hutu rebel groups and the military. Those living in regroupment camps were considered traitors by the Hutu opposition, while military protection was not always as energetic as it could have been. Those who remained in their homes would sometimes find themselves forced upon pain of death to assist rebels, only to be threatened and even killed by the military, suspecting their involvement with the opposition.

A propaganda war has exacerbated the situation. The Government sanctioned Netpress and Azania - private, but far from neutral news services - never use the word "rebels", preferring to use the term "terroristes génocidaires". One news communiqué declared that the terrorists, unable to find sufficient food, had begun to eat their children. The title "Terroristes Génocidaires Cannibales" is as solid a tarnish on the image of any political group as one could hope to paint. Who would dare to say they had made peace or negotiated with this group?

The political situation within the Government remains fluid, to say the least. Peace negotiations, chaired by former Tanzanian leader Julius Nyerere and supported by regional African leaders, move slowly forwards, and sometimes backwards, as they confront and overcome various obstacles. The involvement of regional African leaders in the peace process is, nevertheless, a welcome initiative and creates hope for the resolution of future crises.

A significant number of international organisations continue to operate in Burundi. The UN Development Programme (UNDP), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), and the World Food Programme (WFP) are all active, complementing the work of a small but efficient NGO community concentrated primarily on emergency assistance. Bilateral donor countries, and donor organizations, such as the European Community Humanitarian Organization (ECHO), generally insist on funding emergency projects, rather than long-term development.

The United Nations High Commissioner for Refugees has reinforced its Burundi office - the very first UNHCR field office in the world, opened in 1959 and operating ever since. The International Committee of the Red Cross managed a sizeable and much needed mission in Burundi until the 4th June 1996, when three international staff members were shot dead in Cibitoke province. The murder of the ICRC staff - still unsolved but blamed by many on the military - led to the withdrawal of the entire ICRC international mission. A significant loss for Burundi.

The Office of the High Commissioner for Human Rights (OHCHR) has a medium-sized field presence of Human Rights Observers, with limited staff and other resources to investigate alleged violations of human rights by both sides and conduct prison visits. It produces monthly reports on the human rights situation which make harrowing reading, and show how, month after month, deliberate violations of the right to life are committed by all sides with complete impunity. The reports are all the more diabolical when one realises that the Observers can investigate and report only a small fraction of the violations that actually occur.

The national situation has been influenced and complicated by the instability of neighbouring countries, and particularly by the genocide in Rwanda which has had a deep impact in Burundi. It has confirmed the worst fears of its Tutsi population and has, perhaps, strengthened the arguments of those who believe that the only way to ensure their children’s survival is through the complete domination of the Hutu population. It should be stressed, however, that many Government members and ordinary citizens continue to support the non-ethnic approach of the much-missed Prince Louis Rwagasore, assassinated in 1961, whose motto was "turi bunwe" - "we are all the same".

3.2 THE SITUATION OF CHILDREN

Every child in Burundi is affected in some way by the armed conflict and children have suffered multiple and repeated violations of their rights. Most of these are intricately linked, each one leading to, or a consequence of, another. Child rights protection efforts must analyse their sequence and nature and must address them at key points, at different levels (national, provincial, or local), and using a variety of strategies. These divisions are not intended to define a hierarchy of problems, or to follow a "Children in Especially Difficult Circumstances" approach. All children in Burundi are affected in some way by the armed conflict. The divisions help, however, to draw attention to the diversity of problems affecting children, and to show clearly the impact of the armed conflict.

Discrimination

The situation of children in Burundi is determined, first and foremost, by discrimination. While some problems, such as sanctions and the indirect effects of armed conflict, may impact the entire population, discrimination is one of the most fundamental problems facing children.

Two examples, one old and one more recent, help to illustrate the scale of the problem. In the early 1970s a Tutsi primary school teacher was shocked to discover that some of her Tutsi colleagues had systematically falsify the marks of their pupils. This ensured that a disproportionate number of Tutsi children moved on to secondary school, and a similarly disproportionate number of Hutu children ended their education in the final year of primary school.

More recently, in April 1997, Hutu armed rebels launched an attack on the Seminaire Junior de Buta school in Southern Burundi. Around 60 of the students were herded together in one room, where the rebels ordered them to divide themselves according to their ethnic groups, with the intention of killing all of the Tutsis. The students refused, and 34 of them, aged from 11 to 20 years old, were killed, along with six teachers.

These two examples indicate the depth to which ethnic divisions are present in Burundian society, as well as the extraordinary courage of those who oppose them.

Ethnic discrimination, however, masks more complex, but equally significant forms of discrimination related to social class, and to geographic regions. Political and military groups are often formed around a particular group of families from the same region or sharing the same economic and social background. Discrimination, while ever present, is a taboo subject in official documents. The Government’s Initial Report on its Application of the Convention on the Rights of the Child does devote a chapter to discrimination, focusing on the discrimination between boys and girls,
Displacement - Refugees, Returnees and Internally Displaced Persons

Entire communities left their homes during the violence of 1993 to seek refuge in other parts of the country and across international borders. Those who fled to Rwanda were caught in the Rwandan genocide just five months later and many joined Rwandan Hutus in a flight towards Rwanda’s western border with Zaire. Some found refuge in IDP camps within the so-called, “safe zone” created by the French Opération Turquoise; others continued to Bukavu in eastern Zaire, adding their numbers to the vast refugee camps that had begun to form.

The camps in Rwanda were closed over the next year, sometimes forcibly – as in Kibeho where several thousand people are thought to have been killed in April 1995. Refugees remained in the Zaïrean camps for almost two years, but were subjected to aggression and manipulation by the forces of the former Rwandan Government and Interahamwe. By early 1997 these camps were forcibly closed during the Zaïrean rebellion which led to the fall of President Mobutu. The refugees fled once more, and, once more, thousands are thought to have been killed.

Some returned to Rwanda, others fled into the forests of the newly named Democratic Republic of Congo, and others moved south in the hope of returning to Burundi.

The children caught up in this whirlwind of violence and displacement have been on the move for up to five years – some for even longer. They have been accompanied at every step by the constant presence of death, as the squalor of camps has led to diarrhoea, malnutrition, and the rapid spread of HIV and AIDS, with infection levels as high as 25 per cent of the urban population.

They have been in the midst of the most direct violent acts, and have witnessed the killings of large numbers of people, sometimes of their own parents.

Refugee movements have been paralleled by those of internally displaced persons (IDPs) within Burundi. The distances traveled may be smaller, but the everyday living conditions within camps are much the same. The fact that IDPs have not crossed an international border means that they may still be exposed to the violence which forced them to leave their homes in the first place, and that they are unable to draw protection from international refugee law or (in principle) from UNHCR.

Displacement Terminology

Strictly speaking “displaced persons” are either refugees or internally displaced persons (IDPs). In Burundi, however, accepted terminology has been revised, and the distinctions are important.

“Regrouped persons camps” – normally occupied by Hutus – would often be set up within a few kilometres of “displaced persons camps”, occupied by Tutsis who fled their homes in 1993. Hutus have been returning to Burundi from the DRC or Tanzania since 1996, but are often unable to go straight home, settling instead in “returnee camps” grouped along main roads. A new generation of “displaced persons camps” has emerged more recently, populated by Hutus trying to escape the attacks by armed Hutu opposition groups.

Added to this confusing mix are “dispersed” people who live in marshes and forests to escape the violence that surrounds them. A final category, “les personnes sinistrées” is used more generally for those affected in some other way. They may, for example, be sleeping in the open because their houses have been burnt down – they have not been displaced, but have, nonetheless, been badly affected.

Camps in Burundi

Roughly 400,000 people currently live in dispersed, regrouped, or returnee camps, “where living conditions are rudimentary.

The growth of camps is rarely planned and families will often live very close together. Shelters are small blindés, or tents, constructed with a cylindrical roof made of folded branches and leaves, sometimes covered by plastic sheeting provided by humanitarian organisations. Each blindé provides shelter for a family in up to seven people. Camps usually develop relatively close to water sources, but these are generally inadequate for the numbers of people. Long queues are formed to fill water containers, and the source itself may run dry by the end of each day. Some families may have just one or two small water containers, meaning many trips to the water source, while others only have large 20 litre containers, too heavy for the younger children to carry. Water sources can quickly become polluted if not well maintained and a single source can be the focal point for cholera epidemics and the spread of other diseases.

Overcrowding and poor knowledge of basic sanitation and hygiene are the main causes of illness. Camp populations use communal latrines, which quickly become very dirty with faecal matter spread across the entrance and standing areas. Children are particularly exposed to disease as they rarely have shoes and walk into the latrines barefoot every day. Many children suffer from scabies and other skin infections. Few people have access to their fields, or, therefore, to the food or income from farming. Fields are often too far from the camps to be reached on foot every day, and security problems may prevent safe travel. Those people that are able to reach their fields cover significant distances, walking as far as 15km to reach them in the morning, and 15km to return, carrying tools, seeds, harvested crops, and sometimes infants, the whole distance.

Many children in camps, and in rural areas in general, have no access to an education. With the onset of the crisis in 1993 many schools closed down, as both teachers and pupils left the countryside for towns where they were safer. Many rural schools remain closed because they have no teachers. Meanwhile, there may be dozens of unemployed teachers in the nearest town. Over time many camps have set up their own schools, but these are often limited to one or two classrooms and only cater for a fraction of the children requiring primary level education. Poor access to education over many years has meant that very few children complete their education on time. Children of 15, 16 and 17 years of age may still be trying to finish primary school, placing even more pressure on the available education facilities. Secondary school places are even more limited.

Figures from early 1997 and based on joint United Nations estimates.
Marriages are placed under strain by economic and other pressures imposed by long-term displacement to camps. Young girls often become pregnant and are particularly vulnerable to rape and to HIV and AIDS. Their children are born without the presence of a father, in a society where marriage is very important to the social, economic and even legal standing of a woman and her child.

Continuing Violence

Burundian Hutu rebel groups continue to launch regular attacks on camp populations across the country, on individual communities and on entire towns, maintaining a permanent atmosphere of tension and insecurity. The military response may avoid civilian casualties, but civilian populations are sometimes the actual targets of the response.

Rebel groups place mines along tracks leading to camps, sometimes causing the deaths of members of the Burundian military, and often taking the lives of civilians and humanitarian personnel. They destroy water pumps, and remove water pipes leading from mountain sources to communities, forcing civilians to walk many kilometres in search of water and to rely upon dirty water sources.

The level of violence in Burundi is always high, but rises and falls in regular cycles that have become the normal state of Burundian life. Curfews, roadblocks, the threat of anti-tank mines, gunshots, ambushes, and massacres, are daily realities. Excerpts from the Monthly Reports on the Activities of the UN Human Rights Field Operation to Burundi in October and November 1997 provide a grim “snapshot” of violent incidents over a two-month period (see box below).

Since the publication of these Reports on Burundi the violence has continued. Shortly before dawn on 1 January 1998 rebel groups launched attacks on Bujumbura airport, which was captured for a few hours, and on the commune of Mutimbuzi, in Bujumbura Rurale. At least 200 civilians were killed during the attacks, and some unofficial sources estimate that the number be around 1,000. Attacks on schools have continued, reminding parents of those that were conducted by the military in the 1972 massacres. Among the rural population, and particularly among returnees there has been noticeable resistance to sending children to school, for fear that they will be killed.

9 October: Approximately 20 people were allegedly killed by the military stationed at the Gahabwa position, on the colline of Gishingano, Bujumbura Rurale Province. According to survivors, questioned by the [UN Human Rights] Observers, the population of Gishingano heard shots around 14.00. Thinking that there was an attack underway some people began to run towards the military post for protection, while others tried to escape into the bush. Near to the checkpoint, the soldiers manning the Gahabwa post allegedly began firing on the people running in their direction. Approximately twenty persons, principally women and children are thought to have been killed by the shooting.

12 October: 2 attacks by unidentified persons left 22 dead and 39 injured in Bubanza, and 3 dead in Cibitoke.

17 October: 22 persons were allegedly killed, and at least 10 others injured following an attack by rebels of the PAUPEHUTU movement on a camp of sinistres in Ciya, Bubanza Province.

19 October: A large number of civilians were allegedly killed during a military operation against rebel groups on the collines of Ngambwe and Mwaza, in Bujumbura Rurale. According to the Commandant of the 1st military region, the rebels took 200 civilians hostage and obliged them to burn the Kivungwe II school. The military intervened and during the confrontation 40 civilians were killed.

1 November: At least twenty people were killed in an attack on the colline of Kandaranda, Bujumbura Rurale.

5 November: 32 people were massacred and several others wounded by soldiers from the posts of Mutawhere and Kivoga, on Kanyinya colline, Buturi province.

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Children Living on the Street

The streets of Burundian towns are home to an increasing number of children who survive by begging for money and food, with no access to health or education services. The reasons for their presence in the street are complex and are a reflection of long term problems within society which are unlikely to be resolved by an end to the current crisis.

Many local organizations have been established to provide care for street children. Some associations carry out remarkable work and would accomplish even more if they were given the resources to do so. However, the availability of financial assistance from the Burundian Government and from the international community for the care of such children has led to abuse and some corruption. Some organizations have been created for the sole purpose of creating jobs and gaining access to funding. At least one Bujumbura-based organization claims to care for a large number of street children. In reality, 90 per cent of its wards are the children of civil servants and other friends of the management, who place their children there so that their education, food, and other costs are paid for.

The losers are the Bujumbura street children whose numbers never seem to decrease in spite of the profusion of organizations that exist to help them.

Children with Disabilities

The severe problems experienced by children with disabilities in Burundi differ little from those in other developing countries. However, the situation of armed conflict, the international embargo, and other related events, have restricted the amount of assistance available to them. Several organizations, which once provided help, have left as a result of the continuing crisis. There are few surgeons available to carry out operations to correct or ease disabilities. A shortage of materials for the construction of apparatus – such as prostheses – which help children to take part in everyday life, ensures that disabilities are, indeed, disabling. Artisans in Makambu Province have to struggle to adapt iron prostheses that have been outgrown by the children for whom they were made, using soldered extensions and softened goatskin for padding.

National organizations and structures providing care and assistance for people with physical, mental, and sensorial disabilities continue to function in Kiganda, Makamba, Bujumbura, Fabe, and Kanyinya, for example. These organizations suffer, however, from very limited financial resources, an absence of qualified staff, inadequate building space, and problems of insecurity, which limit access.

Children with mental disabilities are the children most excluded from the limited assistance available and suffer from discrimination within rural communities. There are no establishments that provide care for children under primary school age, for whom the family is the only form of support.

Without strong campaigns to promote understanding of physical and mental disabilities, these children will continue to be stigmatised, and excluded from the social and economic activities of their communities.

Detention

The prison population, swollen by the arrest of people accused of participating in the 1993 killing, has outstripped the capacity of Burundian judicial and detention facilities. Conditions of detention fall far below the Standard Minimum Rules for the Treatment of Prisoners,17 and below the United Nations Standard Minimum Rules for the Administration of Juvenile Justice18 – United Nations personnel have recorded many cases of ill treatment and of torture.

The judicial system, weakened by meagre resources, is unable to respect the rights of detainees – to the extent that people may be held in preventive detention for up to a year without meeting authorities regarding the investigation of their cases. In October 1997, 618 of the 653 prisoners in the central prison of Muyinga Province were held under preventive detention and had yet to receive a trial.19

Children in detention have suffered, with adults, from violations of their basic rights. They are rarely detained, as minimum standards require, away from adult prisoners and detainees, and face the same poor conditions of detention.

Malnutrition

Children, and to a lesser extent mothers, are the most common victims of malnutrition in Burundi, as in most developing countries. Malnutrition is a serious problem, caused more by a poor diet than by actual lack of food. Long before the visible symptoms start to show, malnutrition leaves children vulnerable to illness and disease, such as measles and pneumonia. In more severe cases, the symptoms include swollen cheeks and limbs caused by water retention under the skin, loss of hair colour and, in the most extreme cases, massive weight loss leading to death.

Intensive feeding centres have been set up in many locations providing food, clothing, health care, and education, suddenly falls upon people who are already responsible for their own children, or who no longer have the strength to undertake the hard manual labour demanded by subsistence farming.

The formal adoption of unaccompanied children is well regulated under Burundian law. However, the massive increase in numbers of children without families has surpassed the capacity of national adoption structures. Many families have chosen to “welcome” unaccompanied children into their homes on an informal basis. These Welcome Families, or Familles d’Accueil, have become institutions in themselves, but an institution that is not governed by any legal structure.

Children taken in by Welcome Families do not, under law, enter into the same parent-child relationship, with corresponding legal responsibilities and obligations. It is unclear whether a Welcome Family should pay for the education or health care of an unaccompanied child, who may in fact be used as an unpaid domestic servant, unlikely to acquire any inheritance rights or any social status within his or her community.
across Burundi, managed and supported by collaboration between UNICEF and several other organizations. Children affected by moderate to severe malnutrition are taken into the centres for periods of up to a month, where they initially receive eight meals a day, as part of an intensive feeding programme. Mortality rates within the centres remain high, reaching between five and ten per cent according to the region.

Donor countries are reluctant to provide money for any assistance that might, in turn, prolong the current status quo. Food distributions to some regrouped populations have been restricted, to stop the current situation becoming a permanent one, and encourage greater reliance on their own fields and homes. The World Food Programme has been told by certain donors not to distribute food to certain camps. Donors have also opposed the construction of wells and the installation of pumps in regrouped person’s camps, preferring to finance more expensive and less efficient distribution of water via trucks, as the only means of avoiding permanent regrouping.

### 3.3 The Child Rights Environment in Burundi

The situation of children in Burundi and of child rights violations has developed in a context of armed conflict, of political instability, of population displacement, of economic embargo, of HIV and AIDS, and many other factors. Among these considerations one can define many actors, including the Government and its military forces, armed opposition groups and their political representatives, rural and urban populations, international NGOs, the UN and its respective specialised agencies, the Special Rapporteur on Human Rights for Burundi, the Sant’Egidio hosts to peace talks, and others.

Taken together, these can be said to make up the child rights environment in Burundi. It is the combination of these influences that determine the extent of respect or violation of children’s rights. Understanding why and how child rights violations take place, the links between different violations, and between different positive influences, helps to illustrate the best means of addressing those violations - a discussion which is explored later in this document as the notion of a Child Rights Dynamic.

The fact that discrimination plays such a fundamental role in determining the situation of children demands that any realistic effort to protect their rights must specifically address discrimination as a root cause of violations. It implies that the provision of other forms of assistance to children cannot be fully successful in their own right because they will always be weakened by discrimination in the distribution of, and access to, that assistance. The protection of rights against widespread discrimination requires a significant role on the part of the State, via clear non-discriminatory child policy, and via the protective and monitoring role of an active and fair judicial system, among others.

The armed conflict in Burundi, in spite of a very high level of violence, remains contradictorily low in intensity, to the extent that the national administration and internal economy continue to function. Salaries, for the most part, continue to be paid, as do some pensions and insurance claims. Banks still receive and distribute money, not only in the capital but also via their, albeit few, branch offices. Society continues to function and allows, therefore, a UNICEF rights protection approach at several levels - such as national, provincial, and community.

The Representative’s decision to develop a UNICEF Child Rights Protection function was based on an analysis of the deteriorating situation for children, an analysis of how violations of their rights were occurring and on the role of key “actors” with the power to influence child rights.

### Three Key Groups

Linking the situation of children with the protection and/or violation of their rights one can distinguish within Burundi three key groups which influence, or have the potential to influence the situation of children: the State, the local community, and armed opposition groups.

#### The State

Discrimination is not in itself a government policy. Discrimination is advocated and practised by individuals, and is represented by extremist political parties which cannot be said to occupy the mainstream of public favour. However, an absence of discrimination in certain situations does not necessarily mean that Article 2 of the Convention on the Rights of the Child, on non-discrimination, is being respected - just as the absence of war does not mean that there is peace.

The problem is that there is no obvious awareness of children’s rights at national policy level. In short, the Government has no policy on children. If there were such a policy, its success could be judged by the extent to which it:
- guides individual ministries in their work
- is reflected by administrative structures
- creates a wide awareness of the rights of children
- creates an understanding of level of respect for those rights
- and ultimately, by its influence on the response of Government to rights violations.

Burundi ratified the Convention on the Rights of the Child in 1991. The years of conflict that have intervened since ratification have inevitably limited progress towards implementation of its provisions, but the State now needs to be made aware of its obligations under the Convention. At a national level there is no single structure with responsibility for children across the range of interests which will affect them, to the extent that individual Ministries, of Justice or Health, for example, plan and implement policies which affect children independently of any child-focused consultation between them.

The absence of a code of laws specific to children – outlining their rights and responsibilities – and the inconsistencies which prevail between different Burundian legal instruments with regard to children, are indicative of the weakness of national legal protection.

The development of a single Government office – such as a National Committee for Children – and subsequently of a National Policy on Children is essential. In addition, given the nature of many child rights violations, the judiciary has a crucial role to play in protection - a role that is inhibited by the absence of a legal panorama of the rights and obligations of children.

This is not to say that the Government has not shown any interest or care for children – individual initiatives concerning, for example, a policy to raise the numbers of children enrolled in primary school have been developed and implemented. These initiatives have not, however, formed part of a larger policy process, and their impact
is limited by other factors beyond the scope of the particular programme.

At the provincial level, there is greater understanding of the situation of children on the part of individual Governors and of their councillors - perhaps because they are physically closer to the people under their administrative responsibility. At this level too, however, there remains an absence of a clearly defined policy. Few provincial authorities have any knowledge of the Convention on the Rights of the Child or training in child rights related issues. Assistance and rights protection continue to be provided according to the mandates of particular Ministries, or humanitarian organizations - and are thus divided into nutritional, educational, health, water, and other distinct areas.

The absence of a single government policy on Burundian children will severely limit the progress of individual efforts to address discrimination, an absolute pre-requisite, according to Article 2 of the CRC, for the protection of children's rights. The meaningful protection of children from discrimination by individuals - such as teachers, hospital staff, and civil servants - can only be achieved by the Burundian authorities themselves through a single concerted effort reaching into all areas of government policy affecting children, and through the judicial system.

Local communities and civil society

In the absence of a protective State the protective role of local communities and of civil society becomes even more important. This role has existed around traditional structures including Burundian customary law, the conseil de la famille (family council), and around the collines administrative unit.

Sadly, civil society has been largely absent in the protection of children in recent years. One of the most damaging aspects of the armed conflict has been the divisions it has created within communities, and by the high level of civilian involvement in the violence. Both Burundians and expatriates working with unaccompanied and orphan children have expressed their sadness, and indeed anger, at the lack of solidarity shown by the inhabitants of rural and urban communities towards the needs of local children. There is marked reluctance, for example, on the part of many families to take in unaccompanied and orphaned children, even when these children are members of the same extended family. The material priorities within communities are hard to criticise given the situation of extreme poverty and exceptional hardship imposed on individuals and families. There are, however, many cases where orphans have been dispossessed of their parents' property by an uncle or aunt. The emphasis for many people seems to have become an “every man for himself” philosophy, in which there is much jealousy against those who are able to do better from their situation.

The fact is that Burundian society has plenty of experience in organising itself along community lines for positive purposes. Prior to the conflict every commune hosted numerous associations of people who had organised themselves to improve their economic situation. Rural women organise themselves as a matter of routine, with one woman from a group of five or six going to market to sell the produce of all the members of the association, leaving the rest free to work in the fields. Resourceful and hardworking rural women in Gitega Province, for example, run a small and self-sustaining scheme based on a gift of one dozen eggs, which are sold to purchase more eggs, and eventually a hen.

High participation in the 1993 presidential elections, and the fact that voting did not follow exclusively ethnic lines also show a capacity for participation, organization, and self-determination which is significant in spite of very low levels of education.

Armed opposition groups

Burundi’s armed opposition groups play a significant role in the violation of children’s rights, but no immediate role whatsoever in the protection of those rights - contrary to armed opposition in some countries. Most people fighting within armed opposition groups have been drawn from the rural community and have very low literacy levels. They are unlikely to feel, or even be aware of, any international pressure.

Most significant, however, is the fact that most of these armed groups have a political representation based abroad - in Tanzania or in Europe. The existence of an internationally recognised leadership, and of some form of hierarchy, means that they could, in theory, be contacted and held politically (if not legally) accountable for violations of children’s rights. It also implies that international humanitarian law in the sense of Protocol II Additional to the 1949 Geneva Conventions would apply to these groups so that Burundian armed rebel groups are legally accountable for violations of humanitarian law.

Addressing the role of armed groups in violating children’s rights should be a principal factor in implementing rights protection in Burundi. However, the difficulties inherent in contacting these groups and the political implications of such acts are such that their role in violations remains largely unaddressed by any United Nations response. The Burundian Government, elements of which have reluctantly recognised the official existence of political opposition groups, refuses to acknowledge any form of legitimacy for armed rebel groups. Indeed, these groups are never described as anything more than terrorists by the authorities.

The Rights Ethos

While internationally recognised children’s rights, contained in the Convention on the Rights of the Child, are a universal standard, they exist within many different contexts which inevitably impose cultural, historical, and practical pressures and influences which must not be ignored. In seeking to protect children’s rights in Burundi it is important to understand how those rights are perceived by the people themselves.

Children have traditionally held a special place in Burundi. Some people describe children as “gold” or as “un don de Dieu” (a gift from God) - something to be treasured and protected. The presence of street children, the burning of schools and the deliberate massacres of children reflect the extent to which violence and poverty have undermined the traditional views of childhood and child rights which might have contributed to their protection.

Most people in Burundi live in rural communities where, prior to the present crisis, a number of mechanisms had long functioned within society to protect the rights of individuals and particularly of children. The immediate and extended family is the first line of protection. A child whose parents die from illness or some other cause can normally expect to be looked after by an older sibling, uncles, aunts or grandparents. Neighbours and the local community provide
a second level of protection. In a society that remains very community-based, people on neighbouring hills traditionally come together to celebrate and to mourn. When a person is ill in Burundi and requires hospital treatment, local men will form a group to carry the sick person on a stretcher to the nearest clinic or hospital which could be tens of kilometres away.

Notions of international human rights law are contained in Burundian customary law which was used to manage local disputes and which still reflects local conceptions of rights. But while the right to life is seen as important, individual and community honour has, in the past, been seen as more important than an individual life. An unmarried girl who became pregnant could be sentenced to death – she might be thrown off a cliff – to assuage the perceived damage caused to the honour of her family. Banishment from the immediate community was considered one of the most severe of punishments, showing the social and economic importance of belonging to a community for each individual. Similarly, defining a notion of childhood is extremely complex and in Burundi, as in many African countries, the ages at which childhood ‘conceptually’ comes to an end can be quite different from provisions in international law. There are, in particular, notable differences between the coming of age of girls from that of boys.

The administrative and judicial systems are highly organised - with a presence extending from the Governor of each Province, to the communal administrator, and down to an administrative/judicial official at the collines level. The main cities have a police force, and the gendarmerie has provided for security and law enforcement in rural areas, under the direction of judicial officers.

These protection mechanisms have gradually deteriorated since 1993. However, the process of identifying the existing, normal rights protection mechanisms should form a part of the basis upon which rights protection efforts are founded.
It should be stressed that the protection of child rights is the responsibility of each UNICEF country office and of each Programme. It is the responsibility, and should be the focus, of the work of every UNICEF staff member, albeit through their different mandates. But it is vital to look at “Protection” in the sense of new perspectives and actions, and the development of UNICEF Protection methodology.

The methodology developed in Burundi focused on the protection role of three groups:
- UNICEF Protection Officers
- Partners – Government, NGO, and UN
- UNICEF Programmes

The significance of identifying two categories of ‘protectors’ in addition to the Protection Officers should be emphasised – this is not a job for one person, or even for one organization.

For a number of reasons, progress in implementing the methodology was slow. The thinking behind the methodology however, remains valid and this document argues for the strategy to be developed further, improved upon, and to be standardized.

4.1 PROTECTION OFFICERS

Creating a Balance
To an outsider, the idea of a “Protection Officer” working with UNICEF in an emergency situation seemed to strike a perfect balance: introducing human rights work to an organization with the expertise and capacity to meet humanitarian relief needs.

Human Rights Officers working with UN human rights operations in situations of conflict, for example, find that their interventions can mean the difference between the life and death of those that they assist. They also find themselves faced by impossible contradictions in that role. Human Rights Officers with a UN human rights field operation could, for example, visit an isolated community to examine violations of civil and political rights. They might, perhaps, investigate the alleged wrongful arrest of a husband and father of six children. Meeting the family and interviewing the man’s wife – now the single head of a large household – they might witness at first hand the lack of blankets and adequate roofing for the family home, the signs of malnutrition among the younger children and the lack of containers to transport water. These problems are all of an “economic and social” rights character upon which the Human Rights Officers can report but are unable to respond. The provision of material assistance is outside the mandate, resources, and expertise of a human rights mission.

While it would be inappropriate for Human Rights Officers to try to meet material needs, there are real contradictions in conducting human rights work in isolation from other forms of assistance. In contrast, organizations primarily engaged in providing humanitarian assistance rarely work with specific human rights of a civil and political nature. They might register the material needs of the fatherless family, but be unable to address the arbitrary arrest that has left the family in such need.

For this reason alone it seemed that the creation of Protection Officer posts within the UNICEF Burundi office would create a much-needed balance with the humanitarian assistance role already filled by the organization. It is interesting to refer to the protection role of UNHCR Protection Officers who address civil and political rights violations committed against refugees, but who can also address humanitarian needs.

On a more practical and operational level, partner organizations present in Burundi and with a “protection” character, such as UNHCR and the UN Office of the High Commissioner for Human Rights (OHCHR), would often meet with UNICEF on specific problems. Unable to identify an equivalent colleague within UNICEF, their Officers would instead talk with a UNICEF Programme Officer, Emergency Officer, or Reporting and Evaluation Officer, with whom they shared no common mandate, human rights vocabulary, or protection experience. The presence of a UNICEF Protection Officer would fill this gap.

The three broad areas for the work of a Protection Officer are:
- monitoring, according to certain criteria
- analysis of the information gathered
- development and implementation of a response.

In addition to this basic methodology, one can identify a number of more specific activities involving, for example, rights protection in individual cases and specific forms of advocacy.

Monitoring
The total absence of information at all levels on respect for children’s rights meant that basic monitoring had to be initiated as systematically as possible and put to use as the foundation for child rights protection. The fact that protection involved a range of actors, including Protection Officers, Programmes, Partners, Burundian communities and parents, meant that the information gathered by monitoring should be made available to all these different groups of people.

Child Rights Protection Reports – the objective of monitoring
Over several years of monitoring and evaluation, UNICEF Burundi had built up a library of information relative to the situation of children. Most of this monitoring had, however, been conducted from the perspective of a particular programme, or occasionally of all ongoing UNICEF programmes, providing, for example, a general impression of the impact of a UNICEF sponsored vaccination campaign. The monitoring had not looked at children holistically. In addition, many
monitoring efforts were focused on justifying expenditure to donors, rather than on the future protection of children.

The immediate goal of child rights protection monitoring was to gather information reflecting not only the situation of respect for child rights, but also the reasons for that situation. The results had to be sufficiently detailed to provide useful information, but not so detailed as to make the collection of information an unnecessarily time-consuming process. Further, the information would need to be easily accessible to the different groups of people who would become engaged in protection, and should help them to assume that protection role. It was decided to present the results of monitoring in Child Rights Protection reports.

Monitoring was conducted by geographical region (province), rather than by category of child, or by type of problem. Information on specific categories of children and particular violations was included within a geographical context through which problems could actually be addressed. This approach facilitated the practical collection and use of information by both UNICEF and its partners across each province, and seemed to strike a suitable balance in terms of detail.

Selecting criteria for child rights protection monitoring

The child rights protection monitoring criteria developed in Burundi were not so much criteria on child rights as criteria on the protection of those rights. The difference is significant. While the Convention on the Rights of the Child (CRC) was included, this was only one of several influences that imposed themselves upon the monitoring and creation of Child Rights Protection Reports.

The CRC was used as the basis, or matrix, laid upon the situation in Burundi. To monitor the full state of respect for all of the rights enumerated in the CRC would have been impractical – the burden of such broad monitoring would have slowed the process of collecting information and producing useful reports. While the work aimed to encourage implementation and respect of the CRC as a whole, the immediate focus of protection efforts lay with the respect or violation of specific rights of relevance to the situation in Burundi.

A list of rights priorities and categories of children was developed and used to determine monitoring criteria, according to the specific situation in the country. Child rights violations involving the loss of life, restrictions to liberty, access to education, to health services, to adequate food, were all of particular importance. Similarly, the situation of unaccompanied children, children with disabilities, children living on the streets and children in detention were categories with specific needs. The identification of categories of children was not an attempt to follow the older UNICEF “Children in Especially Difficult Circumstances” (CEDC) methodology. Rather it was an effort to state the immediate focus of protection efforts lay with the respect or violation of specific rights of relevance to the situation in Burundi.

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The information gathered through monitoring had to be presented not only in a way which would make the information accessible to the Protection Officers, programme staff, and partners receiving it, but in a way that would facilitate the actual protection of the rights violated. By collecting and presenting some of the information according to the structure, vocabulary and activities of the UNICEF office – Education, Health, Nutrition, Water, and Sanitation Programmes – and some major partners, a reporting format was created that would make the information more accessible to Programme staff and partners.

Some characteristics of the humanitarian situation, while not directly related to child rights, were also included in the monitoring criteria. The changing security situation and freedom of movement were two key factors affecting children, which often differed from province to province, and which influenced respect for children’s rights. Poor security is often synonymous with some form of restriction on freedom of movement, which in turn can reduce access to clean water, to farmed land, to schools, or to health centres. Poor security also means that the population may be living under considerable daily tension.

For example, a Child Rights Protection Report would typically include information on health and freedom of movement within a Province – along with many other criteria. The relevant sections might state that the number of children with diarrhoea in displaced persons camps in a particular region has drastically increased, and that restrictions on the freedom of movement have been imposed in the same province by the authorities, following a series of attacks by rebels. The logical conclusion is that the local population is obliged to use polluted water sources as they are no longer free to leave their camp. The UNICEF health, water and sanitation sections will not need to know the security situation to realise that the displaced people have become ill through drinking polluted water. The importance of the information, however, lies in establishing, through “rights protection” monitoring, the possibility of a direct link between the restrictions and the illness. This serves two functions:

1. it emphasises UNICEF’s role in addressing restrictions on freedom of movement and other violations of civil and political rights
2. it establishes the link in a Report, providing an ideal “tool” through which UNICEF can then advocate for the restrictions on movement to be lifted.

It would be ideal if UNICEF’s Child Rights Protection Reports were also of use to other UN and NGO partners in the field. In Burundi, the original intention was to provide both UNHCR and OHCHR with the chance to comment on the UNICEF Report format, and to suggest changes which would make the reports more useful to them, while remaining within UNICEF’s mandate and objectives. Several informal discussions were held with UNHCR Protection Officers and OHCHR Human Rights Officers. These discussions produced only limited concrete results, however, as a final UNICEF version was never completed.

Evolution, Uses and Constraints

An important characteristic of the Child Rights Protection Reports and monitoring criteria was that both were intended to evolve with the changing situation and with UNICEF’s increasing understanding. Respect for property rights, for example, became one section in the Reports, because of the central role that access to property was found to play in the respect for children’s rights.

The Reports on each province were meant to serve as documents that could be used either as individual reports, to highlight regional and nation-wide problems, or to give an overview of the situation in a particular province.
The Reports were intended to provide an understanding of the situation of children from a rights perspective, according to criteria which would themselves serve as indicators of the situation of children. The majority of the information contained in the Reports was widely known and they did not so much reveal information that was startlingly new, as draw attention to specific problems and, most importantly, the links between them.

The act of collecting information and distributing the reports to partners was almost as important as producing the reports themselves. The contact between Protection Officers and children, NGOs, UNICEF Programme staff, government representatives, and others, provided an opportunity for the situation of children to be discussed in the context of the specific mandate of the programme or partner concerned. The contact helped raise awareness among those in a position to address child rights violations, and formed the basis of a developing Child Rights Protection Network.

One possible development of the Reports was that they became basic reports for Protection Officers and for other staff members, including Emergency Officers co-ordinating UNICEF’s overall emergency response, and Project Evaluation Officers who would coordinate different project proposals for donors and would monitor the impact of those projects. Again, this objective was never really achieved because of personnel and time constraints. And again, the basic idea seemed valid, and would have helped the Child Rights Protection Reports to become a basic tool within the UNICEF office upon which decisions and strategies would be based.

The following constraints were identified:

**Time and personnel resources.** Collecting information for the Reports was time consuming and very labour intensive. Monitoring would require a visit of several days to a province, making contact with every organization or authority working directly with children. UNICEF’s child rights protection initiative would be explained and each partner would be asked questions on the local situation of children, with particular emphasis on their area of interest. The time invested in monitoring was certainly worthwhile, and built up good contacts, but it also meant that initial progress was slow.

**Frequency of the reports.** The time needed for each report, and the fact that situations changed only slowly, meant that the Reports themselves could only be produced with a limited frequency, such as every three months. It was felt that additional efforts could be made to report more frequently on provinces where the situation was changing very rapidly.

**Start-up time.** The effective use of the Reports both by programme staff and partners would require a major and visible effort within the UNICEF office. Without several complete reports it was not really possible for either the Programmes or partners to see their genuine utility, so that four or five months were needed before effective feedback could be gathered and used to reorientate the Reports accordingly. Certain Programmes, which based their own work on very detailed statistics – such as the nutrition Programme – felt that the comparatively general monitoring criteria used by the Protection Reports would be of little use.

**The burden of certainty and the objectives of monitoring/reporting.** Many humanitarian and human rights organizations use reporting to draw attention to human rights violations – such as Amnesty International, Human Rights Watch, and the ICRC – albeit with different purposes and through different mechanisms (ICRC’s reporting, for example, is usually confidential and made only to the host Government). All of these benefit from an established mechanism, through which information is gathered and reports presented in a manner that may influence future violations.

Human rights reporting of this nature has an extremely limiting characteristic, however, in that it places a very heavy burden of certainty on the reporting organization. An organization that presents its human rights report in a public forum or to high government officials is also placing a certain amount of its credibility on the accuracy of the report.

The burden of certainty lies in the indication of a perpetrator. Linking a violation with a perpetrator is an accusation which must not only be justified, but be rigorously correct. When issues covering violations of the right to life as a result of direct violence were discussed it became very difficult to report on them. Such incidents were often surrounded with a lack of clarity – who had actually been killed, where, how, and who by? Much time was spent debating whether or not to include such questions in the reports. How could UNICEF develop a child rights protection report without including information on the most blatant and tragic of violations of children’s rights?

At the same time the inclusion of such information raised a series of problems. UNICEF has neither the capacity nor the mechanisms to conduct detailed reporting on child rights violations of a civil and political nature. It’s monitoring experience and capacity is focused more on rights related to specific Programmes, and with a development character.

The focus of Protection Officer monitoring and reporting should not, therefore, be on identifying a perpetrator, or on reporting on specific cases of child rights violations. It should be on monitoring and reporting on situations of child rights violations. UNICEF Protection Officers, and the UNICEF Representative to a country, should, however, be prepared to raise concerns over specific violations with governments in a private and confidential context. UNICEF could also make use of its partnership with OHCHR by passing information on specific child rights violations and their perpetrators to its in-country representatives.

**Problem, Analysis and Response**

The first hand monitoring drew attention to particular aspects of problems and highlighted the links between them. One example of protection was a possible judicial and administrative response to the problem of unaccompanied children (UACs).

**Problem**

The situation of Unaccompanied Children in Burundi provides a good example of the development of UNICEF protection methodology. It was common knowledge that every province in the country had a large number of unaccompanied children. It was, however, extremely difficult to identify them and assess their situation. Family tracing activities are notoriously complex in the Great Lakes region. The use of surnames in the region is complicated and unsystematic – so that a child’s second name may not bear any resemblance to his/her parents’ names – making tracing on the basis of family name alone impossible.

Some unaccompanied children are taken in by “Centres
are too young to initiate the process themselves. Some are unable to do so. Others do not know that they are entitled to land or that they are the child who should have inherited the land. Many unaccompanied children, who have no money and no land, are a burden on their adopting or welcoming families, and are thus less likely to receive the care, affection and access to health services that they need.

Land and property issues are vital. Land is the main expression of wealth in Burundi. It provides a home. It can be cultivated to provide food for survival or trade, and pasture for farm animals. Land means status, and provides the strongest link between and individual and their community. It can be sold and converted into some other form of asset. Unaccompanied children with no money and no land are a burden on their adopting or welcoming families, and are thus less likely to receive the care, affection and access to health services and education they need.

The fact is that most unaccompanied children have the legal entitlement to inherit and take possession of their absent parents’ property. In practice, however, the value of land proved a temptation for many people, who would appropriate it as soon as the owners were absent. A neighbour or distant relative, for example, might begin farming a plot of land and subsequently claim ownership, depriving the child who should have inherited the land. Many unaccompanied children who have tried to return to their parents’ land have been unable to do so. Others do not know that they are entitled to land or are too young to initiate the process themselves.

Analysis

An analysis of the situation of such children highlights the importance of a response that addresses these problems close to their source and before they multiply. Ensuring the access of UACs to their parents’ land is one way to interrupt the cycle of rights violations which begins the moment a child becomes unaccompanied.

A child who is the recognised owner of land is in a very different position to an unaccompanied, landless child. An adoptive family can farm the land until the child is old enough to take it over, using some of the proceeds to pay for child’s needs. Unaccompanied landowners gain a certain independence that can serve to protect them. In Ngozi province, for example, a project run by a church group purchases land for unaccompanied children. The land is registered in the name of the child who is then given assistance in building a house, and buying tools, chickens and goats. The children are able to live on their own land, supported by neighbours and by the local administration, with an income to pay for food, health services, and education. They have shelter, and a future.

If unaccompanied children can be automatically linked to their parents’ land, the task of identifying them and monitoring their progress becomes much easier. Indeed, those parents who are still alive could find their own child waiting for them on their return home.

In short, the access of unaccompanied children to their parents’ property is an important shield against the violation of their rights. Within this context, the role of the administrative and judicial authorities is of primary importance in helping to identify UACs in each commune and province, ensuring some sort of quality control for the care provided by adoptive families, and ensuring respect for the property rights of UACs.

Response

The functioning of the judiciary in any country is central to the respect of law and of individual and group rights. The judiciary in Burundi should be able to play a key role in the identification and protection of UACs, and address property rights issues. UNICEF worked with the judicial and administrative authorities to plan a workshop in a pilot province, bringing together members of the authorities and the key individuals and organizations working on behalf of children. The workshop was to consider:

- the main problems faced by children in the province
- the main child rights violations
- the role of the judicial and administrative authorities in addressing these rights violations under national and international law
- how effectively this role is carried out
- how this role could be strengthened and improved.

The participants in the workshop were to produce a plan of action and reconvene three months later to discuss the progress made. The workshops were to be repeated in various provinces, bringing together key members of the authorities, NGOs and international organizations in each province to establish a working relationship focused on child rights. The workshops would also promote children’s rights in a very practical manner and provide UNICEF and a national Government representative (such as the Minister of Justice) with the chance to explain at provincial level Burundi’s obligations to children under the Convention on the Rights of the Child.

Sadly, the constraints of time, personnel and resources mentioned earlier meant that these objectives were never fully realized.

Reinforcing the Role of Local Communities

The dwindling protective role of local communities, and their lack of information and understanding of children’s rights were seen by UNICEF as key factors in the situation of children. The weakened role of the local community allowed the exploitation of unaccompanied children, while lack of understanding of children’s rights and the situation of children limited the awareness within local communities of children’s problems. Poor communication between local communities and local authorities limited the protective role of the authorities. The distressing situation of children with disabilities in rural areas was linked, in part, to a lack of understanding of their difficulties and of their rights as individuals.

UNICEF began to work at the provincial level with Governors and NGO representatives to develop Child Rights Protection Committees in each province. The Committees, with contacts down to colline level, would be given initial training on child rights and would work to gather information on the situation of children according to criteria similar to those used in the Child Rights Protection Reports. The information gathered was to be included in the Reports for each Province and used at provincial level to encourage greater protection of children by the local authorities and others. The presence of Provincial Committees was intended to complement the workshops that specifically targeted the judicial and administrative
authorities. Further, by gradually placing the emphasis of monitoring on the Committees, and providing them with the material capacity to maintain it, the protection initiative would be able to continue after the end of the conflict and without UNICEF support.

A National Policy on Children's Rights

At the national level, the absence of a Government child policy and low awareness of the Convention on the Rights of the Child, led UNICEF to assist the Government in producing its “Initial Report on Implementation of the Convention on the Rights of the Child”. A UNICEF consultant and one of the Protection Officers worked closely with Government officials to gather and collate information, also involving other UN agencies and NGOs in the process. The Report was originally due in 1992, two years after Burundi ratified the Convention, and was intended to inform the United Nations Committee on the Rights of the Child of the progress made by Burundi in implementation of the Convention.

The very process of producing the Report, which was submitted to the Committee in March 1998, has been valuable, bringing together all the key players for children. Its formal adoption by the Burundian Government as an official document highlighted the situation of children in the country, the Government’s obligations under the Convention on the Rights of the Child, and the need for a national structure which could help create and co-ordinate a Government child policy. The creation of a National Committee or other body might eventually become the central structure co-ordinating the work of the Provincial Committees, receiving, publishing and acting upon their reports.

Case-by-Case Protection – Networks and Contracting

To what extent should UNICEF Protection Officers in situations of conflict act to protect children’s rights on a case-by-case basis? There are two apparently conflicting answers to this question – “rarely” and “as often as possible” – which require some explanation.

Without a significant increase in field staff members assigned to child rights protection, it is simply unrealistic to expect UNICEF to address more than a small per centage of problems on a case-by-case basis. However, the opportunities offered by rights protection “contracting” and by the use of a Child Rights Protection Network are such that UNICEF can hope to respond to case-by-case rights protection needs as often as necessary – to the extent that such a response becomes an integral part of UNICEF Protection Officers’ work.

What type of cases?

UNICEF Protection Officers will have their attention drawn to such a diversity of cases that it is impossible to represent their range here.

In Burundi, for example, UNICEF received information in mid-1997 indicating that between 10 and 15 young children were without any food or shelter having been abandoned by the managers of a children’s centre. UNICEF staff visited the centre, where they tried to identify the children and to discover exactly what had happened. At issue were: the immediate physical and emotional care of the children; their longer term prospects, including a home and education; the status of the centre; the role of the centre’s staff in possibly abandoning the children; and any implications this situation had for the work and particularly the vetting of other centres.

As the problems became clearer the situation became more complicated. It appeared that most of the children were not unaccompanied at all, but had parents or guardians living in a nearby displaced persons camp. The manager of the centre had needed unaccompanied children in order to open his centre and claim material and financial assistance from international organizations. A bargain had been struck with the children’s guardians under which the manager would claim that the children were unaccompanied, in return for which he would take on the living costs of the children. Problems emerged when the children’s guardians felt that the manager was getting more profit than they were from the children’s presence and was not sharing the aid that he received on the children’s behalf.

In other instances, letters of complaint were addressed to UNICEF on behalf of orphaned children who had, allegedly, been dispossessed of their property by a local authority or other person. The letters requested assistance from UNICEF towards the restitution of property and described the very disturbing circumstances in which the children, deprived both of their parents and home, were now living.

In a third case, a group of unaccompanied children had been taken from Zaire and placed in a institutional home in Burundi while adoption procedures were initiated with European families. In 1997, and after several years without any progress in obtaining visas from the relevant embassies, the organization in Burundi responsible for looking after the children claimed that it had no money to continue paying for food, clothing, education, and lodging. The situation raised a number of questions: Who and where were the children’s real parents – were they still in the DRC, and were they still alive? Were the adoption procedures initiated for these children legal? Was there an exchange of money for the adoptions? And if so, was the whole process – from the removal of the children from their home regions to their presentation for adoption – part of a child trafficking network? What were the best interests of these children – should the adoption process be supported or terminated? Should the case be handled by the nascent diplomatic authorities of the Democratic Republic of Congo, by the Burundian authorities, or by a third party?

Other examples of individual “cases” might include the massacre of children by armed men; sexual abuse; the beating and arbitrary detention of street children by police forces; the forced recruitment of children into a military group; discrimination in access to education and health facilities; or serious human rights violations committed against a whole population group, among which there are many children, involving for example, forced displacement or arbitrary detention.

Contracting

UNICEF Protection Officers can respond to a wide variety of cases involving violations of children’s rights in situations of conflict. However, UNICEF Protection staff will not have the capacity to manage such cases on a day to day basis. In spite of this, UNICEF’s name and status as a major UN agency can be used to help ensure that a response is achieved.

UNICEF never works in isolation and its Programmes have always “contracted” specific tasks and general responsibilities to partner organizations – specifically NGOs. For example, UNICEF may contract an NGO for family tracing and re-unification. Or UNICEF may contract an NGO to rehabilitate several water distribution systems in an entire region. UNICEF Programmes finance the
work of a chosen partner according to a well-defined contract, and oversee the implementation of the project. It would be both impractical and expensive for UNICEF to develop its own capacity to address all the various needs related to a child’s welfare and development.

There is a strong argument for a similar system to be used to address certain types of individual cases of child rights violations confronted by UNICEF. There are several advantages to a ‘case’ passing through UNICEF, rather than being taken on directly by another organization. People know what UNICEF is, and roughly what it does and are likely to bring UNICEF information on possible violations of children’s rights. Secondly, UNICEF’s status as a well-known UN agency gives it influence and some leverage. It may be easier for a UNICEF staff member to secure an urgent meeting with a Government Minister than for somebody from a small, specialised and less well-known organization. And cases being managed by a contracting UNICEF partner could be supported from time to time by any appropriate UNICEF intervention.

A Child Rights Protection Network

A contracting relationship between UNICEF and a partner organization should be reserved for cases of a specific nature, and typically those requiring detailed follow up in various directions. In a more general sense UNICEF Protection Officers should develop and rely on a Child Rights Protection Network to resolve the majority of individual cases brought to the organization’s attention.

The term Protection Network describes a framework of UNICEF partners – both governmental and non-governmental – whose work has an influence on the protection of children’s rights. The members of this framework can be as diverse as the Ministry for Housing and Sanitation, a local Women’s Association, or the United Nations Development Programme. The main criteria are that each partner recognises the need to protect child rights, takes into account the respect of those rights in the course of every day work, and is prepared to work as part of a loose framework or network of organizations, structures and individuals with related mandates and similar concerns.

Thus, in the space of a week, UNICEF Protection Officers may be able to refer the cases of refugee children who wish to return to their country, unaccompanied children suddenly deprived of a place to live, reports of discrimination against children in access to health centres – to UNHCR, to an NGO providing everyday care for unaccompanied children, and to the Ministries of Justice and Health, respectively.

In fact, networks of related structures already exist and have done so for some time during humanitarian crises. However, there is little attempt to formalise and standardise the relationship beyond limited health, education, water, or sanitation mandates, or to place relationships under a human or child rights protection umbrella. Doing so will help to ensure that:

- the protection of children’s rights is prominent on the agendas of partners
- that co-operation is rapid
- that co-operation works in both directions, with partners referring to, and receiving from, UNICEF problems and child rights violations that need to be resolved.

The process of establishing a Child Rights Protection Network is the task of Protection Officers and UNICEF Country Representatives. Playing a vital information role, it tells partners that UNICEF is interested in these problems and has a mechanism for response. It not only draws attention to the problems; it is an important step towards their eventual solution.

4.2 UNICEF PROGRAMMES

Reading through a variety of UNICEF Executive Board documents it is clear that evolving notions within the organization of the “protection of children’s rights” intended the Convention on the Rights of the Child and the rights therein to become the centrepiece of programming strategy. The objectives of the Executive Board are twofold:

- for UNICEF Programmes to link the provision of assistance to children’s rights, so that assistance is loss a fulfilment of children’s needs and more a respect of their rights
- for UNICEF Programmes to determine the success of their efforts via an analysis of the whole range of children’s rights, and not just those related to the specific mandate of the programme.

All UNICEF programmes respond, in some way, to an element of child rights, and can therefore be said to have a protection role. However, the focus of each programme is invariably limited to the aspect of a child specifically covered by the programme’s mandate. So, for example, the Health and Nutrition programmes will identify children with severe malnutrition, or children who are particularly vulnerable to diarrhoea or cholera, but do not consistently consider wider information beyond indicators of health and nutrition conditions. The limited perspective of UNICEF Programmes significantly limits, in turn, the rights protection role that the Programmes can fulfill.

The strategy in Burundi was twofold – to ask each Programme (education, health and nutrition, information, and water and sanitation) to:

- look at the whole Report from the perspective of the Programme’s mandate
- look at the work and mandate of the Programme from the perspective of the whole range of rights violations described in the Report.

The two points are best explained through the use of examples drawn from a real situation in a Burundian province.

Looking at the whole Report from the perspective of the Programme Education Programme Officers might focus on the “Education” part of a Child Rights Protection Report which states that many children do not have access to school because of the lack of teachers, lack of classroom space, the acute poverty of unaccompanied children, and the particular educational needs of adolescents.

However, the most useful information for them is not contained in the Education section of the Report at all, but in the other sections. Under the title “Security, freedom of movement, access”, one reads that a large number of Burundian refugees across the border are preparing to return home to the Province. UNHCR reports that there are many teachers among them. The Education Programme could

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contact them during the return process and work with the Ministry of Education to get them back into the classrooms. Good security conditions also imply that farmers will be able to farm their fields, that they will have an income, and may be able to afford school fees and school materials.

The Water section of the report has other useful information. International NGOs in the Province have reported that children in the various camps spend approximately four hours a day carrying water, having a negative impact on their school attendance, even where schools are open and places available. If the nearest water source only produces water at times that coincide with school opening hours, for example, efforts should be made to improve water flow, to change school hours, or to establish a water source which is much closer.

The Education Programme’s awareness of information beyond its normal monitoring, and beyond its specific mandate, can help the Programme to better fulfil that mandate.

Looking at the Programme from the perspective of rights
Each UNICEF Programme should focus not only on the protection of those children’s rights which fall within the mandate of the Programme, but on the whole range of children’s rights.

The Water and Sanitation Programme, referring to the above Protection Report, might have noted the link between access to education and children collecting water for four hours each day. Access to education is far from the specific mandate of the Water Programme, but the Water Programme has the technical expertise to offer a solution. A water truck could make regular visits to the area, or the rate of water flow could be increased. The Water Programme could, therefore, ease a specific problem linked to the right to education. In practice, all UNICEF Programmes have the potential to complement each other in this way – but it is unusual for co-operation and ‘wider’ perspectives to become so systematic as to allow this kind of protection on a regular basis. The problem is not a lack of will on the part of UNICEF Programmes, but rather the lack of perspective and information.

Protection Officers working with programmes
Protection Officers can assist programme staff in addressing problems which affect a programme’s success, but the solutions to which lie beyond the mandate of the Programme. These typically involve a violation of child rights.

One major problem faced by the UNICEF Water and Sanitation programme in Burundi, has been the destruction of water installations by armed rebel groups. The rebels are thought to be based in the mountains that supply much of Burundi’s drinking water. Seeking imaginative solutions to this problem, the Head of the Water and Sanitation programme wondered if rebels were not destroying water equipment simply in order to have access to drinking water. When repairing damaged pipes and pumps in the mountains he would also install water taps so that anyone (including the rebels) could get water without damaging the whole distribution system. To little avail; the destruction of water equipment and pipes continued – clearly part of the guerilla strategy.

The solution to this problem, apart from burying water installations in concrete which makes repairs difficult and expensive, lies beyond the specific mandate of the Water and Sanitation programme. In contrast, some possible solutions should, arguably, lie within the mandates of UNICEF Child Rights Protection.

International humanitarian law, in Article 14 of Protocol II covering non-international armed conflicts, states, “It is prohibited to attack, destroy, remove, or render useless . . . objects indispensable to the survival of the civilian population, such as . . . drinking water installations and supplies and irrigation works”. Article 38 (4) of the Convention on the Rights of the Child requires that humanitarian law be respected. There exists, therefore, a clear and direct link between the destruction of water installations in Burundi, international humanitarian law, and the Convention on the Rights of the Child. This problem should fall well within the mandate of UNICEF Protection.

Addressing the destruction of water sources by rebel groups with whom there is no direct contact poses some problems. UNICEF rights protection could, for example, develop a series of messages – on the sanctity of civilian populations and on the dependency of children upon clean water. The messages could be communicated to rebel groups through the massive distribution of leaflets with images, or through public speeches to the rural civilian population in areas where the rebels are thought to be active.

There was some discussion on the wisdom of these particular tactics. The Government might not accept a United Nations organization seeking to contact rebel groups from within the country – however limited and distant the contact. For their part, the rebels might see the leaflets as confirmation of the success of their activities, encouraging them to continue and perhaps diversify their sabotage.

The role of UNICEF child rights protection in addressing Water Programme related problems, and vice versa, was raised repeatedly by Harold Randall, Programme Co-ordinator. He saw far beyond the provision of water as a physical life supporting element, or the improvement of sanitary conditions as a means of preventing illness and disease. He asked whether a new water source could not be promoted as a point of harmony in the community. He asked whether the protection of children’s rights could not be furthered by promoting a sense of community around a shared ‘communal’ water source in places where massacres had pushed people far apart. Harold and his staff went further, seeking to involve the local population of a Bujumbura suburb in the maintenance of water and sanitation facilities. Using members of the neighbourhood to promote basic rules of hygiene, the Water and Sanitation team encouraged a greater sense of community, and asked if child rights protection activities could not be conducted through some of the structures that were being created around essential water and hygiene services.

These examples show that UNICEF Child Rights Protection should be closely linked to the work of the Programmes. Relationships between Programme Co-ordinators and Protection Officers should be close and ongoing, beginning not when a specific problem arises, but with the everyday monitoring of a changing situation of children from a rights and holistic “whole child” perspective.

4.3 UNICEF PARTNERS
UNICEF “partners”, at its broadest, refers to all those organizations, authorities, and individuals whose work has implications for the situation of children. This potentially vast definition is, in practice, restricted by the capacity and willingness of certain partners, and by UNICEF’s own capacity, to establish a working relationship.

* Article 14 of the 1977 Protocol II to the 1949 Geneva Conventions
Establishing a Child Rights Protection Network

The methodological basis of UNICEF’s protection work with partners in Burundi was to create the Child Rights Protection Network referred to earlier in this document. Ideally, such a network would link its members so that a broad form of protection could be developed through their different mandates to cover the range of child rights violations – not only to address specific problems, but also to collect and disseminate information.

Unlike many organizations working in situations of armed conflict, UNICEF will usually have no more than a very small fixed presence beyond the capital city, and even this is rare. In Burundi, two antenna offices, each staffed by one person, were established in the provinces of Muyinga and Ruyigi with the objective of helping UNICEF to respond better to the emergency situation. In contrast, UNHCR has offices in Muyinga, Ngozi, Ruyigi, and Gitega, each staffed by several international and national staff. NGOs such as Médecins Sans Frontieres, the International Medical Corps, Action Contre La Faim, and many others, commonly establish a number of field offices in a country of operations.

Without a local presence, UNICEF cannot realistically expect to protect those children’s rights that are at risk. While occasional visits from the capital may be adequate to support much of the organization’s work – education, health, nutrition, water and sanitation – it is more difficult to identify and understand an abuse of child rights through such brief visits.

For these very practical reasons, UNICEF protection needs to be carried out, in part, through partners. Principal UNICEF partners were presented with the recent development of a rights protection initiative in Burundi, and a general analysis of the problems of children in a particular province. The Child Rights Protection Reports were used as ‘supports’ in the discussion, the sub-divisions of each Report serving as a list of key indicators. Using similar methodology to that employed with the Programmes, the various partners were asked:

- to consider the overall situation of respect for children’s rights when planning and implementing their activities
- to look at how their particular mandate – medical, legal, administrative – could contribute to an overall protection of children’s rights.

In terms of an actual ‘network’ for child rights protection it was intended that regular contact between UNICEF protection and these partners would lead to a two-way exchange of information. Partners based in a province and with a more local understanding of the situation of children, could draw UNICEF Bujumbura’s attention to particular child rights problems. The information gathered by UNICEF itself, and through partners in one province, would be used in the Child Protection Reports which in turn would be distributed to each of the partners, every three or four months.

The use of information given by partners in the Child Rights Protection Reports is a very politically sensitive subject, and one which can be dangerous – the idea was received with interest but also with considerable caution. The Provincial Child Protection Reports were, however, specifically intended to be for wide, and particularly Government, use. There would be little point in producing a Report which required strict confidentiality, and they were not intended to be human rights violation reports of a type that denounce specific individuals or acts.

Other UN Agency Partners

The presence of several United Nations agencies in Burundi offered significant potential for partnership in protection. In terms of the practical day to day protection of children’s rights, however, two UN operations in Burundi are of particular relevance: the UNHCR Protection Officers, and OHCHR Human Rights Observers. The mandate similarities and potential for partnership are best illustrated through a practical example.

A particular Burundian Province borders a neighbouring country and is a key-entry point into Burundi for a steady stream of returning refugees. UNICEF is concerned with the identification and follow up of the unaccompanied children among them, and with subsequent violations of their right to inherit their parents’ property. This concern becomes focused on the effectiveness of the provincial judicial system in protecting the rights of unaccompanied minors.

UNHCR has a mandate to protect refugees, including the period covering their return and resettlement in their country of origin. Its mandate covers all returning refugees, regardless of gender or age, and thus provides for protection and assistance on behalf of returning refugee children. UNHCR itself is concerned about the numbers of returnees who are being arrested upon their return to the Province and charged with acts of genocide committed in 1993. They are also concerned about the legal protection afforded to returnees in their communities, and about the problems of access to housing and property for returnees.

The OHCHR Observers, meanwhile, have a mandate to investigate possible human rights violations, and to seek the protection and promotion of human rights. The Burundi human rights operation contains a specialised section on the administration of justice.

The mandates of each of the three UN agencies have large areas of overlap, while each agency offers a certain specialisation not shared by the others.

UNICEF’s response to the problems of unaccompanied children in the province, based on a wider analysis, was to plan a workshop for the judicial and administrative authorities, and key organizations in the province with the close involvement of UNHCR and the OHCHR. The partners were intended to involve an equal exchange, and both UNHCR and the HRFOB were given the opportunity to integrate relevant aspects of their own mandates into the workshop objectives.

In general terms, there are a number of areas of practical UN agency partnership that would be useful in Burundi. These ideas could be easily adapted to other countries.

- The collection of information on human and child rights abuses can be shared: the minor adaptation of each organization’s monitoring procedures and reporting formats can help to cover issues of mutual interest. The common UN relationship helps to ensure that confidential information and resources can be exchanged without too much difficulty. For example, familiarity within UNICEF of UNHCR’s mandate will allow Child Rights Protection Reports to be structured in a way that better reflects the situation of returnee children.
- Reporting and use of information: the HRFOB, via the Office of the High Commissioner for Human Rights in Geneva, has an international reporting structure. Monthly ’Activity Reports’ are presented to the Burundian Government, detailing information on the human rights situation, particularly with regard to violations of the
right to life and liberty, and conditions of detention. The Reports also go to Geneva where they are discussed by the staff of national diplomatic missions to the United Nations. UNICEF may be able to make use of the OHCHR reporting system to draw attention to the situation of respect for children’s rights in Burundi and other countries, by providing human rights staff with information, for example, on levels of malnutrition, disease and access to education.

Training/Promotion of human rights: both UNICEF and UNHCR are concerned at the limited rights protection provided by judicial authorities in the communes, and by conditions of detention affecting returnees and children—professional training to improve the understanding of rights and the protection available would help significantly. The HRFOB is the organization with the most appropriate mandate and expertise to conduct training, and can integrate the human rights concerns of partner agencies.

Field Offices: UNHCR has field offices in four Provinces outside the capital, UNICEF in two, and the HRFOB currently does not have any (as of April 1999). Sharing field offices with those agencies that are less well represented at field level will, for example, allow the HRFOB to better accomplish its mandate, and lead to improved co-operation between agencies.

**Government**

Placing a protection “responsibility” on governments is essential when taking a rights approach, and using a methodology which requires such a focus is a useful way to overcome the potential problems related to accountability and sovereignty.

UNICEF’s principal partner in any country is traditionally the host government— to the extent that programme instincts are to work through a government wherever sufficient capacity exists. In Burundi, a large proportion of UNICEF’s funding for programmes and specific projects passes through relevant Government ministries, including some funding for NGOs, which is subsequently distributed by the authorities. Projects are often developed in close collaboration with ministry officials and technicians, and much of UNICEF’s work is intended to contribute to the long-term capacity of the State to fulfill its obligations towards children.

UNICEF protection – distinct from the work of UNICEF programmes – raises some issues which suggest that the relationship with a host government might be less comfortable, or at least not as exclusive, as that maintained by the programmes. Governments are sometimes the main violators of children’s rights, making them awkward partners in protection. Governments themselves may also be reluctant to devote meagre resources to child rights activities that do not themselves make a major contribution to the infrastructure of the country as investments in health, water, and education services do. The State in Burundi – and the military in particular – is actually involved in very serious child rights violations. However, the initiation of child rights protection by UNICEF was warmly received by national and provincial authorities, who expressed enthusiasm and eagerness for its potential.

Ideally, UNICEF protection through government partners should identify a few key “national” level relationships, on which to base activities around the country. The Ministry of Justice is the most obvious. In Burundi, however, the military’s role in many of the tasks normally conducted by the police means that contact with the Ministry of Defence is also essential. In contrast, the independence of Provincial Governors from Bujumbura means that a close relationship with the Ministry of the Interior is not necessarily essential, and contacts with the administrative sector of Government are best made at the Provincial level.

**Non-Governmental Organizations**

The term “NGO partner” refers to any national or international NGO working with any UNICEF programme in Burundi. In an emergency situation there may be large numbers of organizations providing various forms of assistance. Organizations might, for example, specialize in providing medical care to internally displaced persons, housing for refugees, or economic development programmes for women. The work of these organizations has a “human rights” character in that they focus on improving the situation of a group of human beings – improvements that can invariably be linked to a number of internationally recognised human rights. However, these organizations are rarely able to react to human rights violations in the course of their work, mainly because this would interfere with their humanitarian assistance objectives.

Some NGOs, such as Médecins Sans Frontières (MSF) and Save the Children, have veered towards greater human rights sensitivity and activism. These are the exception in the humanitarian world where organizations, both NGO and UN, do not make the provision of assistance conditional or otherwise dependent upon respect of human rights by authorities.

However, the universal moral force of child rights, and the legal weight of the Convention on the Rights of the Child, provide a solid basis for organizations working on behalf of children to introduce a “rights” perspective to their work. It was easier in Burundi for UNICEF to ask an international NGO to work within the CRC framework, than for example, to ask that same NGO to work within the framework of the International Covenant on Civil and Political Rights, an action which may have led to its removal from the country.

Protection through national NGO partners is distinct from protection through the government. However, the Protection Officers should seek to bring national NGOs into a permanent structure of consultation and co-ordination with the government. The combination of government and national NGO protection activities is a vital long-term relationship, which will replace UNICEF’s protection activities when these are withdrawn. UNICEF protection might, in particular, focus on the role of national human rights organizations, or the media, as national partners alongside the authorities.

**4.4 CONCLUSIONS ON THE UNICEF APPROACH IN BURUNDI**

**What is Child Rights Protection?**

Our first task on reporting for work in Bujumbura was to explain why the two UNICEF Protection Officers were there. Protection Officers with UNHCR were intrigued to find UNICEF versions in their midst, and were curious to know what this meant. Staff with the UN Human Rights Field Operation and with international NGOs were more easily accepting of the human rights role of a UNICEF staff member –
perhaps because the use of the title “Protection Officer” was not one that borrowed from their terminology. The authorities, both national and provincial, waited patiently to see what this entailed in practice. And some UNICEF colleagues mistook us for extra ‘Security Officers’.

This general uncertainty demonstrates that few people, inside or outside the organization, associated UNICEF with the protection of children’s rights. For many UN colleagues it was the actual “protection” element that came as a surprise, implying some additional form of action new to UNICEF and which required an explanation.

UNICEF partners would seek to “place” protection in the familiar structure of the organization. They would ask if Protection was a UNICEF Programme in its own right, or if it was a section within a Programme – and if so, which Programme? Unfortunately, the answers were deceptive.

Protection was created as a section of the Information Programme within the UNICEF Burundi structure. For UNICEF programme staff and partners alike, it seemed that Child Rights Protection was a new element of the overall Information Programme, and would focus on a particular use of information regarding children’s rights. Logically, how could Protection possibly be broader than the programme of which it was a part? The various Programme Coordinators were not immediately sure themselves where exactly Protection should be positioned with regard to their work.

In fact, Protection was placed within the Information Programme because both were seen as cross-cutting and would affect, in some way, each of the other programmes. If Protection had been established as a programme in itself it would have created major financial and administrative demands. Each UNICEF Programme plans, obtains, and manages its own annual budget – used to finance most staff positions and activities within the programme. The creation of an additional programme would imply also that a senior (and expensive) staff member would be needed to run it. Placing Protection within the Information Programme allowed a single financial structure and Programme Head to manage two different but related activities.

Successes and limitations – Protection Officers

During the first few months, the rate of progress made by the UNICEF Protection Officers was determined by the need to first define the objectives of protection, and the methodology through which these were to be achieved. Available headquarters documents and Executive Board reports affirmed the need for a rights approach but provided only few indications of strategies or methodologies. The Protection Officers devoted significant time during their first two months to accompanying UNICEF Programme Officers on their visits to the field in an effort to become familiar with the work of the programmes, the problems facing these programmes, and the overall situation of children. Equal amounts of time were spent meeting with Government, UN, NGO, and local administrative partners regarding their work in support of children, child rights and human rights.

The successful definition of a protection methodology required monitoring of the situation of child rights across the country according to carefully defined criteria. There is no doubting the value of the monitoring conducted and the importance of making one on one contact, however, on a countrywide scale the task was very labour intensive, slow, and daunting.

As information came in, and as news of UNICEF’s protection role spread, it became clear that UNICEF’s lack of a countrywide field presence would require a significant proportion of child rights protection work to be conducted through partners. Emphasis needed to be placed on strengthening such a link. Subsequent months were thus increasingly devoted to developing relationships with partners, and in defining a methodology through which joint protection could be conducted. Again, this was an essential but slow process. Had there existed a pre-defined protection methodology, and if the UNICEF office had already had access to detailed information on the situation of respect for child rights, then Protection would certainly have progressed more rapidly.

Successes and limitations – UNICEF programmes

In Burundi, the Protection Officers attempted to develop a regular relationship with each of the different programmes. Periodic meetings were organised with each Programme Coordinator to discuss the work of the programme and the problems faced. The child rights monitoring initiatives were discussed in detail and each of the Coordinators was individually involved in the development of the reporting structure, with the aim of ensuring that the reports would be as useful as possible to all staff. The Protection Officers repeatedly accompanied programme staff on missions to the field to become familiar with the specific mandate and work of each programme. The Protection Officers were also asked by the UNICEF Representative to participate in the weekly programme meetings, where Coordinators and Protection Officers would exchange information on their current and future work.

In spite of these many coordination mechanisms, however, the Protection Officers made only limited progress in introducing a protection approach to the programmes. Programme Officers made time for discussions and showed interest when the subject was presented, but, with some notable exceptions, would then wait for practical suggestions from the Protection Officers as to how child rights and specifically protection could be better linked to their work.

It is perhaps correct that the burden of defining protection initiatives should fall squarely on the Protection Officers. However, this means that the Protection Officers must first acquire a solid understanding of the work of each of the programmes and the problems they encounter – which requires considerable time. Further, placing so much emphasis on the Protection Officers defeats one of the objects of conducting protection through UNICEF programmes, i.e. that the Programme Officers themselves should be fully aware and conscious of child rights and protection, and able to maintain these notions prominently in view during all of their normal programme activity.

One of the first steps of UNICEF Protection, in the field and in headquarters, should be to conduct training workshops for all of the programme staff on children’s rights, other relevant elements of human rights and international humanitarian law, and on protection methodology. In parallel, UNICEF Protection staff should themselves become familiar with the mandate, procedures and challenges common to each of the UNICEF Programmes. At a secondary stage “protection programme strategies” should be developed and documented for each programme through collaboration between the “trained” Protection and Programme staff.

Beyond these preparatory activities, Protection Officers should establish a routine of weekly contacts with individual Programme
Cooperation with national NGOs was also complicated by the sharp imbalance in resources. Contact with UNICEF, for most organizations, was seen as a step to more regular funding and the Protection Officers had to choose their partners with care. International NGOs were keen to work more closely with UNICEF on specific child rights problems. Concerned by the connotations of the words “monitoring” and “reporting” in a rights context, they were nevertheless willing to participate in UNICEF’s proposed Child Rights Protection Network and reporting process, provided that these were transparent mechanisms in which the authorities were also involved.

As with the programmes, the Protection Officers attempted to establish a routine of regular contacts. If limited progress was made this was due essentially to the work and time restrictions placed upon them. Ideally, the Protection Officers, working full-time on protection issues, would divide contacts with government and NGOs between them. The objectives of those contacts should be well defined. Although not achieved in Burundi, a useful division would have selected:
- a reduced number of partners who would share in UNICEF’s monitoring of child rights – such as UN partners, international NGOs with a countywide field presence and local government protection committees
- a similarly reduced number of partners to implement a few major protection projects such as national governments, local government, and national NGOs
- a much larger number of partners who would form a part of a Child Rights Protection Network, who would receive the information published in the protection reports, and who would help in addressing specific cases referred to them by UNICEF.

UN Overlap and Protection Gaps
Co-operation between UN agencies in the area of human and child rights protection was very good. There were, however, several occasions where questions of mandate and responsibility were raised, and which provide useful examples of some of the problems that can emerge in complex emergencies as an increasing number of organizations take a human rights approach to their work.

UNICEF’s mandate, as has been shown, is essentially to provide assistance and protection to refugees – by definition people who are outside their own country. The emerging UNICEF Protection mandate is to seek the practical respect of the rights of children.

The unaccompanied Burundian refugee children mentioned earlier, for example, were stranded in refugee camps on the DRC side of the Rwanda (Bukavu area) and Burundi (Uvira area) borders. They received assistance over many months from a consortium of UNHCR, UNICEF, WFP, and NGO assistance. Throughout 1997 frequent discussions were held in Bujumbura about their future. Attempts to trace their families progressed extremely slowly, and many were being exploited as house servants in the DRC. UNICEF was particularly keen for the children to be repatriated to Burundi, and for family tracing to continue once they were in the country.

UNHCR staff, however, during much of 1997 were under
instructions not to facilitate repatriation into Burundi – and particu-
larly not to western Burundi. UNHCR staff in Bujumbura did not
consider it to be safe to facilitate the repatriation of unaccompanied
children to the Bujumbura, Cibitoke and Bubanza, and Western
Burundi provinces. While adult refugees can choose to repatriate
when they want, regardless of the assistance they may or may not
receive, UACs are obviously less able to do so.

The key point that emerged from this process, from a method-
ological point of view, was the question of competence and mandate
responsibility for Burundian children, 10 or 20 kilometres beyond the
border. As refugees, should UNHCR make the principal decisions on
their behalf, or, as children on the borders of their own country,
should UNICEF make the protection decisions? Uncertainties with
regard to protection issues can also emerge where no UN agency
believes that a problem falls into its mandate, and a gap is left in
the protection available.

Internally displaced persons (IDPs)
The most obvious rights protection gap in Burundi is related to the
protection of internally displaced persons (IDPs) – of whom only for-
mer refugees in the process of returning (returnees) fall under the pro-
tective mandate of UNHCR. The international defence of the rights
of IDPs in Burundi was essentially limited to private discussions with
authorities, occasional public statements by UN agencies, bilateral
pressure from interested countries, and the reports of external human
rights organizations such as Amnesty International and Human
Rights Watch. Just to gain access to groups of regrouped or displaced
persons, for the assessment of health or other needs, UNICEF staff
would often have to obtain written permission from the Governor of
a Province. If the Governor happened to be away during the UNICEF
visit, then access to a given camp would be denied and no assistance
could be provided. The populations of the camps had no role in the
decision process whatsoever.

The UN protection role on behalf of IDPs is a major discussion
in itself, and beyond the scope of this document.25 In the context of
UNICEF’s protection of child rights, protection must certainly
cover IDP children. However, providing protection to IDP children
cannot be divided from the need for a protection of IDPs in general.
Ideally, such protection should be provided for by a mixture of host
Government action, and UNHCR, UNICEF, and OHCHR efforts –
with additional roles for agencies such as WFP. UNHCR should con-
centrate on humanitarian assistance of the same type that it provides
to returnees – but without the civil and political rights element.
UNICEF should provide humanitarian assistance according to its
normal mandate and also address all child rights protection issues.
And OHCHR should monitor the role of the host Government author-
ities and address issues of general human rights protection, linking
with UNICEF’s child rights role wherever necessary. The role of
these agencies should be provided for in a binding international legal
instrument relevant to IDPs, and should be conditional to some
Government approval, while also imposing strict rules on
Governments to prevent any abuse of this conditionality.

Specific cases
A second example of gaps in protection mandates concerns the group
of unaccompanied children identified in Bujumbura towards the end
of 1997 who had not official identification papers and were in the
midst of complex, possibly illegal, adoption procedures. As the case
involved a cross border issue, and would ostensibly require the legal
representation of the children in Burundi, and family tracing activi-
ties in the DRC, the UNICEF Protection Officers referred the case to
UNHCR Protection staff. The UNHCR personnel replied, however,
that cases of adoption were not their speciality and that UNICEF; as
the lead agency for children, should take responsibility for the case.

Ideally, there should be no contradiction between UN agencies
over questions of mandate responsibility. Their analyses of a situation
and of the best interests of the children concerned should be based on
the same information and perspectives, and should come to the same
conclusions. In defining UNICEF protection, efforts must be made to
define the points at which UNICEF’s protection mandate links with
that of partner agencies.

Six Points of Progress – and Three Key Problems
Significant progress was made in laying the groundwork for child
rights protection in Burundi, most notably in:
- encouraging the Government to produce its “Initial Report on
  Implementation of the Convention on the Rights of the Child”
- working with government ministries
- initiating contacts with provincial governors
- establishing provincial child rights committees
- involving provincial judicial authorities in the situation of child
  rights
- developing contacts with national and international NGOs, and
  with UN agencies.

However, UNICEF’s protection work in Burundi has, so far, been
unable to achieve the potential that it promised in its first few months.
In particular, the progress made has not always resulted in an actual
improvement of respect for children’s rights. The departure of one of
the Protection Officers cut the activities with international NGOs and
UN agencies aimed at developing a protection network, and made it
impossible to continue regular protection monitoring and reporting.
The remaining Protection Officer has been obliged to undertake other
activities as well as protection, thus dividing her time, and financial
restrictions have limited the activities that could be carried out.

Three Key Problems
The various constraints can be summarised as three key problems:
- there is a need for a clear definition of UNICEF’s protection man-
date and objectives and, subsequently the development of protec-
tion methodology based on those definitions
- some UN partners can fulfill a special role in child rights protection,
  and it is important to establish a common UN approach to child
  rights protection
- the protection of children’s rights is indivisible from that of human
  rights in general. UNICEF’s child rights protection, beyond being
  part of a UN child rights protection, must also be integrated into an
  overall UN protection of human rights strategy.

25 For a thorough discussion, see “The protection gap in the international protection of
internally displaced persons,” Stephanie Kleine-Ahlbrandt, Institut des Hautes Etudes
5. IMPLICATIONS FOR UNICEF / UN PROTECTION OF CHILD RIGHTS

UNICEF protection of children’s rights in situations of armed conflict should be conducted as an integral part of United Nations efforts to protect human rights. UNICEF not only has a vital role to play in such UN efforts, but its protection of child rights cannot be fully effective without a wider UN approach.

UNICEF provides the strongest UN basis for child rights protection in the field – a role recognised by many. However, this role raises many questions, particularly in a situation of conflict. Even UNICEF’s use of the term “protection” in connection with its child rights work has led to debate within the organization and within partner UN agencies – such as the UN High Commissioner for Refugees (UNHCR) – which also have a protection role. There has been particular concern about potential contradictions between UNICEF’s development mandate – with its requirement for close relationships with national governments – and a rights protection approach. Given that governments are often implicated in child rights violations, doubts have been expressed as to UNICEF’s ability to pursue its development objectives and conduct active protection at the same time.

There are also substantive issues concerning the definition of UNICEF rights protection activities, how they are to achieve their protection objectives, and the legal or other grounds on which they are to be based. Organizations engaging in practical rights protection in the field must base their efforts on a suitable mandate; the type and methodology of protection activities must be well defined; the activities must correspond with the rights violations they are trying to address; and protection must focus on appropriate rights with an internationally accepted legal basis.

Child rights protection goes far beyond the mandate of any one organization, including UNICEF. In particular, the respect of child rights cannot be divided from the overall respect of human rights – and child rights cannot be protected without also seeking to protect certain more general human rights. This essential consideration demands that UNICEF child rights protection focus not only on developing its own protection efforts but also on strengthening those of key UN partners. UNICEF’s protection should thus be focused not only “internally” on its own activities, but also “outwardly” on the work of those partners. UNICEF should, for example, be actively advocating for the presence of UN human rights field operations in countries where child rights are at risk, ensuring that child rights are integrated into the mandates of these operations, and encouraging their fund-raising efforts.

UNICEF should also take the lead on creating greater awareness of the Child Rights Dynamic – the series of factors thought to have an influence on the child rights situation in a particular country – and in creating a common perspective for UN Child Rights Protection.

Problems Facing a UN Rights Protection Role

The notion of a “practical protection” of the rights of nationals within their country by an inter-governmental organization, such as UNICEF or by the UN in general, raises significant problems. Given that national governments carry the main responsibility for protecting the rights of their nationals, a UN human rights protection role can raise concerns for national sovereignty, responsibility and accountability. These issues are aggravated in situations of armed conflict where government sovereignty is challenged by the presence of armed opposition groups. Where these groups have an influence on respect for human and child rights, UN protection may need to assess their possible human rights responsibilities while avoiding any recognition of these groups which might diminish State sovereignty, responsibility or accountability.

The practical protection of rights in a situation of conflict is rendered more difficult by the very nature of conflict situations. The problems include access to regions or population groups, limited information, the large numbers of persons in need of protection, a lack of resources, and chronic insecurity. Protection methodology must develop within these constraints while remaining focused on a genuine and useful protection of rights.

5.1 MANDATES

A definition of protection cannot be complete without being placed in the context of an organization’s mandate and the activities to be based upon that mandate. UNICEF’s mandate to conduct protection, for example, is markedly different from that of its nearest partners and a comparison helps to illustrate better UNICEF’s protection role, its extent and its limits.

UNICEF’S Protection Mandate

A moral mandate

UNICEF’s move towards the protection of children’s rights has been made in response to changing circumstances, rather than a specifically altered mandate. It is an interpretation of UNICEF’s vocation – its moral mandate – in a changing context, which provides the basis for this change in focus. Following this evolving interpretation of UNICEF’s role, the organization’s Mission Statement has been altered to reflect the new rights protection approach.

The organization’s moral mandate, coupled with the universal nature of child rights, now provides a firm basis for protection activities, so that UNICEF is less dependent upon a specific mandate providing, for example, access to a place of detention. UNICEF’s perceived role is well illustrated by the positive comments made by each country presenting Reports on Implementation of the CRC to the Committee on the Rights of the Child. States see UNICEF as fulfilling an essential role in helping them to implement the Convention.

Further, UNICEF is often present in a country for many years...
prior to a conflict, and inspires some trust among populations, governments and opposition groups alike. The organization does not arrive with the onset of an emergency, but shows commitment to the long-term development of a country and its people. UNICEF is a major channel for aid to infrastructure in the areas of education, water, and health. And, UNICEF is a major voice, heard and recognised throughout the world. This means that, even in a crisis, UNICEF may be able to carry out activities requiring access to certain locations on the basis of its reputation and local standing – rather than on a specific rights protection role provided for in an international instrument.

As well as providing a basis for its protection role, UNICEF’s moral mandate helps to characterise and define the nature of UNICEF Protection of Child Rights, and the activities which might be undertaken.

In Burundi, for example, UNICEF made efforts to help a number of children in detention. Visits were made to child detainees and discussions were held with both the children and the authorities about their conditions of detention and the respect of their civil and political rights. In several instances the children were released shortly afterwards. UNICEF had no legal mandate providing access to children in detention, nor any formal role with regard to conditions of detention and/or the respect of legal guarantees of those children. Nevertheless, access was granted very rapidly by the authorities who took relatively prompt action to address alleged violations of the children’s rights. This freedom of movement was granted to UNICEF staff because of the image and perceived role of the organization in Burundi, and indeed locally in particular provinces.

Members of the High Commissioner for Human Rights Field Operation in Burundi do not enjoy a similar image – built up over years of presence in a country – and operate with less freedom. Although they have the legal right of access inscribed into their mandate, the Government is wary of the Operation’s mandate to report on human rights violations.

In addition, the presence of national staff at senior levels in UNICEF country offices ensures that UNICEF remains close to current issues and problems. While it is more appropriate to use international staff for certain human rights related work, national staff members have a more profound understanding of the situation of children in their country. They are committed to long-term solutions, and are sensitive to issues of culture and local conceptions of human rights. Most importantly, national staff members remain in their posts for many years providing a continuity which international staff on short-term contracts do not bring with them. UNICEF’s balanced use of national and international staff can maximise certain forms of protection.

An official mandate

The General Assembly resolution that created UNICEF on 11 December 1946, Resolution 57 (I), provided the organization with a mandate far broader than those of its partner organizations, covering every major aspect of a child’s existence. The organization’s sources of funding and guidelines for spending funds are equally broad so that UNICEF is free from many of the restrictions that limit some of its partners. UNICEF’s current Mission Statement stresses the organization’s commitment to the protection of children’s rights, including “special protection” for child victims of war.

However, beyond its traditional programmes, and in situations of armed conflict, UNICEF’s protection mandate is very different, and more restrictive than those of its immediate partners:

1. In comparison with other organizations such as ICRC, OHCHR and UNHCR, UNICEF’s mandate for the protection of children’s rights does not benefit from the same legal provisions regarding, for example, access and freedom of movement throughout a territory in conflict.

2. UNICEF does not have the same wide reporting mandate common to the field operation of OHCHR. UNICEF’s “Standard Basic Cooperation Agreement” with host governments is limited to protection through the provision of certain assistance and services. Article XVI (1.b) states that UNICEF (and associated) personnel are entitled to “unimpeded access within the country” but limits this to “sites of co-operation activities, and to the extent necessary for the implementation of programmes of co-operation”.

References to UNICEF in the Convention on the Rights of the Child (CRC) differ from those included in the Convention relating to the Status of Refugees or the Fourth Geneva Convention, with regard to UNHCR or ICRC respectively. Article 45 of the CRC states that UNICEF and other UN entities “shall be entitled to be represented at the consideration [before the Committee on the Rights of the Child] of the implementation of . . . provisions of the present Convention”. Article 45 goes on to state that UNICEF may be invited by the Committee to provide expert advice and to submit reports on implementation of the Convention, and that States Parties may request (via the Committee) expert advice from UNICEF.

The differences in mandate, and the fact that there is no explicit mention of a UNICEF protection role in an international legal instrument, does not mean that UNICEF cannot seek to protect children’s rights. On the contrary, UNICEF’s specific Protection will draw its strength from these distinctions. The differences do, however, influence the methodology and activities through which UNICEF can seek to achieve such protection.

The distinctions between the rights protection work of UNICEF and partner organizations should not be seen as limitations, but as simple definitions of the direction of UNICEF protection, and indeed the character of protection to be provided.

Potential Limits on UNICEF’s Protection

The apparent dependency of UNICEF Protection upon a less formal mandate than those of its partners raises an important concern. Whenever an organization begins to address human rights problems in an environment in which it is dependent upon the authorities (and sometimes, therefore, the authors of the violations) for permission to address those concerns, there is the risk of compromising human rights standards and the work of other organizations.

To give a specific example – but one which is true for many related situations: ICRC is the main organization working with persons in detention in situations of armed conflict, and is present in country X, currently in the throes of a civil war. A second organization is also working in country X and wishes to help children reportedly detained under appalling conditions in the capital city. This organization has the material resources to help the children but no legal authority to enter places of detention. It must, therefore, ask the Government for permission. The Government agrees to allow the organization’s staff to work in the detention centres on the conditions...
that they visit only on days pre-arranged by the Government, and only visit specific places of detention. The Government also requires the organization to make public statements to international journalists attesting to the Government's good will and efforts to improve the situation of children in detention. The organization accepts, on the basis that at least some children in detention will receive assistance.

By doing so the organization may be implicitly accepting the detention conditions and treatment imposed by the Government on the child detainees who remain hidden. The organization may also have compromised the position of the ICRC which generally refuses to work in a place of detention unless its standard rules of operation are respected – complete and unconditional access, and evidence of overall efforts by the authorities to respect minimum standards. Its refusal to work in detention centres can be damaging to a government's international image and can be used as leverage in negotiating access to detainees. If, however, another organization is already present in the detention facilities and is making press statements on the good will of the Government, there will be substantially less pressure on the Government to comply with minimum standards or with ICRC's rules of operation.

This shows that there can be a certain risk for an organization, with the best of good will, to work in areas to which it has no automatic legal mandate to function, so that it is dependant upon the discretion of authorities, who may demand certain concessions. In this respect, UNICEF's child rights protection must tread carefully, and work in close collaboration with partner organizations.

**Attitudes and Expectations Towards UNICEF's Protection Role**

The attitudes and expectations towards UNICEF Protection in the field, on the part of UNICEF staff members, UN sister agencies, other partner organizations, host governments, and donor countries will all influence the nature of activities that are undertaken.

**... within UNICEF**

Attitudes and expectations within UNICEF are perhaps the least clear and the least predictable. A shift in emphasis always implies shifts in responsibility and in the prominence of certain sections. Some staff may feel that the organization should not be moving in this direction at all. There are many people who see UNICEF exclusively as a development organization and have resisted the organization’s move into emergency situations. In fact, UNICEF has not so much moved into emergency situations as continued to work right through them, rather than withdrawing and waiting until the emergency is over and development can begin. It is, in a sense, re-embracing the original role for which it was created.

There is perhaps a risk that UNICEF will lose some of its development character. The debate on the merging of emergency humanitarian aid and development aid has highlighted the fact that many “emergencies” can last for an entire childhood, so that children must survive and grow in the middle of an emergency. There may be some who see child rights protection as going beyond the mandate of the organization, or, at most, playing a very secondary role to UNICEF's “main” concerns of health, nutrition, education, water, and sanitation.

**... partner organizations**

Partner organizations of all types may be concerned by the potential for further overlap between the mandates of organizations active in situations of conflict. Competition and rivalry can be exacerbated where mandates overlap and staff find themselves implementing the same activities. The first mission of the OHCHR in Rwanda was greeted with considerable scepticism by many partners, who questioned its usefulness and effectiveness during the first six months of its existence, but who later came to appreciate its contribution.

The attitudes and expectations of partners to UNICEF’s rights protection initiative is likely to depend – in the long term – on the effectiveness of the initiatives themselves, the professionalism of the UNICEF rights protection approach, and upon the extent of collaboration developed with those partners.

One particular concern may be related to that of funding. Some organizations are better than others at obtaining financial support for their activities, and partner organizations may worry that funding for their own rights protection capacities may be weakened as yet another rights capacity emerges. There may also be concern that donors will be confused or frustrated by the profusion of rights-based initiatives.

**... donors, other members of the international community and host governments**

The support of donor countries, and of the international community in general, for UNICEF’s child rights protection is essential. Leaving aside the fact that donor country contributions may be needed to fund activities, the political support of interested governments will be an important weight behind protection efforts, and one that UNICEF can use to reinforce its work in countries in conflict. Foreign governments that show an interest in countries in conflict, and donors in particular, like to influence the general strategies of UN and NGO field presences.

The introduction of a human rights approach by UNICEF to some of its work will need to be clearly explained to governments and donor organizations. They will wish, in particular, to see how child rights protection activities will be linked with overall human rights efforts, and must be sure of the long term benefits of such protection work. This is just one reason why UNICEF’s protection objectives and methodology need to be well defined and well coordinated with partner agencies.

The attitudes and expectations of host governments will vary. Host governments should nevertheless welcome a UNICEF rights protection initiative. UNICEF is usually a trusted partner of government and protection can only help governments to fulfil their obligations. Of course, where governments specifically violate rights there may be a temptation for UNICEF field missions to avoid confrontation by avoiding any criticism.

**Mandates of Other Agencies**

The UN High Commissioner for Refugees

Article 1 of the Statute of the Office of UNHCR states: “The (UNHCR) . . . shall assume the function of providing international protection . . . to refugees . . . and of seeking permanent solutions to the problems of refugees by assisting governments and . . . private

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\*Adopted under General Assembly resolution 428 (v) 14 December 1950.\*
organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities."

The Convention relating to the Status of Refugees provides in its preamble: “Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognising that the effective coordination of measures taken to deal with this problem will depend upon the cooperation of States with the High Commissioner.”

Article 35.1 states: “The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.” Article 35.2 contains an obligation on States Parties to provide certain information to UNHCR, relative to refugees.

As a part of its role of supervising international conventions, and of providing “international protection” to refugees – including in situations of conflict – the UNHCR addresses problems related to the rights to life and liberty of refugees, problems of freedom of movement, access to humanitarian assistance, to employment, education, and health services. UNHCR sometimes establishes and manages refugee camps, monitors the return of refugees to their countries of origin, and may visit refugees who have been detained in prison, among many other activities.

The Office of the High Commissioner for Human Rights

The mandate of the High Commissioner for Human Rights (OHCHR) is defined in General Assembly Resolution 48/141, of 20 December 1993. Field Operations managed by OHCHR, however, function not so much on the basis of the High Commissioner’s mandate, as on a specific mandate negotiated by the High Commissioner’s office with the host Government of a country in which a human rights operation is to be initiated.

UN Human Rights Officers will typically: enter prisons to monitor the treatment of detainees, the conditions of detention and the respect of judicial guarantees; conduct investigations of alleged violations of human rights; report to the High Commissioner (and often the host Government) on human rights violations; and seek to address those violations through a mixture of advocacy, investigation, and reporting. Human rights operations will also very often undertake some form of assistance to national judicial systems, promotion of human rights, training of military, police, or judicial officials, and other activities related to the prevention of violations.

Investigations of human rights violations can involve a visit by Human Rights Officers to the scene of a reported violation, for example a massacre site, where they will note the identities and numbers of victims, and of the apparent causes of death. They will interview survivors and witnesses, and perhaps also alleged perpetrators. Where the violation is thought to have been committed by members of the authorities, the Field Operation will usually request a response from the authorities, ask that an investigation be carried out to identify the authors of the massacre, and will then monitor the efforts of the authorities to bring the perpetrators to justice.

The International Committee of the Red Cross

ICRC derives its mandate, and the legal basis for its activities, from two main sources: the Four Geneva Conventions and their Additional Protocols and the “Statutes of the International Red Cross and Red Crescent Movement.” Together, these two sources provide ICRC with a mandate from the international community to monitor the application of international humanitarian law by the parties to a conflict. Decisions taken by the Red Cross “International Conference”, relative to specific ICRC interventions, provide a further mandate basis for activities in particular situations. Specifically, ICRC bases its action during international armed conflicts on the Four Geneva Conventions and Additional Protocol I; and during internal armed conflicts on Article 3, common to the Four Geneva Conventions, and Additional Protocol II.

Part IV of the 4th Geneva Convention (on the ‘protection of civilian persons in time of war’) relative to the “Execution of the Convention” states in Article 143 that the delegates of the ICRC shall enjoy the same prerogatives as the Representatives or delegates of Protecting Powers regarding access to persons protected by the Convention. The prerogatives include: “permission to go all places where protected persons are, particularly to places of internment, detention and work”; the ability to “interview [protected persons] without witnesses”; and “full liberty to select places” to be visited.

The Statutes of the International Red Cross and Red Crescent Movement provide a further basis for action. Article 2.1 provides: “The States Parties to the Geneva Conventions cooperate with the components of the [Red Cross] Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.”

Article 5.2.c) provides that the ICRC may work towards the “faithful application of international humanitarian law applicable in armed conflicts” and should “take cognizance of any complaints based on alleged breaches of that law.” Article 5.2.d) states that ICRC should “endeavour at all times . . . to ensure the protection of and assistance to military and civilian victims” of armed conflicts. The Statutes make particular reference to the “specifically neutral and independent” (Article 5.3) role of ICRC – important characteristics of the organization, and which are reflected in the freedom of movement and access assured it. ICRC’s mandate enables it to take up issues with States and parties to a conflict, without conferring any formal recognition on these authorities, thus addressing a major problem encountered by UNICEF and other UN agencies in the field.

Key Characteristics of These Different Mandates

In conflict situations, all three of the above organizations play a major role in preventing and addressing human rights violations, involving:

- visits on site to the scenes of human rights violations or location of protected persons – be they returnee camps, massacre sites, or places of detention
- direct and detailed contact with the victims of violations and protected persons
- a certain implication in the procedures of national authorities towards addressing violations

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23 Article II of the amending Protocol relating to the Status of Refugees – entry into force 4 October 1967 – confirms the Preamble and carries forward the provisions of Article 35, so that they remain applicable today.

24 As adopted by the 25th International Conference of the Red Cross at Geneva in October 1986. Note, however, that the Statutes were updated in July 1998.
• a tendency to ‘oversee’ or ‘monitor’ the role of the authorities (and armed opposition groups in the case of the ICRC) in ensuring the respect of rights.

All of the organizations have (or obtain) mandates which provide them with an explicit responsibility either towards a set group of a population or towards certain rights, and which implies a special status in the relationship with governments – and parties to a conflict (for the ICRC). In the case of the ICRC and OHCHR the mandate also usually provides for a certain freedom of access to and movement around a country – again implying a special relationship with authorities.

Capacity
In addition to these references to mandate, it is also useful to refer to capacity. UNHCR, the ICRC, and OHCHR, in their various field presences, all have a significant number of international staff members working towards the protection of rights. The OHCHR Human Rights Field Operation to Rwanda at one point had an international staff of over 140 people, while ICRC had up to 160 delegates and other international staff. UNICEF Rwanda had just four international staff working as CEDC officers, and in Burundi there were just two Protection Officers.

The fact that each of these organizations use international staff for their human rights related activities is also of significance. National staff will usually be far more familiar with a situation of human rights abuse than expatriates. Nevertheless, however competent and experienced those national staff are, international organizations tend to place responsibility for human rights work on expatriate staff members who can claim greater neutrality in their highly sensitive work, and who are safer from any possible retribution.

5.2 A CHILD RIGHTS DYNAMIC
The term Child Rights Dynamic (CRD) refers to a series of factors thought to have an influence on the child rights situation in a given geographical space – such as a single country. When trying to protect rights in the case of a single human or child rights abuse it may not be important to know or understand the different factors which have led to the specific violation. However, when trying to protect many child rights violations in an entire country, and in a situation of conflict, it is essential to understand how and why violations occur. The notion of a Child Rights Dynamic is intended to fill this need and to facilitate a United Nations protection of rights in practice. It should be UNICEF’s responsibility to establish and update country CRDs.

CRD Analysis …
… to identify the causes of violations
A violation of human rights can be seen as a single action or event involving only the victim – for example, the death of an internally displaced child following acute diarrhoea. A human rights violation can also be seen as the end result of a whole range of different influences. A child may die of diarrhoea because she was obliged to drink dirty water – the result of the destruction of clean water distribution systems by armed groups; loss of access to clean water as a result of military restrictions on freedom of movement, and a decision by aid organizations not to construct wells in camps for internally displaced people.

These contributing factors would be included in a CRD analysis. A CRD analysis can be applied to the situation of children across an entire country, including information on all the key internal and external actors who may influence factors within the Dynamic. It shows that any effective attempt to protect child rights must address several of the key elements within the dynamic, some of which may go far beyond the violation itself, and that a number of these elements may be beyond the mandate and resources of any single organization.

A principal focus of UNICEF protection must be to work with potential partners to address those elements of a Child Rights Dynamic which are important in a situation, but which are beyond UNICEF’s reach.

… to identify key partners for child rights
Any actor with the potential to positively influence one of the key elements of the CRD can fill a role in child rights protection. There are, therefore, many potential partners whose activities might not usually be related to children but who can nevertheless make an important contribution to the protection of children’s rights. The particular advantage of a CRD perspective is that it illustrates the important role of actors who would not normally see themselves as having a protection role at all, and who would not normally consider the situation of children when taking decisions on their future activities.

… to act as a standard UN protection tool
One major limitation on UNICEF’s ability to harness the protection role of different UN actors is the lack of understanding and communication on rights issues, and between potential partners. In practice there are two key problems:

• UN partners with mandates that do not directly include children do not usually have access to information on the situation of respect for children’s rights in a country, the potential for their activities to affect the respect of children’s rights, or the protection objectives of UNICEF

• UNICEF staff do not usually have adequate information on the planned activities of UN partner agencies and the potential impact of those activities on children’s rights.

The development of a written CRD analysis for a particular country will provide a useful ‘tool’ with which to explain to the various actors how their activities influence, or could influence, respect for child rights. Ideally, every UN agency functioning in a situation of conflict would refer to the country CRD document on a systematic basis, so that it becomes as important as their own mandate specific analysis of the situation. If every UN agency were to refer to the same analysis of the situation of children’s rights, taking into account the role of all the UN components, overall UN protection of child rights would improve significantly.

The Contents of a Child Rights Dynamic
Careful selection of the information to be included in a CRD is crucial. The basic idea is that any organization seeking to protect rights in a situation in which they are being violated – as opposed to simply
reporting on them – must look not only at the violations themselves but also at the surrounding environment. Four different groups of information can be included.

- **The respect of children’s rights**: information on the respect or violation of children’s rights, focussing on certain rights which are particularly vulnerable to abuse and are of special relevance to the local situation. Positive respect of child rights should be highlighted, asking why certain rights are successfully protected in certain areas.

- **Characteristics of the conflict and physical environment**: information on the conflict and environment, including the training levels of combatants which might influence their respect of humanitarian law, their weapons, their strategies, the level of conflict intensity, the extent to which infrastructure is damaged, and the population’s freedom of movement.

- **Groups of people and organizations**: information on the role and capacity of key actors, such as the Government and Provincial authorities, the various rebel groups, families and local communities, civil society, media, and international humanitarian organizations. The list should include external actors such as political opposition groups, the hosts to peace talks, the UN Security Council, the Secretary General, relevant Special Rapporteurs and Special Representatives, the international media, and international donor countries and organizations.

- **Community characteristics**: information on factors which increase understanding of the roles of different groups and their interactions, including the strength of normal local rights protection mechanisms, local conceptions of rights, and the level of education among the perpetrators of violations.

Some suggestions are made in the following chapter on how a Child Rights Dynamic report could be prepared and maintained in practice and how it would feed into a common perspective for UN Child Rights Protection and into UN Child Rights Impact Studies.

### 5.3 A COMMON PERSPECTIVE FOR CHILD RIGHTS PROTECTION

While UNICEF has a certain vocation and capacity to protect children’s rights in situations of armed conflict, it cannot address the whole range of factors within the Child Rights Dynamic. UNICEF Protection may be unable, for example, to physically investigate gross violations of children’s rights, gain access to local information through a constant and widespread field presence, provide expert assistance to a national judicial system, or make contact with the political representatives of armed opposition groups.

A key element of UNICEF’s protection role must therefore be to encourage the protection role of partners who can address those points – to create a common perspective.

There are limits on the work of all organizations working to address human rights concerns, and particularly so in situations of conflict where there are many additional obstacles to the protection of rights. The OHCHR Human Rights Officers in Burundi, for example, have the mandate to investigate gross violations of human rights, including massacres. They do not, however, have the mandate or resources to address violations experienced by children related to specific health or education problems. They do not have the expertise to address violations that may be specific to other groups, such as returnees. Violations related to the right to identity papers, or the ability to be free to enter and leave the country in circumstances of mass population displacement, require the specialist protection of UNHCR. The problems of returnees often require a cross border response between the country of refuge and the country of return. The OHCHR has no presence or mandate in neighbouring Tanzania or the DRC, while the UNHCR has well established offices in both countries.

However, when returnees are the victims of arbitrary arrest, detention or massacres, UNHCR staff do not have the mandate or expertise to conduct prison visits (in the country of origin) or investigations of massacre sites. These activities are better covered by the OHCHR.

A series of United Nations agencies, including UNICEF, all have mandates of a human rights protection character, but none of them can address the full range of factors that would allow them to effectively accomplish their rights protection role. In contrast, when their mandates are laid side by side, and placed at the disposal of respective partners, a far more effective UN coverage of the different factors in the human/child rights dynamic is visible.

There is an increasing focus throughout the UN on human rights within countries in armed conflict, leading to practical, in-country, initiatives that go beyond a purely humanitarian perspective. This changing focus is reflected in various key documents and initiatives of recent years, and in the work of OHCHR, UNHCR, UNICEF and other UN agencies.

The World Declaration on the Survival, Protection and Development of Children, for example, adopted at the World Summit for Children in September 1990, included a Plan of Action as a framework for more specific national and international undertakings. The Plan of Action urges all UN agencies to contribute to the achievement of the Summit goals and strategies, and UNICEF is urged to assist in analysing and monitoring country and international plans and actions towards this end.

On 31 January 1992, the UN Agenda for Peace was launched – in response to a Security Council meeting of heads of State and Government – to discuss the strengthening of the United Nations role in response to new conflicts. The subsequent report, the “Agenda for Peace”25 by the then UN Secretary General, Boutros Boutros Ghali, included the issue of the coordination of United Nations entities.

On its creation in 1993, the Office of the United Nations High Commissioner for Human Rights (OHCHR)26 was given an extremely broad mandate – of particular relevance to UNICEF’s child rights protection objectives. OHCHR provides support to UN Special Rapporteurs, establishes field presences, makes recommendations to the relevant UN mechanisms on the promotion and protection of all human rights, and coordinates human rights promotion and protection within the United Nations system. UN Secretary General Kofi Annan foresees a strong role for the OHCHR in his reform plans, and as its field operations develop, the organization must become more closely involved in the practical rights protection objectives of its UN partners. It should develop the capacity to provide human rights training to partner agencies, and to complement the work of those agencies, particularly UNICEF.

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The post of Special Representative of the Secretary General (SRSG) for Children in Armed Conflict, recommended by the Machel Report, was formally created in August 1997, and Mr Olara Otunno was subsequently appointed. The impact on the protection of child rights has yet to be seen in practice and the links between the SRSG and key partners must move beyond diplomacy to become operational, requiring equal effort and capacity development on both sides. In particular, the SRSG needs a much closer link to events in the field, ideally through OHCHR and UNICEF Desk Officers who are themselves in direct contact with relevant field staff.

In its response to the Machel Report, the UN General Assembly requested UNICEF, UNHCR and OHCHR to support the implementation of the report, explore ways to contribute more effectively to the protection of children in situations of armed conflict, and to ensure that concerns for the protection of children are fully reflected in UN field operations.

The establishment of UN International Criminal Tribunals for the Former Yugoslavia\(^2\) and for Rwanda\(^3\) has added momentum to calls for the creation of the new permanent International Criminal Court (ICC).\(^4\) While the statute of the court and the definition of the acts that it will be able to prosecute will determine the extent of its protective influence, the ICC has the potential to play a major preventative role in favour of child rights in situations of conflict. However, for it to be effective, the Court will have to rely on various UN structures with a field presence (and possibly other sources) for information.

The existence of the ICC could mean, therefore, that organizations such as UNICEF and OHCHR find it harder to gain access to the victims of rights violations if the perpetrators fear that information may be communicated to the court. A clear relationship between the ICC and UN staff in the field will have to be developed, establishing a single standard applicable in all countries to take pressure off the field staff.

UNHCR has been working hard to redefine its own role in the face of a changing world and the changing nature of warfare. It now faces enormous moral, legal, logistical and financial complications in its efforts to fulfil its mandate to protect refugees – estimated to number 13 million at the end of 1997. The possibilities of permanent resettlement for refugees in host countries faded during the early 1990s with the growing numbers of refugees in need of protection. In consequence, UNHCR has become increasingly concerned with the respect for human rights in their countries of origin. The organization has been searching for ways to address these human rights concerns while remaining within its mandate, and has been involved increasingly in cooperation with the OHCHR and with international NGOs with a judicial or human rights speciality.

Like UNICEF and other organizations, UNHCR was closely involved in the process leading to publication of the Report on the Impact of Armed Conflict on Children (The Machel Report) and has been developing its child protection approach in close collaboration with the Save the Children Alliance. The Action for the Rights of Children (ARC) project is intended to “increase the capacity of UNHCR, government, and NGO field staff to protect and care for children and adolescents in emergency situations” through the use of a series of human rights training modules.

UNHCR is also faced with the growing number of internally displaced persons (IDPs), who face the same risks as refugees but are unable to benefit from the same legal or even material protection because they remain within their own country. They do not, therefore, benefit from international refugee law or, strictly speaking, the assistance of UNHCR, although the General Assembly has asked UNHCR to assist specific populations of IDPs. The efforts of the Representative of the Secretary General for Internally Displaced Persons, Francis Deng, alongside a coalition of interested organizations, has led to the adoption of Guiding Principles on Internal Displacement by the Commission on Human Rights.

The UN Staff College Programme, based in Turin, Italy, is conducting UN Field Co-ordination Workshops intended to improve inter agency coordination around a specific theme – including countries emerging from conflict. Each workshop brings together the senior Representatives of the different UN agencies from several countries and each group of Representatives participate in the workshop as a “country team”, emphasising the need for partnership and complementarity.

The many UNICEF protection activities underway include workshops for UN and NGO partners, organized by the Office of Emergency Programmes, on humanitarian principles and the value of a child rights approach in “complex emergencies”. The UNICEF Executive Board\(^5\) talk of building partnerships with other UN agencies and organizations in the context of steps for the implementation of a UNICEF policy on protection.

### Improving UN Protection for Human and Child Rights

The most concrete efforts at coordination of a UN human rights role have been made at a senior level, involving agreements such as that signed between OHCHR and UNDP. For these efforts at coordination to become practically effective for child rights they must be accompanied by other efforts at a more operational level. The most important step for improved UN protection of human and child rights in situations of conflict could be to address the perspectives of the different UN agencies – on the overall situation to be addressed and on their different mandates.

An organization’s perspective of a situation of conflict is typically seen from the angle of the organization’s own mandate. UN staff defining their strategies and activities will often refer exclusively to their organization’s mandate – and only rarely to the overall human rights mandate embodied in the United Nations Charters. A UNICEF staff member, for example, may see conflict in terms of problems of access to water, to food, to health care, to education, and in terms of numbers of unaccompanied children. UNHCR staff members, for example, might see a conflict in terms of movements of a population, the location of refugee camps, or security in regions of return.

If UN agencies in the field could develop strategies upon the basis of a common perspective, the combined ability of those agencies to address their mandates would be much stronger. It would help them coordinate their approach to a problem, highlighting ways in which each agency could help its partners. One key element of this common perspective would be the situation of respect for children’s rights.

\(^{27}\) Established by resolutions 908 and 827 of the UN Security Council, adopted on 22 February and 25 May 1995.
There are several complementary ways in which one might begin working towards this ideal. The notion of the Child Rights Dynamic approach discussed earlier is one. Others include: the adoption of a functional human rights focus at the centre or across the range of UN operations in a country in conflict; human rights training for UN personnel; mandate training; improved personnel policies; secondments; and a stronger role for OHCHR.

**Shared Field Offices (outside capital cities)**

The regular physical presence of a UN agency throughout a country in conflict is an important step to rights protection. The maintenance of a regular field presence outside a capital city is, however, expensive and requires considerable time and logistical support. Rather than duplicating a UN presence, one suggestion is that organizations such as OHCHR and UNICEF rely on the field presence of partners – or that each agency provides for a certain number of field presences which can be shared by a partner. In practice, a UNICEF Protection Officer could travel to a particular region and, based in the local UNHCR office, carry out the various protection related activities in the area – developing contacts and establishing a working relationship with local authorities.

**Co-ordinated Funding of UN Rights Protection**

UNICEF country offices should take the lead on coordinating funding proposals for child rights protection, pooling the requirements of partner organizations, particularly the OHCHR field office. Agency headquarters and donors would see that UN human rights efforts are linked both on paper and in practice, and that the success of a UNICEF child rights protection effort might be linked to, for example, funding for a complementary OHCHR human rights presence.

Donors sometimes categorize their spending by organization – so that, for example, X million is reserved for UNICEF, and Y million for WHO. Some organize their funding according to the type of expenditure or to the country where it will be spent. Burundi, Rwanda, and the Great Lakes in general have all been the object of UN Consolidated Appeals. This shows donors that the different projects have a logical thought process behind them, and eases the task of those providing the funds. It is not certain, however, that donors will automatically take to the presentation of funding requests for various human/child rights protection activities presented by several different United Nations agencies in a single country or region.

Some donors prefer to focus on assistance with a particularly high profile issue. Funding is often available, for example, for assistance to child soldiers, street children, and the victims of sexual exploitation, while there may be very little funding for prevention work, or to address the problems of other children affected by armed conflict in a more general manner.

Unfortunately, reductions in the funding available to organizations working in situations of conflict are such that UN agencies often find themselves competing for funds. When individual agencies are faced with staff cuts or reduced capacity they inevitably bid for whatever funding is available. In an ideal world, however, each UN agency would be free to recognize and support the merits of its partners, and each agency would seek to share donor money with those partners with the single objective of better protecting the human rights of persons in conflict situations.

**Common Rights Training for UN Personnel**

Common human rights training is an essential first step for UN staff working in situations of conflict, and especially for Protection Officers. Ideally, all UN humanitarian personnel (including Peacekeepers) should go through training in international human rights and humanitarian law, and in the protection of rights in situations of conflict. Children’s rights should be included in such training. Some progress is being made – UNICEF conducts training for peacekeepers and Junior Professional Officers (JPOs), and the UN Staff College in Turin continues to improve upon the human rights and other training it offers to the trainers of Peacekeepers, JPOs and others throughout the UN system. Ideally, however, training should be country specific and conducted in the country of operations.

In-country training could be conducted by a single team of trainers from UNHCR, OHCHR, UNICEF, and DPKO (Department of Peacekeeping Operations), to name just four. It is essential that UN personnel from different agencies be trained together, and that the human and child rights perspectives of different agencies are covered by those conducting the training as a team. The key is not only to conduct human and child rights training, but to ensure that it is presented and perceived as UN human rights training, as opposed to UNICEF child rights training, OHCHR human rights training, or UNHCR refugee law training.

**Common Rights / Mandate Training for Protection / Human Rights Officers**

Protection Officers from UNHCR and UNICEF, Human Rights Officers from the OHCHR, and relevant staff from OCHA (the UN Office of the Co-ordinator of Humanitarian Affairs) should be trained together more intensively on the mandates of each UN agency from a protection of human/child rights perspective. As well as covering international human and child rights law, such training would highlight the complementary nature of different mandates and show staff how they can help colleagues from different organizations in achieving their mandates. This training should include the basic structure of each organization, its main activities, its reporting process and obligations, and the problems it encounters in the field. It should refer to the various external UN human rights mechanisms that can positively influence the respect of rights.

**Joint UN Human Rights Protection Field Guides**

Joint Field Guides should be developed and written for the use of staff from UN agencies with related mandates, covering:

- the human rights that fall within the mandates of the various agencies
- the links between the different rights violations and between the solutions to those violations in conflict situations
- the mandates and structures of each of these key UN agencies
- the ways in which different UN agency mandates complement each other in practice
- examples of coordination and complementary strategies used in the past.
Rights Impact Studies

Each UN agency operating in a situation of conflict should, at the beginning of its mission, conduct a study of the likely impact of its activities on human rights, child rights and women’s rights. The study should be updated every 6 months. These documents would include brief information on the organization’s projected areas of activity and a rapid analysis of how specific programmes might positively or negatively affect these rights. If these were then circulated between agencies, it would be easier to develop a combined understanding on the overall UN impact on rights. Specialised agencies, such as UNICEF, could then work with individual agencies to see how the positive impacts could be increased and the negative impacts reduced. Organizations without the capacity to conduct such studies could ask staff members from UNICEF or the OHCHR to complete the work.

Making the Best Use of Human Resources

UN child rights protection depends ultimately on the quality and experience of its staff members. Similarly, the future capacity of UN agencies and structures to work together on UN protection of human and child rights in the field will depend upon the ability of individual staff members to communicate with each other, and to combine complementary mandates.

Current economic difficulties within the UN system, however, make it very difficult for the UN to make the best of its human potential. Apart from the training needs mentioned above, current UN system personnel management hinders the organization’s ability to get the best from its staff. While the fundamental problem may be one of a lack of financing, this difficulty obscures the main impact of these personnel arrangements upon the organization’s rights protection work. The ability of UN staff members to work within different elements of the UN system should be the focus of attention.

Inter-agency staff mobility

UN personnel with one agency do not usually have a thorough understanding of partner agencies. Such understanding is vital for the protection of human and child rights where problems are intricately linked and go far beyond the mandate of any individual organization.

In contrast, a UNICEF staff member who has previously worked with OHCHR and UNHCR will understand clearly the mandates, capacities, and strategies of all three organizations. That staff member will be able to work with these partners towards an effective protection of the rights of children, refugees and human beings in general. Ideally, then, junior level staff (those most commonly present in the field) should be given opportunities to work with different UN agencies.

Current job cuts are such that staff try to remain with one agency for as long as possible in the hope of obtaining a permanent post with the particular organization. This gives a staff member a certain priority status (and therefore job security), over and above staff working on short-term contracts. Posts are usually only available to staff members who have worked with an agency continuously for a number of years. Someone who leaves one agency before they have a post to work for another will lose any seniority that has been acquired, effectively moving backwards several years in terms of job security. Some staff are recruited as Consultants for long periods, staying on the margins of the UN for several years.

Career management structures need to be developed within the UN system that break down the divisions between UN agencies, facilitating the transferral of junior and mid level staff from one UN structure to another. This would improve collaboration in the field and would help the UN as a whole to profit from the experience of its staff members. Personnel would be less inclined to see themselves as the members of individual agencies, and friction and competition would be reduced. One strategy might involve a system of secondments.

Secondment of staff members between UN agencies

If staff members from one agency were able to work for short periods of time as staff members of partner agencies, the artificial barriers between these agencies would be rapidly dismantled and UN staff would acquire a far broader perspective of their work. A system of secondment should be developed within the UN system to allow staff members to maintain and add to any acquired seniority while moving between agencies. It is common practice for senior level staff to be seconded from one agency to another while maintaining their original status, but this is rarely applied to more junior staff. It is essential that the UN be able to build up a professional human rights protection capacity at mid and junior levels - a process which needs to be planned from the beginning of an individual’s career and which should involve cross-agency personnel management.

Regular co-ordination between UN agency personnel departments

Regular exchange of information between the personnel departments of the different UN organizations would ensure that staff members from one agency with a good record can be easily recommended for a post with a partner agency. Information on posts should be well circulated. Rosters of available staff should be exchanged between personnel officers and relevant desk officers, and there should be regular meetings to discuss personnel issues between these staff.

Inter-agency Desk Officer co-operation

At a headquarters level, Desk Officers and other staff could undertake working “internships” in partner organizations. For example, Desk Officers with UNHCR might spend two weeks with their corresponding colleagues from the OHCHR, and vice versa. Beyond these internships, Desk Officers from UNHCR, OHCHR, and UNICEF responsible for the same countries should meet regularly to coordinate the UN response to human rights concerns shared by each of the agencies. To date, such coordination has rarely been possible. The OHCHR, for example, has had neither the personnel resources nor the internal structural arrangement that would have facilitated inter-agency Desk Officer coordination. A recent re-structuring has established a system of Desk Officers which should make cooperation and coordination easier. This could be based upon feedback from the field, and should involve an analysis of the situation of human rights abuse from the different perspectives of the various UN agency mandates.

Strengthening the Role of OHCHR

The Office of the High Commissioner for Human Rights (OHCHR) has the broadest UN mandate on respect for human rights and is, in addition, well placed to make contact with the other mechanisms that
can contribute to protection. The presence of an efficient UN human rights field operation in a situation of conflict has the potential to improve the general respect of human rights, serving as an ideal partner to UNICEF child rights protection. The investigatory reporting, assistance, and wide access of typical UN human rights mission mandates can extend UN reach into areas beyond the expertise, capacity and mandate of UNICEF. There are several ways in which this might be accomplished.

UNICEF presence in OHCHR field offices, and OHCHR Child Rights Officers

One of the main limitations of UNICEF’s efforts to protect child rights in Burundi was the concentration of UNICEF staff members in the capital city. In spite of the unusual presence of two UNICEF antennae offices in the provinces of Muyinga and Ruyigi, the Protection Officers remained somewhat isolated from the situation of children in the field. UN human rights operations, in contrast, often have an effective field presence throughout a country of operations. This is the case for some, although not all, of the operations of the OHCHR. Other human rights operations, managed by the UN Department of Peace Keeping Operations, such as those in Haiti, Guatemala, Cambodia, and El Salvador – have had up to 200 staff in the field. To the extent that the OHCHR is likely to gradually assume responsibility for all UN human rights field operations, such a large field presence may well continue under the High Commissioner’s responsibility.

A human rights field presence throughout a country in conflict can provide UNICEF with a child rights presence, producing information on the situation and a response to violations. Through appropriate collaboration, such a presence could devote some of its time to monitoring and investigating violations of children’s rights according to specific UNICEF criteria. UNICEF might need to provide support to the OHCHR Office for such work, both in the provision of logistical assistance such as vehicles, and in the search for appropriate funding.

In future operations, UNICEF could help to provide training for OHCHR Human Rights Officers working on children’s rights. These staff members could, for example, work in daily partnership with a UNICEF Protection Officer based in the capital – providing a field based complement to UNICEF’s capital city based child expertise.

While Human Rights Officers are often familiar with the CRC and violations of a civil and political nature, few are aware of violations related to specific nutritional, water, health, sanitation and education needs. UNICEF, in contrast, has thorough expertise in all of these areas, combined with the capacity to address material problems identified. This expertise can be used to bolster the child rights protection capacity of the OHCHR Field Officers who, in turn, can assist UNICEF in responding to problems – such as those involving massacres or requiring detention visits, or the gathering of information through a major field presence – which are beyond UNICEF’s mandate.

OHCHR Human Rights Officers with each UN agency

There is an argument for the OHCHR to place Human Rights Officers as integral members of partner agencies in many different countries. Such Officers attached, for example, to OCHA, UNDP, UNESCO, UNHCR, UNICEF and WFP in one country or region of operations, could assist each of these agencies in maintaining a specifically human rights perspective on the situation they are addressing. The Officers could help to ensure that each agency shared the same human rights perspective with its partners, and could provide a human rights liaison mechanism between each element of the United Nations’ work in the region.

A small OHCHR component within every major UN field presence

Alternatively, the OHCHR could establish a small component of Human Rights Officers – perhaps just two or three staff members – in every country where the UN is addressing a situation of armed conflict with human rights implications. These staff members could function as OHCHR staff members, but be supported administratively and logistically by a partner UN agency, already established in the country of operations.

At very limited expense (essentially the salaries of staff members), the OHCHR could deploy two or three Human Rights Officers to 20 or so countries with conflict related human rights problems, where they could be given an internal UN human rights reporting mandate. Their principal objectives would be:

● to keep the High Commissioner and the other UN agencies operating in the country informed of the general human rights situation

● to ensure, through their internal reporting, that the UN system maintains a constant human rights perspective during the provision of assistance and the protection of groups such as IDPs and children.

In this way, the High Commissioner for Human Rights could keep track of the evolution of particularly worrying human rights situations. In addition, the various UN agencies operating in potential crisis situations would receive assistance to ensure that their work is conducted through a common understanding of the prevailing Human Rights Dynamic – encouraging greater communication and cooperation between agencies towards the achievement of human rights goals. The Human Rights Officers would work with staff from key UN agencies on a daily basis to ensure that the different efforts correspond to the human rights problems, and are coordinated from a human rights perspective.

The monitoring and reporting work of these Officers would probably need to be internal to the UN to avoid the opposition of national governments. If their work was presented as an internal, positive, and confidential contribution to the authorities concerned, and as an asset to the UN’s overall assistance to the country, their presence might be more readily acceptable to governments. If human rights violations by the government itself were to become more serious, the High Commissioner might then wish to withdraw the Officers in order to be free to make public statements on the situation – at which point the more public mandate of a human rights mission could be negotiated with the authorities.

Regardless of how it is achieved, the UN should have a common and coordinated human rights perspective of every complex emergency in which it is involved. Each agency should analyse a country situation, and make strategy decisions, according to a common human rights analysis of the situation. Such human rights coordination and a regular OHCHR presence in countries in conflict would be advantageous for UNICEF’s child rights protection work and should be encouraged and supported by UNICEF and other agencies.
Protection by Out-of-Country UN Mechanisms

Important progress can be made to improve UN-wide protection of child rights through the role of UN mechanisms which may be outside the country of conflict but which have the potential to influence events inside that country. A number of mechanisms exist, such as UN Special Rapporteurs, Special Representatives, ad hoc UN international criminal tribunals, and ad hoc Commissions of Enquiry. Their capacity to protect children’s rights, however, is hindered by the limited impact they have on specific and immediate violations.

The role of out-of-country mechanisms in protecting child rights

External UN mechanisms have a particular role in addressing ongoing human rights violations. They are sometimes needed to apply some form of pressure on the violators of rights, or on other structures or governments that are in a position to end those violations. Out-of-country UN mechanisms can put pressure on participants in peace negotiations, encourage interested governments to apply their own bilateral pressure, or draw media attention to a problem. Such mechanisms are needed whenever UN structures within a country in conflict are unable, on their own, to address rights violations.

The Convention on the Rights of the Child, for example, provides for a Committee on the Rights of the Child, responsible for overseeing the implementation of the Convention. States parties must report to the Committee at regular intervals, and the report process requires that States respond to questions posed by the Committee. The Committee thus has a mandate for specific concern on respect for child rights in particular countries.

Similarly, the UN Commission on Human Rights has the authority to nominate Special Rapporteurs on specific human rights subjects, or to countries where there is special concern for the respect of human rights. There are, for example, Special Rapporteurs on: torture and other cruel, inhuman or degrading treatment; religious intolerance; freedom of expression or opinion; Burundi; Iraq; Sudan; and Nigeria. The Secretary General has the authority to appoint Special Representatives also according to particular themes or countries, and there are currently, for example, SRSGs for internally displaced persons, children in armed conflict and Cambodia.

All of these mechanisms benefit from international recognition, and from relative independence – members of the committees and the Special Rapporteurs receive no salary for their work. Their common, most immediate, tool for addressing rights violations is reporting. Their situation within the UN system ensures that reports are disseminated at high levels, and provides them with access to senior government representatives.

The main problem with these mechanisms is their physical and intellectual distance from the scenes of child rights violations, and the amount of time they need to respond. Commissions of Enquiry, for example, can take many months to be formally created, so that their eventual investigation into gross violations of human rights can only reveal the true nature of past events – rather than attempt to bring those events to an end. And there is usually a significant time lapse between a major human rights violation and the response of a Special Rapporteur or Special Representative.

The Committee on the Rights of the Child already has difficulty in carrying out its present duties, to the extent that there have been numerous calls for reform. A reformed Committee may be in a position to respond more rapidly to human and child rights violations in situations of conflict, using its expertise and weight outside the restricted context of country reports.

Ideally, a structure or link should exist through which UNICEF Protection Officers in a country of conflict can rapidly communicate information on child rights abuse to appropriate UN out-of-country mechanisms.31 A UNICEF country Protection Officer could give information on child rights abuse to the UNICEF Protection Desk Officer, for example, who would pass it on to the Desk Officers of OHCHR. The OHCHR staff could, therefore, serve as a hub of human rights information from countries and UN and NGO sources and provide a link with the various UN human rights mechanisms, organizing meetings with UN colleagues as needed. If UN out-of-country human rights mechanisms could rely on OHCHR for a continuing source of information, and for a link with UN and NGO staff in the field then their influence could perhaps be brought to bear on more specific problems of children’s rights violations.

The potential protection role of the International Criminal Court

The impact of the creation of ad hoc international tribunals for the Former Yugoslavia and Rwanda, and the proposals for a permanent tribunal should not be underestimated in terms of their preventive role in the protection of human/child rights. The prospect, even if fairly remote in terms of time and probability, that a combatant might face prosecution for certain acts committed during a conflict will have a very powerful dissuasive force as the work of the tribunals becomes increasingly visible. The creation of the permanent International Criminal Court is of immense importance in the context of child rights protection.

However, for the ICC to have a preventive rights protection role, organizations working in conflict situations, and UNICEF in particular, must encourage the publication of international human rights and humanitarian laws towards combatants, and provide information on the existence of the ICC. All parties engaged in a conflict must be aware that their acts may lead to their being called before the court. Efforts should also be made to record children’s rights violations which might fall under the jurisdiction of the ICC and UN field based staff should receive training and guidance accordingly.

31 “Effective functioning of bodies established pursuant to United Nations human rights instruments”, E/CN.4/1995/574, transmitted to the Commission on Human Rights by the Secretary General and prepared by an independent expert, Philip Alston.
CONCLUSIONS

It would be difficult to overstate the need for practical UN protection of children’s rights in situations of conflict. It is no exaggeration to say that hundreds of thousands of children’s lives depend on urgent action in favour of their rights. UNICEF should have the principal role in leading such a protection initiative.

UNICEF’s child-specific focus, its combination of development and emergency expertise, its trusted presence in countries across the world, its experience and capacity to identify and address basic essential health, water, food, and education needs, combine to provide the organization with the potential to protect child rights when they are most at risk, such as during armed conflicts. The adoption of the Convention on the Rights of the Child has provided the most solid grounding upon which to base protection. The Convention must now be applied in practice.

Some UNICEF field operations, notably Operation Lifeline Sudan, have led the way in advocating for the introduction of humanitarian principles, child rights, and thus a form of protection, into their everyday work. The UNICEF Executive Board has accompanied these initiatives with the gradual adoption of a child rights approach for the organization as a whole, so that child rights are now considered to be the focal point for UNICEF’s work. However, this study argues that protection efforts have, so far, fallen short of addressing the very serious child rights violations that continue to occur.

Through an explanation of UNICEF’s mandate, and with references to experience from Burundi, this report has argued that UNICEF’s protection should be distinct from that offered by partner agencies, with various advantages and disadvantages. Further, through explanations of the manner in which children’s rights are violated in situations of conflict, and the specific vulnerability of children, it argues that UNICEF cannot fully protect children’s rights on its own. The factors that determine the violation or respect of children’s rights go far beyond the capacity and mandate of any one organization. UNICEF’s protection, it is suggested, must therefore focus not only internally, on the organization’s own protection capacity, but also externally, on the child rights protection role of governments and partners in situations of conflict.

Three main areas have been defined, to which UNICEF must give attention before protection activities can succeed.

1. Policy Decisions Needed within UNICEF

Within UNICEF, policy decisions need to be made which will define child rights protection objectives, strategies and methodology. There is no doubt that UNICEF has adopted, with significant energy, a rights-based approach to children with the Convention on the Rights of the Child at its forefront. There appears, however, to be continuing uncertainty as to what this approach should mean in practice – particularly in situations of armed conflict.

This document has concentrated on a “child rights protection approach”. Other UNICEF documents, and indeed job titles, refer to “Child Protection” within an overall context of child rights, or to “Children in Especially Difficult Circumstances”. The significance of these different terminologies has been discussed in Sections I and III, where it is argued that very different activities, strategies, and results, would stem from a choice of “protection of persons” or a “protection of their rights”. It is important that UNICEF define whether or not the organization’s approach is indeed to be one of the protection of children’s rights, as opposed to the protection of children. Such a definition is a prerequisite to developing further a protection methodology, and corresponding relationships with partner UN agencies.

At some point during this process the organization will need to set aside adequate resources for a protection initiative to be launched.

2. UNICEF Must Work with NGO and Government Partners

Successful protection will be dependent upon UNICEF’s work with NGO partners and governments. Child rights training and the development of a methodology for systematic protection through these partners needs to be established. The international precedents set by the established protection mechanisms for refugees provide a good example of what is needed. UNICEF has already initiated the training process with humanitarian principles courses – these need to be elaborated upon in line with UNICEF’s own protection methodology and then discussed with NGO and government partners.

3. UNICEF and UN Partners

Above all, there is a need to develop a UN child rights protection capacity, embracing UN agencies and UN structures. The UN capacity to protect children’s rights in practice is significant but, at present, remains potential. Again, protection methodologies, procedures and capacity need to be developed in cooperation with UN agencies. In particular, the development of a UN capacity to protect child rights should be a part of a wider strategy to protect human rights – the OHCHR has a particularly important role to fulfil.

The situation of internal armed conflict in Burundi continues amid economic sanctions that punish a civilian population far more than combatants. Burundi’s attempts to enter into a democratic process have repeatedly fallen at the last hurdle as fear and distrust overwhelm any sense of national unity. The protection of child rights in Burundi is inextricably tied to the conduct of the parties to the conflict, to those foreign governments that can influence them, to the role of neighbouring countries, and to the UN approach to human rights protection in situations of conflict. Efforts to provide assistance and to protect children’s rights at a field level cannot be successful without similar and linked efforts at an international and diplomatic level.

The discussions and recommendations raised in this study must be taken further. In particular, they should be analysed at a UNICEF
UNICEF Experience in Burundi

A final comment should refer specifically to children themselves, as the individual human beings on behalf of whom child rights protection is being developed. This document has neglected references to the best interests of children, and to their participation in the decisions that affect them. Article 3 provides that “In all actions concerning children . . . the best interests of the child shall be a primary consideration.” Article 12 of the Convention on the Rights of the Child provides that “the views of the child shall be given due weight” and that States parties should assure to children “the right to express those views freely in all matters affecting the child.”

Protection activities, in the urgent situations of armed conflict, should surely involve children in important decisions that will drastically affect their future, and should always focus on a child’s best interests. However, respecting the right to participation is a complex subject of its own – for which methodology is only slowly developing – and accurately defining best interests can be equally difficult.

At a minimum, those working towards child rights protection should spend as much time with the child beneficiaries of their work as possible. Protection Officers should spend time in the streets where children work, in the parks and market stalls where children sleep, in the camps where they live, in schools, in family homes, in health centres with the malnourished, in hospitals with the injured, talking to them, to their parents, to their guardians, to their teachers, to police officers and market workers on the streets. Protection Officers should become familiar faces so that they can arrive, listen and watch without causing disruption. Experience in Burundi showed that many of those working on behalf of children have had very little actual contact with the beneficiaries of their assistance. Particular effort should be made to understand the situation of children, to share their physical environment and understand their feelings.

Proximity to the problems and rights violations faced by children in conflict is a step towards respecting their right to participate. It is an essential means of understanding their best interests and how their rights should be protected. Participation should be seen in a two-way context involving not only the specific participation of children in decision-making processes, but also the participation of the decision-makers in the everyday situation of the child.

In sharp contrast with the extent to which they are violated, children’s rights are one of the few precepts upon which most parties to a conflict agree in unanimity. The gap between ratification of children’s rights instruments and practical implementation is wide, but one can hope that it might be crossed, and that an improved respect for child rights may itself contribute to the resolution of conflicts, and a greater respect for human rights in general.
ANNEX
WHAT DOES PROTECTION MEAN?

The term “protection” is used within a wide range of different contexts, and with a variety of different intentions, in the areas of humanitarian and human rights work alone, so that a single precise meaning is elusive. Protection has been variously applied in favour of persons, and in favour of rights. It has been implemented by military action, and by advocacy in the sense of oral representation. It has been used by the civilian members of humanitarian non-governmental organizations (NGOs) and by the military members of United Nations peacekeeping operations. It is essential for the development of practical methodology that “protection” in a UNICEF sense be defined clearly.

A. PROTECTION FROM A UNICEF PERSPECTIVE

From “Children in Especially Difficult Circumstances” to “Protection of Child Rights”

Since the beginning of the 1980s, UNICEF has been moving increasingly towards a child rights perspective of the problems faced by children. In 1986 UNICEF joined with a coalition of organizations working on what later became the Convention on the Rights of the Child, and in the same year the UNICEF Executive Board introduced the notion of “Children in Especially Difficult Circumstances” (CEDC). The establishment by UNICEF of a policy on behalf of Children in Especially Difficult Circumstances (CEDC) marked a starting point for UNICEF’s practical efforts in the field to address violations of child rights. The CEDC strategy, as its name indicates, consisted of identifying categories of children who were in pre-defined “especially difficult circumstances”, and then providing them with assistance specific to their situation. CEDC activities in most country programmes and regional offices were, nevertheless, “regarded as a programmatic add-on” and generally remained limited to problems involving child survival, health, and education.

Through the 1990s the use of a “Children in Especially Difficult Circumstances” terminology has gradually given way to one of “Protection”. From 1995 onwards internal and published UNICEF documents refer more and more frequently to “protection”. The new terminology has, however, been used in varying contexts, and interpretation of its practical significance varies. In 1996, the UNICEF Executive Board, in its “Review of UNICEF Policies and Strategies on Child Protection” raised the need for “special measures towards the protection of children’s rights”, and particular attention was given to protection in situations of armed conflict. The Executive Board established a new policy highlighting six sets of circumstances, often overlapping, and in which children may be in need of “special protection measures”:

1) harmful and disabling child labour
2) warfare and other forms of organized violence
3) sexual abuse and exploitation of children
4) childhood disabilities
5) temporary or permanent loss of family and/or primary caregivers
6) deficient laws, abusive legal and judicial processes.

The “Special Protection Measures” policy is a small step beyond that of CEDC. It classifies armed conflict as one of the wide sets of circumstances in which protection may be needed, and provides some broad guidelines for the implementation of protection through UNICEF programmes. Emphasis is specifically laid on a “protection role” for UNICEF and not only on efforts in favour of certain children in especially difficult circumstances. The Protection Measures policy does not however take the much larger step to protection of rights.

Since 1996 UNICEF Protection has come further with references both to protection of children and protection of children’s rights. Some UNICEF terminology with regard to posts published in Internal Vacancy Bulletins through 1997, for example, referred to “Child Rights Officer” posts in Bangladesh and in India. The process of gathering information for the Machel Report has in itself had a significant impact on perspectives on children in conflict situations, and many of the non-published documents prepared in the context of the Report refer to the protection of children in situations of armed conflict, or to the protection of children’s rights.

The Protection of Children or of Their Rights?
The key to developing protection as an approach lies in the difference between a “special protection measures” approach, the broader “protection of children”, or the “protection of children’s rights”. To talk of the protection of children in situations of conflict, refers to the earlier “children in especially difficult circumstances” approach of trying to address the needs of certain children in a situation of conflict, and is arguably similar in character to a UNHCR definition of protection (see below).

To talk, however, of the protection of children’s rights is quite different and assumes, for example, that some wrong or violation has been done or may be done to the children in need of protection – and implies that there may be a perpetrator of that wrong. There is an immediate tendency to seek the responsibility of the participants to a conflict, and to look for some form of accountability. Further, the protection of “rights” refers to all children and is not restrained by a necessarily arbitrary definition of an “especially difficult circumstance”. The protection of rights, rather than the “meeting of needs” suggests that assistance provided should have certain minimum standards. The protection of “rights” (because of the rights and obligations partnership) also helps to show that the protection role is incumbent upon many organizations and governments who claim to uphold rights, and indeed helps these different actors to communicate.

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B. OTHER NOTIONS OF PROTECTION

United Nations Peace Keeping Operations

Following the genocide in Rwanda the mandate of the United Nations Assistance Mission to Rwanda (UNAMIR I and II)\(^38\) – initially created in 1993 – was expanded to include the “... security and protection of refugees and civilians at risk” through the establishment and maintenance of secure humanitarian areas, and the provision of security for relief operations. The United Nations Operation in Somalia (UNOSOM I)\(^36\) was established, in part, to “provide protection and security for United Nations personnel, equipment and supplies. ...” In August 1992 UNOSOM I’s mandate and capacity were enlarged to enable it to protect humanitarian convoys and distribution centres throughout Somalia.

The United Nations Mission in Haiti (UNMIH)\(^37\) included within its mandate the “protection of international personnel and key installations”. In the Former Yugoslavia, the United Nations Protection Force (UNPROFOR)\(^38\) was initially established to ensure that the three United Nations “protected areas” in Croatia were demilitarised and that all people residing in them were protected from attack.

Protection, in terms of the actual activities of peacekeepers, and in the context of their larger mandate, has thus been synonymous with the provision of physical security and protection from armed attack. Protection has often involved the creation of an environment through which other activities – the provision of humanitarian assistance (UNOSOM and UNPROFOR), the return of refugees or other civilians (UNAMIR II and UNPROFOR), the organization of free and fair elections (UNMIH) – can take place.

The United Nations High Commissioner for Refugees\(^42\)

Protection is traditionally the heart of the work conducted by the United Nations High Commissioner for Refugees (UNHCR) – although the organization’s mandate has gradually been enlarged so that other activities have also become prominent. Within UNHCR protection is used in the context of a category of persons, refugees in general or a specific category of vulnerable refugees such as women or children. UNHCR does not usually use the term protection in the context of the protection of rights.

UNHCR has a Protection Division within its Headquarters office, and deploys Protection Officers – who typically have a legal academic and professional background – to all of its field offices. The fact that UNHCR’s protection concentrates on a specific population as opposed to the rights of that population implies, for example, that the organization’s “protection” is less concerned with the perpetrators of violations committed against refugees, or with structures that might address those perpetrators and threats. In the context of a practical definition of protection this emphasis has several implications, best illustrated when compared with ‘protection’ in the sense of an organization such as Amnesty International.

Amnesty International\(^42\)

Amnesty International’s work is based firmly on the respect of rights. The organization’s objective is to contribute to the observance of human rights as set out in the Universal Declaration of Human Rights. Amnesty’s mandate focuses, in particular, on certain civil and political rights – the right to physical and mental integrity, the right to freedom of conscience and expression, and the right to freedom from discrimination. However, the organization has increasingly shown concern for much wider abuses of human rights, involving, for example, rights violations in situations of armed conflict.

In its July 1997 Report on Burundi, Amnesty International drew attention to the population regroupment policy applied by the Burundian government, to the excessive use of force by the military, to living conditions within internally displaced persons camps, and it recommended independent investigations into human rights violations and called for those responsible to be brought to justice. In February 1998, for example, addressing the newly elected President of South Korea, Kim Dae-Jung, Amnesty International called for a “thorough, impartial investigation into all reported human rights violations in South Korea, past and present”, recommending also the revision of the country’s national security laws.

Amnesty International’s protection of human rights involves prevention (via the promotion of human rights law and of suitable national constitutions and other legal texts) and the use of information and publicity as a means of pressuring governments to end human rights abuse. The main point to be drawn from this brief description is that Amnesty’s emphasis on the protection of rights, while being specific to a category (human beings suffering specific violations of their rights), leads to an involvement in activities which go beyond attention to the victims of the violations. The protection of rights has led Amnesty to undertake work with regard to the perpetrators of rights violations, and to structures which address impunity and a community’s need for justice.

The International Committee of the Red Cross\(^42\)

Protection in situations of armed conflict in the sense of the International Committee of the Red Cross concentrates on specific categories of a population – most generally persons not participating in the conflict but who are, or may be, victims of it, be they civilians or injured combatants.

The focus of the ICRC’s work is on helping to ensure that the rules defined in humanitarian law, and intended to protect fundamental human rights, are respected; and a primary aim of ICRC’s action is thus to influence the conduct of the parties to a conflict. The ICRC will seek to provide for the needs of protected populations by the promotion of international humanitarian law and humanitarian principles in situations of conflict, and sometimes through the provision of emergency food and medical assistance. The ICRC visits persons in detention, seeking to improve detention conditions, to restore family ties, and to end or prevent the disappearance, torture, or ill-treatment

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\(^{42}\) The description of ICRC protection applied here is the author’s own and is used only in the very limited context addressed by the present document.


\(^{44}\) The description of Amnesty International’s protection applied here is the author’s own and is used only in the very limited context addressed by the present document.

\(^{45}\) The description of ICRC protection applied here is the author’s own and is used only in the very limited context addressed by the present document.
of detainees.\footnote{Article 5, paragraph 2 (d) of the Statutes of the ICRC Movement states that one of ICRC’s duties is to “endeavour at all times . . . to ensure the protection of and assistance to military and civilian victims” of armed conflicts.} ICRC, although with a different status and protection mandate to those of UNHCR, nevertheless resembles the latter in terms of the ICRC focus on the protection of a category of persons, rather than on their rights. In so far as ICRC addresses specific violations of humanitarian law “its aim is then to inform the authorities of intolerable conduct which must be condemned and brought to a halt. On the other hand, the ICRC refrains from asking who exactly was responsible and if or how the offenders have been punished.”\footnote{See the International Review of the Red Cross, No. 294, pp 195-220, 1 May 1993 for a discussion of ICRC’s role in situations of internal violence.}

C. THE PRACTICAL SIGNIFICANCE OF DIFFERENT DEFINITIONS OF PROTECTION

The forms of protection described above are substantially different from each other in practice.

\begin{itemize}
  \item The protection offered by UNHCR and ICRC, focused on categories of persons, is specific to the situation in which those persons find themselves, and not inherent to the persons themselves. The persons protected by these two organizations benefit from this protection because of their temporary condition as ‘refugees’ or as ‘victims’ of war/detainees. The focus on the individuals, as opposed to their rights, does not imply an interest in perpetrators of violations or in structures such as judicial systems that protect individuals.
  \item Protection, from an Amnesty International perspective, and concentrating on rights inherent to human beings, implies concern for the manner in which a violation occurs, for perpetrators and State structures that should protect rights.
\end{itemize}

Differences in the form of protection used by each of the above organizations have a profound effect, not only on the activities that the organization will undertake but on the way the organization is perceived and the role that it is able to fill. The publication of reports by Amnesty International on human rights violations in some countries has lead to the expulsion, or threats of expulsion, of expatriates from that country. The point to be emphasised is that different forms of protection lead to different activities, require a different organizational structure, demand slightly different expertise, different financing, are based on varying mandates, have implications for other activities conducted by the organization concerned, and are appropriate to different and distinct protection needs and objectives.

D. UNICEF PROTECTION AS COMPARED WITH OTHER FORMS OF PROTECTION

UNICEF protection in the past has sometimes resembled UN peace-keeper definitions of protection – with UNICEF organizing the creation of “humanitarian corridors” or “days of tranquility” – creating “spaces” through which children could be assisted. In contrast with protection in terms of UNHCR or ICRC mandates, UNICEF protection should not be specific to a situation of particular vulnerability – as is the case with refugees, victims of war, or other vulnerable categories. The focus of protection on “rights” as opposed to “persons” means that the rights are inherent, and are independent of any situation of vulnerability – indeed they are limited only to the period of childhood.

In the context of armed conflict, this form of open-ended protection implies that the protection should not be interrupted with the end of an armed conflict and emergency situation. Rather, the protection offered should exist prior to a conflict, and should continue after the end of the conflict period – so that there is thus little distinction between emergency and development. This form of protection would complement effectively the essential need to protect a child’s right to development, and not only survival, through a period of conflict.

The focus on rights also implies, as described in the context of Amnesty International above, a UNICEF interest in structures which protect rights and address rights violations – such as national judicial systems, police forces, administrative laws, national constitutions, international criminal tribunals, human rights training for the military, etc.

UNICEF protection in practice will however be quite different from that of Amnesty. UNICEF has a mandate and personnel resource which provide it with a field presence in situations of conflict, and an institutional ‘character’ which mean that it cannot make use of the same sort of “public pressure” strategies that are employed so well by Amnesty, but which also mean that it has other tools at its disposal.

E. CONCLUDING POINTS

\begin{itemize}
  \item UNICEF protection should focus on the protection of child rights, and not only on a more limited “protection of children” perspective. It is only through a specifically human rights approach to the situation of children that lasting protection can be practically achieved.
  \item UNICEF protection has the potential to be extremely broad, covering not only the provision of material, life sustaining assistance via the various traditional UNICEF programmes, but also rights to development which imply a long-term commitment and a link between emergency, post conflict, and development.
  \item UNICEF’s protection of children’s rights implies not only an interest in the child victim of rights violations, but also in the role and capacity of the State in protecting rights, the role of judicial systems, and of government in general, and it implies interest in the perpetrators of violations.
  \item In parallel, one must also draw attention to the fact that UNICEF is distinct from those of its immediate partners (UNHCR and ICRC in the examples used above) in its limited field presence in situations of conflict, and in certain mandate limitations. Issues of capacity and mandate will therefore impose their own pressures on the practical application and definition of UNICEF protection. In addition, a definition of UNICEF protection in armed conflict will have to consider the role of the organization as a whole, including UNICEF’s development mandate.
\end{itemize}

An initial definition of UNICEF child rights protection in situations of conflict:

“\begin{quote}
\text{“The practical implementation of human rights and the respect of humanitarian principles on behalf of children.”}\end{quote}"

\footnote{The development of this definition is largely due to Iain Levine, formerly a member of UNICEF Emergency Operations and of Operation Lifeline Sudan, whose work over many years has made an inestimable difference in encouraging the protection of children’s rights by UNICEF.}
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- Mandate of the OHCHR Field Operation to Burundi – OHCHR internal document.
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