

might compromise its ability to protect refugees. The UNHCR is the only body that has the capacity to do this. The International Committee of the Red Cross bases its action on humanitarian law rather than human or children's rights, and its remit of neutrality may be limiting. UNICEF does not have the capacity, skills and perspective for child rights. The UN High Commission for Human Rights is not funded to meet the operational capacity required. Thus an additional body that takes a rights-based approach to assistance is required.

Dr. Hamilton asserts that a rights-based approach needs to permeate all activities in conflict situations, but

Refugee or Displaced Person?

There are those who argue vociferously that the UNHCR should stick to its original remit: that by seeking to protect internally-displaced persons they compromise their ability and effectiveness to protect refugees. I would submit that, from a child's angle, this argument is unattractive and unsustainable.

To a child, it makes no difference to their situation whether they have managed to cross a border or not. Their needs for protection arise largely from conflict, and what they need is good old fashioned protection: protection that will enhance and implement not only their right to survival, but also their right to equal opportunity.

The only organisation that has the capacity and the experience to undertake this task at present is the UNHCR and if they do not they leave a vacuum: no other body has the organisational capacity to do so.

Carolyn Hamilton: Testimony to the Tribunal

especially in programmes involving children. She provided further examples from Kosovo. In the first, she referred to the fact that clothing for 300,000 children aged 13 to 18 years was not provided and there was no vocational training for this age group. Although the CRC defines a child as being under 18 years of age there was no provision for children over 13 years of age. Likewise, sticking rigidly to the reconstruction rules for schools meant that there were no schools available in the short term.

Dr. Hamilton recommended that the development of a rights-based approach in all conflict situations should be a priority for all agencies, backed up by regular, analytical training on children's rights provided by the NGO sector. In addition, a child co-ordination unit should be established to take responsibility for integrating work with children in each area of armed conflict. Such a unit should have authority,

based in the lead agency, be well funded, experienced and knowledgeable, with strong management skills to ensure accountability. This should cater to all children in the age range 0-18 years, with a range of programmes, a child rights approach taken by all agencies and children's rights implemented to the greatest extent that is feasible: 'We can't protect children from the impact of armed conflict, but we could certainly do more than at present to limit the impact and move a long way to a better preservation of their rights.'

? *Questions to Carolyn Hamilton from members of the Tribunal*
In response to a question from the Tribunal on what would provide the greatest support to implementation of the CRC, Carolyn Hamilton replied that in her opinion the greatest need is for training in awareness of children's rights. This training would strengthen initiatives of all international bodies, including among donor bodies, so that they understand better what the CRC requires of them.

2.2. Compliance With and Obligation to International Standards Protecting Children in Armed Conflict

2.2.1. Existing weaknesses in mechanisms enforcing obligation by non-governmental armed groups to international standards and norms

Lack of accountability and obligations of non-governmental armed groups: *Testimony of Raffael Vonivier, Senior Researcher, Institute for Security Studies, South Africa*

Mr. Vonivier first drew the attention of the Tribunal to definitional problems generated by the idea of 'non-governmental armed groups'. The primary problem is that their importance in reality is far greater than their strength in law, because international law tends only to consider the rights and obligations of two types of entity: states and international organisations. In contrast, armed groups that are well known and may even control large territories in quasi-governmental fashion - such as UNITA, RENAMO, RUF, Sendero Luminoso, UCK, PKK, FARC and LTT - have no proper legal personality. Likewise they cannot be party to instruments such as the Optional Protocol to the CRC. This is a growing problem, because the vast majority of armed conflicts are now internal, with a state fighting against one or several armed opposition groups, while some armed groups engage in warfare against each other.

The second problem is the actual definition of a non-governmental armed group. Mr. Vonivier drew attention to the working definition proposed by Rachel Brett and Margaret McCallin: 'Groups which are armed and use force to achieve their objectives and which are not under state control.'¹⁷ Although this definition works in practice in most situations, Brett herself admits that it poses certain difficulties, including:

17. Brett, Rachel and McCallin, Margaret, *Children: The Invisible Soldiers*, Radda Barnen (Save The Children Sweden), 1998