

intensity. In times of what is called 'complex emergency' (when children are in the midst of the combat) it may be unrealistic for the state and/or other agencies to do more than attempt to ensure the right to survival. At the centre of the fighting, the struggle to preserve life, to move people to safety and to ensure that they have food, shelter and basic health care may completely absorb all the energies and capacities of those involved. At such times, the rights to leisure, and even the right to education, are not matters of equal concern. Yet such situations are generally of relatively brief duration even though UN agencies and NGOs seem to regard them as extending over a considerable period during which only 'survival' rights, such as food, shelter and basic health care, can be addressed.

Nevertheless, while recognising the difficulties inherent in a truly complex emergency, the full implementation of rights is essential for children if their life chances and opportunities are not to be foreclosed or permanently affected. Dr. Hamilton expressed the opinion that the difficulty lies in achieving an acceptable balance, illustrating these statements with the example of the war in Kosovo, where large scale population displacement began in 1998 and some estimates indicated that by July of that year, one quarter of the population had been displaced with children representing between 55 and 63 percent. Two months later, the lowest estimate of the number of internally displaced persons was 120,000. UNICEF and OXFAM put the number at 250,000 and the United States Defence Ministry at 300,000, while on October 1 of that same year USAID provided an estimate of 534,000. Child mortality and morbidity figures rose during this period. Meanwhile children were not in school, often confined to their homes or, if they were in school, the conditions were very difficult and overcrowded. In other words they had no rights. Conflict continued until late March 1999. A year later, stated Dr. Hamilton, many children were still displaced with no permanent homes, some living in tents with all the inevitable consequences of conflict, including economic deprivation.

From March 1998 to June 1999, assistance efforts concentrated on providing services within a complex emergency. UN agencies and other bodies concentrated on securing food and shelter rather than children's rights to education, play or any other rights contained in the CRC.

Dr. Hamilton asserted that these agencies could and should have provided these other rights. The reasons they did not do so, she suggested, were multifaceted. Leaving aside the issue of funding, she claimed that the main reason for this failure was that relief agencies are driven by an ethos of

assistance, rather than being based on rights. When staff of the Children in Armed Conflict Unit were in Kosovo carrying out an assessment of children's rights, they enquired about whether people had a copy of the CRC and what they knew about it. Dr. Hamilton told the Tribunal that:

Only one agency, and that did not include UNICEF, had a copy of the Convention. Virtually none had received training on the Convention, its remit and interpretation. Whilst a considerable number held themselves out as aware of children's rights, in reality they didn't know what this meant. This lack of awareness and understanding had a profound effect on their programming.

Dr. Hamilton suggested that survival should be the sole aim only in short-term crisis situations: 'The implementation of children's rights should not wait for the development teams of an NGO or UN agency to arrive in the area. They should be part and parcel of the planning for children in armed conflict, even in areas of complex emergency.' About one quarter of the children in Kosovo were caught up in the fighting between March 1989 and March 1999, but they were rapidly moved from the centre of the fighting, mostly living in a stable place for a number of months. During that period and certainly from July 1998 onwards, suggested Dr. Hamilton, there was no reason why the implementation of their rights should not have been assured, despite the difficulties and tensions of their situation. Yet, in July 1998 nothing other than basic survival services was offered to children over the age of 13 years. All programmes targeted children of compulsory school age except that, ironically, they did not include educational provision. Thus she came to the conclusion that children's rights had been violated despite the fact that it was realistic to expect the state to implement them.

The next question considered by Dr. Hamilton was who is responsible for the preservation of children's rights in the absence of a functioning state, or if the state is the aggressor. The international community cannot do the same job of implementation as a fully functional state might do or in the sense normally understood by the term. She concluded that humanitarian law is not a route by which children's rights can be protected. Yet there are problems in taking the alternative strategy of allocating responsibility on the ground to a single international agency. The example of internally displaced persons is a case in point. The UN High Commission for Refugees (UNHCR) cannot take on any more than a restricted role in their welfare for fear that this

Article 4 of the UN Convention on the Rights of the Child

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.

With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.