

A Human Rights-based Approach to Programming in Humanitarian Crises: Is UNICEF up for the Challenge?

Introduction

In 1998, UNICEF formally adopted the human rights based approach to programming (HRBAP), one of the first UN agencies to do so. While our thinking on the HRBAP has evolved since then, there remains a lack of clarity on the implications of this approach in humanitarian crises. The development of the HRBAP has been mainly focussed on a development context rather than on humanitarian situations. However, human rights principles and values are not only the foundation for development, but also for the response in emergencies. There are approximately 50 countries – close to a third of our programme countries -- in a state of complex emergency at any given time, and on average, approximately 20-25% of UNICEF funding is spent in countries in crisis.

This paper aims to clarify the relevance of the HRBAP in humanitarian crises, and offer some thoughts on its implementation in these particularly challenging situations.

The Human Rights Based Approach to Programming (*excerpted from PPPM, chapter 2, section 01*)

For UNICEF, a human rights based approach to programming means that:

- All UNICEF Programmes of Cooperation are focused on the realization of the rights of children and women;
- Human rights and child rights principles guide programming in all sectors at all phases of the programme process; and
- Programmes of Cooperation focus on the development of the capacities of duty bearers, at all levels, to meet their obligations to respect, protect and fulfil rights; as well as the development of the capacities of rights holders to claim their rights.

Under a human rights-based approach, benevolent and charitable actions are considered insufficient. A human rights approach is based on the premise that the empowerment of rights holders is in itself an important result. A human rights-based approach thereby better guarantees the sustainability of development programmes.

The human rights principles of universality and non-discrimination mean that the promotion of social inclusion, equality and justice should be central concerns in the dialogue with national partners, and in the development of programmes of cooperation. While the well-being of all children is important, UNICEF gives priority to the most disadvantaged children and the countries in greatest need. Positive measures are vital to ensure that public policies benefit all children, and that all children have access to basic services and other opportunities, based on, among other things, distributive justice.

Ratification of human rights treaties makes States legally accountable for the realisation of the human rights of all those under their jurisdiction, and opens the way for UNICEF and other UN agencies to discuss with governments how children's or women's rights can be effectively safeguarded and how challenges to the fulfilment of these rights can be overcome.

A Human Rights Based Approach to Programming places equal emphasis on outcomes and the process by which outcomes for children and women are achieved. Participation, local ownership, capacity development and sustainability are essential characteristics of a human rights-based process.

Other important programming considerations include strengthening the capacity of parents and other primary caregivers to provide effective care for and protection of children; advocating with States to use their maximum available resources to achieve results for children and women; ensuring that women and girls participate fully in community life, and in the development and monitoring of policies that affect them; and finding a balance between activities that respond to the urgent survival, development and protection needs of children and women and those – such as participation and prevention of discrimination - that contribute to the social, economic and legal transformations that will guarantee the sustained and universal fulfilment of children's and women's rights.

UNICEF's Core Corporate Commitments in Emergencies (*excerpted from E/ICEF/2000/12*)

In 2000, UNICEF elaborated its approach to ensuring an effective response to the needs of children and women affected by unstable situations, through mutually reinforcing actions in the area of humanitarian policy, global advocacy and humanitarian response. At this time, the central role of UNICEF in unstable situations was defined as the implementation of programme activities for children and women, with particular emphasis on advocacy; assessment and coordination; and assistance and protection of vulnerable children. In these efforts, UNICEF uses an integrated approach in meeting the rights and needs of children and women in crisis, based on recognition of the complex range of factors and the relationships between physical and emotional security, social and cognitive development, and health and nutritional status.

The Core Corporate Commitments, or CCCs, constitute the organization's initial response to protection and care of children and women in unstable situations. The CCCs fall into four principal areas: rapid assessment, coordination, programme commitments and operational commitments. The programme commitments cover health and nutrition, education, child protection and water supply and sanitation. Although the rights-based approach is not explicitly mentioned in the CCCs, some of the characteristics of the HRBAP, such as an integrated approach and a focus on advocacy, are part of the CCCs. This link needs to be made much clearer in the revision of the CCCs, expected in late 2003.

Why is the human rights-based approach relevant in a humanitarian crisis?

Human rights standards create legal obligations that are valid in all situations, including in humanitarian crises. While some human rights can be derogated from during times of extreme crisis, most human rights are non-derogable, such as the right to life or the right to be free from torture. One of the greatest strengths of the CRC is that it contains no provision for derogation of any of its provisions – the realisation of children's rights is to be considered a priority at all times.

Humanitarian action has long been rooted in human rights principles and standards, and in international humanitarian law. The universally recognized humanitarian principles – the humanitarian imperative, neutrality, impartiality – demonstrate that some elements of rights-oriented thinking have been a part of humanitarian action since its early days. The humanitarian imperative is predicated on the universality

and inherent equality of humankind – all human beings are equal, and their suffering must be alleviated as an urgent priority. Impartiality, the principle that assistance must be provided on the basis of need alone - without discrimination, is closely linked to the core human rights principle of non-discrimination.

International humanitarian law, most notably the Geneva Conventions of 1949 and their Additional Protocols of 1977, provide the legal framework for protection and assistance to civilians during times of armed conflict. The Geneva Conventions are founded on the idea of respect for the individual and his/her dignity. Persons not taking part in hostilities or no longer taking part in hostilities must be respected and protected against the effects of armed conflict; those who suffer must be aided and cared for without discrimination. They apply to all parties to conflict, including armed groups in non-international armed conflicts provided that these groups are organized, have a recognized command structure, and exercise control over territory. Organizations such as UNHCR and the ICRC have worked very closely with international legal regimes, which have their underpinnings in principles and standards similar to the rights-based approach. The work of these organizations has been oriented towards the protection of individuals, but it has also long been grounded in human rights principles such as non-discrimination. Thus, in some ways, these organizations have followed a HRBAP, without necessarily labeling it as such.

In today's humanitarian crises, human rights are deliberately and systematically violated as a strategy of warfare. Over 2 million children have been killed in the last decade, and approximately 20 million children forced to flee their homes as a result of armed conflict. There are an estimated 300,000 child soldiers being used in the world at any give time. Rape is used as weapon of war, the most well-known examples being Rwanda, Bosnia and now DRC. Human rights are also widely denied in crisis situations as a result of the breakdown in basic social services. Civilians are being deliberately targeted, particularly women and children, thereby blurring the lines between civilians and combatants.

Humanitarian organizations cannot simply provide life-saving assistance in the face of the deliberate targeting of the very people they are trying to assist. When human rights violations become a *strategy* of war, humanitarian organizations are compelled to respond. A human rights approach thus is an imperative if these organizations are to remain relevant and effective.

It is now generally recognized that assistance without protection from attack, persecution and other human rights violations is not enough (*Growing the Sheltering Tree*, 2002: 4). The definition of protection in humanitarian crises adopted by the IASC, i.e. “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law)” recognizes the importance of seeing the protection dimension in all of our work, including the more traditional “assistance” activities such as immunization or micronutrient supplementation. While governments have the primary responsibility to protect civilians, humanitarian organisations should still help to mitigate and sometimes prevent violations to the extent that they can (*Growing the Sheltering Tree*, 2002: 4). This is particularly important in conflicts where the government is among the major perpetrators of human rights abuses.

The HRBAP has been adopted by UNICEF in all its work. In practice, however, this approach has tended to be seen as applicable or relevant primarily in development (or stable) contexts. Some humanitarian workers have not seen the HRBAP as relevant to their work, i.e. “I can't talk about human rights now, I have an emergency to deal with.” This belief stems from a tendency to understand the HRBAP as limited to civil and political rights, and to discount the collapse of the (even limited) enjoyment of social and economic rights which also tends to happen in crisis situations. Believing that the safeguard of human rights should wait until the armed conflict or emergency is over is counter-

productive. Another reason that humanitarian workers may be less keen to take on a rights-based approach is that they are concerned with not losing access to affected populations, i.e. in many cases, even quiet advocacy around human rights violations may result in access being cut off if the government is the one committing the violations. Yet, if we are not prepared to implement a HRBAP in the context of some of the most extreme violations of human rights that are taking place, when are we prepared to adopt such an approach? To be a credible actor in both human rights and humanitarian work, UNICEF must be consistent in *all* of its work on behalf of children and women.

Sometimes in humanitarian crises, there may be a tendency to assume that sound programming practices and methods (such as the HRBAP) do not need to be applied in crisis situations to the same extent as in non-crisis situations because of the urgency of action which is needed in crises. In fact, sound programming (e.g. assessing and analyzing/understanding the emergency situation; setting smart objectives; monitoring of outputs/outcomes/impact; managing resources for results; evaluating to learn from experience) can still be practiced in a time-compressed, adaptive form, without sacrificing quality. Such sound programming practices support an efficient and more effective use of resources, and are therefore a duty of humanitarian organizations working in crises where the resources are scarce and lives massively at stake.

One of the advantages of the HRBAP in humanitarian situations is that it can strengthen UNICEF's position as an impartial, neutral actor in very complex contexts. In adopting the HRBAP, UNICEF grounds itself in a comprehensive body of normative standards, from international human rights and humanitarian law to regional human rights instruments to Security Council Resolutions. These standards allow UNICEF to be more coherent, universal and principled in our humanitarian action.

What are the specific characteristics of humanitarian crises that have a bearing upon the application of the HRBAP?

The specific characteristics of emergency situations - particularly the prolonged, complex emergencies which dominate UNICEF's humanitarian agenda - create several specific challenges and a few opportunities for the implementation of the HRBAP. Some of the key characteristics of emergency situations of most relevance to HRBAP implementation include:

- **Failing States and the Rise of Non-State Entities:** States assume obligations under international law when they become a party to an international human rights treaty. They become accountable for fulfilling the rights of all persons under their jurisdiction. However, in an emergency situation some governments are unwilling or unable to fulfil these obligations. The protracted disorder of most humanitarian crises has a major effect on the programming context. In many such situations, the capacity of governments to provide effective administration and to meet their obligations is severely affected or virtually non-existent, e.g. Somalia and the DRC. This threatens the provision of basic social services, the rule of law and respect for human rights. There may be no functioning government in large parts of the country and humanitarian workers may find themselves negotiating with one or more rebel groups in order to reach populations in need with basic social services. Non-state entities (NSEs) may not be recognised by the international community, cannot ratify international instruments such as the CRC, and may not have adequate financing to maintain basic services. All too often, governments or NSE authorities may have the capacity to fulfil their obligations to children and women, but not the will – they may in fact be among the worst perpetrators of violations against children and women.

- **Widespread collapse of basic social services:** The majority of children who die as a result of armed conflict do so because of lack of access to basic social services, including health, nutrition, water and environmental sanitation, and basic education. During crises, such services are severely reduced if not shut down altogether due to, for example, the destructive targeting by combatants of community clinics, schools and teachers (as in 1980's Mozambique and elsewhere), or the evaporation of operating funds for services due to economic collapse, or the drying-up of boreholes due to drought. Even where these services continue to function in some way, people's access to them may be limited due to violence and conflict or pervasive insecurity.
- **Political Advocacy Agenda:** There is now a significant political advocacy agenda around children affected by armed conflict, as evidenced by the 1996 Machel Study and 2001 Review; the engagement of the Security Council with the human security agenda including the adoption of four resolutions on children and armed conflict, one on women, peace and security, and two on the protection of civilians; the creation of the Office of the Special Representative for Children and Armed Conflict in 1997; and the establishment of Child Protection Advisors positions in three UN peacekeeping operations. This kind of global momentum and profile is an important opportunity to mobilise key actors to respect and fulfil the rights of children and women in armed conflict situations. Operationalisation of this agenda, especially at country-level, remains a challenge.
- **Displacement:** Many conflicts are characterised by mass displacement. An estimated half of all internally displaced persons are children, uprooted during a particularly vulnerable period of their lives (Machel 2001: 26). Repeated displacement can increase mortality rates by as much as 60 per cent (Machel 2001: 35) Displacement of population groups reduces accessibility of communities to basic social services, and leads to greater threats to the well-being, health and security of children and families. Displaced children may be denied the right to education due to a lack of birth certificates and other proper documentation or an inability to pay school fees. Community breakdown and family separation are all too common in such situations with profound threats to community participation, child protection, and development opportunities for all children, especially very young children. In many situations, this is compounded by the AIDS pandemic. Landmines are particularly insidious for populations on the move - whether fleeing to safety or returning home. Often, displacement can extend for months or years, affecting children's long-term development and well-being.
- **Extensive human rights abuses:** Widespread and systematic violence during conflict, civil unrest and other emergencies put children and women at great risk. Children may become refugees or be internally displaced, abducted, forced to work for armed groups, disabled by combat, injured by landmines and unexploded ordnance, sexually exploited during and after conflict, or trafficked for military purposes. Girls and women are routinely targeted by campaigns of gender-based violence, including rape, mutilation, prostitution, forced pregnancy and sexual slavery.
- **Humanitarian Access:** The denial of humanitarian access to basic social services can have a significant effect on morbidity and mortality in humanitarian crises. Emergencies may threaten access to populations in need through communication breakdown, for example after an earthquake, or more frequently, through deliberate denial of access by warring parties to conflict. Landmines may also limit access to populations in need of humanitarian assistance and protection.

What does the rights-based approach to programming look like in a humanitarian context and what are the implications for UNICEF?

There are no major conceptual differences in human rights based approaches to programming in development and humanitarian contexts. The general programme implications of the HRBAP, such as the CRC and CEDAW as the legal foundation of UNICEF's work, taking a holistic view and developing the capacities of duty-bearers to meet their obligations to fulfill children's rights, all remain valid in humanitarian crises. Good quality programming practice (e.g. assessment and analysis, setting clear objectives, impact monitoring and evaluation) also remains essential in all situations, and is a critical requirement of a rights approach. There are, however, some additional points and specificities that need to be recognized.

Implications for what we do

- **Protection and assistance:** The holistic approach to programming that is strongly encouraged in the HRBAP becomes even more critical in a humanitarian context where protection and assistance must be seen as two sides of the same coin. It is now clear that assistance without protection can only go so far in most complex emergencies, an idea summed up in the expression "the well-fed dead." An example of how protection can be woven into traditional assistance efforts is the child-friendly spaces established in Albania, Angola, Guinea and Liberia, where key assistance interventions were brought together with the idea of safe spaces for children and their care-givers.

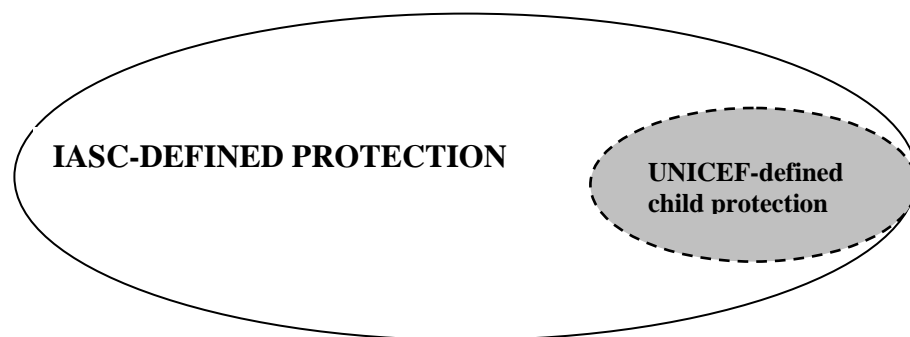
There remains some confusion around the terms protection and child protection. The broad definition of protection adopted by the IASC actually encompasses assistance since protection is seen as "all activities aimed at obtaining full respect for the rights of the individual." This would include, for example, the safeguard of social and economic rights such as the right to health and right to education, as well as civil and political rights such as the right to be free from torture, the rights to freedom of speech and birth registration. Activities as diverse as immunization, teacher training, human rights sensitization campaigns and demobilization programmes for child soldiers would all be considered protection activities under this broad definition. In this way, protection essentially becomes part of everyone's job.

To further illustrate this, the IASC uses a "protection egg" framework, originally developed by ICRC, which includes three layers of protection activities. The first layer is responsive action and includes any activity undertaken in the context of an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects. The second layer is remedial action, which is aimed at restoring people's dignity and ensuring adequate living conditions, subsequent to a pattern of abuse, through rehabilitation, restitution, compensation and reparation. Finally, the third layer is environment-building action which aims to create and/or consolidate an environment – political, social, cultural, institutional, economic, and legal – conducive to full respect for the rights of the individual (ICRC 2001: 21-22). To take an example, in Sierra Leone, the response to sexual abuse and exploitation in camps has included ensuring the provision of health care for women and girls who have experienced sexual abuse and exploitation (responsive action), reviewing the way that humanitarian assistance is distributed in order to minimize the potential for exploitation (remedial action), and training humanitarian workers, government officials, and community leaders in children's and women's rights (environment-building action).

While the IASC definition of protection is very broad and thus difficult to apply operationally, UNICEF has adopted a more focussed definition of *child protection*. In the context of the MTSP, UNICEF uses the term "child protection" to refer to protection from violence, exploitation, abuse and neglect. The Operational Guidance Note to the MTSP presents a conceptual framework for the realisation of the child's right to protection, demonstrating how this depends on a number of

immediate elements, underlying factors and fundamental factors. Among these factors are attitudes, traditions, customs, behaviour and practices; governmental commitment to fulfilling the right of the child to be protected; open discussion of, and engagement with child protection issues; legislation and enforcement; capacity of those who deal with children; children's life skills, knowledge and participation; monitoring and reporting; and services for recovery and reintegration (OGN 2002, section 6.1).

Although the IASC definition of protection and the UNICEF definition of child protection are different in scope, there are no conceptual contradictions between them. In fact, there are many similarities, for example, both approaches recognize the importance of immediate as well as longer-term environment-building actions, and both adopt a multi-layer causal approach. Child protection can be seen as a sub-set of the broader protection approach, focussing on a smaller range of rights abuses and seeking to address them through different strategies which include remedial, responsive and environment-building actions. Visually, they could be presented as follows:



(See annex 1 for further explanation of the similarities and differences of these concepts and approaches).

A final point of confusion is that protection is also often used to describe the defense or promotion of children's rights, as in "UNICEF responds in emergencies to protect the rights of children" (UNICEF Mission Statement). Used in this sense, "to protect" is one of the three types of obligations that duty-bearers have to rights-holders under international human rights law, i.e. there are obligations to respect, to protect, and to fulfil rights (UNICEF ESARO, 2001, p. 17). Protecting *the rights of* children falls squarely within both the IASC and UNICEF approaches to protection. However, both approaches would maintain that protecting the rights of children is the responsibility of *all* staff, not just of "protection officers." A concrete example of what this means is that CAPs or Country Programmes would not have a separate project on "Child Rights" since the Health, Education, and WES projects are *also* children's rights projects.

- **Advocacy – with more consequences:** Perhaps the single biggest misconception about the HRBAP in humanitarian crises is that it means speaking out on sensitive issues in sensitive situations, and therefore will undermine UNICEF's ability to save lives and protect children in the midst of armed conflict or other emergency situations. This fear stems from a fundamental misunderstanding of what the HRBAP is, and more specifically, of what advocacy is. The HRBAP does not compel UNICEF to speak out on CNN or the BBC on children's rights violations every day. Advocacy does not equate to media.

Advocacy is, rather, a strategy of engagement with decision-makers to persuade them to act to safeguard children's rights. It is what UNICEF has excelled at from its inception – mobilizing actors at all levels to take action on behalf of children, e.g. the campaign for Universal Child

Immunization, the nearly universal ratification of the CRC, country-level efforts in Burundi and the DRC to negotiate Days of Tranquility between parties to conflict so that children could access basic services, etc. In Sri Lanka, UNICEF has been advocating with the LTTE to stop the recruitment and use of child soldiers for many years. These efforts have led to a commitment by the LTTE not to use child soldiers, the demobilization of many child soldiers from within its ranks, and the establishment of a database to monitor any new recruitment of child soldiers. In fact, it is usually only when all of the usual tactics of advocacy (the behind the scenes lobbying, the use of the special relationship with governments, the privileged access to decision-makers, etc.) have failed that UNICEF resorts to public advocacy (or denunciation) in the media.

One part of UNICEF's advocacy strategy in humanitarian situations is more strategic engagement with the Security Council in order to capitalize on the Council's interest in children in armed conflict, women, peace and security and the protection of civilians. For example, thanks to advocacy efforts by the UNICEF Representative in Bujumbura and by HQ in New York, the January 2003 Statement by the Security Council President on Burundi to the press called on all parties to the conflict in Burundi to immediately stop the use of child soldiers. This was the only thematic issue, other than the direct peace process, mentioned in the statement.

The HRBAP means that UNICEF has to become more sophisticated at understanding what advocacy is, and how to do it effectively and strategically in humanitarian situations. In short, since the "retributions" of a human rights-based approach in crises can be more life-threatening than in non-crisis, we have to be more thoughtful about how we apply this approach - but we should not question the validity of the approach itself.

- **A broader legal and ethical base for our work:** with the adoption of the HRBAP, UNICEF recognized that its staff needed to understand and be able to apply the CRC and CEDAW in their work. The implication of the HRBAP in humanitarian crises is that staff also need to be familiar with international humanitarian law and international criminal law, namely the Geneva Conventions and the Rome Statute of the International Criminal Court. Similarly, UNICEF staff need to be aware of other relevant normative standards, including Security Council resolutions, the Guiding Principles on Internal Displacement, as well as refugee law and humanitarian principles. For example, staff in Macedonia, FRY and Bosnia-Herzegovina were trained in human rights, child rights and the rights of war victims in 2002.

One concrete implication of this is that existing in-house training courses (such as PPP training, Human Rights Core Course, Senior Leaders, etc.) need to incorporate modules on these humanitarian normative standards more systematically. Specific training courses on humanitarian principles are already available within the organization, and may need to be offered more frequently. In addition, an on-line course on humanitarian principles is in development and expected to be ready by the end of 2003.

- **Improved monitoring:** A HRBAP requires that UNICEF adopt a stronger role in the monitoring and documentation of child rights violations. At a minimum, UNICEF must be aware of the situation of children in humanitarian crises, and be prepared to document and report it. To help do this, UNICEF can make more strategic use of existing United Nations human rights monitoring mechanisms, such as the Commission on Human Rights and its country and thematic Rapporteurs, to draw attention to violations of children's rights in situations of armed conflict. For example, in December 2000, the United Nations Mission for the Verification of Human Rights in Guatemala issued a report, *The Situation of Children and Adolescents in the Peace Process*, for which UNICEF provided technical support, on the successes and shortfalls in fulfilling children's rights during the peace-building process. Child rights violations could also be raised with Special

Representatives of the Secretary-General. The Committee on the Rights of the Child is an important monitoring body, in particular because the Committee will soon start to consider the reports of States Parties under the Optional Protocol on the Involvement of Children in Armed Conflict.

In order to better use the human rights system, UNICEF will need to strengthen its relationship with the Office of the High Commissioner for Human Rights, particularly its field presences, and UNDP, given the Humanitarian Coordinator/Resident Coordinator system. The wider human rights community, including NGOs and community-based organizations, are often closer to the issues and often in a better position to monitor and report on human rights violations. For example, in Colombia, UNICEF, ECHO and other international organizations supported the establishment of CODHES, an early warning analytical project which gathers indicators, using community-level ‘sentinel sites,’ that suggest increased likelihood of displacement within a given geographic area.

- **Justice and impunity:** The rights of children and women are protected in, inter alia, the CRC, CEDAW, the Geneva Conventions and their Additional Protocols, and the Rome Statute of the International Criminal Court. The HRBAP, with its emphasis on the universality of human rights and the obligations of duty-bearers particularly States Parties, recognizes the importance of accounting for atrocities committed against children, in order to strengthen the protection of children and end the climate of impunity that so often prevails in complex emergencies. UNICEF’s role in such situations is to call for accountability for those who have committed crimes against children and women; to advocate for child-sensitive protocols in any truth and justice-seeking mechanisms which are established; and to provide technical assistance to such mechanisms as necessary. Good examples of UNICEF’s efforts in this relatively new area are the work being done on the development of child-friendly protocols by UNAMSIL, UNICEF and other child rights organizations for the Truth and Reconciliation Commission in Sierra Leone and on the elaboration of a policy on children for the Commission for Reception, Truth and Reconciliation in Timor Leste.
- **Transition:** All too often, humanitarian assistance is provided in a way that is too limited to the crisis itself, without seeking to lay the groundwork for creating the conditions for sustainable peace, recovery and renewed development. The human rights based approach to programming must build the bridge between emergency response and longer-term development work. When the HRBAP is applied to humanitarian work, it can make the transition to post-emergency and development work seamless. Monitoring systems, participatory approaches, and multi-dimensional situation analyses can all be modified as the situation shifts from emergency response to transition to development cooperation (or even when all three modes of operation exist at once). UNICEF’s presence in a country before, during and after a humanitarian crisis puts us in a unique position to *continuously* apply the HRBAP in all of these phases, without the usual artificial distinctions between “emergency” and “development.”

Implications for how we do it

- **An expanded set of programme tools and approaches:** The HRBAP can inform the traditional tools and strategies used to programme in crisis situations. For example, the HRBAP can provide a framework for developing or modifying rapid assessment tools so that they capture a wider range of children’s rights violations in humanitarian situations, and help identify the respective duty-bearers and their capacity gaps and assistance needs. As in development contexts, the HRBAP in humanitarian situations places great emphasis on causal analysis, particularly at the underlying and systemic levels. Such analysis would need to reveal issues not just of disparity or inequity, but also of deliberate and systematic human rights violations waged as part of armed conflict, such as denial

of access to certain groups or areas, ethnic cleansing campaigns or existence of a climate of impunity. A human rights-based Consolidated Appeal, for example, would therefore have to go beyond the usual child welfare indicators, to an analysis of the human rights violations which are occurring and the reasons behind them, the capacities of local communities and government authorities to respond, etc. Similarly, the HRBAP should be applied in emergency preparedness planning exercises. If this is done effectively, implementation of the HRBAP in crises may be perceived in a less threatening way by authorities.

- **Participatory approaches, including with young people:** Participatory approaches tend to be forgotten in the context of emergency response – which is when they are in many ways most important. The experience of armed conflict, violence, and displacement is disempowering in innumerable ways. Humanitarian response is an opportunity to help restore dignity to affected populations, support the capacities of rights-holders to cope with and respond to the crises they face, as well as save lives and protect them from further harm. The HRBAP can act as an impetus for us to review how we involve affected populations in the delivery/management of humanitarian assistance, as well as in recovery and social reintegration of victims (e.g. child soldiers). In humanitarian crises, this may mean that certain activities take longer (life-saving interventions obviously not falling into this category) but have greater impact in the short- and long-term. In many cases, the HRBAP could actually speed up some types of response in humanitarian situations, for example, if a human rights-based rapid assessment reveals needs in an unanticipated area and leads to early preventive actions. The HRBAP can also contribute to improving the *quality* of the humanitarian response, e.g. through a participatory approach to data collection or food delivery.

During an emergency situation, young people's participation in home, school and community life is crucial as a development strategy and to enhance protection. In order to develop skills and become contributing members of the community, young people need to play a role in decisions that affect their lives. Participation will increase self-confidence and self esteem and help establish a foundation for sustainable development. But, during a crisis, the limits of participation must be clear. Specific strategies are needed to overcome obstacles for young people's involvement, and to address the inherent risks. It is important to be aware of the aggravated risk that young people may face if they engage in community development and peace-building activities in a society torn apart by war. For example, in a number of instances, young people involved in the Colombia Children's Peace Movement were threatened by rebel groups and local militia. It is also important to recognize that the participation of young people in programme activities requires long-term follow up to ensure that the results lead to sustainable community-based action. [see also the case studies on adolescent participation for more on this]

- **Working with national and local civil society organizations:** In both development and humanitarian situations, UNICEF works very closely with national and local civil society organizations, including NGOs. Such organizations are often best placed to monitor human rights abuses, implement participatory approaches with communities, and generally link external assistance to the needs of affected populations. In cases where the local authorities are negligent, losing control or absent altogether, civil society organizations may be the only credible local partners UNICEF has.
- **Exacerbated gender inequalities:** Armed conflict is a gendered activity, and its impact is different on boys, girls, women and men. In fact, armed conflict tends to exacerbate existing gender inequalities and lead to increased gender-based violence. With its emphasis on equity and non-discrimination, a HRBAP compels us to bring a gender perspective to our humanitarian work. What this means in practice is that humanitarian actors must recognize and act upon the different ways

that women, men, boys and girls are affected by humanitarian crisis, with a view to ensuring the realisation of their human rights. For example, women and girls are more at risk of sexual abuse and exploitation, more likely to become heads of households, take on an additional burden of labour during armed conflict, drop out of educational facilities and lose access to health care services, while boys and men are more likely to be recruited into armed forces, or forced into hostilities and injured by landmines and unexploded ordnance. Programme activities will need to be tailored to take into these specific vulnerabilities and capacities in order to be most effective. Monitoring of gender-based violence must be integrated into UNICEF's work, as well as the work of all humanitarian agencies.

- **Principled engagement with non-state entities (NSEs) and failed states:** The issue of applying the HRBAP with non-state actors or in failed states arises particularly in humanitarian crises. NSEs are not bound by legal standards in the same way that states are; they may in fact be the ones perpetrating the extreme human rights violations against children and women. Yet they often exercise control over populations and territory and have de facto responsibilities for the delivery of basic services in areas under their control, making it necessary for UNICEF to engage with them to gain access to children and women in need. In such cases, the HRBAP can be even more important and powerful in establishing UNICEF's impartiality, neutrality and credibility as a humanitarian actor. Visibly adhering to humanitarian principles, being clear about our objectives to all actors at all times, and putting children's rights firmly on the agenda with such actors are among the operational strategies UNICEF has used in the past in Afghanistan, Sri Lanka, South Sudan, Uganda and the DRC.

Even where NSEs are not actively targeting children in a humanitarian situation (e.g. by abducting them to be child soldiers), most NSEs have neither the desire nor the capacity to protect and promote the rights of children. Building consensus with different actors around the rights of children, increasing their understanding of normative and legal human rights standards -- and ultimately building their capacity, as de facto authorities over a given area, to meet these standards - can therefore be a key strategy for UNICEF and other humanitarian actors. Such an approach must of course not compromise UNICEF's neutrality and impartiality.

Failed or failing states pose similar challenges, with the important difference that they *are* legally bound by their obligations under international human rights law and they can be held accountable for meeting these obligations. Failed or failing states do not have the capacity to meet their commitments to the rights of children. In such cases, capacity building of government officials at all levels constitutes a key strategy of the HRBAP although in most armed conflicts, this strategy may not be feasible in the short-term. In other cases, failed or failing governments may be particularly resistant to any international attention to the rights of certain groups such as internally displaced persons, perceiving such attention as undermining their national sovereignty. In these cases, UNICEF's impartiality, neutrality and credibility as a humanitarian actor and advocate for children's rights becomes of critical importance.

- **A shift in the humanitarian culture of the organization and of partners:** This shift has to take place in two major areas. First, in terms of the attitude towards humanitarian work, humanitarian organizations need to "reorient their morality and thought so that they orbit around equality and justice rather than pity and help" because "rights dignify rather than victimise or patronize people...[and] make people more powerful as claimants...." (Slim 2001). Second, the scope of emergency response needs to be broadened. Humanitarian action is usually seen as a rapid response to a crisis and is associated with the delivery of food, blankets and medication. Other aspects of humanitarian action, such as basic education and learning opportunities, recreation, the

monitoring of child rights violations and advocacy for the safeguard of children's rights, are less known or seen as less crucial elements of humanitarian action. The HRBAP in a humanitarian context requires that the culture in the organization needs to be shifted so that all aspects of humanitarian action are recognised and valued.

This shift needs to take place within UNICEF's partner organizations as well. The IASC has already been active in this area, although many of its members continue to be resistant to applying the rights-based approach in humanitarian crises. Its Reference Group on Human Rights and Humanitarian Action has produced *Growing the Sheltering Tree*, and is now working on guidelines on human rights and humanitarian action for Humanitarian/Resident Coordinators, as well as a workshop on this theme in late 2003. UNICEF has already proposed that the HRBAP be put on the humanitarian agenda through the Inter-Agency Standing Committee on Emergencies (IASC) in early 2004. Meetings of senior leaders can be used to familiarise staff with the HRBAP in emergencies (for example, the annual Humanitarian Coordinators retreat). Existing processes such as the CCA/UNDAF and the CAP process can also be used to bring the HRBAP approach to a humanitarian context.

- **Accountability of humanitarian organizations:** The HRBAP recognises crisis-affected populations as rights-holders. In doing so, the HRBAP imposes a duty upon humanitarian organizations and local and national authorities to hold themselves accountable to providing a certain standard of assistance and protection, i.e. according to internationally accepted norms. The HRBAP therefore *demand*s accountability on the part of humanitarian organizations and their staff in a way that is not the case in more traditional approaches to humanitarian action. To reflect the importance of this shift, UNICEF has recently revised its global set of humanitarian principles to include the principle of accountability. As part of their response to the Southern Africa food crisis, and to promote the accountability of their staff, UNICEF, WFP and Save the Children trained all staff on the 6 core principles for a code of conduct on preventing sexual abuse and exploitation, and on their responsibilities with regard to reporting violations.
- **Improved knowledge and sharing of information about HRBAP in a humanitarian context:** Although UNICEF has adopted the HRBAP in all its work, there still seems to be a general lack of understanding and/or capacity on this approach in the organization. As discussed most recently at the Copenhagen Consultation on Humanitarian Response, UNICEF needs to continue to familiarise staff with this approach, to de-mystify it, while also promoting its applicability in humanitarian crises. UNICEF's emergency training programmes aim to familiarize staff with the HRBAP in emergencies, but more systematic efforts are needed in this area.

In addition to staff, implementing partners and donors also need to be briefed on the HRBAP in humanitarian crises. Although many donors already support the rhetoric of HRBAP, they are less likely to support its implementation, as evidenced by the difficulty in obtaining funding for the development of non-traditional emergency activities. For example, as of March 2003, the education programme in the Liberia CAP had not received any funding at all, the protection programme was only 36% funded, while the health programme was 100% funded (PFO 2003).

In order to be able to share knowledge and best practices about the HRBAP in a humanitarian context, it is important to document good examples. In this way, UNICEF can show how this is done and that the organization has the capacity to do it. A number of initiatives in this respect have already been taken. In 2002, the IASC published *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action*, a collection of experiences from humanitarian workers in diverse situations demonstrating how strategically designed programmes can enhance the protection of

civilians. The book demonstrates that when emergency relief is wedded to a human rights-based agenda, there is every possibility of laying the foundation for sustainable peace, recovery and renewed development. Integrating a human rights and child rights agenda within the framework of humanitarian assistance is therefore essential. Another initiative is the publication *Children Affected by Armed Conflict: UNICEF Actions* in 2002. This publication presents UNICEF's activities in countries experiencing conflict or its aftermath, and shows the wide range of UNICEF's work in this area. A third initiative is the documentation by EMOPS and Programme Division of good practices related to adolescent participation in armed conflict situations.

Summary and Conclusions

This paper has argued that the HRBAP applies to UNICEF's work in development and emergency contexts, while recognizing the specific challenges presented by humanitarian situations. These challenges include failing states, the presence of non-state entities with control over populations and territory, massive populations in flight, and denials of humanitarian access for political, economic or security reasons. Precisely because of these challenges, the HRBAP remains extremely relevant in humanitarian crises.

There are a number of implications for UNICEF and other humanitarian organizations in adopting the HRBAP. The understanding of what constitutes humanitarian action needs to be broadened, so that all its aspects are recognised and valued. In particular, protection and advocacy must be seen as key systematic elements of humanitarian action. The normative basis for UNICEF's work needs to be expanded to consider in a systematic way international humanitarian and criminal law as key pillars. Staff working in both development and humanitarian situations need to be familiar with key legal instruments (beyond the CRC and CEDAW), and the meaning, implications and use of the HRBAP in emergencies. Staff also need to be familiar with and use the good basic programming practices which are essential underpinnings of the rights-based approach. Humanitarian organizations will need to have greater accountability to the populations they serve, treating them as rights-holders and not simply as victims. Monitoring of children's rights violations, advocacy for the safeguard of children's rights at all times, and the pursuit of an end to impunity for crimes committed against children during armed conflict are all areas in which UNICEF will need to be engaged more actively. All of these implications indicate that we still have a great deal to learn about what the rights-based approach means in humanitarian crises.

UNICEF was at the forefront of the international development community in adopting the HRBAP almost 7 years ago. We again have the opportunity to help chart a bold new course, together with others in the humanitarian community. Are we up for the challenge?

Annex 1: Matrix of Relevant Definitions

	Assistance	IASC Protection Egg	Child Protection	HRBAP
Definition/ Descrip.	“Aid that seeks, to save lives and alleviate suffering of a crisis-affected population.” (OCHA Protection of Civilians Glossary, 2003)	“all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law)” (ICRC, 2001)	“Child protection means addressing and preventing violence, abuse and neglect, exploitation and discrimination affecting children.” (MTSP 2002-2005)	“a human rights based approach to programming means that: · All UNICEF Programmes of Cooperation are focused on the realization of the rights of children and women ; · Human rights and child rights principles guide programming in all sectors at all phases of the programme process; and · Programmes of Cooperation focus on the development of the capacities of duty bearers, at all levels, to meet their obligations to respect, protect and fulfil rights; as well as the development of the capacities of rights holders to claim their rights.” (PPM 2003)
Adherents	All UN agencies.	All IASC members (UN, Red Cross Movement, Steering Committee on Humanitarian Response, ICVA)	UNICEF	UNICEF (note that the UN system has also endorsed this approach, through the “Statement of Common Understanding” reached at the Stamford Inter-Agency workshop in 2003)
Key principles/ elements	Assistance may be divided into three categories - direct assistance, indirect assistance and infrastructure support - which have diminishing degrees of contact with the affected population.	Responsive action, remedial action, environment-building action	Protective Environment Framework: attitudes, traditions, customs, behaviour and practices; governmental commitment to fulfilling the right of the child to be protected; open discussion of, and engagement with child protection issues; legislation and enforcement; capacity of those who deal with children; children’s life skills, knowledge and participation; monitoring and reporting; and services for recovery and reintegration	Human rights principles: universality; indivisibility and interdependence of rights; accountability; participation. Important considerations: the child as a subject of rights; the role of parents, family, community; setting priorities at the country-level; achieving the maximum with existing resources; international cooperation; implications of CEDAW; CRC and CEDAW reporting processes; legislation and customary law; influencing public policy and policy formulation; taking a holistic view; partnerships.

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