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The Right of the Child to Education in Emergency Situations
(Article 28 & 29 of the UNCRC)

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Introduction:

In every emergency situation, whether natural, man-made or caused due to conflict situation or otherwise, education especially pre-primary, primary and secondary schools suffer large scale devastation and irregularity, mostly because of poor infrastructure and inadequate focus on educational system at a period of crisis. This is a worldwide phenomenon which is however essentially seen in developing or underdeveloped poor countries where educational system is grossly wretched. When an emergency occurs, immediate rescue operation, supply of food relief and rehabilitation of affected people become the top most agenda in the administration of relief operation. It leaves education of children in the lowest rung.

This paper is prepared in the premise that education is equally significant to receive proper response in all forms of emergency response service and management. While focussing on education as an important issue in the arena of emergency management, this paper also makes a distinction between emergency caused suddenly which shatters a wide range of resources including educational institutions and in some cases of emergency, which occurs over the period like a conflict situation or famine and economic collapse and sometimes at the household level a situation of poverty-ratchet. The purpose of making such a distinction between forms of emergencies is to find out solution for different kinds of emergencies and its consequential impact on education. Similarly, a distinction can also be made between the nature of devastation. Sometimes the emergency shatters a considerably large geographical area and population whereas in many cases the calamity is localised one. The other aspect is emergency situation that occurs for single or a handful of households, like sudden demise of guardians or when a death occurs due to HIV/AIDS syndrome. Here it is necessary to point out that when emergency occurs to a household or of a lesser proportion, the response to the situation is also limited. For example when a death occurs due to HIV/AIDS, it penetrates a situation of emergency for the entire family, as the family is stigmatised. However, the accountability of the State is not fully demanded as the victims constitute small in number and often live in a condition of powerlessness. The children of such families immediately exposed to work environment to eke out a livelihood and/or deprived from education.

Here, there is also a need to stretch the framework for education to address educational needs of children of different age group. It is not that only primary, secondary or higher education get affected but also education within the family and pre-primary stage receive severe jolt consequential to effects of disaster. The learning environment within family gets scattered as security concern are high in a time of emergency. Many may argue that a child learns through a process of socialisation and develops coping mechanism in course of passing through a situation of emergency, however, such condition of life may not help looking at education from the perspective of Article 28 and 29 of UNCRC. In another dimension those children who learn life-skills as an apprentice or trainee they may also encounter a situation of deprivation from education. By and large, education as reaffirmed in UNCRC under Article 28 and 29 receives serious damage, leaving children at lurch. Further, there is a chance that many children have become orphan. The question is not one of sending them to orphanages. The best interest of the child should be considered so also to bring them the ordinary pursuit of life which was available prior to emergency in respect of education.

There are various forms by which the educational system is temporarily (sometimes it is permanent in nature) goes beyond the control and also does not attract attention. The emergency situation not only causes devastation in terms of damage to educational infrastructures like building, furniture, books, learning kits but also creates trauma and behavioural problems among students. Further, due to the involuntary separation from both family and community protection during emergency situation a child's risk of exposure to violence, physical abuse and even death greatly increases. This upshots the deprivation of rights and entitlements conferred on children by national and international laws and policies. One of the significant aspects of rights of children which is mostly affected during an emergency situation is enjoyment of Right to Education. Serious difficulties have been observed regarding the enjoyment of the right to education in countries experiencing emergency situations like India. In Indian context, emergency may cause difficulties to the education system in the following ways:

- Damage to school buildings.
- Loss of furniture, teaching and learning materials.
- Use of school building for temporary shelter, supply of relief material which causes temporary suspension of classes.
- Absence of teachers and student.
- Loss of life of teachers and students.
- Use of school building for storage of relief materials, which almost paralyzes the educational system for more than 6 months.
- Causing physical disability among students.
- Causing trauma related behavioural disorder around educational institutions.
- Loss of text books and educational materials of the students.

All the above damages may bring with it the following consequential misfortune to the educational sector:

- Non-operationalisation of classes for a long period of time.
- Reduce the number of attendance by students.
- Irregular attendance of teachers.
- Increase in child labour.
- Lack of motivation among children to go back to the school.
- It has affected other systems of education like Pre-primary and Non-formal Education centers.

- Involuntary separation of children from both family and community protection.

These are some of the recurring concerns during an emergency situation, which disrupt, deny, hinder progress or delay the realization of the Right to Education. Such situations can also be caused by complex emergencies like armed conflicts, including military occupation and guerilla warfare like Naxalite Movement in India. There is a little attention given to Right to Education of Children in emergency situations in the development plan and policies of the national government as well as the international agencies. Although the issue is recognized, it is often not treated with the importance that it deserves or as a matter of children's rights by various stakeholders. Many aspects of education in emergency situations, such as mobilising students for attending classes and thereby reducing dropouts, making special arrangements for teaching and learning materials, providing the students with educational kits including books as per the suggested syllabus, immediate repair of school buildings, regularising teaching staff to conduct classes etc. are overlooked and as a result are not prioritized.

Every emergency situation, whether it is man-made or natural, has potentially devastating effects on education. Therefore it is important to give utmost priority to restore the education during an emergency. Practical justification for addressing emergency education stems from the following grounds:

- Firstly*, education helps in meeting the psychosocial needs of children affected by conflict or disasters that have disrupted their lives and social networks;
- Secondly*, it is a tool for protecting children in emergencies;
- Thirdly*, it provides a channel for conveying health and survival messages and for teaching new skills and values, such as peace, tolerance, conflict resolution;
- Fourthly*, education for all is a tool for social cohesion, whereas educational discrepancies lead to poverty for the uneducated and fuel civil conflict;
- and, *fifthly*, children benefit from getting out of their homes and the leisure facilities in schools provide a relief from family tensions.

In order to restore the education system in the wake of an emergency situation, the educational sector requires a massive reconstruction of following nature:

- Immediate repair of school buildings.
- Regularising teaching staff to conduct classes.
- Mobilising students for attending classes and thereby reducing dropouts.
- Making special arrangements for teaching and learning materials.
- To provide the students with educational kits including books as per the suggested syllabus.
- Motivate parents to ensure that their children are attending schools regularly.
- Making arrangement for reduction of trauma sustained by students as well as teachers in some cases.
- Providing children with facilities and opportunities, which offer them right to leisure.
- To ensure fullest co-operation of the concerned communities, special drive may be launched at the grassroots level.
- To free educational institution wherever it is occupied by different agencies particularly Government for purposes of storage and relief administration. Similarly where the school is still being used temporary shelter, it should be liberated from such occupation.
- As a matter of mobilizing students, mid-day meal programme or any other type of supplementary feeding should be resumed as has been done earlier.
- Educational fees be waived.

Emergency Education in Indian Legal Framework:

The Constitution of India makes substantial provisions for Right to Education of children in all situations including emergency periods. Right to Education is a Fundamental Right under Article 21 of Constitution of India. In this regard, the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manners as the State may, by law, determine. Article 41 promises right to education and public assistance in certain cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want, which by interpretation include natural calamities. Article 46 promotes educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. Further emergency education of young children can be seen in Article 45 which makes the provision that State shall endeavor to provide Early Childhood Care and Education of children below 6 years of age. Apart from these constitutional provisions, the National Policy on Education envisages that free and compulsory education shall be provided to all children upto fourteen years of age. In *Unnikrishnan Vrs. State of Andhra Pradesh* (1993) judgment, the Supreme Court has held that Right to Life includes Right to Education and education upto the primary stage is a Fundamental Right.

The term "disaster" has been defined in the **Disaster Management Act, 2005** of India as a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. Further the **Orissa Relief Code**, a relief operation guideline of Government of Orissa Province of India, in Para 3 mentions about kinds of natural calamities and other distress that frequently visits the Orissa region. It says that Natural Calamities have dimensional differentiation such as: (a) Natural Calamities which are fairly widespread e.g. draught, flood, cyclone and tidal disaster, earthquakes, volcanic eruption etc. and (b) Those that are localized e.g. gale-wind, whirlwind, tornadoes, hailstorm, distress resulting out of fire accidents, accidents relating to communication and transport services, lightening, thundersquall, virulent epidemics, locust menaces.

In India relief operation is by and large the responsibility of federal States. Every State has their administrative policy and relief code. For example, the Orissa Relief Code, which is the relief operation guideline of Govt. of Orissa provides various provisions for addressing emergency education during natural calamities. Para 38 of it provides for relief to students and educational institutions during an emergency situation for purposes of immediate restoration of educational system. The provisions of Para 38 quotes "In case of serious conditions occurring to the people consequent on a widespread natural calamity, resulting in suspension of collection of taccavi loans in certain villages, Government may consider the grant of any of the following as relief to the students in such villages: (i) Grant of full freeship, (ii) Distribution of textbooks free of cost to primary school children, and (iii) Remission of tuition fees, admission fees and examination fees." Para 150 (c) mentions that repair of school buildings can be included as relief works but may be given a low priority. Further Para 11 (6) entrusts with the Mass Education Department the responsibility of taking measures of relief to students and educational institutions in the affected areas, mobilizing students, volunteers force, when needed restoration damages to education institutions and buildings etc. There is also a scope for including schools construction activities under Food for Work vide Para 158 or as Grain for Work under Para 159 of the Orissa Relief Code.

Respecting and prioritizing children's right to education in emergency situations:

It has been observed that emergency education in India do not get priority in the Government's plan, as a result of which it is not embodied in the reconstruction programmes in spite of the above mentioned declaration in the constitution and policies concerning children. Similarly, Civil Society Organisations also refrain from doing reconstruction work in most cases as revival of educational system particularly reconstruction of educational institutional building requires permission from the Government authorities. The civil society groups who are undertaking revival of educational system claimed that they do not get full support from the Government. For example they face problems like obtaining permission from the Government for rebuilding schools, infrastructure, provision for supplementary feeding in school, etc. Further, absence of legislative reflections on education right of children in emergency situation in the present laws relating to disaster management also prompts for non-prioritization of restoring and respecting the educational reconstruction. Considering the importance of education in addressing the psychosocial need of children in emergency situation, children's right to education in emergency situation must be respected and prioritized in the legislative and administrative measures of the Government.

Continuation/reconstruction of the educational system in emergency situations:

Continuation or reconstruction of the educational system should be the most important aspect of development plan during and after emergency situation. All the emergency management related programmes, by definition, respond to immediate needs, like food, clothing and shelter. However, any humanitarian interventions, which focus only on immediate needs, will remain insufficient and incomplete unless they look forward to the reconstruction of education systems. As a basic social service, education is a model type of programme for the transition between emergency humanitarian action and national reconstruction. This long-term vision is vital for social stability and the return to normalcy, since it should guarantee the logical continuity of assistance programmes from the beginning of a crisis to the phase of actual reconstruction. Any interruption of education programmes constitutes a serious violation of children's rights. This new vision of a strong link between humanitarian intervention and reconstruction is a clear result of the experience gained in recent years. Governments as well as international bodies need to integrate this vision in their humanitarian and development programmes.

Addressing and bridging the gap between the provision of education in the emergency phase and in the post-emergency recovery and development phase:

Educational intervention in an emergency should not be seen as a one-time relief effort, similar to the distribution of cooked foods and blankets. It is a long-term process considering the magnitude of disruption. The actions taken in the emergency phase may have a lasting impact on educational structures and processes. From the beginning, education should be seen as a critically important dimension of national reconstruction. Emergency education plans should involve innovative, culturally appropriate, community-based and sustainable education systems. There may be two kinds of agencies involved in emergency education programmes. One group of agencies have mandates to assist the displaced and victims of 'emergencies'. Other agencies have mandates to assist in the work of 'development'. The coordination and cooperation between the two agencies is very much essential for linking emergency intervention with development perspective. There are often different sections dealing with humanitarian response and with development, viz, UN, multilateral agencies, bilateral donors, NGOs and national governments. The distinction between 'emergency' and 'development' be disregarded in the case of education in the agenda of these actors, since education is a long-term investment that brings forth its fruits way into the future.

Coordination among stakeholders in Emergency Education:

Considering the importance of emergency education, there lie distinguished responsibilities of different stakeholders, such as, Government, Civil Society Organizations, Community, United Nations and other International Development agencies in making education part of relief efforts and prioritising education during emergency situation. Government's responsibility should be reflected in the activities like building an inter-departmental coordination, particularly the education, women and child development and health and family welfare, as co-ordination among these sectors is essential for ensuring holistic development and the efficient use of donor and government resources; Rapid response to the needs of emergency education like repair of school building, providing free textbooks, ensuring better attendance; Adoption of special policies on right to education of children living in complex emergencies; Promotion of gender sensitivity and girls' education in emergencies; Identification of standards for the resourcing of humanitarian response; Special budget allocations must be earmarked in National Calamity Relief Fund for addressing emergency education, etc.

Without active participation of NGOs, addressing emergency education cannot be justifiably endeavored. Therefore, involvement of NGOs in School building reconstruction, motivating the parents to ensure that their children are attending schools regularly, making arrangement for trauma sustained by students as well as teachers in some cases, mobilizing students with educational arrangements for teaching and learning materials, etc. is highly desired for addressing emergency education.

Community participation throughout an emergency education intervention should be encouraged. This is *firstly* because it is widely acknowledged fact that the well being of young children is inextricably linked to their principal caregivers and to the social milieu in which the family unit exists. Secondly, in case of crisis in the political system of a country, communities often resort to self-help despite their lack of means. It is a fact that the partial or total collapse of government structures during a political crisis follows a conflict, which seriously reduces or totally disables the operational capacity of a country and pose significant problems for international aid programmes. In such cases, external assistance needs to channelise through large-scale grass-roots motivation. Thirdly, community participation is instrumental in ensuring sustainability of educational interventions in the aftermath of an emergency. Together what is essential is building social capital for cohesiveness in communities.

The UN bodies as well as other international agencies also possess an important role in providing support in the nature of financial, technical and material, to emergency education projects being run by Government and NGOs. A lot of materials is being developed by UN bodies, multilateral agencies, NGOs and others for use in complex emergencies, which can be shared among a larger stakeholders. Further, relevant education materials, manuals and guidelines should be prepared on an inter-agency basis, and key documents should be made available as a resource pack to organisations working in emergency and post-conflict education.

It is always important to include emergency education in the parameters of disaster preparedness in a such a manner that the children, their parent, their family and the community in which they live are ready to reinforce education in the event of any emergency.

Re-establishing daily routines in schooling:

In the post-emergency phase, the educational sector requires a massive reconstruction in order to re-establish the daily routines in schooling. In Indian context measures like, Immediate repair of school buildings; Regularising teaching staff to conduct classes; Mobilising students for attending classes and thereby reducing dropouts; Making special arrangements for teaching and learning materials; Providing the students with educational kits including books as per the suggested syllabus; Motivating parents to ensure that their children are attending schools regularly; Making arrangement for reduction of trauma sustained by students as well as teachers in some cases; Providing children with facilities and opportunities, which offer them right to leisure; Ensuring fullest co-operation of the concerned communities, special drive may be launched at the grassroot level; Freeing educational institution wherever it is occupied by different agencies particularly Government for purposes of storage and relief administration; Mid-day meal programme or any other type of supplementary feeding should be resumed as a matter of mobilizing students; and Educational fees be waived; etc. must be given special emphasis for restoring school system.

“Window of opportunity” for quality education:

During the emergency situation, realization of quality education for children remains great challengeable task. Since the education in emergency situation is seemed to be addressed as a part of relief work largely founded on the notion of charity, this does not give priority to the quality aspect of it. Hence, education reconstruction processes must be imbued with a window of opportunities which opens up avenues for children for enjoying a good school environment, trained teachers, emergency-proof buildings, culturally-accepted foods, text books, etc. in a Right Based Approach. Further, children of tribal and dalit communities in India are worst sufferer during an emergency situation due to their poor socio-economic status and social exclusion. Therefore these children should specially be addressed in the education rebuilding process by providing an opportunity for them to access the education system with full respect and dignity to their social position. Further, gender issues and girl's education also a most import part to be given special attention as there is significant gender gap in emergency education plan prevailing in India.

Gender issues and girls' education:

The prevailing educational system in India is still characterized by significant gender gaps. This problem can be even more serious in emergency situations. There is a serious gap in the extent of management efforts devoted to promoting the education of girls in different emergency education programmes. Where support for schooling has been made conditional on at least half the children being girls, there has been a positive impact on girls' education. It is vital to ensure that there is full participation of girls and women in school management committees, parent-teacher associations, the teaching force and student enrolments. Emphasising girls education during emergency situation Article 3 of Jomtien Declaration in its Para 3 quotes 'The most urgent priority is to ensure access to, and improve the quality of, education for girls and women, and to remove every obstacle that hampers their active participation...'

ECCE in Emergency Situations:

Early Childhood Care and Education (ECCE) find a very negligible attention in emergency management efforts in developing countries like India. A few are fully aware of the vulnerable through Comprehensive data rarely gathered, programming. A to a more general policy makers and EFA. The Dakar calls in Goal One for *comprehensive early especially for the children. Similarly 2015 all children, circumstances and have access to and education of good that ECCE young children from environment,*

60 Children lost one Educational Year

One of the submissions presented a tragic picture of emergency education rights of children. The fact is that 60 children lost one educational year without getting proper schooling just because these unfortunate children could not produced their birth certificate to the school authorities in a new school where they have been sent for education by an orphanage called Diocese Home, Kendrapara. The tragedy is that all the children who are inmates of one of the orphanage, which started just after the super cyclone, lost their parents, family members and well wishers. As there was no immediate effort for rehabilitation of children the above-mentioned orphanage brought these children for their upkeep. But the humanitarian effort of the orphanage got obstruction when they could not enroll these children in local school as the authorities of the school demanded birth certificate. What is more confusing is that instead of issuing birth certificates the local administrative authorities created unnecessary intrusion into the effort of the orphanage. Even when CLAP intervened for justice to the children the concerned authorities simply escaped from their responsibility by saying that they were not aware about the fact. When education is considered as Fundamental Right and comes within the extended meaning of Right to Life, denial of education for complete one year is just another example of deprivation of entitlement.

policy makers in developing countries overwhelming needs of children made displacement and destruction. about children's needs and status are analyzed and used for policy and recent policy review by UNICEF points marginalization of ECCE amongst practitioners within the framework of Framework for Education for All (EFA) *Expanding and improving childhood care and education, most vulnerable and disadvantaged Goal Two states for Ensuring that by particularly girls, children in difficult those belonging to ethnic minorities, complete free and compulsory primary quality.* What is overlooked is the fact programmes promote transition of home environment to school ensures readiness to attend the primary education and encourage children to complete primary school, often reducing drop-out and failure rates.

A Case Study – Education in Super Cyclone of Orissa-1999:

The ominous evening of 28th October 1999 presaged an eventful happening that left its mark in the memories of people of Orissa forever. It was a holistic event of catastrophe in disastrous proportion. The dark devilish night dawned with a mournful morning waking the people to the reality of existence. The shock and trauma of the holocaust of the Super Cyclone jolted everyone. It was time for courage and action. The nature spread everywhere was bereft of its beautiful ornaments - the tress, the forest, the flowers, the faunas and the orchards. In the still dark night, stealthy and sonorously, the marauder of a cyclone almost ravaged the beautiful damsel, the mother earth, in spite of her sons, daughters and devotees spending sleepless night in vigil to protect her magnanimous citadel, but to no avail. The devastation occurred in spite of the long vigil. The Super Cyclone affected Nineteen districts of Orissa. 13 million people were affected, including as estimated 3.3 million children. The official death toll is just under 10,000 people. An estimated 1,500 children have been orphaned. Over 17,000 schools were damaged or destroyed. Many of those, which survived, were turned in to temporary shelters for people who had lost their homes. Most school equipment and classroom materials were destroyed in the Super Cyclone. Despite this, many schools have opened for classes within ten days of the Super Cyclone, with lessons being held in the open air. Many integrated child development services (ICDS) buildings were destroyed or damaged, which will have an impact of the provision of local health and welfare services for children.

The Super Cyclone caused untold miseries of large-scale human rights violation. The people had to rise to the occasion to establish their authority and their entitlement to various Human Right Declarations. The Universal Declaration of Human Rights showed its figure to Public Hearing as a technique of providing the people a Right to Say in the matters connected to them. Thus the CLAP, arrived at the decision of holding a Public Hearing as a technique of Public Interest Negotiation (PIN) for establishment of the entitlement of the people and strengthening of the polity chosen by them. This prompted CLAP to organize a Public Hearing with active support of numerous civil society groups in 2001. A total number of 1200 depositions were made in the Public Hearing. The issues that came to forefront for intervention are: building collapse, schooling in open air, damage of school furniture and properties, non-availability of government grants for building reconstruction, denial of admission in school due to non-production of birth certificates, etc.

Rejuvenating Education Movement – A Civil Society Initiative on Emergency Education:

CLAP had undertaken a Campaign in the nomenclature of Rejuvenating Education Movement in which efforts were made to bring the children into the educational process in which efforts were made to bring back the children into the educational process which was completely shattered by the Super Cyclone of Orissa in 1999. In this effort near about 10,000 pre-primary and primary school children including children attending Anganwadi Centres (Pre-School Centres) were given Text Books, Slates, Note Books and other writing materials to navigate their attention from the fury of the Nature to the glory of their future. When CLAP undertook the responsibility of ensuring the Best Interest of the Children in any situation of disaster, it relied upon the philosophy that a house can be rebuilt again but the life of a child cannot be. Hence CLAP always put emphasis on immediate response to basic need of children.

The Rejuvenating Education Movement had been undertaken as a symbolic method to mobilize support from the Civil Society to create pressure on the Government to restore education of children as early as possible since by that time restoration of education was a neglected area.

Recommendations:

1. In emergency education, there is a need to adhere to convergence approach so that nutritional surveillance, health and education of children are addressed as a part of response service.
2. The laws and policies of the State Parties concerning relief and disaster management must include rejuvenation of education forthwith when any emergency occurs.
3. There should be an Optional Protocol to UNCRC on the basis of Article 28 and 29 for Emergency Education. This can advance more systematic efforts to link emergency education with the themes of various human rights and humanitarian law protecting the rights of children.
4. Ensuring the equal rights of girls and women to education in emergencies should find a priority in all efforts. It is necessary that a gender strategy be developed for all emergency education programmes. Efforts on emergency education should make sure that equal participation of girls and women in educational activities, through culturally appropriate structures and arrangements is reflected in the intervention plans.
5. Early Childhood Care and Education (ECCE) must be paid a substantial attention to the specific measures required to meet the needs of children below school age during emergency period. There has been little experimentation and intervention with delivering early childhood programmes to respond to the psychosocial, emotional and educational needs of small children and their families in times of emergencies. Often, disaster management workers lack specific child development expertise, and may not be aware of the essential developmental and psychosocial needs of young children. This has often led to the invisibility of young children in relief efforts.

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ABOUT CLAP AND THE IN DEFENCE OF THE CHILD PROJECT

The Committee for Legal Aid to Poor (CLAP) is a non-profit making specialised professional legal support NGO operating in the State of Orissa, India. CLAP exists for promotion and protection of Human Rights and Rule of Law. It is a Social Action Group registered under Societies Registration Act, 1860 (Act XXI of 1860). From its inception CLAP promotes legal activism for establishment of Human Rights and Democratic Development, with emphasis on Rule of Law. As a principle, CLAP acts as Pro-Bono-Publico, where legal wrong or legal injury is caused or apprehended to be caused by reason of violation of Constitutional and Legal Rights and Entitlements or when any burden is imposed in contravention of constitutional or legal provisions with or without proper authority of Laws. Thus, the CLAP originated to facilitate the process of accomplishment of Human Rights through Legal Support Services and Legal Activism.

The CLAP, from its origin, places highest priority on the Rights of the Children through a strategic intervention. CLAP has launched a special programme for children viz. In Defence of the Child Project. The CLAP launched In Defence of the Child Project in the year 1998 with a view to address the legal issues of the children from the perspective of the Convention on Rights of the Child. The Convention on the Rights of the Child (CRC) was ratified by India on 11 December 1992. Since then CLAP had been working extensively to translate the provisions of CRC in to actions at the ground level for the actual realisation of Rights of the Children. The In Defence of the Child Project creates an environment of opportunity for holistic growth and development of children through the use of law, legal process and legal system apart from protection of rights as happens in an adversary system. The CLAP regularly participates in the General Day of Discussion through Oral and Written submission as a part of its International Lobby.