



COMMITTEE ON THE RIGHTS OF THE CHILD

Day of General Discussion 19/09/2008

**THE RIGHT OF THE CHILD TO EDUCATION IN EMERGENCY  
SITUATIONS**

**Reaching out to children excluded from  
the right to education in emergency situations**

**Submission by  
Plan International**

## 1. Introduction

Plan is a child rights-based organization working in 49 countries. Plan makes long-term commitments to support child-centred and rights-based community development programmes in Africa, Latin America and Asia, which are linked to development education and advocacy activity in the South and the North. Plan International addresses issues from a long-term development perspective, which includes working with children and their families during difficult times such as in emergencies and conflicts, assisting them in claiming their rights and rebuilding their lives.

This paper is submitted in response to the Committee's invitation to provide written contributions to the 2008 Day of General Discussion on the rights of the child to education in emergency situations. In line with the principle of interdependency of rights, the right of the child to education in emergencies relates to the wider context of how the CRC can systematically protect and fulfil all the relevant rights and principles of the CRC before, during and after an emergency. Consequently, this submission contains an analysis and recommendations on certain normative and principal issues which can enhance the protection and implementation of the more specific right to education in emergencies. In addition, this document also highlights the issue of: **using 'windows of opportunity' for quality education that may arise in emergency situations vis-à-vis disadvantaged children, such as those who, prior to the emergency situation, did not attend school.** It will focus primarily on three groups of children in marginalised and vulnerable situations, namely girls, children with disabilities and children from ethnic minorities. Plan has previous experience of working with and consulting these three groups of children.

## 2. Normative Standards

The right to education is a human right enshrined in the Convention on the Rights of the Child (CRC) and in other human rights treaties and instruments.<sup>1</sup> It applies to all children, in all parts of the world, in both non-emergency and emergency situations. The latter, however, presents a different set of realities and conditions that necessitate a special set of standards and guidelines for the continued protection, respect and fulfilment of children's rights, including the right to education. Although the CRC recalls the provisions of the Declaration on the Protection of Women and Children in Emergency and Conflict and obliges State Parties to undertake to respect and ensure respect for rules of international humanitarian law in armed conflicts, it does not sufficiently articulate the application of the rights in the Convention in the specific context of emergencies apart from articles 38 and 39 concerning armed conflicts, nor has the CRC Committee provided specific guidelines for all types of emergencies in the form of a General Comment or an Optional Protocol.<sup>2</sup>

The CRC principles of the right to life, survival and development, best interests of the child, views of the child and non-discrimination are meant to be applied in the interpretation and implementation of all the rights contained in the Convention. As this paper focuses on marginalised and vulnerable groups, the principle of **non-discrimination** will be discussed more extensively than the other principles. Non-discrimination requires not only equal treatment of individuals and groups but also includes the adoption of temporary special measures in order to bring children who have been historically disadvantaged or have been marginalised and excluded for a very long time to the same level as other children in society. In practice, this requires prioritisation and special attention to be given to such groups of children. Thus, the application of the non-discrimination principle ensures equality of treatment and equality of result.

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<sup>1</sup> The right to education is enshrined in the Universal Declaration on Human Rights Article 26, in the Covenant on Economic, Social and Cultural Rights Article 13, as well as in the Convention on the Rights of the Child Articles 28 and 29, Article 5 (e) (v) of Convention on the Elimination of Racial Discrimination, Article 10 of the Convention on the Elimination of Discrimination against Women and Article 24 of the Convention on the Rights of Persons with Disabilities.

<sup>2</sup> The CRC Optional Protocol on the Involvement of Children in Armed Conflict limits itself to the obligations of States and non-State armed groups to refrain from the recruitment and use of persons under 18 years old to take part in hostilities as well as the rehabilitation and social reintegration of children who are victims of acts in contravention of the Protocol.

The right to education as articulated in the CRC is subject to the non-discrimination principle of the Convention, article 2. This applies equally in all the other core human rights treaties, where all rights are to be realised in a non-discriminatory manner. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) goes further by stating that **non-discrimination is not permitted even in time of public emergency**. Not even during wars or natural disasters can a state act in a discriminatory manner in their protection of persons under its jurisdiction. Common article 3 of the Geneva Conventions equally points out that during armed conflicts non-discrimination applies: "in all circumstances [persons are to] be treated humanely, without any adverse distinction grounded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria".

In accordance with CRC General Comment 1 on the aims of education, all discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) of the CRC which states that education should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. In addition, the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d).

In the INEE<sup>3</sup> handbook, *Minimum standards for education in emergencies, chronic crises and early reconstruction*, standard 1 deals with equal access and states that: "All individuals have equal access to quality and relevant education opportunities"<sup>4</sup>. Access does not only mean that children are included in educational activities, it also means that they have equal opportunities to learn, which includes the quality of education children receive. Although standard 1 explicitly mentions equal access to education, non-discrimination is enshrined in all the INEE standards emphasizing that, in all efforts to provide education during or after emergencies, non-discrimination is a vital element.

Although one may argue that the right to education is a right that may be subject to derogation<sup>5</sup>, the CRC does not contain a derogation clause applicable in times of emergency. This may lead to an interpretation that, apart from limitations that may be imposed on specific rights (for example on the right to freedom of movement, expression, thought, conscience and religion, and association), the other rights contained in the CRC may not be subject to derogation, and therefore, may not be suspended in emergency situations. The conditions caused by a disaster (destroyed school buildings, equipment and materials, absence of teachers and school officials, deaths, injuries, etc.) may disrupt the children's enjoyment of their rights, including the right to education, but it may not be suspended in a formal procedure that the State might take by declaring a state of emergency. Due to lack of authoritative guidelines on this matter, the CRC Committee is strongly urged to provide clarity in the matter.

#### **RECOMMENDATION:**

The **CRC Committee** needs to **address urgently the gaps in normative guidance** in the CRC in relation to the **rights of children, including the right to education, in all types of emergencies**. Such normative guidance may take the form of a General Comment (which may subsequently be articulated as an Optional Protocol), and should clarify the following:

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<sup>3</sup> The Inter-Agency Network for Education in Emergencies. INEE is a global network of non-governmental organizations, UN agencies, donors, practitioners, researchers and individuals from affected populations working together within a humanitarian and development framework to ensure the right to education in emergencies and post-crisis reconstruction.

<sup>4</sup> <http://www.ineesite.org/page.asp?pid=974>

<sup>5</sup> In the ICCPR's article 4, a right may be suspended where there is a situation of public emergency threatening the life of the nation and the existence of which is officially proclaimed. Derogation is only permitted temporarily (the State must state the date on which it will terminate such derogation).

- a. Minimum core content of the rights in the CRC and other relevant human rights instruments in emergencies; specifically, a definition of the minimum core content of quality education in the context of emergencies;
- b. the extent to which the rights in the CRC, including the right to education, may or may not be considered rights that may be subject to derogation and the implications thereof; and if the right(s) is(are) subject to derogation, define the criteria for and scope of limitations to the rights that may reasonably be exercised by States in time of emergency;
- c. the application of the four CRC principles, including non-discrimination specifically in terms of attention that should be given to marginalised and vulnerable groups;
- d. the specific obligations of States and non-state actors (including UN agencies, NGOs, armed groups, communities, donor agencies, international financial institutions, the international community in general) in emergency situations, including issues of coordination and cooperation (both domestic and international)

### **3. Emergency Situations: Increased risks in the non-fulfilment of the right to education versus expanded ‘windows of opportunity’ for quality education vis-à-vis disadvantaged children**

#### ***The risks***

Schooling for children is often stopped or curtailed during or following an emergency situation. Numerous factors impede the ability of schools to remain functional and of teachers and students to continue their normal routines when survival becomes the paramount concern. Worryingly, all this happens at a time when children are most vulnerable. Conflicts and natural disasters can potentially deprive generations of children from the opportunities education provides and, ultimately, affect entire communities.

*“... Some children in Kovalam cannot continue their studies after school due to the lack of money and loss of certificates in the tsunami. Some children in Vedaraniam found it difficult to go to school as it was far away and they had to walk quite a distance.” From Tamil Nadu, India (13-18 years old)*

During emergencies, children in vulnerable and marginalised situations often experience a greater degree of exclusion, with education being one of many rights out of their reach or denied to them. Frequently, children who are excluded from education either during or in the aftermath of emergencies are often excluded in ‘normal’ times as well. In many parts of the world girls, children with disabilities, child soldiers, children in institutional care, working children, street children, children living with HIV/AIDS and children from ethnic minorities are excluded from educational opportunities, and this is exacerbated during an emergency.

#### ***The windows of opportunity***

Education, during and after an emergency, can play a critical role in caring for all children by creating a sense of normalcy and routine in their life when the regular social support structures are disrupted. This is especially the situation for children in marginalised and vulnerable situations such as girls, children with disabilities, or children from ethnic minority communities.

Education, together with psycho-social support, are tools for preparing girls for the new roles they have to take on during an emergency situation and vehicles for helping girls cope with the traumas they have experienced. As Graca Machel stated in the UN Study on the Impact of Armed Conflict on Children<sup>6</sup>, education is what girls need during and after an armed conflict.

Countries that are affected by natural disasters or conflicts have an opportunity to rebuild learning facilities and an education system that is inclusive and accessible for all children.

<sup>6</sup> UN Study on the Impact of Armed Conflict on Children (1996). <http://www.unicef.org/graca/>

Education is a good entry point for other forms of assistance in an emergency context, such as the provision of health services, and may provide children with previously inaccessible learning opportunities to enhance their **health, well-being and development**. It also enhances girls' life skills, vocational skills and knowledge of sexual/reproductive health. Children with disabilities can be provided with self-help and personal care skills, vocational training and communication and social skills, and children from ethnic minorities can be provided with the opportunity to celebrate their indigenous culture as well as the opportunity for greater social integration through language learning and cultural studies.

Education during emergencies can also help ensure children's **right to protection** especially for those children who are most at risk. In the case of the tsunami in Asia, children were exposed to the risks of child trafficking and similar types of violations. Children's attendance in schools and informal learning centres in the immediate aftermath of an emergency may enhance the awareness and knowledge about protection issues among adults and children as well as allow for better monitoring of their safety and well-being.

As a child-centred international organization, Plan works to ensure the right of children to quality education both during non-emergency situations and *in the context of* emergencies - *during* emergencies as well as *after* emergencies. It recognizes, promotes and supports the growing role of children to be actively involved in preparing for and preventing emergencies. Although this usually takes place within the school environment and is often closely connected to lessons within the school, preparedness and prevention activities that are initiated within schools often extend beyond the school environment to out-of-school peers and into communities. This work can encourage policy change in respect of local and national disaster management, empowering children to become active and influential young citizens and realise their **right to participate**.

### ***Children in marginalised and vulnerable situations***

#### *Girls*

In times of emergency, the right to sustained access to quality education for girls is often threatened. Girls with disabilities, refugee or internally displaced girls, and girls from marginalised groups such as those belonging to religious or ethnic minorities, may have even more difficulties in accessing education, as they may be subjected to multiple levels of discrimination.

In times of conflict, premature drop-out is most likely to affect girls and young women. There is evidence of early marriage being adopted as a strategy to protect girls in times of insecurity, but this usually results in premature school drop-out and the continuation of the cycle of poverty. In Afghanistan, girls' schools have been deliberately targeted in order to terrorize girls into leaving and staying at home. Many have been burned and girls have died.

*"Most of all we need education, especially for girls because we are the future of Afghanistan. In my country many talented girls are not allowed to go to school, and it makes me sad. But if we had peace and security I am sure we will also have education."* Meena, 17 years old

In emergencies, where learning facilities do exist, the few women who are qualified and able to teach may stay away from schools, leaving girls, especially in the upper grades, to be taught only by male teachers. Such situations, especially where there are very few girls and few checks and balances in place to ensure the professional conduct of teachers, create particular vulnerabilities for girls.

It is not only literacy and numeracy that are critical if young women are to be able to play active roles in reconstruction and peace building, but also the knowledge and the confidence to be able to speak out. Access to education is therefore highly significant in efforts to ensure that young women contribute to positive change, and in the case of post-conflict rehabilitation, to break the cycle that can

so easily lead back to violence in a post-conflict period. If girls are excluded from the recovery process, they ultimately feel less accountable. Their education and wider **participation** therefore impact at all levels from the local community, to government, to the international community. It is, therefore, important to establish gender-sensitive emergency education programmes at an early stage as these lay the foundations for increasing the **participation of girls** in recovery and reconstruction activities.

Post-emergency situations may in fact provide girls with greater opportunities to access education and can be a window of opportunity to tackle social exclusion. After the 2005 earthquake in Northern Pakistan, more girls attended schools than before the disaster. This was primarily the result of successful awareness-raising by local and international organizations and agencies such as Plan on the value of educating girls.

### *Children with disabilities*

During war or natural disasters, the number of people with disabilities increases significantly due to injuries caused by acts of violence or natural disasters. In addition, inadequate health care during emergencies may result in more cases of disabilities. There are many forms of disabilities among children that may have an adverse affect on their access to education during, and after emergencies. Hearing and visual disabilities, mental disabilities and physical disabilities require different strategies and approaches in order for children to obtain full access to education during and after emergencies.

As affirmed by the UN Convention on the Rights of Persons with Disabilities (CRPD), which recently entered into force, children with disabilities have the same rights to educational services as anyone else. Furthermore, the CRPD provides additional protection for children with disabilities in their exercise of their right to education. It is crucial that the CRC Committee, UN agencies, NGOs and other actors advocate the ratification of the Convention. In addition, raising awareness of the CRPD and the right to education of children with disabilities is important in order to enhance the status of all persons living with a disability and to remove discriminatory and harmful stereotypes. Educational programmes for persons with disabilities must not only focus on formal education, but also on informal ways of acquiring and developing life skills such as communication, and sometimes even self-help skills such as cooking, dressing and eating.

During and after an emergency, many children with disabilities become more marginalised as fewer resources, including specialist support and relevant medical treatment, are available to meet their special needs. Furthermore, children with disabilities often face more significant child protection violations as they are the most exposed and least cared for in a community, especially those in institutional care. However, during emergencies children with disabilities may also experience improvements in their access to education, as many internationally run refugee or IDP camps receive additional funds from donors to meet this need. This sometimes creates hostilities in camps, as other refugees/IDPs view the education of children with disabilities as an unfair allocation of funds. In addition, many children with disabilities find that when they return to their home country or community, there are no such education opportunities available for them<sup>7</sup>. After the tsunami in Asia, Plan noted that after schools had been rebuilt in new places many children with disabilities no longer had access to them. Also, in the case of host schools many did not have the facilities necessary for children with disabilities, which meant they had to stay home.<sup>8</sup> The international community has an obligation not only to provide education for children with disabilities in refugee/IDP camps, but also to advocate that governments provide inclusive quality education when children with disabilities return to their home or host countries.

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<sup>7</sup> UNESCO Guidebook for planning education in emergencies.

<sup>8</sup> Plan Asia. Children and the Tsunami

### *Children of ethnic minorities*

Political, religious and ethnic affiliation, singly or in combination, can negatively affect children's access to education. Minorities may be denied access to education altogether, or education may be used to suppress their language, traditions, art forms, religious practices and cultural values. In a situation of forced migration, refugees and internally displaced persons may reside in countries with different ethnic, political or religious groups, and this can at times create tensions. Refugees and IDPs may be denied access to schools because of the differences in ethnicity, political affiliation or religion. Also in post-conflict situations, returnees are often subjected to discrimination if they have a different ethnic background.

One of the lessons learned by Plan in implementing educational programmes for children affected by the tsunami was the importance of employing creative thinking and alternative ways in trying to reach marginalised and vulnerable groups. In its initial decision to carry out school-based emergency education activities and services in Thailand, Plan inadvertently excluded the children of migrant workers and minority groups. Thai children who were consulted by Plan expressed the opinion that the exclusion of migrant workers and minorities in Thailand was one of the biggest failures of post-tsunami aid.

Acting on children's recommendations, measures were taken to address this by working with a Burmese NGO to support non-formal education through 9 learning and 2 pre-school centres in Thailand catering to Burmese children. In addition, Plan worked with the Thai Law Society and Ministry of Education to promote and contribute to the achievement of the Thai government's newly introduced policy by providing access to education for migrant children and others.<sup>9</sup>

Governments have an obligation to provide education for all children, including children belonging to ethnic minorities living in remote areas. Governments need to collaborate with civil society, children and members of ethnic minorities to find alternative ways of reaching children who live far away from already existing schools. The 'window of opportunity' that emerges after an emergency creates a situation in which children from ethnic minority groups can be specifically targeted and thus receive the education they need.

### **RECOMMENDATION:**

The CRC Committee should recommend to State Parties that they, with the support of other secondary (non-state) duty-bearers, from the early onset of an emergency adopt an inclusive non-discriminatory approach to education which will benefit all children and that this approach is maintained in the planning and implementation of school reconstruction programmes. Furthermore, all duty-bearers should identify and give special attention to marginalised and vulnerable groups of children.

### **4. Accountability**

The obligation to implement the CRC rests primarily with State Parties both in non-emergency and emergency situations. The different actors and stakeholders in emergency situations should have a crystal clear understanding of the various levels of obligations as well as the delineation of roles and functions, and must recognise the State as generally having the lead role in the relief, reconstruction and rehabilitation phases. However, it is also necessary to employ a practical approach when the State and its agencies lack the capability and resources to respond to the enormous demands of an emergency situation. In such cases, other non-state actors (including UN agencies, NGOs, donor agencies) should fill in the gap until state institutions and agencies are able to fully assume their responsibilities. It might also require non-state duty-bearers to assist the State in building its capacities to effectively respond to emergencies as well as during reconstruction and rehabilitation.

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<sup>9</sup> From Plan Thailand

The guidelines on periodic reporting to the CRC Committee under the section on "Special protection measures in emergency situations" require State Parties to report on progress and steps taken to implement the provisions of the Convention. However, the only specific point made was for States to "indicate all measures adopted pursuant to article 39 to: Promote physical and psychological recovery and social reintegration of child victims of armed conflicts; and ensure that such recovery and reintegration takes place in an environment which fosters the health, self-respect and dignity of the child. In this regard, reports should provide information *inter alia* on: The role played by education and vocational training..." There is, however, no specific set of guidelines for state reporting in the context of natural disasters.

The CRC Committee has, in its Concluding Observations, on occasions addressed the issue of the implementation of the right to education, in particular for marginalised groups, in post-war situations in countries such as Liberia and Sierra Leone. However, in the case of natural disasters, the Committee has given very scanty statements. For example, in its Concluding Observations to Bangladesh's state report, all the Committee said concerning the matter was "The Committee recognizes that poverty and recurrent natural disasters have impeded the full implementation of the Convention".<sup>10</sup> The same was said in its Concluding Observations to India's state report in 2003.<sup>11</sup>

### **RECOMMENDATIONS:**

- The CRC Committee should include a more specific set of guidelines for state reporting on the implementation of the CRC in the context of all types of emergencies, not just armed conflicts. It should, in its dialogue with States Parties, through the reporting process, increasingly address issues concerning children affected by emergencies.
- The CRC Committee should provide more substantial comments and recommendations on ways in which States Parties' responses to emergencies could be improved, especially concerning the continued and sustained fulfilment of children's rights.
- The CRC Committee should encourage NGOs to continue to include in its alternative reports substantial information on the implementation of the CRC in the context of emergencies, specifically the enjoyment of the right to education by marginalised and vulnerable groups, Furthermore, the CRC Committee should utilise such information in its critical examination of States Parties' fulfilment of their obligations under the CRC.

### **5. Conclusion**

During an emergency, and in the aftermath of one, the State and other duty-bearers need to continue, as far as possible, to provide education for all children, including girls, children with disabilities and children from ethnic minorities. In no circumstances can the State discriminate in the protection and fulfilment of rights, including the right to education. All duty-bearers should maximise the 'windows of opportunity' presented by emergencies in providing quality education to marginalised and vulnerable groups including those who did not have access to education prior to the emergency situation.

In the aftermath of an emergency, it is vital that all people, adults and children alike, participate in the recovery and reconstruction of the community. It is equally important that all persons from marginalised and vulnerable groups partake effectively with their voice and expertise. Education is instrumental in enhancing the meaningful participation of children and adults in the community.

The Committee has to urgently address any gaps in the normative standards on how to implement the rights of children in emergency situations especially concerning the continued and sustained fulfilment of children's rights in post emergency situations. State reports provide very little information on the implementation of the right to education during emergencies, especially in the

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<sup>10</sup> CRC 34<sup>th</sup> session (2003) CRC/C/15/Add.221

<sup>11</sup> CRC 35<sup>th</sup> session (2004) CRC/C/15/Add.228



context of natural disasters. Likewise, the CRC Committee has not sufficiently addressed the same issue in its examination of state reports. This is reflected in the relatively sparse statements on the matter provided by the Committee in its Concluding Observations.

## Annex 1

### RECOMMENDATIONS

1. The **CRC Committee** needs to **address urgently the gaps in normative guidance** in the CRC in relation to the **rights of children, including the right to education, in all types of emergencies**. Such normative guidance may take the form of a General Comment (which may subsequently be articulated as an Optional Protocol), and should clarify the following:
  - a. Minimum core content of the rights in the CRC and other relevant human rights instruments in emergencies; specifically, a definition of the minimum core content of quality education in the context of emergencies;
  - b. the extent to which the rights in the CRC, including the right to education, may or may not be considered rights that may be subject to derogation and the implications thereof; and if the right(s) is(are) subject to derogation, define the criteria for and scope of limitations to the rights that may reasonably be exercised by States in time of emergency;
  - c. the application of the four CRC principles, including non-discrimination specifically in terms of attention that should be given to marginalised and vulnerable groups;
  - d. the specific obligations of States and non-state actors (including UN agencies, NGOs, armed groups, communities, donor agencies, international financial institutions, the international community in general) in emergency situations, including issues of coordination and cooperation (both domestic and international).
2. The CRC Committee should recommend to State Parties that they, with the support of other secondary (non-state) duty-bearers, from the early onset of an emergency adopt an inclusive non-discriminatory approach to education which will benefit all children and that this approach is maintained in the planning and implementation of school reconstruction programmes. Furthermore, all duty-bearers should identify and give special attention to marginalised and vulnerable groups of children.
3. The CRC Committee should include a more specific set of guidelines for state reporting concerning the implementation of the CRC in the context of all types of emergencies, not just armed conflicts. It should in its dialogue with States Parties, through the reporting process, increasingly address issues concerning children affected by emergencies.
4. The CRC Committee should provide more substantial comments and recommendations on ways in which States Parties' responses to emergencies could be improved, especially concerning the continued and sustained fulfilment of children's rights during and after the emergency.
5. The CRC Committee should encourage NGOs to continue to include in its alternative reports substantial information on the implementation of the CRC in the context of emergencies, specifically the enjoyment of the right to education by marginalised and vulnerable groups. Furthermore, the CRC Committee should utilise such information in its critical examination of States Parties' fulfilment of their obligations under the CRC.