

**Written Contribution to the
UN Committee on the Rights of the Child
for the General Day of Discussion 2007**

**Resources for the Rights of the Child
-Responsibility of States-
(Article 4 of the UNCRC)**

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Written Contribution by CLAP, India
on the theme
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Article 4 of the UNCRC.

Securing Rights for Children implies allocation of resources in a non-discriminatory and equitable manner. This statement was, in fact appropriately realised by the United Nations while contemplating the UN Convention on the Rights of the Child (UNCRC) for which it was duly incorporated in the framework of CRC under Article 4. More so, allocation of resources is an essential pre-requisite for realisation of economic, social and cultural rights as these inter-generational rights have a wide bearing for majority of children whose rights are violated due to their disadvantaged position and marginalisation caused by poverty and other forms of social mal-adjustment as well as oppression. Children belonging to underprivileged families and communities require special care and assistance. This is properly put in the Preamble of the UNCRC when it says that for the growth and well-being of children, family should be afforded the necessary protection and assistance so that it can fully assume its responsibility towards their children within the community as family is the fundamental group of society and a natural environment. Thus State Parties must afford protection and assistance for enabling children to realise its Rights. This provision fixes responsibility of the State to generate and arrange resources for Rights of the Children. Rights of Child thus desire that the State Parties make its social and economic planning in such a manner, which is consistent with its obligation under UNCRC.

On the other side the UNCRC encompasses a wide range of rights on Children in the shape of survival, development, protection and participation rights. These Rights are invariably termed as positive rights, which eventually require both financial and institutional resources for productive intervention. In the absence of maximum resources, these rights will inevitably remain flawed and inadequately realised. Here a distinction needs to be made between negative and positive rights. The former, enjoying a longer tradition, stipulate that something not to be done. They are Rights not to be wronged in some specified way. Whereas, the later that is the positive rights include the right to adequate nutrition, primary health care and elementary education. Positive Rights are produced goods or services. They are therefore dependant on resources, the allocation of which may be affected by scarcity and competition. Negative rights, on the other hand know no such limitation. They do not have to be created, only to be protected. Hence it is feasible to honour them irrespective of rich or poor states. It is worth remembering that some negative rights such as the juvenile justice may well depend for their enforcement on their being converted into positive rights where the state has to create rehabilitation measures. As negative rights do not involve substantive direct resource costs makes it easier to be accepted by the States and also for arguing for their universality and inviolability. This raises the concern that on the ground of non-availability of resources positive rights may be relegated to low priority in the economic and social planning of

the State in spite of the fact that these are significant rights the violation of which shall affect the entire childhood. The UNCRC under Article 4 makes a positive gesture when it says State parties shall undertake measures to the maximum extent of their available resources and international cooperation for the implementation of the rights of the child. However it also makes a compromise by providing the space for the State parties to escape from their responsibility on the ground of non-availability of resources. Hence the debate concerning Resources for Rights of the Child and the responsibility of the States need to be appreciated from the following factors:

Available Resources:

It is a myth to hold all the time that there is a resource crunch on the part of the State to fulfil the obligations concerning social, economic and cultural rights. Resource crunch rather shows poor social and economic planning by the State to secure social justice for its subjects particularly for the children. Spending resources for children means making an investment at the very beginning of the life of an individual, which automatically curtails huge expenditure at the later stage of life to correct the social wrongs. When securing rights becomes a culture of the state and society then naturally the resources are not too heavy. To make observance of rights a culture there is a latent need to invest at the early stage of life, which means shaping childhood. In fact lack of resources which is so easily advanced as an argument by the state is in reality very often unfounded and not based on actual state of available resources. Invariably the State possesses resources to realise the ESC Rights without creating a new set of facilities but such existing resources are not being harnessed by the state due to the culture of escape from obligations. Besides the moment it is said that the resources are required it is considered as financial resources alone. Therefore the state parties need to work out what are the available resources that can be used to secure for its children their rights. For this a workable definition needs to be contemplated with regard to the term available resources. Along with this country-wise resource mapping for children are also essential for each of the specific rights such as child care, education, health, immunisation, rehabilitation of children in conflict with law etc. Of course while doing so the state must bear in mind the impact of globalisation, structural adjustment with a human right orientation, foreign direct investments, debts and the role of corporate bodies in joint financing initiatives.

International Cooperation:

There is an unequivocal provision made in the UNCRC for international cooperation. Although it is not explicitly made what forms of international cooperation in Article 4, it is understood to be about development assistance. Of course there can be other forms as well like technological know-how, various modules of childcare and systems for upbringing childhood etc. It is important to mention here that the term international cooperation is used in various provisions of UNCRC like 24(4) Right to Health, 28(3) Right to Education etc. Other forms of cooperation can be agreement, bilateral and multilateral measures to prevent abduction, sale or trafficking, sexual activity and exploitation. In its totality, international cooperation can be effectively built to strengthen

the resources for the rights of the child under UNCRC. What is essential is its extensive use both by donor and recipient countries. The hallmark is ensuring child centred approach in the broader development aid policy. In deed the World Summit for Children in its Plan of Action discussed cooperation in the economic arena like debt relief for children, debt swaps for investment in social development and private sector creditors.

Right Based Approach:

The Best Interest of Children cannot be realised unless children enjoy all their rights. The Rights should not therefore be categorised to say that some of it can be implemented as these are negative rights which can be achieved without much investment and important rights for the life of children are impossible to realise due to its nature of being positive right where state has to create facilities and opportunities for children which at once demands huge monetary investment. A Right based approach is hence inevitable to secure for the children all rights conferred on them by UNCRC, which terms the basic need of children into normative rights. Since these needs are no longer mere requirement for the childhood but a right of every child, the aspiration of society also changes that as a matter of entitlement these rights can be claimed. Failure of Entitlement means denial of basic needs of children which amounts to denial of childhood. Now that these childhood needs are given the status of rights, as these needs are basic requirement for shaping childhood therefore to secure these needs a right-based approach is an essential element. When State pursues a Right based approach the system of governance must be effectively informed about the role of State as a duty holder. The negative role of the state must be changed and state should be an actor to create facilities and opportunities for children. Finally the mandate of the State in a right-based approach must include equitable distribution of resources, non-discrimination, affirmative action in support of childhood, good governance and human development.

Balancing Economic & Social Policies:

By and large ESC related rights are perceived as means for development and economic growth. This notion generates and perpetuates the understanding that ESC Rights depend on availability of resources. The division of rights as positive and negative is very often stems from such approach. It is therefore essential to contemplate policies, which looks at childhood needs and investment at the early stage of life. The rights when grounded on economic and social policies in a manner of equitable distribution of resources, non-discrimination and for creation of facilities and opportunity helps in progressive realisation of rights of child so also use of available resources to the maximum extent. Similarly if the economic and social policy receives statutory back-up for its implementation a conducive environment can be built for affirmative action and positive discrimination in favour of children. Concentration of economic power can be transferred for social purpose with fixing corporate social responsibility, which should be treated as legal obligations. It is not always true to hold that economic growth contributes to social development but also social development has positive bearing on the economic growth as well. Investment in childhood presupposes human development, which is essentially a part of economic and social policies.

Prioritising Resource Allocation:

In pursuit of measures for implementation of rights of child to the maximum extent of available resources or which can be made available from international cooperation the state parties need to prioritise issues which are required to be addressed urgently. It is a political decision and changes from state to state. Therefore such notion would not actually help in realising the rights for children unless the rights are viewed as basic needs, which is universal and intrinsic. This at once requires prioritising resources on the basis of existing principles already in force like the declaration on World fit for Children and the Millennium Development Goal. Therefore there is hardly any need to reinvent the wheel once again for purposes of resource allocation. The priority should be fixed in accordance with the principles of above mention documents. The following principles of Millennium Development Goals must be taken into consideration in course of resource allocation:

- (1) Eradicate extreme poverty and hunger (Reduce by half the proportion of people living on less than a dollar a day. Reduce by half the proportion of people who suffer from hunger);
- (2) Achieve universal primary education (Ensure that all boys and girls complete a full course of primary schooling);
- (3) Promote gender equality and empower women (Eliminate gender disparity at all levels of education and empower women).
- (4) Reduce child mortality (To reduce child mortality by two-thirds, from 93 children of every 1,000 dying before age five in 1990 to 31 of every 1,000);
- (5) Improve maternal health (Reduce the maternal mortality ratio by three quarters. Healthy children need healthy mothers);
- (6) Combat HIV/AIDS (Halt and begin to reverse the spread of HIV/AIDS. Halt and begin to reverse the incidence of malaria and other major diseases),
- (7) Ensure environmental sustainability (Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources. Reduce by half the proportion of people without sustainable access to safe drinking water. Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020);
- (8) Develop a global partnership for development (Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory, includes a commitment to good governance, development and poverty reduction— nationally and internationally. Address the least developed countries' special needs. This includes tariff- and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries; cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction).

Measuring Maximum Extent:

It is primarily a Governance Issue to measure the effort made by the state to ascertain whether the existing resources are used to the maximum extent or not. It requires the

States to identify the indicators and measurable outcomes. Like the term available resources there is no working definition of what are maximum extent and the limitation imposed beyond which no resources can be made available. Such principles must be embedded in the indicators for measuring governance in each country. In the absence of which it will be easier for State to escape from its responsibility on the ground of resource crunch which actually may not be the case.

Transparency and Fixing Accountability:

Very often it happens that in spite of heavy expenditure on social development by the state actual benefit does not percolate down to the target beneficiary for whom the special opportunities are created or facilities have been made. When it is about the children the situation is blurred, as children are traditionally not being involved in course of arriving at decision in their name by the adult policy makers. As legal recourse is also restricted for children due to lack of accessibility to judicial systems when their rights are infringed or violated therefore the systems of governance and institutions do not show responsibility towards children. In a situation of absence of accountability the benefit hardly reaches the children. This state of governance in most of the states who have ratified the convention desires that the state must be transparent in its decision making process and resources allocation. At the same time accountability must be fixed by statutory means so that the failure of duty holder to perform its obligation can be reviewed. A strong monitoring system is an essential ingredient in the statute concerning children. Social Audit, Public Hearing, fact finding and documentation on a regular interval can be useful measures for effective governance. Finally what matters is Good Governance in the affairs of children.

Participation of Children and Civil Society:

For purposes of promotion of good governance in the affairs of children involvement of children themselves and civil society organisation is seen as a positive step. In fact the UNCRC recognises participation of children as a matter of their right. A transparent and accountable system emerges when participation of individuals who are going to be benefited by such rights are ensured. But participation of children in the decision making process in the systems of governance is long overlooked. Children are denied the information concerning the decisions taken in their name by authorities. Similarly participation of Civil Society Organisation are also significant in the realisation of rights of children as a review of resources for rights of the children in a state require consistent mapping, budget analysis and advocacy for allocation of more resources where it is due breaking mere conservative political consideration.

Ensuring Quality Basic Services:

While the Article 4 of UNCRC desires the State parties to take all measures for implementation of rights of children to the maximum extent of their available resources, it does not make it mandatory that qualitative measures needs to be undertaken. Even

though it is not directly flows from Article 4 it is essential that not only all possible measure but qualitative services should be rendered as protection of best interest of the child is one of the salient feature of the convention. Again it is a governance issue for which regular monitoring through social audit and public hearings are required. Participation of Children themselves and Civil Society Organisations can help in building qualitative services. Apart from it indicators of change and outcome analysis should be incorporated in the policy framework so that effective results can be realised.

Recommendation:

1. The term available resources must be defined to include equitable distribution of resources and non-discrimination in the process of allocation of budget along with the line of demarcation so that a limitation can be fixed.
2. The ESC Rights of the Children should be treated in a Right Based Approach so that deprivation of entitlement can enable children to be compensated.
3. Participation of Children as a matter of Right must be guaranteed for Policy decision concerning financial allocation.
4. Indicators for measuring governance must be contemplated by the states to review their achievement and to ensure qualitative services.

References:

1. UN Millennium Development Goal.
2. International Covenant on Civil and Political Rights.
3. UN Universal Declaration of Human Rights.
4. UN Convention on the Rights of Child.
5. Constitution of India.
6. State of World's Children, UNICEF, 2006.
7. Circle of Rights.
8. India's First Periodic Report 2001.

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.