

Children and Governance



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HAQ: Centre for Child Rights

Report Based on the proceedings form the Colloquium on Children and Governance November 9-11, 2011
organised by HAQ: Centre for Child Rights in Partnership with UNICEF, India and CRY

Published in 2012

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Suggested citation: HAQ: Centre for Child Rights. Children and Governance. 2012. India

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Preface

On July 21-22, 2009, HAQ: Centre for Child Rights organised an International Colloquium on Children and Governance: Holding States Accountable. Participants from Ethiopia, South Africa, UK, Nepal, Sri Lanka and India shared their experiences of monitoring government's performance in realising child rights and ensuring the participation of children in governance. (See Annexure 1 for key recommendations of the colloquium).

Since the 2009 colloquium, two other meetings were organised by UNICEF and Save the Children along with their partners in New York and London. The African Child Policy Forum, drawing upon HAQ's methodology, produced "*The African Report on Child Well-Being-Budgeting for Children*" and organised a conference on this subject. HAQ has since brought out a book (*Every Right for Every Child: Governance and Accountability*, published by Routledge) drawing upon experiences from across the world and across sectors on this subject. HAQ has developed a '*Child Rights Index*' for India, to rank the states according to their performance on realisation of child rights across different sectors. It has also developed a *Beginners' Guide for Budget for Children Analysis*.¹

Against the above backdrop, HAQ, supported by the Unicef India Country Office and Child Rights and You (CRY) organized a colloquium, to follow up and take forward the discussions initiated in 2009 and linking the same to similar efforts in other parts of the world. The Colloquium was held in New Delhi between November 9 to 11, 2011. Thirty five participants from six countries apart from national participants, including the chairpersons from the State Commissions for Protection of Child Rights from four states in India intensely deliberated the issues for three days.

This report synthesises the deliberations of the Colloquium. In what follows, the key points of emerging from the major themes discussed are summarised. The issues related to law, governance and children (Rule of Law, Social Norms and Policy Coherence/Child Sensitive Judiciary and the Role of Judicial Activism in Child Rights) have been clubbed together.

It also draws upon other relevant discussions on the issues on governance and children, though they may not necessarily have been raised in the Colloquium. They are nonetheless important in the context of the ongoing discussions on children and governance and hence can help build our understanding on this very important subject.

An overriding concern of the Colloquium, cutting across all the themes, was how to make the state accountable and prevent the governments from abdicating its prime responsibility not only for upholding the rule of law but also as prime duty bearers to ensure the rights of children in favour of non-state actors. The other major issue related to measuring or developing indicators of good governance in a rights based framework as distinct from welfare oriented one.

Children and governance is about the recognition of children as citizens in their own right, therefore rights holders. Fundamental to this recognition is State action by formulating legislation, policies and programmes and also implementing them through the executive, legislature and the judiciary. It has been recognized across the world that improved or good governance is a pre-condition for sustained poverty reduction and a peaceful society. A commonly accepted definition of governance is the way the State positively exercises its political administrative and economic power.

Enakshi Ganguly, proceedings of the Colloquium on Children and Governance. Holding State Accountable. July 20-22, 2009

¹ HAQ: Centre for Child Rights and Save the Children., 2010 : *Budget for Children Analysis. A Beginners' Guide*, New Delhi, India.

1. Laying the Ground: Good Governance

“Governance is a multifaceted concept that focuses on the interactions between the government in its various forms and the people. Exact definitions vary across organisations. To the UNDP, “governance can be seen as the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.” The World Bank defines governance as “the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions with them.”¹

1.1 Global Movement towards Good Governance

The concept of governance is not new and countries across the world have their own forms of governance as well as reforms in governance. However, of late, the term has come to receive greater global attention, with a recognition of the need to establish what is commonly referred to as ‘good governance’.

This shift, especially in the development sector, was a consequence of international financial institutions and donors to establish a basis for investments or donations for a cause. Discourses on good governance led to the evolution of indicators to measure the states’ performance – a move that has often been wrongly criticised for being based on standards common to western democracies as measures of goodness in government.

This has been accompanied by global attempts to analyse diverse perspectives and situations and establish universally accepted standards and indicators and also those specific to different socio-cultural, economic and political contexts.

Discussions on ‘good governance’ led to indicators for measuring state performance in this regard. As one of the criticisms against these indicators has been that they are based on the standards that are common to western democracies as measures of ‘goodness’ in government, globally attempts are being made to look at the different perspectives and establish both universally accepted standards and indicators as well as those specific to the different socio-cultural, economic and political contexts.

Both ‘governance’ and ‘good governance’ are also now being viewed and analysed in the context of different groups of people, especially the more vulnerable.

Children and their concerns however, have failed to find adequate space in these discussions although governance and the realisation of the rights of the child are intrinsically connected.

Essential characteristics of good governance as recognised through international discourse so far include:

1. Participatory,
2. Consensus oriented,
3. Accountable,
4. Transparent,
5. Responsive,
6. Effective and efficient,
7. Equitable and inclusive, and
8. Follows the rule of law.



¹ Save the Children, OECD and Unicef, 2011: *Child Rights and Governance Round Table: Report and Conclusions*, Unicef Innocenti Research Centre, Florence, Italy

1.2 Children's rights and good governance

Good governance, though a necessary condition, alone is not sufficient. What is needed is a rights approach, as distinct from a welfare one or a total paradigm shift in the approach to the child. It has to be remembered that when societies or governments deal with children, it is not doing them a favour. A child is a bona fide citizen with full human rights as much as an adult citizen – an oft forgotten fact that leads to relegating any action concerning children to the realm of charity and goodwill.²

Children's rights to protection from violence, abuse and exploitation are clearly laid out in international law, the legal standards of regional bodies and in the constitutional and legal frameworks of most countries in the world. It reflects a basic human consensus that a world fit for children is one in which all children are protected, at home or outside of it (Ibid).

The critical change in thinking then is shifting from positions of governance and children to governance *for* and *with* children. Integral to this is the creating of an enabling environment for the realisation of child rights. It means recognising children as full citizens with all their rights. But having provisions, charters or policies alone will not do, mechanisms need to be instituted to fulfill the rights and ensure that they are actually implemented, underscoring the necessity of measuring the influence of the intent of the state. The latter raises the question of how really measurements ought to be done and what could be robust indicators that would enable measuring good governance and that too from the child's point of view. Mechanisms need to be instituted to ensure that when the intent of the State is converted into policies, they are not piece-meal and half-hearted but holistic and inclusive and do not divide or prioritise some children over others. This necessitates a different ethical code and accountability than prevalent today insofar as children and child rights are concerned.

Contemporarily, the notions of governance and good governance are viewed and analysed in the context of different groups of people, especially the most vulnerable.

This brings us two concepts that need to be examined as far as children as citizens are concerned:³

Children *and* Governance

Children *in* Governance

Children *and* governance involves developing an understanding and engagement with the systems of governance that ensure the realisation of the rights of the child. This may not necessarily include the "protaganism" of children. Interested adults in society may choose to work on ensuring systems of governance by working towards creating the system, implementing programmes, or through research, advocacy or training.

Children *in* Governance, on the other hand requires building partnerships with the children themselves participating in governance and recognises that children are 'agents of change'. "Children's citizenship and governance is concerned with the active participation of girls, boys and young people in the familial, social, economic, political and cultural arenas. It is a step-by-step process through which they develop the skills, understanding and values to influence decision-making and outcomes at local, national and international levels in an environment that recognises them as competent social actors".⁴ This is only possible through the recognition of their right to participation. In other words, children's roles as protagonists are dependent on spaces that are created/or not created for them by the state or the adults in society. How then does the state respond to the concerns of children? Are the state mechanisms adequately equipped for it? What are the characteristics of a child friendly governance system?

2 HAQ, 2008: *Blind Alley* – Juvenile Justice System in India, HAQ: Centre for Child Rights, New Delhi, India, p. 7

3 Ganguly Thukral, .Enakshi., 2011: *.Every Right for Every Child-Governance and Accountability*, Routledge. New Delhi. India

4 Save the Children, 2003 &2004: *Children and Young People as Citizens: Partners for Social Change. Overview. 2003 and 2004*. International Save the Children Alliance. Nepal

1.3 The Criticality of Good Governance in the Context of Children

Given the criticality of good governance in realising child rights, something that is attainable only in a rights framework, it becomes imperative to redefine the basic parameters of governance itself. On the face of it, governance is as governance does, and almost anything is passed on as 'good' if it is backed by the State. In the Indian sub-continent, despite gross violation of child (and human) rights, increasing hunger, trafficking, diseases like diarrhoea, multiple drug resistant tuberculosis, HIV/AIDs, displacement of large populations from their habitats and livelihoods, ecological refugees, natural disasters, the State looks away with impunity. More often than not, poor implementation of legislations and policies are held responsible for the sordid state of affairs.

The underlying social structures and the distribution of power in society that creates this situation go mostly unchallenged. There is a large gap between the last post of the systems of governance and children, especially the underprivileged ones. Street children for instance remain expelled from society. Breast feeding, or children being in school is so natural, yet so many normative barriers exist in the actualisation of such natural acts. Normal activities become abnormal for a poor child, and the poor child's access to institutions becomes abnormal, mediated by the power structures of society. This is best exemplified by the issue of child labour. "Children do not work simply because they are poor. They continue to work because child labour helps employers by depressing the general wage levels. Child workers work as much and as long as adults for no wages or a fraction of the adult wage in inhuman and dangerous conditions, with no bargaining power. There is no arguing that children can be beaten into submission. The only way to resolve this situation, a demand that's more than two decades old, is to eliminate all types of child labour in agriculture as well as in un-organised non-agricultural enterprises."⁵ Yet the distinction between hazardous and non-hazardous occupations continues to be made in law and is also sought to be reinforced by international conventions like ILO's Convention 182. Such distinctions are clearly violative of child rights, including the right to childhood.

Legislations and conventions do need to centralise child rights and appropriate mechanisms need to be put in place to implement the same and at the same time over-turn the existing distribution of power in society. This includes the power of adults over children. The exercise of such power takes inhuman forms at times.

In bitter cold, children made to wait for chief guest wearing just vests

Lucknow: Most schools across Uttar Pradesh are shut or open only for students in higher classes due to the severe cold wave but there is one in Allahabad which forced its students to spend hours wearing just skimpy vests while waiting for the chief guest to arrive for their annual day function.

The MR Sherwani School, run by senior Congress leader Salim Sherwani, did the unthinkable yesterday, when these students, who were drawn from all classes, wore vests as they marched past the chief guest, Allahabad Commissioner Mukesh Meshram.

The event was scheduled to begin at 11 am but the children had no choice but to shiver in the cold as Mr Meshram arrived two hours late.

The senior official, who did not seem to be aware of the district magistrate's order to shut schools till December 24 to shield children from the biting cold, praised the students.

"I am proud of these students because they are braving the cold," Mr Meshram said. Most people attending the event had several layers of clothing on them.

The school management says that this mega event had been planned in advance. Since the show had to go on as scripted, the children had to wear only vests even in the biting cold, it said.

(Source: <http://www.ndtv.com/article/india/in-bitter-cold-children-made-to-wait-for-chief-guest-wearing-just-vests-159721?pfom=home-otherstories&cp>, accessed 21/12/11)

Underlying all this is a fact that is often overlooked: in the contemporary paradigm of neo-liberal economic growth regimes, good governance is relegated to the economic sphere only. It is assumed that allowing free markets to work without any impediments will solve all problems. The full impact of such policies on the realisation or violation of child rights has not been adequately understood or researched. The social aspects of good governance are almost totally ignored, creating a near de-link between good governance and the masses. Notions of transparency and

5 HAQ, 2009: Still Out of Focus-, *State of India's Children*, 2008, HAQ: Centre for Child Rights, New Delhi, India, p.181).

accountability have been re-interpreted from the corporate perspective, to serve their ends in a situation where the market forces have co-opted the state. The hiatus between the economic and the social sectors is increasing. The vulnerability of the socially excluded, especially children, is rising, as shown by the worsening indicators of children's well being in countries like India. There is absolutely no linkage between the high growth rate of the Indian economy and poverty reduction. Growth is not development. The Indian paradigm is of development-less growth, thanks to the dominance of the market, leading to the existence of a notional social protection due to very weak institutions.

The issue then becomes how the space for the common people, especially children, can be reclaimed. The notion of good governance has to be redefined from the perspective of the people, especially the children. This would necessitate that planning and budgets at the grassroots level are outcome oriented, and the implementation be done through grassroots institutions, people's audits being a part of the processes. People's capacities need to be built to deal with the market forces so that inclusive growth becomes inclusive development.

Intrinsic to this is that training and sensitisation of grassroots workers should be replaced by training the higher level functionaries. Motivation is needed instead of mere criticism and communities need to be mobilised to build pressure from below in demanding accountability from the state. This would entail adopting a bottom-up approach instead of the prevalent top down systems that are operative today. Pushing local bodies, building their capacities, letting them decide what is appropriate and right in their areas is required, with those at the top supporting and not forcing decisions on them. Civil society organisations have a major role to play in the formulation and support of these relationships, creating enabling conditions. Equal relationships are needed, with equality being the keyword in every aspect. Notions of practicality have to be seen from this perspective and not be defined by our capacities, because doing the latter creates hierarchies such as vulnerable, hard to reach or most hazardous children, violating the basic principle of equality of all children. But all this requires effective decentralisation of governance to reach the children where they are.

Thanks to the rights based approach to development, we have seen a growing understanding emerge that children's rights cannot and will not, be significantly achieved without taking into consideration the governance systems in which they are implemented. The issue is of governance for children.

What do we mean by this? It is about the capacity of duty bearers to respond to children's rights, both at an individual and organisational state level. And it is about creating an environment that enables these capacities to flourish. Governance for children therefore implies examining actions of the State, through a child rights lens. Governance rests on a series of principles including: transparency, responsibility, accountability, participation and responsiveness to the needs of children.

The benchmark that we are talking about here involves a combination of approaches and initiatives. Child-centered policies and laws are only as effective as the capacities of duty bearers at different levels of governance to implement and enforce these policies and laws. So what we need are effective institutions, equitable services and adequate resources, combined with political will and accountable leadership. Accountability can be defined as "the ability of the governed to hold to account those who govern.

Karin Hulshoff, Country Representative, Unicef, India, Opening Address to the Colloquium (see Annexure 2)

2. Children and Governance

Governments are obliged to fulfill the rights of children as well as playing regulatory and oversight roles to ensure non-state actors' compliance with child rights codes. In general, child rights impose three distinct obligations on governments: the obligation to respect, protect and fulfill those rights.

1. The obligation to respect child rights requires governments to refrain from interfering directly or indirectly with children's enjoyment of their rights.
2. The obligation to protect children against abuse and exploitation refers to the governments' duty to prevent, investigate, punish and ensure redress for the harm caused by abuses of their rights by third parties, such as private individuals or other non-state actors or even state actors at times.
3. The obligation to fulfill rights necessitates that governments fulfill the rights of children through the implementation of legislative, administrative, budgetary, and judicial and other measures. Additionally, the obligation to fulfill child rights refers to the progressive realisation of rights, and includes governments' duties to facilitate and provide for basic needs, particularly when children's families are unable to do so.

Child Rights Governance is important to children as it supports the implementation of their rights, contributes to sustainability and has the potential to reach all children. Child Rights Governance is important to all agencies and organisations having child rights and the CRC at their core. Good governance and child rights are mutually reinforcing. While the principles set out in the CRC provide a set of performance standards to guide the work of governments and other social actors, a conducive environment is also necessary for child rights if they are to be respected and protected in a sustainable manner. For instance, the general measures under the CRC such as child rights legislative frameworks, budget allocations and policies inform and support good governance efforts such as rule of law, transparency, accountability and inclusiveness.

Children of Asia: How to ensure their rights?

Turid Heiberg, Save the Children

See Annexure 3

Fundamental to this recognition is State action by formulating legislation, policies and programmes and also through the systems it sets up to implement them – the executive, legislature and judiciary. In keeping with this, it becomes crucial to examine the experiences with results based planning for children in the overall context of governance and evolve indicators that best reflect fulfillment of child rights and national progress. According to Save the Children, governance involves structures and systems. It is concerned with power and resources and opportunities to influence matters that affect individuals and their communities. Improved or good governance is a pre-condition for sustained poverty reduction and a peaceful and stable society. And good governance in the area of the rights of the child is measurable by the level of realisation of those rights.

Yet, despite the discussions on children and governance globally, the situation remains what Barlett described seven years ago:

*"One of the hallmarks of 'good governance' is its inclusiveness and attention to enquiry and participation for all groups. But even progressive governments that refer carefully in their policies to 'women and men' may express an unwitting bias against children. This is not unique to government. This bias can run deep in many quarters. Even in discussions among committed development professionals who are fully aware of the benefits of taking gender into account, it is not uncommon for interest to fade if the topic of children comes up. The unspoken message is that bringing children into the discussion is a not-quite-relevant tangent – that surely their needs are met if their parents' needs are met. To some degree, this is true. But it is also true that boys and girls of different ages experience the world in particular ways, and maybe affected in particular ways (sometimes profound and long lasting) by a range of decisions and actions."*⁶

6 Bartlett, Sheridan, 2005: "Good Governance : Making Age Part of the Equation – An Introduction," *Children, Youth and Environments*, 15(2) p.1-17.

Implementation of the Convention on the Rights of the Child is highly dependent upon the way traditions, mechanisms, processes and institutions, through which authority is exercised, operate for common good – not only for children but for all. Conversely, governance can only be comprehensive if it takes into account the human rights of all, including children.⁷

However, governance with respect to children in a rapidly changing global scenario needs to keep pace with and be responsive to the changing needs of children, referred to as Newly Emerging Needs⁸. These authors recommend that policy makers be more flexible, and increasingly prepared for new and as yet unfamiliar situations emerging in a fast changing world. They caution against a 'cookie cutter' approach to developing interventions. The following issues continue to be of relevance:

- What is good governance for children?
- What are the standards and indicators for good governance for children?
- Is a single answer possible for all these questions that is applicable to all children across the world?
- How can States be held accountable?

In this context, it must be remembered that accountability is a distinctive, complex and central feature of human rights and is concerned with the requirement of the State to fully comply with its national, regional and international obligations. This involves continuous monitoring by government and civil society. It means holding governments accountable for obligations and commitments they have made. Despite this very critical role of accountability, there is very little work in this regard on children.

Thus in India, despite six decades of Constitutional guarantees and twenty years after the signing of the United Nations Convention of the Rights of the Child (CRC), children continue to face grave violations of their basic rights, as a recent social audit showed. Even a uniform definition of child has not been formulated. "We do not have a National Policy for Children defining the 'child.'" In fact, the CRC has time and again recommended that a uniform definition of the child be adopted in the policies and laws," says the report brought out by HAQ on the social audit conducted by 172 organisations, campaigns and networks across the country of the laws and Constitutional Guarantees for children in the country⁹.

7 Child Rights and Governance Roundtable, Report and Conclusions. London, 26-27 April 2011

8 Oudenhoven, Nico van and Rekha Wazir, 2006: *Newly Emerging Needs of Children, An Exploration*, Garant, Holland, pp. 23, 26 & 31)

9 Dhar, Aarti, 2011: 'Grave violations of child rights continue, reveals social audit', *The Hindu*, Saturday, November 19.

3. Children's Participation in Governance

Ironically, children and their concerns have not until recently been given adequate space in the discourses though governance and the realisation of the rights of the child are intrinsically connected. As Nolan notes, "It is significant that, despite notable exceptions such as Article 40 of the Ecuadorean Constitution, Articles 78 and 79 of the Venezuelan Constitution and Article 41(6)(k) of the draft Kenyan Harmonised Constitution, recognition of children's participation rights other than in a legal, adjudicatory context is rare within child-specific provisions across countries. This contrasts with the significant rise in recognition of the 'protection' and 'provision' rights set out in the UN Convention on the Rights of the Child at the domestic constitutional level".¹⁰

Venezuela's Constitution Upholds Child Rights and Participation

Children are full subjects of rights and shall be protected by the law and by specialised organs and courts, which shall respect, guarantee and develop the provisions of this Constitution, the Convention on the Rights of the Child and other international treaties on this subject, signed and ratified by the Republic. The State, families and society shall give absolute priority to ensuring holistic protection and in so doing, shall take the best interests of the child into account in all decisions and actions that concern them. The State shall promote their progressive assumption of an active role in society and a national orientation system shall direct policies for the holistic protection of children. (Article 78, Constitution of Venezuela)

"The right to participate in decisions made on their behalf is one of the bundle of civil and political rights provided in the CRC that are usually associated with liberal democracies. Because of their immaturity, children may need extra assistance in order to be able to exercise these rights, assistance that should be provided by duty-bearers"(Ibid). However, as was remarked by the UN Special Rapporteur on Human Rights and Youth in 1991, dialogue between adults and children is to a large extent limited by the absence of structures through which children can 'filter their opinions through to decision-making bodies'.

Genuine participation vs.tokenism

Participation cannot be genuine if children have no opportunity to understand the consequences and the impact of their opinions—such non-genuine 'participation' often merely disguises what is actually the manipulation of children, or tokenism. Again, the key to genuine participation is ensuring respect for children's views. In addition to facilitating and supporting activities to foster child participation, it is becoming increasingly important to consider whether and how to ensure follow-up of children's recommendations and concerns.

Children's referendums and the 'What do you think?' project are but a few examples of a worldwide movement to increase the spaces and opportunities for child participation. In all such activities, strong monitoring and evaluation components must be present and initiatives tested against the principles of the Convention. Is the activity in the best interests of the child? Is any form of discrimination present? Do the most disadvantaged and marginalised children have opportunities to participate and are their voices heard? Are children genuinely participating? Can children make a difference in decision-making processes?

(Source: <http://www.unicef.org/crc/files/Right-to-Participation.pdf>)

What is clear is that children's participation cannot be a one-time project. It is a continuous process that needs support and facilitation. There is a need to be constantly aware that it does not become tokenistic or unsustainable. The discussion in the colloquium clearly showed that enabling children's participation has to be with the keen awareness that children are being encouraged to take decisions that are in their best interest, with an understanding of the long and short term implications of such decisions.

10 Nolan, A, 2010: "The Child as 'Democratic Citizen' – 'Challenging the Participation Gap'", *Public Law*, (4) pp. 767-782.

Children's participation involves complexities which require us to 'deepen our perceptions' of what the construct of childhood means to the many different people in children's lives. Perceptions of children inevitably affect the roles, responsibilities and behaviors that children are expected to take on in any one particular context, as well as the nature of adult-child relations, and how children are treated. Moreover, children's own perception of themselves and their peer group plays an interacting role in determining how children think and behave.

Child Rights and Children's Participation

Rita Panicker, Director, Butterflies, India, Annexure 4

Participatory development can be broadly defined as people's involvement in developmental processes that concern their lives and their community. Such participation can be *passive*, that is others plan and the constituency participates in the implementation or *active*, when the people make their own plans, chalk out their own developmental goals and ask the State institutions to participate in them. Ironically, most State institutions and organs seek only passive participation. Yet children have the right to be heard, a right that is enshrined in Article 12 of the UNCRC (See Box: The UNCRC and Child Participation)

The UNCRC and Child Participation

Several provisions in the UNCRC reflect children's right to participation. Participation is a key guiding principle of the UNCRC, as well as one of its basic challenges. Article 12 states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard—within the family, the school or the community. The principle affirms that children are full-fledged persons who have the right to express their views in all matters affecting them and requires that those views be heard and given due weight in accordance with the child's age and maturity. It recognises the potential of children to enrich decision-making processes, to share perspectives and to participate as citizens and actors of change. The practical meaning of children's right to participation must be considered in each and every matter concerning children.

The experience of the Child Workers in Nepal Concerned Centre (CWIN) since the early 1990s has shown that a strong child rights movement in Nepal created space for children as citizens and right holders defying conventional outlook towards children, especially those living and working in risk situations. The emergence of child rights forums and child clubs created a positive environment for children's meaningful participation at various levels. The first ever child club 'Bal Chetana Samuha' was registered formally with initiation of UNICEF-Nepal 1996. From 2002, consensus has been reached among stakeholders to consult with children in issues concerning them, and this as we have seen is an integral part of the Government of Nepal's child rights and decentralisation initiative. There are about 13,000 such clubs spread all over the country.

The children's organisation 'Jagriti Bal Club' and CWIN won a court case in the Supreme Court of Nepal (2004) on the right to children's association, which grants children under 18 in Nepal to govern an organisation on their own without the involvement of any adult and register with the government, sharing the same mandate as any other adult organisation. Children today have space as board and advisory committee members in national and local organisations. They are also engaged in monitoring and evaluation of organisations including in programme and policy.

As a fundamental right of the child, the right to participation stands on its own; it requires a clear commitment and effective actions to become a living reality and therefore is much more than a simple strategy. It was for this reason that the Committee on the Rights of the Child identified the right to participation as one of the guiding principles of the Convention. Participation is an underlying value that needs to guide the way each individual right is ensured and respected; a criterion to assess progress in the implementation process of children's rights; and an additional dimension to the universally recognised freedom of expression, implying the right of the child to be heard and to have his or her views or opinions taken into account.

Respecting children's views means that such views should not be ignored. It does not mean that children's opinions should be automatically endorsed. Expressing an opinion is not the same as taking a decision, but it implies the ability to influence decisions. A process of dialogue and exchange needs to be encouraged in which children assume increasing responsibilities and become active, tolerant and democratic. In such a process, adults must provide direction and guidance to children while considering their views in a manner consistent with the child's age and maturity. Through this process, the child will gain an understanding of why particular options are followed, or why decisions are taken that might differ from the one he or she favoured.

The child's participation is a right and children therefore are free to express their views or, if they prefer, not do so. Children should not be pressurised, constrained or influenced in ways that might prevent them from freely expressing their opinions or leave them feeling manipulated. This principle clearly applies to judicial proceedings involving them, as victims, as children who have contravened the law or because their parents are fighting over their custody. It may also include judicial proceedings in which a child is forced to participate as a witness even if the legal outcome may contravene the child's best interests. Children's right to participation as outlined in article 12 of the CRC is closely linked to freedom of expression. It is also related to fulfilling the right to information, a key prerequisite for children's participation to be relevant and meaningful. It is in fact essential that children be provided with the necessary information about options that exist and the consequences of such options so that they can make informed and free decisions. Providing information enables children to gain skills, confidence and maturity in expressing views and influencing decisions.

Article 15 states that children have the right to create and join associations and to assemble peacefully. Both imply opportunities to express political opinions, engage in political processes and participate in decision-making. Both are critical to the development of a democratic society and to the participation of children in the realisation of their rights.

Participation leads to the realisation of other rights like the right to health and education. Thus, children are entitled to be informed, have access to information and be supported in the use of basic knowledge of child health and nutrition (article 24(2)e) so that they may enjoy their right to health. Children's participation takes on a special dimension in the area of education. Education should give children the opportunity to develop their talents and abilities to full potential, to gain confidence and self-esteem, to use their initiative and creativity, to gain life skills and take informed decisions and to understand and experience pluralism, tolerance and democratic coexistence. In brief, the right to education means the right to experience citizenship. To achieve citizenship and all it entails, children must be perceived not as mere recipients of knowledge, but rather as active players in the learning process. It is for this reason that the UNCRC puts so much emphasis on the aims of education (article 28) and on an educational system that respects the child's human dignity.¹¹

Barring a few exceptions in Civil Society Organisation (CSO) interventions, by and large active participation of children in decision making processes, especially when their own lives are at stake, remains a cherished goal. At times some children from privileged backgrounds are at best 'consulted,' but the vast majority of children living in poverty, those belonging to socio-economic groups who are looked down upon, (like the Dalits and Tribals in India) and the disabled, are not even asked and remain perpetually excluded. This is as true for State organs and institutions as CSOs. In this context, it needs mentioning that the Nepalese government has developed a child participation policy and more or less mainstreamed children's participation. However, getting marginalised children to participate, and overcoming conventional approaches and conservatism still remain challenges. India and other countries in the region could learn from Nepal's experience.

Yet a beginning has to be made. Good governance insofar as children are concerned becomes meaningless without their active participation. CSOs can lead the way but the State has to be made responsible for ensuring child participation. Actively listening to children's points of view can be a good beginning but a change in the prevalent mindsets and power equations in society will be essential. Children would have to be educated to respect differences amongst themselves and their responsibilities. The moot questions that need to be discussed and debated at wider platforms are:

- How to mainstream child participation in all spheres of society and societal action, including in State functioning? How child participation can be incorporated for instance in the education processes including schools and local governance bodies like gram sabhas?
- What does participation and the mechanisms of doing so mean for different categories of children – specifically middle class, working and street children, child victims of abuse and exploitation and children with disability?
- How to balance meeting the needs of and providing interim care for vulnerable children vis-a-vis the long term goals of holding the State accountable to ensure the basic needs and rights of children?

¹¹ <http://www.unicef.org/crc/files/Right-to-Participation.pdf>

Finding single answers to these questions will not be possible. The answers will have to be evolved in participatory ways according to contextual specificities. It may be argued that in a situation where active participation of underprivileged adults, except through the ballot box once in five years, is not ensured, child participation is a utopian concept. But that is precisely the point: child participation cannot await adult participation but on the other hand active participation of children in matters concerning them will eventually lead to greater participation by adults in the future.

4. Monitoring State Performance

Violations of rights take place both by acts of omission and commission by the state. An act of violence or withdrawal of a basic service is an act of commission, but non-provision of resources, which includes budgetary provisions and services, is an act of omission. Accountability is a distinctive, complex and central feature of human rights, and is concerned with the requirement of the state to fully comply with its obligations, national, regional or international. Concrete examples of individuals and groups seeking accountability show that the real challenge is to convert legal commitment into specific measure of implementation.¹² This involves **continuous monitoring** by government and civil society. There are several examples of how this is possible in the context of children. Must be undertaken at the Federal (Central/ National) and provincial or state levels.

Society for the Protection of the Rights of the Child (SPARC) in Pakistan¹³ has since its inception monitored state performance through its annual report the State of Pakistan's Children, regularly highlighting issues related to policy, legislation, planning, implementation, budgetary allocation and, national and international obligations with recommendations for improving the situation. It also orients the media on state performance and governance related issues, leading to regular articles, features and editorials in leading newspapers.

The experience of tracking the allocation and expenditure from when the budget has been announced, right down to the last user is what the PAISA report of the Accountability Initiative attempts to do through its tracking of the flow of money in the education budget for schools by asking the question *"Do Schools Get Their Money?"*

This initiative is based on the assumption that outcome failure is a symptom of a systemic accountability failure and that the system is a leaky pipe. But there is very little empirical understanding of how increased allocations translate to actions (planning and decision making, fund flows). As a result inefficiencies from one year (or one scheme) simply translate to the next. This understanding, however, is crucial for both policy makers and citizens (service users).

Good governance is about the right Laws, Budgets, Politics. It isn't oil or diamonds but politics that matter.... It is therefore important to build a supportive environment & building voices and advocacy. Hence the value of evidence, including indexing and comparing government performance

Assefa Bequele,
Measuring, Scoring and
Ranking Government
Performance: An approach
from Africa

SSA School Grants
EACH YEAR EVERY SCHOOL GETS THREE GRANTS FROM SSA.

SCHOOL DEVELOPMENT GRANT

SCHOOL MAINTENANCE GRANT

TLM GRANT


Has your school:

- Received these grants?
- When did the grants come?
- What were the grants spent on?

School Development Grant
For School & office equipment
Such as: Blackboard, sitting mats, chalk, duster, registers etc


- Rs.5000 per primary school per year
- Rs 7000 per upper primary school per year

Primary and upper primary schools treated as separate schools even if they are in the same compound or premises




School Maintenance Grant
For Minor repairs & Maintenance
Such as: Repair of toilet, handpumps, boundary wall or playing fields and whitewashing etc.

- Rs.5000-Rs.7500 per school per year for schools with upto 3 classrooms;
- Rs7500- Rs.10000 per year for schools with more than 3 classrooms.



TLM Grant
For Teaching-learning aids
Such as: Charts, posters, globe, models, books etc

- Rs.500 per teacher per year for all teachers in primary and upper primary schools



CONTACT US: ACCOUNTABILITY INITIATIVE TEL: (011) 2611 5273-76 FAX: 2687 2746 EMAIL: ipaia@accountabilityindia.org

ACCOUNTABILITY INITIATIVE

Under standing processes, unpacking the leaky pipe is critical to addressing the accountability failure

¹² Potts, Helen. Undated: *Accountability and Right to the Highest attainable Standard of Health*, Human Rights Centre, UK and Open Society Institute,. Public Health Program. USA.

¹³ Arshad Mahmood, 2011, *Children and Governance: Monitoring State Performance: A case study of Pakistan*. Executive Director SPARC

The PAISA exercise stresses the creation of tools that emphasise:

- *Collecting data* related to implementation of programmes including: planning, resource allocation, expenditures and institutional arrangements for service delivery
- *Developing easy to use, scalable tool-kits* to track fund flows and understand institutional roles and responsibilities
- *Disseminating data* widely to ALL stakeholders
- *Building capacities* to create “barefoot expenditure trackers” and enable wider stakeholder participation in planning and resource tracking

This systematic tracking enables us to see how much money reaches the schools from what has been sanctioned, when it reaches and how it is used. It also allows for comparisons between the performance of the various states.

A similar tracking of budgets from the Centre to the states, and beyond to the smaller administrative units, right up to the schools was undertaken by HAQ in six states as part of its overall budget for children exercise.

However, for HAQ, budget analysis to monitor financial accountability, is only one instrument in a bouquet of tools it has developed to monitor state performance. The core of HAQ’s work is developing tools for monitoring State response and holding it accountable for its omissions and commissions in the realisation of child rights. It seeks political and democratic accountability by monitoring and analysing parliamentary questions. Its Status Report monitor the executive and HAQ monitors the judiciary by engaging with it and through initiating judicial intervention. It is also planning and executing interventions to make governance systems more responsive to children’s rights and entitlements, through its advocacy initiatives.

The African Child Friendly Report by the African Child Policy Forum and the India: Child Rights Index are other methods of measuring progress in states efforts to implement child rights. The African experience and the response it has received from the different states clearly shows that this can indeed be a very effective method for monitoring state performance and holding it accountable.¹⁴

The African Child Friendly Index is a statistical tool to assess performance, uses input and outcome indicators, ranks governments across Africa and identifies which governments are / not doing well, then uses the results for advocacy within and across countries.

A similar exercise is being planned for the South Asian countries. South Asia Initiative To End Violence Against Children (SAIEVAC) together with regional and national agencies will develop a child-friendly study for the SAARC area in 2012¹⁵

On the other had the India Child Rights Index, is specific to India, ranking the states within the country across indicators.

Towards an era of good governance and accountability

- **Move from rhetoric to practice**
- **Governments are duty bearers and hence the key actors.**
- **What governments do or don’t matters and hence the need to focus on their performance.**
- **NGOs capacity to change the world limited but significant.**
- **The need for measuring and evaluating it.**

¹⁴ Assefa Bequele *Measuring, Scoring and Ranking Government Performance: An approach from Africa (Presenatation)*

¹⁵ Turid Heiberg, Save the Children, ‘Children of Asia’, Presentation to the Colloquium. See also Annexure 3.

5. Law, Policy and Judicial Activism

A child sensitive judiciary has been an issue of discussion over decades. Questions that have plagued the judicial system includes – How can it be ensured that children are heard while formulating orders and passing judgements? How can the judicial processes become child friendly so that children are not intimidated by the proceedings and processes?

There are laws that are child specific, in other words deal with children directly such as those on the right to education or child labour. The most well established across the world now are the laws related to juvenile justice. However, there are several offences against children that are not addressed by law or dealt with adequately, like with sexual offences against children, both boys and girls in India, thereby requiring the creation of a new law under discussion. There are often special provisions relating to offences against children. But, it is the penal codes or the criminal codes of countries that continue to be used for children, or laws for special offences such as trafficking that may include children or adults. There are instances in which judges have pushed the boundaries of judicial paradigms through their orders for example in India, the Supreme Court and the Delhi High Court¹⁶ has laid down guidelines for the treatment of victims of child sexual abuse. This was only possible because of judicial activism. Similar examples are available from across the world. This has led to jurisprudence and even the framing of new legislations in countries. The fundamental right to education in India is an example of this.¹⁷

At the same time, a regressive judiciary can take away rights and kill progressive legal mechanisms.

The Indian Constitution prohibits child labour but selectively. We are facing a problem with this formulation. The Right to Education is shifting attention from government schools. The typology of schools converges with the stratification existing in society – poor schooling for poor children. Can the status of children be a yardstick to measure economic development?

Babu Mathew, Professor of Law, National Law University Delhi

The inadequacy, inappropriateness and weaknesses of the existing legal frameworks in relation to governance and child rights and the state abdicating its responsibilities is a continuous concern. In talking of legal aspects usually children in conflict with the law come to mind. While there are major lacunae in relation to these children, the other categories of children like those in need of protection also suffer from the weaknesses of the legal system and its implementation mechanisms. And in general, the legal and constitutional rights of children who are neither in conflict with the law nor in need of protection seem to be ignored.¹⁸

Is law and policy relevant? Why do we need international standards Indeed, all societies need laws and normative guidelines, and they must be guided by international standards. Governments are bound by law, processes of administration of justice, and that justice has to be non-arbitrary. People centred democratic governance entails access to justice and an accountable executive is an essential part of it. Human rights must form the focal point of good governance and children have to be protected from violence through regulations, monitoring and third party actions. To fulfill rights, the State is obliged to take action to fulfill the basic rights of every child. It is essential that the courts give judgments in accordance with natural and international standards. With respect to non-state actors, the state has to perform a regulatory role in relation to human rights. Law must give leadership to the community but the concept of accountability cannot exist without the protection of human rights.

Savitri Goonesekere, Public Address on Children and Governance

Essentially, the issues that arise are 1) Is the existing legal framework sufficient or 2) Are new laws and statutes needed? 3) How can the implementation mechanisms be strengthened so that ordinary children who are neither in

¹⁶ In The High Court Of Delhi At New Delhi W.P. (Crl.) No. 930/2007 14.08.2007.

¹⁷ The Unnikrishnan Judgement had clearly stated that Article 45 of Part IV (Directive Principles of State Policy) of the Constitution must be read in conjunction with Article 21 (Right to Life and Personal Liberty) of Part III relating to Fundamental Rights. By reading Article 45 in the context of Article 21, the Supreme Court made education a Fundamental Right for all children 'until they complete the age of 14 years'.

¹⁸ See Savitri Goonesekere's address appended to this report (Annexure 7).

conflict with the law nor in need of protection can realize their rights¹⁹. As a concept, **judicial activism** has been in existence for more than a century. However, the meaning has changed over time from its earlier pejorative sense to the now more acceptable, and is sometimes considered a laudable practice. Earlier the term was scathingly used to describe decisions which essentially reflected political manipulations. Nowadays, however, the term connotes different meanings to different persons. It commands popularity from the quarter benefitted and scorn from others.²⁰

The nomenclature ‘activist judge’ is used to describe a judge who actively and knowingly subverts, misuses, grossly misinterprets, ignores, or otherwise flaunts the law and or legal precedence due to personal opinion, be that opinion ideological, religious, philosophical, or other. On the other hand, **judicial activism** in litigation is a helpful mechanism used by the courts to assert their powers and jurisdiction and to do justice strictly according to the law, as they would interpret it in the facts and circumstances of each case before them. Judges who interpret the law by looking to the intendment of the Legislature, in a way so as to cater for the needs of the population for whose benefit the law was enacted, are not making law. Thus the conclusion that can be drawn from the above is that through the process of judicial pronouncements only the creation of a certain degree of sensitisation has been possible. Judicial activism in those cases, if it can be called that, was purely an exposition of the existing legal principles, applied to the facts of the case.²¹

Black’s Law Dictionary defines judicial activism as “a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.”

Bryan A. Garner,
Black’s Law Dictionary

“I believe the judges dealing with cases of violence against women and children as well as those concerning the rights of child offenders, have not been making any new laws, but have propounded the law in its correct spirit and perspective, keeping in mind the subjects whom the laws were enacted to protect and benefit, and always bearing in mind the structure of the society, its cultures, mores, difficulties and drawbacks, and above all keeping in view the rule of law. If while acting under the forgoing urge to do justice in accordance with the law, the judges appear to be ‘guilty of judicial activism’, then so be it. This, to my mind, is ‘beneficent activism’ and not the type to be decried or sneered at. This type of judicial activism is good for the poor and oppressed, who are otherwise prevented from getting proper and proportional treatment under the law and denied redress due to various hurdles- economic, social, educational etc”.

Justice Imman Ali, Judge of the Appellate Court, Supreme Court of Bangladesh

¹⁹ Presentation by Babu Mathew.

²⁰ Role of Judicial Activism in Child Rights By Justice M Imman Ali, see Annexure 6.

²¹ Ibid

6. Role of Independent Human Rights Organisations and Ombudspersons

National Human Rights Institutions exist in a number of countries across the world. Drawing upon this, and because of the specific needs of children, over seventy countries across the world have independent institutions for monitoring children's human rights set up by the state. The defining features of these institutions are that they are stand-alone, specialised institution or identifiable child rights department within broad based human rights institution. They may be stand alone institutions or part of the over all National Human Rights Mechanisms and have their own regional specificities.²²

While independence is the defining feature of these institutions, it is also their most fragile aspect. Being within the government, and often located within a line ministry with reporting role to the minister in charge, it lends itself to political and administrative interference and pressures. The very constitution and appointment of members to such bodies are also by governments and hence often based on other political considerations than just competence. Hence such institutions find themselves at intersection of many governance factors as they are dependent on strong legislative mandates and resources.

What defines the ability of an institution to fulfill its mandate is the trust by all; independent monitoring; facilitation rather than decision-making; ability to take voices of rights holders to decision-makers and pay attention to most marginalised and not be coerced by elections and other political agenda with only the best interest of the child as the central consideration.

If the human rights mechanisms existing at the national level focusing on children are counted, there are about 130 such mechanisms across the world. In India the Commissions of Protection of Rights of Children Act, 2005 requires the setting up of national as well as state Commissions. Accordingly India has set up commissions in 12 of the 35 states and union territories. (India is divided into administrative units that include 30 states and 5 Union Territories.). However, all these commissions are located under the Ministry (at the national level and departments at the state level responsible for Women and Child).

The Afghanistan Independent Human Rights Institution has a special Child Rights Unit (CRU) established in April 2003. The CRU supports protection of child rights through providing coordination and support to stakeholders through its focus on awareness-raising. Its aim is to understand and address the underlying causes of the abuses of children's rights and advocate for laws and policies that protect children from such abuse. It is responsible for promotion and monitoring of the status and well-being of children in Afghanistan. The CRU also conducts direct interviews with children nationwide to assess their access to the standards set forth in the CRC²³

Sri Lanka was handicapped by the lack of a professional approach and political will for very long. Children's issues remained invisible till the appointment of a Presidential Task Force on Child Protection in 1996. Based on its recommendations, the National Child Protection Authority Act, No 50 of 1998 was introduced in Parliament. It has a national as well as provincial and district mechanisms. While it began as a very strong body with independence and professionalism as its hall mark "the moment professionalism is dropped and the child rights and protection agenda is taken over by politically-driven mandates, its efficacy declines, which is now increasingly the case."²⁴

22 Vanessa Sedletzki. Child Rights and Governance. *Conclusions of a Roundtable organized by UNICEF, Save the Children and the OECD. (London, April 2011)*

23 Najeebullah Babrakzai, National HR Education Coordinator, Afghanistan Independent Human Rights Commission, Address to the Colloquium

24 Professor Harendra de Silva, Founder Chairperson, National Child Protection Authority (NCPA) at the 2009 International Colloquium on Children and Governance: Holding the State Accountable, Report of Proceedings, HAQ, p. 29.

7. Decentralisation

Does decentralisation address equity? It is often assumed that it does, but how far is this assumption true? Prima facie, decentralisation is good and is an important aspect of good governance because of local knowledge, and closer connections with the ground realities and also representation of the actual stakeholders. It can potentially lead to equity, efficiency and efficacy in providing goods and services²⁵.

However, nominal and /or piecemeal decentralisation does not work; rather such decentralisation worsens the situation, including that of children. The essential conditions for decentralisation to be effective, it is important not to assume that decentralisation will bring in benefits automatically or change the situation. It is important to:

- Move beyond the theoretical assumptions on the automatic positive aspects of decentralisation
- Focus on the analysis of the real effectiveness of decentralisation to promote children's rights with equity.
- What specific decentralised arrangements work best to address inequities (and which do not)
- Better understand the challenges, strategy and interventions to maximise the positive aspects and minimise the negative ones.²⁶

The minimal conditions for effective decentralisation then become:

- Clear altruistic objectives: quality, equity and protection of minorities
- No major inequalities
- Effective local accountability and representation mechanisms
- Clearly specified mandates
- Adequate fiscal and human resources

In the debate on decentralisation and understanding its efficacy, it becomes crucial to address two important sets of issues:

1. How the design of the decentralisation process, the process of programme development, and the practice of its implementation can promote the realisation of children's rights with equity?
2. How does the State ensure and monitor that decentralisation does not result in disparity in the provision of services among different local communities²⁷

The notion of decentralisation of government has flourished in popularity since at least the early 1980s. This is true in both the official statements and, to a lesser extent, the practice of governments around the world. Of the 75 developing and transitional countries with populations over five million, all but 12 claim to have embarked upon some transfer of power to subnational governments. Moreover, experience suggests that it is the services of particular relevance to children, including schools and health care, that tend to be decentralised.

Jeni Klugman,
Decentralisation : A Survey from a Child Welfare Perspective.

²⁵ Decentralisation, Equity and Child Rights in South Asia, Presentation by Andrea Rossi to the Colloquium.

²⁶ Ibid.

²⁷ Ibid.

Decentralisation is the transfer of competencies and responsibilities for performing public service obligations from the central government to local or sub-national governments. Decentralisation can occur in the political, administrative, fiscal, and market domains. Political decentralisation aims to shift power and accountability to locally elected bodies or outposts of sectoral ministries. Administrative decentralisation redistributes responsibility for local planning and operational management. Fiscal decentralisation redistributes funds and financial responsibilities. Market decentralisation creates an enhanced role for non-state providers, including NGOs, FBOs, CBOs and the private sector.The basic decentralisation premise suggests that local governments, endowed with adequate resources, can provide the level of public services such as education, health and water that most closely reflects local demands. Decentralising service delivery, which involves tasks such as the shifting of decision making, re-allocation of financial resources, undertaking local budgeting, improving sectoral capacity and greater community involvement, is a complex process and works differently in each sector. If done well, decentralisation can possibly improve equity, efficiency, accessibility, and accountability in public service provision. Done poorly, it can result in chaos, inefficiencies, service delivery failures and accentuated inequity.

Decentralisation: Equity And Sectoral Implications For UNICEF In East Asia And The Pacific, Dejana Popic & Mahesh Patel, Social Policy and Economic Analysis Unit Unicef EAPRO, Bangkok March 2011

Decentralisation has to be conceived of and understood as a dynamic process²⁸. Very often, multi-level governance, enveloped in a vertical, top down hierarchy is passed off as decentralisation, in which evaluations and audits become more important than the programme itself. In the present context, like in India, budgets, spending norms, evaluations are heavily centralised, leading to situations where the State gets de-legitimised as the desired outcomes are not achieved. This is accentuated further by the State withdrawing and allowing itself to be de-limited in the name of public-private partnerships. The fault is not with the concept itself, but more to do with the nominal way in which decentralisation is sought to be done, with the total de-link between the local bodies and the higher structures of the bureaucracy²⁹.

In effect then the entire structure and indeed the political economy of decentralisation needs re-examination. The local bodies and institutions are under-staffed and under resourced. Also, there are sometimes parallel mission modes that by-pass the state organs, creating more confusion than clarity. Effective data bases need to be set up for proper decentralisation. Also it has to be ensured that that elite capture of local bodies doesn't take place in lieu of decentralisation. As things stand, while often the locally elected representatives corner the benefits of decentralisation, more generally the local bureaucrats get empowered and the elected representatives get the blame. And so far, in the decentralisation processes, there is limited room for children to participate or get their voices heard. Participation is an important keystone of good governance, but child participation is given the go-by as adults usurp children's spaces in the name of doing good for them.

Nepal's efforts at mainstreaming Child Friendly Local Governance (CFLG) is an example of decentralising children and governance.³⁰

This strategic framework for CFLG approved by the cabinet in July 2011 has been developed in order to mainstream child-rights issues in local governance and institutionalise the concept of CFLG. Its overall objective is to bring uniformity to programme policy, strategy, implementation and outcomes by analysing children's situations and ensuring a policy, institutional and procedural system to establish and promote CFLG. It aims to create an environment conducive to enabling financial and technical cooperation through coordination and partnership among governmental and non-governmental organisations working for children. The framework should also help to improve consistency in Nepal's implementation of international, national and local policies related to child rights, and to provide a basis for enhancing institutional capacity and human resource development in CFLG. Finally, the framework provides guidance on the expansion of CFLG. It is suggested that, by 2015,

Child Friendly Local Governance can be defined as a strategic framework that places children at the core of the development agenda of local bodies, government line agencies and civil society, promoting child rights through good governance at the local level.

28 Decentralisation, Equity and Child Rights, Presentation by Joy Elamon to the Colloquium.

29 Ibid, also Shantha Sinha's address

30 Child-Friendly Local Governance - Efforts to Institutionalize Child Friendly Local Governance (CFLG) in Nepal by Teertha Dhakal, Joint Secretary Ministry of Local Development, GON and Anjali S Pradhan, Programme specialist, Unicef Nepal- International Colloquium on Children and Governance 2011, New Delhi (see Annexure 5)

some 50 districts, 40 municipalities and 1,000 VDCs will be implementing CFLG. This represents nearly three-quarters of the country's administrative units.

The CFLG provides overall guidance to realising and mainstreaming the rights of children (to survival, development, protection and participation) in local government systems, structures, policies and processes. CFLG also facilitates and coordinates the realisation of child rights at the national (macro) and sub-national (meso and micro) levels, and enhances the integrated delivery of local services related to children. Unicef Nepal has been supporting the Government of Nepal for many years through various joint agreements, the latest being the Country Programme Action Plan (CPAP) 2008–2010.³¹ Decentralised Action for Children and Women Programme (DACAW) focuses on: promotion of quality basic education; protection of children and women against violence, exploitation and abuse; improvement of maternal and neo-natal health; improved management of common childhood illnesses; improved psychosocial and cognitive development of children; greater access to safe drinking water and sanitation; and increased awareness of HIV/AIDS. DACAW includes a Community Action Process (CAP) that enhances the capacities of individuals, families and communities to assess their situation, analyse its various causes, and plan appropriate actions by mobilising internal and external resources needed to bring about change in the community. 10,681 community organisations and 395 women federations have been supported through DACAW. The program also seeks to make local administrations and service-delivery institutions more responsive by building their capacity to work on child-rights and women's-rights issues. Communities create demand for better services by informing people about their rights and mobilising them to utilise local services. Village facilitators serve as the link between the community, local decision-making bodies and other service-delivery institutions at the district, municipal and village level.

The stipulation that children must be involved in the process of collecting information for the child profile and must also be part of planning committees deciding on expending funds ensures that the children's voices taken into account in local governance processes. Efforts have been made to ensure that children are represented and their voices heard and mainstreamed in the LGCDP social mobilisation structures such as the Ward Citizen Forums, the CFLG VDC, District and Municipal Committees and in the VDC's Integrated Planning Committee (the key committee that decides the allocation of the block grants). The stronger focus on child-centred planning has resulted in CFLG districts and VDCs developing several new tools including integrated child profiles, localised poverty reduction strategies, and codes of conduct aimed at reduction in violations of specific child rights, for example, against the worst forms of child labour or the misuse of children for political purposes.

Although CFLG is still at an early stage in Nepal, eventually this type of localised planning should result in a noticeable improvement in MDG indicators aimed at bettering children's lives.

Decentralisation in India has involved a shift from a two tier to a three tier federation in both rural and urban local governments. This has been for ensuring social justice and local economic development. Reservations have been made for women and the socially disadvantaged. The village assembly has been made the focal point of decision making. Twenty nine subjects, like drinking water, poverty alleviation programmes, education, including primary and secondary school, health and sanitation, women and child development, social welfare of the physically and mentally challenged, have been transferred to the States, which are to define the details.

However, the scenario after decentralisation lacks in many ways. There has not been much of a change within the sectors, and the various departments function independently without any coordination. There is no organic linkage with local governments. While subjects have been transferred there is no clarity about functions, funds and functionaries. In fact, there are no support systems for local governments. There is tremendous duplication of authorities, leading to confusion, conflicts and lack of accountability in sectors of concern.

But there are exceptions to the above. In Kerala, the transfer of institutions and functionaries to the local levels has taken place. Local participatory planning with funds has been instituted and five per cent of the plan budgets have been allocated to children, elderly and the differently abled mandatorily. Similarly, 10 per cent of the plan has been mandatorily reserved for the Women Component Plan. These changes motivate local governments to focus on women and children.

31 UNICEF's main partner for promoting CFLG is the Ministry of Local Development (MLD). Specifically, the CPAP 2008–2010 provided the impetus for formalizing CFLG, with the MLD as the lead government agency for piloting CFLG initiatives in selected districts and municipalities.

By and large the programming is vertical. In concerned sectors the programmes emanate from central government. The guidelines, norms and criteria are centralised, due partly to the funding from the national government and co-funding by the states. This leads to weak linkages with local governments and lack of ownership. The major areas of concern remain the lack of flexibility in addressing local needs that potentially affects effectiveness and leads to wastage. Access is hindered by the lack of transparency and accountability to the local communities, making the efforts unsustainable. What is required is decentralisation down to the lowest tier, community participation and planning from below.³²

32 Joy Elamon's presentation, op cit.

8. Discrimination and Exclusion

A key principle of good governance for child rights is that all forms of discrimination have to be done away with. Non-discrimination, enshrined in the Universal Declaration of Human Rights, is re-iterated in the preamble to the UNCRC:

“Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³³

In the specific context of children, Article 2 of the UNCRC rules out discrimination in any form whatsoever (See Box – Article 2 of UNCRC):

Article 2 of UNCRC : Barring Discrimination Against Children

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Yet, in the South Asian context, as is also the case in many other regions of the world, discrimination against children continues unabated. Such discrimination is typically based on the following criteria:

- 1) Ascribed status due to birth. This is exemplified by the exclusion of children based on ethnicity, race or class (for example those who belong to the so called lower castes, (Dalits) and indigenous people (tribes or Adivasis))
- 2) Disability
- 3) Gender
- 4) Geographic location

(The latter two issues were not discussed in the Colloquium. However, given their importance, they are discussed briefly below).

8.1 Exclusion and Discrimination based on Ascribed Social Status due to Birth

In the South Asian context, the problem of birth based discrimination is its invisibility and universality. Nor is it confined to followers of Hinduism alone. Muslims and Christians too have caste divisions and discrimination³⁴. Aspects of development and the impacts of interventions need to be looked at through the prism of class- caste-ethnicity-poverty. Thus, caste has a pronounced difference- this must be addressed through specific steps. Birth based discrimination takes many forms, both subtle and not so subtle. There is default discrimination in access to State provided opportunities, including education, jobs or even health care. The behavioural patterns of the Dalits and Adivasis are constantly restricted: they cannot do many things that others take for granted as part of normal behaviour. Finally, violence is used as a backlash whenever these groups try to assert themselves. Underlying all this, and based on notions of purity and pollution, is the notion of untouchability. It's a rather curious concept. It corrupts everything

³³ UNCRC Preamble.

³⁴ Jodhka, Surinder S and Ghanshyam Shah, 2010: "Comparative Contexts of Discrimination: Caste and Untouchability in South Asia", *EPW*, November 27.

that is human. It is not just exclusion or non-social; it is a process of being anti-social. Thus in a study of 565 villages across 11 states in 2000, 51 forms and sites of untouchability were observed in various degrees, a prevalence of 3 percent to more than 70 percent. Andhra Pradesh recorded 140 forms of current practices. In Nepal, more than 250 forms were recorded in a recent study.³⁵ These discriminations perpetuate themselves in many ways (see Box: Default Discrimination and Naming)

Default Discrimination and Naming

World Bank researchers Karla Hoff and Priyanka Pandey carried out an interesting experiment in a junior high school in UP between January and March 2003. 321 students each from Dalit and upper castes, all 6th and 7th graders, were given some puzzles (mazes) to solve. Thakurs dominated the upper castes and Chamars the Dalits.

An instructor taught everyone how to solve a series of mazes, each for a cash reward of Re 1 per maze. Then they were sorted into groups of six each, with three high and three lower caste boys, and asked to solve as many mazes as possible within a given time allocation. The experiment was conducted over three rounds, with each boy participating in only one round. However, the results were robust since boys are allotted rounds randomly.

- In the first round of games, the boys did not know each other's identity, and did not think that the experimenters knew it either.
- In the second round of games, each boy's identity - name, village, father's and grandfather's name and caste - was publicly announced. The boys were still in the original groups of three high caste and three low caste each.
- Finally, in the third round of games, the boys were segregated by caste. The sorting was meant to invoke a sense of being "out-casted", (segregated on the basis of caste) for the low caste boys.

What were the results of the boys' maze solving? Compared to first round where caste was not announced, low caste boys saw their performance drop by 25 percent in the second round. In the last round constructed to evoke outcaste, low caste boys performed 39 percent worse than in first round. Most significantly, in the first round of games when the children did not know each other's (caste) identity, the performance of both high and low caste boys was statistically the same. (Hoff and Pandey, 2004).

This experiment shows the corrosive nature of caste based discrimination :

- When caste was made public information, 'low caste' subjects anticipate that their effort will be poorly rewarded
- Social identity -a product of history, culture and personal experience- creates a pronounced economic disadvantage for a group through its effect on individuals' expectations

(Hoff and Pandey, 2004; <http://www.indiatogether.org/cgi-bin/tools/pfriend.cgi>)

Discrimination is rampant. It has been noted that, "Most victims of starvation are women and children from the Scheduled Castes (SC) and Scheduled Tribes (ST), with their deaths mainly due to discrimination in the [state] food based schemes."³⁶ The vast majority of the working children in South Asia, especially in India, are Dalits and Adivasis(see Table Working Children in India). These children not only are denied the right to childhood but are forced to work and be embedded in a situation of life-long discrimination by being denied education. On top of it, millions of Adivasi children face eviction and uprooting from their traditional habitats due to numerous development projects (dams, roads, mines) and environmental conservation measures (national parks and sanctuaries).

Working Children in India³⁷

Social Group	Rural %	Urban %
SC	7.22	8.1
ST	12.17	12.5
Others	3.36	6.2
All	6.26	7.2

³⁵ Caste – A Default Discrimination affecting Children, Presentation by Paul Divakar to the Colloquium.

³⁶ HAQ, 2009 (op cit)

³⁷ Presentation by Paul Divakar op cit.

8.2 Children with Disabilities³⁸

States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23.1, UNCRC)

Despite being a signatory to the UNCRC, Indian society continues to treat disability with indifference, pity or revulsion. Low literacy, school enrollment and employment rates as well as widespread social stigma make the disabled among the most excluded in Indian society and deter them from taking an active part in the family or community.³⁹ Women and girls with disabilities are particularly vulnerable to abuse. A small 2004 survey in Orissa, India, found that virtually all of the women and girls with disabilities were beaten at home, 25 percent of women with intellectual disabilities had been raped and 6 percent of women with disabilities had been forcibly sterilised⁴⁰. Disabled children and women are the least likely to seek health care. There is also stark regional disparity in India. In general, states that lack social, welfare and health services also fail to adequately care for children with disabilities. In addition to this, services for disabled children tend to be centred in the large cities, whereas the majority of children with special needs live in rural areas. Those suffering from mental health disorders face the worse stigma and social exclusion. Mental illness counts for nearly a sixth of all-health related disorders but India spends less than one percent of its total budget on mental health⁴¹.

Article 23 of UNCRC : Rights of Disabled Children

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Indeed, children with disabilities seem to be the nowhere children. In terms of their education the general societal attitude is, "What is the point of schooling a disabled child?" According to the UN Secretary - Generals Report on Violence against Children with disabilities occurs at an annual rate for atleast 1.7times greater than their non-disabled peers. Ironically, the official District Information System for Education (DISE) reports, including the latest (2009-10) projects the sole indicator projects the sole indicator for barrier free access as the ramps and rails. Even taking this indicator, 15 out of the 35 states do not have 50 percent of their school made barrier free.

Children with disabilities comprise the highest number of children out of school. In India for example, in 2009 34.8 percent children were out of school (Table Proportion of Out of School Children in India).

Proportion of out of school children, India, 2005-09 (%)

Year	Muslim	ST	Children with Disabilities
2005	10.0	9.5	38.1
2009	7.7	5.6	34.8

(source: SRI IMRB survey)⁴²

Why do countries like India, despite years of the UNCRC, still fail to be accountable to the child with disabilities?

38 This section is based mostly on the presentation, Children with Disabilities – The No-where Children, made by Radhika Alkazi to the Colloquium.

39 HAQ, 2009, op cit, p:81

40 <http://www.un.org/disabilities/documents/toolaction/pwdfs.pdf>

41 HAQ, 2009: Ibid.

42 Cited by Radhika Alkazi in her presentation

The answer to the above question partly lies in the fact that specialised agendas are followed. There is excessive focus on the impairment rather than the human being; the child. There is a whole range of whole range of special interventions and a focus on inherent difference. The social contexts have just been lost. And because of this great emphasis on the impairment the parallels with other groups who have been deeply excluded are created.

Disabled children are segregated. In such a scenario, specialisation leads to separation through say special schools or the sheltered workshops. This alongwith the fact that children with disabilities are overly represented by the poor had led to the agenda of disability being place in the realm of social welfare. On top of it, the budgetary allocations seem to be shrinking.

UN Convention of the Rights of Persons with Disability (UNCPRD): A quantum leap in thinking

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of disability as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

8.3 Gender Discrimination

Though there was no formal presentation on gender discrimination at the Colloquium, gender discrimination is a critical challenge in today's context. In this section, the some of the major issues relating to gender discrimination are discussed.

Despite many women world leaders, presidents, prime ministers and chief ministers, South Asian women and the girl child in particular continue to face discrimination due to their gender. Indeed, new forms of discrimination and violence only get added to what already persists⁴³. Sex selective abortion, leading to falling sex –ratios, and acid attacks are added on to older forms of violence such as female infanticide and honour killings. Data from various sources, including state ones, show that a girl child is less likely to go to school or complete schooling than her brothers, and is less likely to get medical attention. She is more likely to be abused inside and outside the home⁴⁴. The roots of such discrimination lie in patriarchy and the continuation of the family and are manifested in strong son preferences and property inheritance norms that go against women. Gender discrimination cuts across all other forms of discrimination. Even amongst groups discriminated against due to factors of birth, or the disabled, the girl child suffers the most.

8.4 Geographical Discrimination

As we saw from the discussions on disability, since most services are concentrated in urba location rural children remain deprived of them. **Again, there was no formal discussion on this issue at the colloquium. However, it's of crucial importance and hence discussed briefly.** Many children suffer discrimination due to their being located specific geographical areas. These include children living in mountain areas, forests, coastal areas, deserts or even specific locales like the seven states in the north-eastern parts of India. Tea gardens and other areas where plantation crops like coffee and rubber are grown in South Asia are often excluded from health care and education, not because of their remoteness but due to the policies and practices of these plantations perpetuating a colonial legacy. Children of nomadic communities get excluded from almost everything – healthcare and education included – because they

⁴³ HAQ 2009,, op cit, p. 9

⁴⁴ Ibid

belong nowhere. The fixation with being settled, a colonial legacy, continues despite decades of freedom from such rule.

8.5 Moving Towards Non Discrimination⁴⁵

Some of the measures discussed by the Colloquium to move towards non-discrimination were:

- The need to develop tools to understand the various forms, direct and indirect or default discrimination and its impacts towards non-discrimination. It is essential to bring caste, tribe, ethnicity, gender, disability and locale into the debates on equality.
- Important in this is to analyse how the numerous State efforts to end discrimination translate into action at the grassroots level for children and why they have had rather limited impact. This would then entail examining all the affirmative actions taken by the State.
- It is essential to identify major discriminations (both overt and covert) and the ways in which they are perpetuated. This would lead to new ways and forms of governance to eliminate the forms of discrimination.
- In the above processes, public policy related to expenditures to end discrimination as revealed through budget analyses could play a major role.
- Sufficient case laws have not been built on issues of discrimination. This needs to be done.

Ultimately, the agency of the excluded has to be strengthened through cold and hard factual analyses.

⁴⁵ Based on the discussions following the presentations on Special Interest Groups and also Education in the Colloquium.

9. State Abdication of Responsibilities: Education and Governance⁴⁶

The Indian state has abdicated its Constitutional obligation and yielded to the dictates of neo-liberal agenda of globalisation and privatisation. It has profound implications on the governance in relation to education. It has resulted in;

- Commoditisation and Corporatisation of Education
- Parallel structures to subvert the mainstream governance in the name of good governance
- More and more dependency on external funding for education
- De-localisation and reducing the contents of education into mere competencies (minimum levels of learning) to suit market needs

Education has come to resemble a private business rather than a public good. The market, with its strong consumer-based philosophy had created pressure on the state for deregulation, and to transform 'non-market' and 'social' spheres of education services into arenas of commercial and saleable activity ;resulting in

- Closure of government and local schools in many parts of the country
- Franchise /lease-out , state run schools to individuals, NGOs and private companies in the name of public private partnership
- Marketing new courses such as MBAs to propagate the philosophy of business and client relationship in education
- Increased use of part-time and distance learning programmes to replace equitable formal education
- Cutting social subsidies and introducing student loans to pay expensive course fees

Increased pace of globalisation and privatisation are threatening the autonomy of national educational systems and the sovereignty of the nation-state as the ultimate decision maker /ruler in democratic societies. The present scenario is marked by:

- Direct intervention in the governance of national educational systems by trans-national agencies such as the IMF and World Bank
- The essence of governance is to depict all public sector services as inefficient and low quality whereas the private sector is more efficient and qualitative .
- Parallel governance has replaced the parliament and main stream governing institutions / structures
- The government has fully succumbed to the pressures of trans-national market forces'

The discrimination is systemic and is perpetuated by the creation of parallel structures, especially of health care and education, where the delivery is of poor quality and the standards are very low (See box: State Abdication of Responsibilities). Such discrimination can be seen as being against Constitutional principles. As the noted Gandhian activist LC Jain had remarked, in the Indian context, **“Civil disobedience helped us to win freedom but Criminal disobedience of the Constitution could imperil it.”**⁴⁷ Parallel structures are the norm today not only in India but countries like Bangladesh, Pakistan and Nepal too.

46 Based on the presentation, Education and Governance – A few Issues for Discussion , made by VPN Niranjanadhya to the Colloquium.

47 Cited by Niranjanaradhya in his presentation.

10. Measuring Governance for Children

The Colloquium repeatedly emphasised the need for measuring governance for children⁴⁸. In fact, there are many examples of the ways in which this is being done, especially by CSOs. These include the following:

- 1) Budget analyses and allocations /investments in children. This involves analysing the national budget allocations and expenditures, and examining the extent to which these contribute to the realisation of child rights, that is looking at not only the proportion of budgetary allocations but also auditing the use.
- 2) Analysing the situation of child rights and the extent to which legislation, government capacity, and national processes such as planning, poverty reduction and decentralisation are responsive to the UNCRC. Independent Evaluations are very important to analyse the situation of child rights.
- 3) Bringing children into the governance agenda of development partners. Influencing donors who work in the area of governance and making them more responsive to child rights, including leveraging resources for children.
- 4) Facilitating the participation of children (organized groups of school committees, child reporters) and youth, by linking them up with local planning processes and governance bodies at the village level.⁴⁹

Ultimately, the objective of such measures is not only to monitor and evaluate but also to make the state fulfill its commitments to children and child rights and mainstream children in all sectors of development. Independent monitoring systems involving academic institutions of repute and the media will need to be set up to collect the data/evidence and analyse the same. Regional comparative studies, across countries will have to be conducted. A common consolidated robust data base, freely accessible to the general public, that is disaggregated along gender, marginalisation exclusion lines, will have to be set up. Indicators that are professional, factual and credible, vetted and validated will have to be developed. It has to be kept in mind that the exercise of creating indicators is an evolving phenomenon, and needs constant refining.

In this whole process, it is crucial to ask the right questions. The focus has to be on the core areas to start with: education, healthcare, nutrition, hunger and the impacts and implications of universalisation and privatisation on these. This can be used to monitor the structures and their performance in a dynamic way. Critical to this is analysing the ways in which community communication systems function and the common people become aware of their rights and entitlements. Needless to say, all this will have to be accompanied by efforts to build the capacities of the functionaries involved, especially those at senior levels⁵⁰.

48 Cf. the addresses and presentations of Enakshi Ganguly Thukral, Vijayalakshmi Arora, Aseefa Buquele, Babu Mathew and many discussions from the floor.

49 Karin Hulshoff's presentation, op cit.

50 Based on the discussions in the concluding session, where the participants interacted with each other to highlight the key issues

11. The Way Forward⁵¹

Based on the intense three day deliberations, the colloquium participants, felt that realisation of child rights, despite the respective countries being party to the UNCRC, is nowhere near adequate. It was re-iterated that the state is the primary duty bearer of good governance and realisation of child rights. The participants expressed concern at the state abdicating its responsibilities to others in the name of public private partnerships, in keeping with the ethos of the market in an era of privatisation and liberalisation. The prevalent opinion was that the quest for economic growth has stunted millions of children across South Asia. The state, it was opined, cannot de-legitimise itself and has to be accountable to its citizens, including children, as children are full citizens with all rights. CSOs have to play a major role in making the state accountable and organise to do so.

There is an urgent need to put the face of children in governance issues, indeed governance has to be child centred. Governance here includes all its three arms – the legislative, executive and judiciary. The policies, statutes, structures and practices have to be inclusive and non-discriminatory, in keeping with Constitutional and UNCRC principles. The entire approach to children, it was re-emphasised, has to be rights and not needs based as children cannot be divided and discriminated against. The basic focus, on any discussion on rights, has to include the right to food, health, education, water and sanitation and the system of delivery of these systems. Although the emphasis on each of these can vary in specific country and region contexts, the right to these is non-negotiable. Further, the right to childhood is an absolute right. The Colloquium did not subscribe to the idea of excluding children by allowing them to work by distinguishing between hazardous and non-hazardous occupations as the right to childhood is violated by children working for wages. This is irrespective of the occupation and the perceived level of hazard.

The participants stressed the need for treating the issue of child rights as a cross-cutting category in all analyses of social and economic issues. Children have to be given the centrality due to them. In this process, a framework and a platform for policy dialogue needs to be created, involving all sections of society – policy makers and implementers, care givers, academia and ordinary citizens.

There was a suggestion that a regional hub, say an asianchildrenhub.org, to monitor the performance of governments can be created, involving SAARC and SAIVAC. Such a platform can play a critical role in harmonising the existing laws, looking at all the different human rights instruments and the UNCRC. Also, given the increasingly important role being given by the state to the private sector in delivering vital services, it will be of prime importance that international standards be set up to ensure high quality of the services delivered. The system has to be fair and transparent. The platform can play an important role in ensuring that this is done. The platform can play an important role in knowledge sharing and advocacy and making the governments deliver its promises.

Decentralisation and empowering the local governance structures and the functionaries is very weak. This has to be changed and the delivery of crucial services has to be made much more flexible. Governments have to be made more accountable to listen to children without differentiating between them.

Ultimately, in all the sectors relating to children, be it education, health, law or budgets, there are tremendous gaps between what is and what ought to be. This needs to be bridged urgently. The process has to begin by institutionalising children's participation in all the institutions affecting them – ranging from schools to local government structures – and ensuring that these structures are accountable to the children. Tokenism in participation has to be avoided. All sections of society need to be involved in these efforts.

CSOs are playing vital roles in the above processes. However, the space for CSOs is increasingly shrinking. This has to change. CSOs not only play the role of advocates and watchdogs, they also engage in path breaking research and mobilise public opinion. The state cannot remove them from the scene under the pressure of corporates.

⁵¹ Based on the discussions in the concluding session, where the participants interacted with each other to highlight the key issues and areas of concern.

Annexure 1

Key Recommendations and Plan of Action in the Colloquium, 2009:

1. Defining governance vis-à-vis children

It was agreed by all the participants that it was critical to define child sensitive/ responsive/friendly governance.

The participants defined governance for children as one that Ensured All Rights for All Children and included the following components:

- Compliance with Constitutional and international obligations
- People and children-informed and driven process
- Establishment of the right conditions for participation in governance

It was agreed that the underlying principles that must define child responsive governance should be:

- Political will - and this must be visible in not just policy, law and programmes but also in their outcomes so that they would positive impact children
- First call for children - children must be the prime focus of all laws and programmes
- Best interest of the child – this premise must govern all government initiatives

2. Domains of action that spur child-responsive governance

The following actions were identified as indispensable for good governance for children:

- All arms of governance – executive, legislature and judiciary and their institutions should be accountable to children
- As the State is the primary duty bearer, it is the State alone that bears the onus of governance for children
- State action needs to be monitored with regularity for its efficacy or the lack of it
- Effective implementation and enforcement mechanisms must be put in place
- National policy and laws for children must be made mandatory
- Independent monitoring mechanisms for objective, non-partisan appraisals must be set up
- Coordination mechanisms should also be set up to pull together discrete initiatives of the State
- Empowerment of children at all tiers of governance and hastening the processes of decentralisation in governance to allow children's participation must be explored
- Facilitating the process of ensuring children's and people's participation in policy and programmes must be initiated
- There is need to build a scientific and credible knowledge base to campaign for children's rights in policy and programme

Key indicators to rate responsiveness of the governance system towards children

For some of these domains, indicators or elements to rate the responsiveness of the governance system towards children were developed:

1. National Policy for Children

- A national policy and plans of action for children are needed
- They must be comprehensive and inclusive
- They must be consistent with the Constitutional and international obligations
- There must be mechanisms to popularise and implement the national policy and plans of action
- The existence of an independent monitoring mechanism can ensure State accountability

- It is important to accord a political locus to the authority responsible for implementation to make its powers inalienable
- Child impact assessments must be conducted regularly to assess the impact of State policy and programmes on this huge demographic group
- The National Policy for Children should be aligned with other national policies

2. National Laws

- National legal instruments need to be harmonised with international obligations
- Critical evaluations of how judicial decisions reflect Constitutional and CRC principles need to be undertaken
- Existence of 'parental leave laws' to ensure that children in their vulnerable first few months have proper parental care from BOTH parents should be ensured
- Existence of domestic laws on child trafficking, sexual exploitation, corporal punishment and free education must also be ensured
- A juvenile justice system must be put in place
- Child friendly procedural codes to deal with offences against children are essential
- There needs to be an autonomous/authoritative child rights protection bodies such as an Ombudsperson

3. Resources

- Budgetary allocations and expenditure for children must be part of every State budget
- Regionalising budgetary allocations and expenditure should follow
- It must be ensured that allocations and expenditures have firm timetables (this is to ensure that resources are allocated on time, do not lie unutilised, are not spent in final quarter but is spent throughout the financial year)
- Laws must be backed with financial memorandum (that is, they must have financial allocations in the budget and the institutions that disburse the funds and mode of disbursement must be identified)
- The ratio of government contribution versus corporate and international aid contribution must be determined to ascertain the actual governmental commitment
- The use of funds in child budgets must be monitored in terms of input/outcome impact.
- Mechanisms to monitor public-private partnership initiatives and reporting on the investment as well as outcomes/impact must be evolved

4. Ensuring children's own participation in governance

This aspect of governance was explored in great detail and the following questions were raised for redress:

- How can children's voices be heard in governance?
- What is the degree of compatibility between Constitutions and the CRC?
- What are the administrative structures available to address children's issues?
- Is there a need to redesign some of these structures?
- How much power do these structures possess?
- Are all children's groups represented?
- It is possible to facilitate the culture of self-determination among children?
- Is the marginalisation of children is due to failure of the state/duty bearers?
- How can an enabling environment be created for children so that children are empowered?
- Can this in turn cause a ripple effect triggering a positive effect on other children?
- How can we respect individuality of personhood within partnerships?

- How can children be transformed into agents of change?
- How can we enhance capacity of children to face opposition when undertaking attitudinal change within their families, schools or communities?

Annexure 2

Opening Address by Karin Hulshoff

Country Representative, Unicef

Good Morning.

The question that will be at the heart of our discussions through the next three days is how key governance is, towards advancing the rights of all children. As we approach the 10 year review of A World Fit For Children in 2012, and prepare to review the progress made against the Millennium Development Goals in 2015, this is a central topic..

Thanks to the rights based approach to development, we have seen a growing understanding emerge that children's rights cannot and will not, be significantly achieved without taking into consideration the governance systems in which they are implemented. The issue of **governance for children**.

What do we mean by this? It is about the capacity of duty bearers to respond to children's rights, both at an individual and organisational state level. And it is about creating an environment that enables these capacities to flourish. Governance for children therefore implies examining actions of the State, through a child rights lens. Governance rests on a series of principles including : transparency, responsibility, accountability, participation and responsiveness to the needs of children.

A good and necessary starting point is the Convention on the Rights of the Child. While the CRC does not explicitly refer to governance, what it does do is lay the ground for a governance agenda for child rights. The CRC is clear on what needs to be done to promote the rights of children, and is just as clear on the role of the State in doing this. Signatories to the CRC need to accept the implementation of the Convention as a benchmark against which the quality of governance of the State can be assessed.

And the benchmark that we are talking about here involves a combination of approaches and initiatives. Child-centered policies and laws are only as effective as the capacities of duty bearers at different levels of governance to implement and enforce these policies and laws. So what we need are effective institutions, equitable services and adequate resources, combined with political will and accountable leadership. Accountability can be defined as "the ability of the governed to hold to account those who govern".

Equally important is the recognition and acceptance of children as active social agents. Yes, we need to focus good governance efforts on all children, especially the most marginalised and excluded, while identifying and addressing the root causes of discrimination. But this is not enough. For governance to be inclusive and transformative, children must be given the opportunity and space to inform governance processes.

UNICEF's work globally in the area of child rights covers both these aspects: it spans a broad spectrum of interventions, ranging from:

- Influencing governance reform processes that strengthen child sensitive institutions and better delivery of services
- Building the capacities of duty bearers to perform their duties
- Providing children, girls and boys alike, and those that work to promote their interests, with a voice to influence decision-making, and hold their leadership accountable.

Some examples of the ways in which this is being done, include the following:

- 1) Investing in children. Looking at national budget allocations and expenditures, and analysing the extent to which these contribute to the realisation of child rights not only % of budget also the use.
- 2) Analysing the situation of child rights and the extent to which legislation, government capacity, and national processes such as planning, poverty reduction and decentralisation are responsive to the Convention on the Rights of the Child. Independent Evaluations are very important to analyze the situation of child rights.
- 3) Bringing children into the governance agenda of development partners. Influencing donors who work in the area of governance and making them more responsive to child rights, including leveraging resources for children.
- 4) Facilitating the participation of children (organized groups of school committees, child reporters) and youth, by linking them up with local planning processes and governance bodies at the village level.

One more dimension to this debate that I would like to mention here, as food for thought, is something I draw from a 2011, World Bank publication called “Accountability through Public Opinion: from Inertia to Public Action”. It emphasises the fact that accountability, as a goal, cannot be separated from public opinion. It goes on to say that if a population thinks in ways that lead it to demand greater accountability, then decision makers may have a greater incentive to respond.

Perhaps this colloquium can also consider how the lessons from the case studies being presented here can be brought into practice to hold the State accountable for results for children. How can one transform formal structures/ processes to increase transparency and information sharing between the State and the public? How to open up spaces for this to be possible? And if we take this one step further – how can we get to a scenario where officials see this kind of public engagement, as helping them do their jobs better – not as a threat, just a gain to have more efficiency and better results.

UNICEF is happy to support HAQ in holding this International Colloquium together with CRY and we look forward to the coming debates, informing an agenda on children and governance, and governance for children.

Thank you

Annexure 3

Children of Asia: How to ensure their rights?

Turid Heiberg⁵²

Child Rights Governance represents a great opportunity to progress in ensuring all children their rights according to the UN Convention on the Rights of the Child. The value of promoting Child Rights Governance depends firstly on governments taking full responsibility for implementing children's rights. Secondly, the realization of children's rights is also dependent on the secondary duty bearers such as the civil society, including children, standing up for those rights and holding the government accountable. Involving the secondary duty bearers will in the long term help to strengthen the gradual transformation of the perception of children from being receivers of benefits to being rights-holders.

Save the Children has a long history of working globally to ensure the rights of children, and in its strategy for 2010 to 2015 Child Rights Governance is one of six main objectives guiding the work. In the Asia region Save the Children has for decades worked with child rights monitoring, strengthening national systems and with awareness and capacity building. However, this field of work was not named Child Rights Governance before the new strategy was launched⁵³.

To introduce and discuss the new theme, with its emphasis on good governance and child rights, Save the Children organized three regional consultations in Bangkok and Kathmandu in 2010 and 2011 with the participation of civil society representatives, regional and international experts and Save the Children and UNICEF management and technical staff. Save the Children will also in cooperation with the South Asia Initiative to End Violence Against Children, UN, INGOs and civil society work to document the Child Rights Governance achievements in the SAARC region during 2012.

Child rights and the rights-based approach

The Convention on the Rights of the Child (CRC) was adopted by the UN in 1989. Gradually almost all states have ratified the CRC, which has a set of universally agreed non-negotiable standards and obligations setting minimum entitlements and freedoms that are to be respected by governments. The CRC is the first legally binding international instrument to incorporate the full range of human rights. It is underpinned by other Human Rights Treaties and Protocols that elaborate and extend these rights.

In the first years after the adoption of the CRC many civil society organizations, UN agencies, INGOs and others cooperated and worked in different ways to implement the Convention. For instance, for many Save the Children members the new Convention implied a new focus, where identifying civil society partners who would use a rights-

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⁵³ Sources to this article are several:

- Interviews with Alfild Petren, Anne Margrete Grøslund and Eva Geidenmark
- Thematic planning guidance: Programming in Child Rights Governance, Save the Children, 2011
- Reports from Save the Children workshops on CRG in Asia, 2011
- Child Rights Governance and Emergencies, Save the Children, 2011
- Child Rights and Governance. Report and Conclusions of a Roundtable. London, 2011

based approach became important. The work became related to the rights children had according to the Convention on the Rights of the Child. Secondly, the Convention implied a strong focus on the duty bearers with the responsibility to implement child rights. This led to child rights being the subject of political discussions and increased advocacy and lobby efforts towards the governments. For instance, projects related to service delivery would also have an advocacy component to involve and keep local and national authorities accountable.

From the beginning the UN Committee on the Rights of the Child has been in the forefront guiding the different stakeholders on how to follow up the CRC. First of all, the states were guided on the state reporting and the follow-up of the Concluding Observations. In this first phase the Committee also strongly recommended civil society organizations to develop Supplementary Reports with children being included in this process. In order to develop the Supplementary Reports the organizations developed child rights situation analyses, research and other evidence-based information to get a holistic perspective of the different challenges for children in a country, district and village.

Training of staff, partners, professionals, government staff, journalists and other stakeholders became important as did developing information material about the CRC. Comparative law-studies were conducted and the first child-centred budget analysis was carried out during these early years. Work to establish independent Ombudsman for Children mandates - or Child Rights Commissioners within the independent Human Rights Commissions - was another area supported by many agencies.

Child Rights Programming was formally adopted by Save the Children as a concept and method in 2002. Child Rights Programming is a rights-based approach to programming - planning, implementation, monitoring and evaluation - to be applied and mainstreamed throughout all programming. In Child Rights Programming children are seen as holders of rights while the authorities have the obligation to take measures to fulfil these rights. The principles of non-discrimination, the best interest of the child, children's participation and child development are integrated into work within all spheres relevant to children. The work includes direct actions to prevent violations of children's rights, awareness raising and strengthening of civil society – and capacity building of duty-bearers to meet their obligations to establish structures, mechanisms and legislation to implement and monitor children's rights, and secure sustainable change for children.

However, despite increasingly wide acceptance of the need for a systematic application of a child rights approach, it has proven difficult to move from a conceptual understanding to practical delivery. Globally, application remains largely patchy and unsystematic. Child Rights Programming is still not part of the day-to-day business of policy-makers and others who influence the lives of children. However, many Save the Children members and other agencies acted rapid in transforming their work to embrace a child-rights approach and in Asia this work has over the years reaped considerable results at country level.

A few examples can be mentioned such as the establishment of many co-ordinating units for children's issues at national and local level, national strategies, policies and plans of action for children, important discussions on how to achieve child-friendly judicial systems and an impressive growth of children's groups - quite a few child-led, who influence governments primarily at local level. Parliamentarians have organised to promote child rights and parts of the private sector have pioneered innovative approaches to protect and support children. Child Rights Coalitions have been established and strong national civil society independent institutions have been built championing child rights.

Child Rights Governance

Child Rights Governance⁵⁴ is important to children as it supports the implementation of their rights, contributes to sustainability and has the potential to reach all children. Child Rights Governance is important to all agencies and organizations having child rights and the CRC at their core.

⁵⁴ Governance rests on a series of principles which include: transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good governance is thus about a government being responsible to its citizens in terms of delivering services, being open and transparent about decision-making processes, making information accessible and having independent established mechanisms whereby it can be held to account for its actions and inactions.

Good governance and child rights are mutually reinforcing. While the principles set out in the CRC provide a set of performance standards to guide the work of governments and other social actors, a conducive environment is also necessary for child rights if they are to be respected and protected in a sustainable manner. For instance, the general measures under the CRC such as child rights legislative frameworks, budget allocations and policies inform and support good governance efforts such as rule of law, transparency, accountability and inclusiveness.

Article 4 in the CRC demands that governments: ‘undertake all appropriate legislative, administrative and other measures for the implementation of the rights’. Based on this demand, in 2003 the Committee on the Rights of the Child drafted General Comment No. 5 outlining governments’ obligations to develop General Measures of Implementation. These General Measures of Implementation cover the following areas:

1. Ensuring that legislation is fully compatible with the CRC and removal of reservations and ratification of CRC’s optional protocols and other human rights instruments for children, (including regional instruments).
2. Ensuring that there is a systematic process of assessing new laws, policies or programmes for their impact on children’s rights (‘Child Impact Assessments’).
3. Developing a detailed, comprehensive national strategy or agenda for children, based on the CRC, and taking into account policies of decentralization, federation and privatization.
4. Ensuring adequate resource allocation and making children ‘visible’ in budgets.
5. Developing permanent mechanisms in government to ensure the effective co-ordination, monitoring and evaluation of implementation.
6. Developing training, education and capacity-building for all those involved in the implementation process.
7. Creation of a mechanism or process to ensure all state and non-state service providers (e.g. the private sector, faith organizations, NGO/civil society) respect the CRC.
8. Promoting co-operation and co-ordination with civil society – with professional associations, non-governmental organizations, children and so on.
9. Ensuring the development of appropriate indicators and sufficient data collection on the state of children.
10. Promoting international co-operation in implementation.
11. Creating statutory children’s rights institutions / ombudsmen offices.

The Committee on the Rights of the Child has since added refined approaches and strategies in terms of budget analysis, participatory budgeting and financial management. Other issues to be considered have been institution-building to ensure that child rights issues and concerns are embedded in institutional arrangements at all levels, child-centred and inclusive services, child rights within rule of laws initiatives and anticorruption initiatives to ensure children’s right to basic services such as health and education. In addition, the perspective of children, non-state actors including civil society and the corporate sector needs to be included to develop integrated social policies.

Save the Children points to key issues such as citizenship and economic governance forming the core focus of any Child Rights Governance programme. Advocacy and programming work on citizenship addresses issues such as birth registration, the rights of stateless children, and children’s civil and political rights. Economic governance includes measures to monitor and improve children’s rights through improved economic governance (including work on corruption, income and taxation, decentralization, and child-sensitive social protection schemes).

In 2009, Save the Children divided its work with Child Rights Governance into three sub-themes in order to facilitate tracking of results. These sub-themes includes largely the General Measures of Implementation and builds on the way Save the Children is working to implement children’s rights at country level:

- *Child rights monitoring:* Support better data collection on children’s lives; studies and research, including analysis of national and sub-national budgets for children’s issues, and monitoring on aid and corruption; the establishment of independent child rights monitoring institutions such as Ombudsmen for Children; the preparation of child-informed supplementary reports to the Committee on the Rights of the Child and the Human Rights Council or other child rights monitoring bodies.
- *Strengthening national systems of Child Rights Governance:* Push for the amendment of national legislation to comply with the CRC; push for and support public administrations and services, including parliamentarian

groups, to become child-friendly and take the best interests of children into account; support children's citizenship (birth registration, children's civil and political rights) and child-sensitive social protection; support the effective coordination of all the ministries and agencies dealing with children's issues and advocate for and influence national strategies, policies and plans of action for children.

- *Building awareness and capacity on Child Rights Governance among children and civil society:* Facilitate child rights education for children and their communities; build capacity to respect children's rights among service providers and other professionals in regular and close contact with children; build organizational and thematic capacity of civil society organizations enabling them to promote and advocate for children's rights to be respected and to claim accountability from those responsible; support children's role as active citizens to organize and build their capacity to promote their rights.

The importance of Child Rights Governance

Governments do not always – as we know all too well – adhere to the General Measures of Implementation. Consequently, children all over the world are not having their basic rights fulfilled, often with disastrous consequences. For example, in countries with high levels of corruption, child mortality rates are higher than in countries with little corruption.

Working to realize Child Rights Governance is therefore extremely important. Working for Child Rights Governance is more than having a child-rights approach – it embraces the governance aspects and makes child rights a political issue. All the big issues can be included when we discuss governance such as corruption, taxation, budget allocations and poverty reduction. These governance issues can also be discussed at local, national, regional and global level. Children's situation becomes more visible and they can more easily be the subject of political discussions.

Invisibility is at the core of the challenge when we work to address Child Rights Governance. Governments have been reluctant to include children as rights-holders and children remain more or less invisible in governance efforts. In a Roundtable discussion between UNICEF, Save the Children and others they underlined the importance of looking into the synergies between child rights and governance as the 10 year review of A World Fit for Children in 2012 is coming up and as we prepare for the Millennium Development Goals assessment and next steps in 2015.

The Governance theme highlights the importance of the many actors in society such as civil society, academia, media, religious and cultural leaders, the private sector and their role in reaching societal goals. Comprehensive national coordinating frameworks are therefore vital to suggest ways of strengthening the governance system and be part of implementing laws and policies. Accountability still rests with the government for efficient governance and to empower their citizens. But children don't have significant channels to exercise their demands on the government. Children's voices are, however, growing louder and they do influence in many settings and contributes to the democratisation of society.

Increased efforts needs to be put in place to strengthen children's capacity through facilitation and child-friendly material, by supporting child participatory methodology and tools, facilitating inclusive children's groups and fora, creating platforms and mechanisms where children can voice their opinions, and supporting child-led organisations to defend, claim and promote children's rights.

Child Rights Governance is about supporting the establishment of mechanisms and systems that can deliver on all rights for all children in all circumstances – in development and humanitarian settings. Children's rights to survival, protection, development and participation are equally applicable in emergency contexts – whether characterized by armed conflict, insecurity or disasters. In general, an accountable and responsive government whose child rights infrastructure is functioning is more likely to be able to ensure proper work on resilience / disaster risk reduction and preparedness for emergencies, as well as responding effectively and efficiently in emergencies.

Although Child Rights Governance has received increased attention it is still important to promote child rights programming as a cross-cutting approach to be applied when working with specific issues like the right to health care,

right to education and protection. Child rights are relevant to nearly every sphere of life and children are affected by all actions of the government. What is most important is to apply a holistic approach and ensure that all aspects of children's rights are promoted.

How child-friendly are the SAARC states?

In 2012, The South Asia Initiative to End Violence Against Children, in cooperation with regional and national agencies and organizations, intends to develop an analysis of the child-friendliness of the South Asian states. The report will be based upon an assessment of the extent to which the South Asian governments meet their obligations, and will highlight good practices and achievements. This report is unique as a first report measuring child-friendliness in the SAARC region and follows the example of a similar report made for the African governments. Together these reports will establish a new way of monitoring and highlighting progress globally.

Child-friendliness was defined in the African report as the efforts to meet the obligations in the CRC to respect, protect and fulfil children's rights and ensure their wellbeing. A Child-friendliness Index was developed. One important finding from the African report was that the crucial determinant of child wellbeing is not so much poverty or wealth of societies and nations, but political commitment. Another important finding was that the most child-friendly governments followed a two-pronged approach: instituting appropriate laws to protect children's rights; and ensuring budgetary commitments to child-related services.

The report on the child-friendliness of the South Asian states will be measured on four levels and a set of indicators will be developed to analyse the progress of the individual countries. Firstly, the report will look into how the countries have applied the General Measures of implementation. Secondly, the African report points to the importance of mainstreaming children's rights into society and putting children's rights first. An important aspect of the South Asian report will therefore be to look into indicators measuring level of progress in the education and cultural sector, in the health and social welfare sector, in the area of children's civil and political rights, in the support to families and care mechanisms and into the special protection measures.

Thirdly, it will be interesting and important to look into how the different non-state actors have approached child rights. These actors include the private sector, religious/faith groups, academia, media, local NGOs, INGOs, UN agencies and other donors. They are all important stakeholders in potentially supporting the governments in their endeavour to strengthen child rights and allow the contribution of children as active citizens. Lastly, child participation has to be an indicator of government's child-friendliness. In what way have the governments developed mechanisms to consult children? Children's citizenship rights and their access to information and platforms to express their opinions and views will also be important. It will be equally interesting to look into how children have organized in order to participate in developing supplementary reports to the CRC committee and how they monitor their rights and communicate their experiences.

The South Asian governments have come a long way during the last decades to ensure children's rights. The good practices and achievements will therefore be documented. This report hopes to be part of encouraging progress by taking stock of the state of child-friendliness today and be part of stimulating a coordinated approach to reach a higher level of child-friendliness tomorrow. We are all partners in this process and the governments are in the position to facilitate this project.

Save the Children was established in 1919. Eglantyne Jebb drafted the first Declaration of Children's Rights which asserted the rights of children and the duty of the international community to put children's rights in the forefront. The Declaration of the Rights of the Child was adopted by the League of Nations in 1924, and was one of the main inspirations behind the 1989 UN Convention on the Rights of the Child.

Annexure 4

Child Rights and Children's Participation

Rita Panicker⁵⁵

“You may give them your love but not your thoughts
For they have their own thoughts
You may house their bodies but not their souls,
For their souls dwell in the house of tomorrow,
Which you cannot visit even in your dreams”

Khalil Gibran

The Context

The traditional concept of the child has been one of beneficiary or victim, dependent on exogenous processes determined by arguably well-intentioned adults and adult led institutions. As part of a gradual shift in focus towards participatory approaches undergone by development discourse and practice over the last decade, organizations and researchers concerned with the position of children within developing countries are increasingly declaring a commitment to children's participation in the development process. While a highly contested and problematic concept, participatory development can be broadly defined as people's involvement in developmental processes that concern their lives and their community. Within this discourse, children are seen as competent social actors, capable and deserving of expressing opinions and acting autonomously. They are also regarded as human beings who form the centre of development, not merely the passive recipients. Participatory rights for children are for many adults a strange concept and are particularly difficult to obtain for marginalized children.

Child participation may be seen as an ongoing process of children's expression and active involvement in decision-making at different levels in matters that concern them. This requires information sharing and dialogue between children and adults, based on mutual respect and power sharing, giving children the power to shape both the process and outcome. It is essential to respect children's own evolving capacity, experience and interests in determining the nature of their participation. Participation may be in the form of a consultative, participatory or self - initiated / managed process.

Listening to children's perspectives can be seen to provide a sound starting-point for intervening in ways that are realistic, context-appropriate and in the best interests of children. Children believe that many projects started on their behalf failed because their opinions were never taken into consideration during project conceptualization and implementation. Also that their input was never respected and wishes never listened to.

There are, however, problems with this discourse and it would be foolish to uncritically accept the idea of child participation as a panacea. There is a real danger that the concept is merely becoming the latest 'development buzzword'. It could be the case, for instance, that organisations 'bolt' participation into existing approaches in a tokenistic response to donor pressure. Indeed, while the right to participation is widely touted at national and international level, action to put that right into place in the formulation of laws and standards is still incipient at best.

55 Director, Butterflies, India

Crucially, working towards participation by children in decision-making will require considerable change in attitudes, a change in mindset, at times even culture and a change in many aspects of practice and procedures.

Empowering Children for Participation In Development Processes

This paper draws upon experiences of Butterflies a grassroots NGO working for the empowerment of street and working children in Delhi, India. It is thus concerned with girls and boys who are surviving life in a particular geographic, socio-economic, political, cultural context. In recognition that children are social actors in their own right, whose views and perceptions need to be understood, this paper gives space for sharing street and working children's own experiences, perceptions, reflections and concerns.

Furthermore, listening to children's views and perspectives is particularly important if we wish to gain a greater understanding of the similarities and differences between different children's lives. In planning programmes and policies for children it is important to recognise the diversity amongst children's life experiences, and to be enabled to respond to children within their local community contexts. Whilst children's 'childhoods' may be characterised by similarities such as their interest in play and their lack of power, children's childhoods are also characterised by diversity, cultural, economic and political context.

Thus, whilst this paper shares illustrations of children's dialogue and experiences in a particular local context, wider learning's for child-focused development practice and the theoretical discourse on childhood and adult-child relations shall be deliberated. Moreover, attempts will be made to place the discussions within a historical framework, highlighting certain trends and politics surrounding the emergence of children's participatory rights. A brief introduction to the context and the work of Butterflies will be given.

Brief Introduction to the Context

The gap between the rich and poor within, as well as between societies and nations is advancing. In South Asia there is an advancing middle class whose income levels have increased tremendously in the past decade, which has given India an image of booming economy. However, there is the other India which struggles for survival in the midst of all this wealth. This India is the rural and urban poor who have their traditional livelihoods disappearing and with no recourse to alternate forms of livelihood are forced to join the ranks of informal workers and as Jan Berner puts it they are "footloose workers". The footloose workers phenomenon has resulted in families getting disintegrated with fathers or parents migrating for work and leaving behind a single parent headed household or children living with grandparents while parents go in search of work.

This paper is particularly concerned with the lives of street and working children living in urban centres. These are children who have run away or rather escaped from acute poverty, dysfunctional families and in some instances from strict disciplinarian parents. These children live and work on the streets.

The effects of ongoing structural adjustment programmes and increasing rural to urban migration have led to an increasing number of families living in poverty in cities. Rapid urbanization has brought with it rapid growth in urban slums. In 1996 an estimated 100 million people were said to be living in urban slums in India (UNICEF, 1998). Of the 37 million children who are living in urban poverty a substantial proportion of them are living in informal (illegal) settlements or other temporary situations which include living along railway lines, drainage canals and on the streets themselves. Products of family instability, violence or economic circumstances of the family, one guestimate are that 18 million children live or work on the streets of India (Human Rights Watch, 1996). There are no reliable census data on this population.

Working primarily in the informal sector as rag pickers, shoe-shiners, porters, assistants in shops, and vendors, the lives of street and working children are commonly characterized by exploitation, marginalization, and abuse. Largely unprotected by adults, children have to learn to survive in difficult circumstances, requiring the acquisition of new skills, and a high degree of resilience.

In the 1980s increasing publicity was given to the phenomenon of street children⁵⁶. In responding to the challenge of reaching out to street children, who clearly did not fit western notions of childhood, nor experience 'golden age childhoods', some local NGOs developed new ways of working with such children on the streets in ways which built upon their capacities. Street children became active partners in programming; new movements grew from which street children were able to raise questions regarding their participation in society, in economic, social and political life.

The historical emergence of Brazilian street and working children and adolescents' movement was first of its kind in the world, a country that also was first in recognizing the status and plight of street children. In many ways Brazil showed the way to rest of the world. Cussianovich (1995) encourages us to recognise the historical significance of children and adolescents movement, not only due to their increasing numbers, but because they:

'[child workers and adolescents] lead us to fundamental questions about the explosion of poverty in the international economic order and the scandalous inequalities between and within the countries; because they raise questions about the model of development and about social and political value assigned to different social actors; because they invite us to rethink the culture of work and its role for building identity and dignity; because they force us to reconsider the concept of age as element besides gender, ethnicity and class' (Cussianovich, 1995, p.32).

Butterflies

With an emphasis on empowering street and working children with the skills and knowledge to protect their rights as children and to help them develop as respected and productive citizens; a range of responses by NGOs to the 'street children phenomenon' in India began to emerge in the late-seventies and eighties. However within a socio-cultural context in which children are generally not listened to, most projects were designed by adults (as 'adults know best') and were characterized by welfare or institutionalization responses. However, Butterflies fueled by our fundamental beliefs in democracy and children's capacity to participate, and inspired by alternative strategies in Latin America and West Africa, we clearly envisioned that the core value in the organization should be to listen to children, consult them and make them part of the decision making processes.

Butterflies strategy towards empowerment of street and working children involves a broader approach which takes into consideration the larger socio-economic and political factors. As opposed to a welfare (or charity) perspective which views street children primarily as victims or delinquents in need of basic services and rehabilitation, an empowerment approach views children as citizens of our society, with rights to survival, protection, and development, in addition to information, respect, and opportunities for participation in decisions that affect them. Through varied strategies children are given information and knowledge about their rights. Moreover, Butterflies uses the Constitution of India and UN Convention on the Rights of the Child as a major tool for ensuring Government and public accountability to the well-being of all vulnerable children.

"In our meetings we have a chance to ask questions and get information"

(Street boys - Jama Masjid and New Delhi Railway Station contact points).

"Through meeting with Butterflies educators I have come to know about my rights: my rights to education, to protection, to health and play. Before time I didn't even know I had rights.

Now I have this information I can do something" (Afroze, rag picker, age 13)

Children are further encouraged to critically reflect on their current realities (e.g. the reasons why they were compelled to run away from home, to live and work on the streets for their survival), to understand the structural, political factors that are at force, to organise themselves and to identify the decision-making bodies which need to be made aware of their realities.

"The right to information is very important, as we need information to know

⁵⁶ As more visible child workers, street children became the focus on fundraising campaigns, media stories and thus programme responses.

About things so that we can change things.”

(Rajesh, rag picker, age 12).

The ‘Bal Sabha’ (Children’s Council) is the guiding force and mechanism of Butterflies programme. Once a month, representatives from each contact point come together for the Bal Sabha. The children elect a chair person and the meeting is presided over by him/her. Each member is encouraged to share any agenda issues, and each of the outlined points is discussed. One of them records the minutes and decisions. Most often, issues discussed are about police harassment, non-payment of wages, education, saving schemes, problem of gambling, drugs, as well as planning outings etc.

Responding to children’s identifications of their needs, Butterflies varied programmes have been developed and implemented including the: education programme, life skills education, Children’s Development Khazana(also known as Bal Vikas Khazana in India), distribution of identity cards, Child health cooperative, child health educators, picnics, vocational training, counseling, in addition to supporting children’s own self-help groups, organised action groups and cooperatives (e.g. Health Cooperative, Children’s Development Bank, Media group). The majority of these programme activities are conducted directly on the streets with street and working children’s genuine participation. Moreover, the Bal Sabha enables a forum where the children can speak, share their ideas as well as monitor and critique the programmes and orientation of the organisation.

“Whenever we have any crisis we come together to have a meeting to look for a solution”

(Street boys, at Connaught Place - Butterflies contact point)

Discussions at the contact points and at the Bal Sabha meetings enable children to discuss and share information that concerns their lives, to analyze various social and political events and decisions, and to work together towards collective action. Through the Bal Sabha children learn the principles of democracy (i.e. every person has a right to an opinion and freedom of expression, a consensus must be reached to take a final decision and that sometimes a compromise is needed). As part of democratic education we also impart to them the value to respect age, gender, ethnic and religious diversities.

‘Through the process of Bal Sabha we learn three important things. Firstly, we get motivated to unite for our rights. Secondly, we have come to understand the importance of our unity which is our biggest asset, our strength in front of which no-one can stand. And finally, it is our unity that will help us in defeating our exploiters.’

(Beeru, rag picker, boy, age 14)

The idea of a Children’s Council provides a very concrete mechanism for allowing children’s collective voice to be heard. Furthermore, one of the main strengths of the Bal Sabha is the way that children’s own initiatives (/ organisations) have grown out from it. They have all been outcomes of children’s collective response to discussions arising during Bal Sabha meetings.

Perceptions of Children

Children’s participation involves complexities which require us to “deepen our perceptions” of what the construct of childhood means to the many different people in children’s lives (Fuglesang and Chandler, 1997). Perceptions of children inevitably affect the roles, responsibilities and behaviors that children are expected to take on in any one particular context, as well as the nature of adult-child relations, and how children are treated. Moreover, children’s own perception of themselves and their peer group plays an interacting role in determining how children think and behave.

Street children live much of their lives in peer groups, largely without adult supervision. However, despite the freedom that such life offers, their lives continue to be influenced by a wide range of adults.

Whilst trying to struggle for their own survival these children are frequently scapegoated as thieves and delinquents and treated unfairly as a result. Such images of street children have been perpetuated by the media, and strengthened

by Governments and NGOs when their response to street children has been characterized by 'criminalisation' or 'rehabilitation'. The children have reported numerous cases of the police beating them, bribing them, locking them up in cells and harassing them. Moreover, the public generally remain passive on-lookers or supporters to such violations.

The impact of prevailing negative perceptions of street children and their desire to be treated with the dignity and respect that they deserve have been frequently vocalised by children during their Bal Sabha meetings, and varied collective and participatory action initiatives:

"We want the people to leave us alone so that we can live our lives peacefully. We want Them to stop labeling us as thieves, pickpockets and beggars.... We should be Treated with respect. Even we are human beings, we are not animals."

(Sonu, rag picker, boy, age 12 years).'

'One day I went to the Government hospital as I had a high fever of over 100 degrees. However, because I was dirty and poor the doctors didn't want to look at me properly. Our educator had to convince these doctors to let me be admitted to the hospital.'

(Rakesh, rag picker, boy, age 13 years).

To change the population's perceptions of street children, it is necessary to transform these children's personal troubles into public issues (Mills, 1958). Through strategies of empowerment and mobilization of street and working children, children themselves can play an active role in sharing their narratives about their lived experiences, thus, challenging dominant narratives about who street children are. Dialogue and encouragement of 'critical enquiry' by children helps them become *conscious beings* struggling for humanization (Freire, 1970).

By listening to children's interpretations of their roles, relationships, as well as to how members of society view them and treat them, we can learn a lot about the nature of children's childhoods in any particular context. Moreover, in considering the range and complexity of children's relationships with different groups of adults it becomes clear that children take on a myriad of relationships and roles, and behave differently in relation to different adults in different local settings who impinge upon their lives.

If we consider the differing perspectives of childhood that various stakeholders hold, we will be enabled to understand the complexities and conflicts that may arise in children's lives as they negotiate with varied stakeholders (parents, police, employers, community members, NGO workers, judiciary, Government agencies, and international agencies) who frequently have differing (and often conflicting) expectations of them.

The implications of such differing expectations need to be addressed in practice, policy developments and in re-constructing theories of childhood. Mayall (1994) suggests that the level of 'children's powerlessness varies according to how the adults in specific social settings conceptualize children and childhood. Thus, the need to address dynamics of power, to carry out preparatory work at varied levels enabling access and space for children as citizens for social change, whilst also valuing diversity becomes evident. Moreover, in recognising power and valuing diversity the necessity to work constructively with conflict is inevitable.

Power

By empowering street and working children to reflect upon their experiences, articulate their views, plan effective programmes and advocate for their own rights, these children are challenging the status quo regarding children's place and power in society. Conflicts will arise when children advocate for their own rights, due to differing socio-cultural perceptions of childhood amongst varied stakeholders, in addition to disparities of power.

Relations between adults and children are regulated by power and interests (Qvortrup, 1994). Whilst many of the 'supposed differences' between children and adults may be socially constructed, adults power over children '*means that merely in relation to adult's praxis.... children have no claim on equal treatment because they are not old enough*' (Qvortrup, 1994, p.4). Furthermore, considering that civic institutions and the adult world with its power relations

are, by and large inimical to children's participation (Fuglesang and Chandler, 1997), in working towards children's empowerment, it is imperative that we work simultaneously at varied levels.

For example, in the early 1990s Butterflies NGO was 'scapegoated' by many NGOs, institutions and International NGOs for their strategy of supporting the development of working children's unions. However, alliances with existing working children's movements in Latin America and West Africa provided solidarity. Moreover, growing acceptance of children's rights to participation and association, in accordance with the United Nations Convention on the Rights of the Child have increased acceptance and support of Butterflies position. Over time, there has been a change in discourse regarding children's right to association and to form collectives. Though, the word 'union' remains a loaded term with negative connotations for many.

In dealing with power dynamics we can learn lessons from strategies which promote women's empowerment. Recent studies have found that many strategies are ineffective in causing a positive impact, unless parallel sensitization programmes for men are conducted. As unless men are willing to share power and change their practices, then what can women do? (See Guijit and Kaul, Shah (eds), 1998). Those with less power generally have a lack of control and choice. Indeed the powerless may be placing themselves at more risk by speaking up and challenging the power status:

I don't know anything except that the powerful people and the officials join hands. If we talk about the Juvenile Justice Act or our rights then the police beat us all the more.

(Gyan, rag picker, age 17)

Whilst working directly with children to give them space and encouragement to speak up for themselves, to organise themselves and to work together to find collective solutions to overcome their difficulties - the quotes below show that such a focus is not enough:

**"We have tackled issues like police violence - we have had protests for many years,
But what has changed? We have little power"**

(Street boy at Jama Masjid contact point)

"The politicians are not giving us our rights"

(Street boys, New Delhi Railway Station)

Children must be seen as integral members of the community. There is a crucial need to sensitize adults to be willing to share power, otherwise children's voices can have little influence and children may become disillusioned. In working towards children's empowerment it is crucial that we carry out preparatory work with adults who are part of children's lives (e.g. parents, teachers, employers, community members, law enforcement officials), whilst also working for change in the institutional and social environments to open up access and opportunities for children to participate (in local, national and international decision-making forums). Sensitization work with adults who are part of children's lives is a critical part of the process.

Furthermore, in working towards systemic change conflict is inevitable. Thus, as facilitators of change processes we need to be alert, able to exercise good judgment, resolve differences and nurture relationships, in order that we may work sensitively and creatively with conflict (see Guijit and Kaul Shah (Eds), 1998).

'Butterflies strives the most to make adults talk to children more gently and treat them in a better manner. Another important thing Butterflies does is in the field of advocacy. They do this by meeting and discussing with various political parties, the Government and other influential people, about our problems... Meetings between them and us children are also arranged.

(Child workers, editors of Bal Mazdoor ki Awaz)

Furthermore, it is also imperative that we address the disparities of power amongst children (e.g. due to age, gender, caste, disability, or language). Considering additional discrimination faced by certain groups, such as girls, children

with disabilities, or younger children, we must continuously Endeavour to make our participative processes and opportunities inclusive and accessible for smaller voices to be heard. It has been suggested that 'exploring cultural models of difference and the ways in which these are used to create inequalities can make space for sensitization about prejudice and discrimination as an integral part of the participatory process' (Cornwell, 1998, p.56). Children should be encouraged to celebrate differences amongst them, to challenge discrimination and to work together cooperatively and democratically in a manner that transforms and challenges much of their existing experiences of exploitative relations.

Rights and Responsibility

In the last 20 years and more the discourse on 'Child Rights' has centered on rights as against needs. The language of child development was no more on welfare, development, and needs assessment but on rights based programming, along with this change in language came also of viewing children as persons who have human rights. They were no more to be seen as passive beneficiaries but active actors to be consulted and to decide on their life situations and options available. This also meant children's participation became an important concept to be understood and to be put into practice.

Over the year's children's participation as pre-requisite to planning/programming for children became a standard requirement from funding agencies. Today practically most NGOs working with children will speak the rights language and would vouch that their approach is participatory and children are active participants in the decision making processes. There are enough of literature on children's participation and as many training workshops held for social workers to understand the concept. However, the understanding of participation varies from activists demanding that children should be "in charge" to tokenistic involvement of children. There have been times when programmers and activists have dismissed children owned or led activities/projects/forum as truly not fitting into the standards/norms set by international agencies on children's participation as the idea of the project/activity/forum came from an adult!! . There are times when children may come up with ideas to initiate an activity but there can also be times when adults can share an idea with children and build on it with their active participation. We have to recognize that as adults we have a responsibility to share knowledge, information and ideas to children, which they can then use it to create something of their own.

Somewhere along the way we have forgotten children also need help and guidance, by doing that it does not in any way take away children's role nor does it dilute the concept of children's participation. It is sometimes misunderstood that the rights embodied in CRC gives children full adult rights, rather it gives children opportunities to express their views to be heard, to take responsibility gradually for decisions they take as their competence grows (Promoting Children's Participation in Democratic decision making, pg.7, UNICEF). In recent past there has been an over emphasis on children being pushed on to taking roles of leadership in areas where they do not have competence, capability nor the knowledge and skills to take on such responsibilities in the name of children's participation. We also need to recognize that they are children first and foremost and not thrust upon them responsibilities which they are not ready for. In this frenzy to get children to participate in all levels of decision making and fora, adult's inadvertently push their agenda through children. It is sad that in the move to make children's voices heard we manipulate them for our own need.

The other area of concern is when older children bulldoze their way through decisions at meetings where there are children of younger age who would have different viewpoints to that of older children. There is this real danger of older children manipulating younger children, just as there is danger of adults manipulating children. One has also experienced that once children have experienced the power of negotiating, as they grow older find it difficult to give up positions of leadership. There have been cases of older children who may be 18 and above pretending they are 15 and 16 years so as not to lose out their positions of power. Organisations also find it convenient to push them forward in public arenas as they are able to articulate well and say the "right things". Of course, today child rights activists have realized that we need age specific fora. There is also the danger of children especially well articulate older children to be manipulated by adults for their own agenda and to settle scores with others. The older children/late teenagers are in a phase of their lives which has its stress and pressures; if they are not handled carefully they can go astray and sometimes join the lumpin.

One of the areas which are completely left out in child rights debate is the concept of responsibilities. The stress has always been on “rights” and not on “responsibilities”. It is equally important to educate children about their responsibilities, so that they learn that along with rights they have responsibilities too. This one sided way of looking at rights has inadvertently resulted in children only demanding what is fairly theirs but not what they should be doing to fulfill their responsibilities. As an organization we have had occasions when children only demanded for things but were not happy to be responsible for the same. Similarly there were occasions when decisions were taken but they were not ready to be responsible for the decisions. It is important to educate children about their responsibilities, this is necessary if we want children to inculcate values of fairness, justice, honesty and acceptance of ones responsibilities and of others.

Moving forward

While dealing with the situation of children in our society, the relationship between children and their families, communities, societies, nations and the international system need to be understood. We need to have socio-cultural, economic and political understandings of various development issues, and critical questions regarding the status of children and children’s rights in South Asia need to be asked. We need a dynamic policy framework which relies on the shared responsibility of governments, communities, individuals, and non-governmental organisations to mobilise and pool resources and to evolve and implement culturally relevant and sensitive programmes for children, families and communities in difficult circumstances.

Furthermore, generation analysis, alongside gender and ethnicity analysis need to be carried out, in order that the differences and relationships between different groups are understood. If differences are not identified, there is a tendency to discriminate against those who are less visible, less powerful and less assertive. Generation analysis will enable us to identify the social structures, practices and ideologies that perpetuate and reinforce the unequal positions of people of different age-groups (children, young people, adults, and older people).

Whilst working at local levels with children on issues that are relevant to their lives, all activities which seek to enable children to fulfill their basic needs (e.g. education, protection, health, shelter, savings, and recreation) can be based in a broader framework, which builds upon opportunities for awareness-raising, training, bolstering identity and self-esteem, participation and organising. Furthermore, parallel work at more strategic levels to increase children’s access to adult decision-making forums at local, district, regional, national and international levels needs to be conducted. However, one would like to add that it is important to recognize that adults need to have their own spaces, it is not necessary to have children represented in all adult forum(s).

In moving forwards with our work within a children’s empowerment framework, we can learn a lot from the women’s movement. For example, if I am to exchange the word ‘women’ for ‘children’, and ‘gender’ for ‘generation’, the following passage (written by the Society for Participatory Research in Asia⁵⁷) concerning steps towards women’s empowerment becomes highly useful for exploring steps forward for children’s empowerment:

“To effectively work within children’s empowerment framework, development actors need to work at different levels and undertake diverse strategies. These may include: transforming social institutions; influencing development policies; initiating institutional reforms within implementing agencies; incorporating issues of the empowerment framework in project cycle management; strengthening children’s collectives; initiating process of conscientisation and enhancing self confidence. While, no individual project can work at all the levels, an understanding of the broader context is essential.... Some important tenet for initiating empowering processes within a project context includes a holistic and a context specific approach, focus on practical and strategic generation needs and incorporation of children’s participation.”

Whilst working with children in South Asia, particularly those children whose lives are characterised by difficult circumstances, we need to address both children’s practical generation needs (e.g. education, health care, shelter), in addition to their strategic generation needs. When talking of children’s strategic generation needs we are addressing

57 ‘Development Projects: A Step towards Women’s Empowerment’ Editorial for *Participation and Governance*, Vol.6, No.15, March 1999.f

the fundamental causes of powerlessness that arise due to children's lesser age, and we are striving for goals like equality.

Whilst working at local levels with children on issues that are relevant to their lives, all activities which seek to enable children to fulfill their basic needs (e.g. education, protection, health, shelter, savings, and recreation) can be based in a broader framework, which builds upon opportunities for awareness-raising, training, bolstering identity and self-esteem, participation and organising. Furthermore, parallel work at more strategic levels to increase children's access to adult decision-making forums at local, district, regional, national and international levels needs to be conducted. However, one would like to add that it is important to recognize that adults need to have their own spaces, it is not necessary to have children represented in all adult forum(s).

Children and young people's participation is a democratising process, which also enables the status of children and children's voices to increase. When supported and given real access to decision-making power children can become a powerful force for social change as we have seen in China where children were instrumental in bringing about a change in peoples' concept of hygiene and in Mexico where children brought about a system to clear garbage and thereby brought in a change in people's attitude towards garbage disposal and littering. In India, in the eastern state of Orissa, girls clubs called Meena Clubs are advocating for girl child rights..... The inclusion of children's voices has not only challenged existing pre-conceived notions of childhood, but has forced adult communities to recognise the macro-economic trends that impact negatively on the lives of children and their families and perpetuate local and global inequalities. Interestingly world over it is the poor children who are in the forefront of the battle for their rights and have also got themselves organized to advocate for the same.

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Annexure 5

Child-Friendly Local Governance⁵⁸

Teertha Dhakal and Anjali S Pradhan

Introduction

Child Friendly Local Governance (CFLG) can be defined as a strategic framework that places children at the core of the development agenda of local bodies, government line agencies and civil society, promoting child rights through good governance at the local level. It provides overall guidance to realizing and mainstreaming the rights of children (to survival, development, protection and participation) in local government systems, structures, policies and processes. CFLG also facilitates and coordinates the realization of child rights at the national (macro) and sub-national (meso and micro) levels, and enhances the integrated delivery of local services related to children.

This report reviews Nepal's progress in recent years in implementing CFLG, with a focus on how south-south cooperation has advanced the process. CFLG is considered by the Government of Nepal to be an important means for mainstreaming child rights in local governance and ensuring that the country can achieve its Millennium Development Goals (MDGs), particularly those related to children and women.

Country Situation

Nepal is one of the poorest countries in the world, with around 25 per cent of its population of nearly 26.6 million living below the national poverty line.⁵⁹ It currently ranks at 157 of 187 countries in the UNDP's Human Development Index 2011. Some 46 per cent of the population is aged less than 18 years. Half of all under-fives suffer from chronic malnutrition and an estimated 61/1000 live birth children die each year as a result of diarrhoea and acute respiratory infection. Figures for child labour and trafficking are somewhat dated but it is fair to say that these are still major issues for vast numbers of Nepal's children. For example, ILO data from 2001 suggested that 2.6 million children aged 5–14 years were involved in child labour, usually in the agricultural sector, and 2004 data estimated that 12,000 girls were trafficking into urban centres of Nepal and across the border into India.

Between 1996 and 2006, Nepal experienced a violent civil conflict that destabilized much of the country and worsened the situation for many vulnerable groups, with the heaviest impact on women and children. The conflict contributed to multiple deprivations by hampering the delivery of basic services, restricting development assistance, and causing the breakdown of family and community networks. Unfortunately, many of the social inequalities among castes and ethnicities that helped spark the conflict remain today, and girls and women continue to face discrimination and chronic economic insecurity. Despite this, many development indicators have been improving. The *MDG Progress Report 2010* estimates that by 2015 Nepal is likely to reach its targets for reducing poverty, under-five mortality, maternal mortality, and the spread of HIV/AIDS, malaria and tuberculosis, and for increasing access to improved drinking water. However, greater efforts are required for meeting the targets on reducing hunger, ensuring universal primary education, eliminating gender disparity, and increasing access to adequate sanitation. Nepal is unlikely to achieve its targets for employment and environmental sustainability. Although it is apparent that not all targets will be met, improving trends demonstrate Nepal's continued commitment to reducing poverty and advancing the lives of its citizens.

In terms of protecting the rights of children, Nepal has developed a supportive legal and policy framework. The Convention on the Rights of the Child (CRC) was ratified in 1990, and various ILO conventions aimed at preventing child labour and other child abuses are in force. These instruments have guided the protection of child rights in the

58 Paper on Efforts to Institutionalize Child Friendly Local Governance (CFLG) in Nepal by Teertha Dhakal, Joint Secretary Ministry of Local Development, GON and Anjali S Pradhan, Programme specialist, Unicef Nepal- International Colloquium on Children and Governance 2011, New Delhi

59 55.1% of Nepalese live on less than \$1.25/day, and 77.6% on less than \$2/day, World Bank World Development Indicators 2010.

Interim Constitution and the forthcoming new Constitution. Furthermore, the government has strengthened policy through the development of the National Plan of Action for Children 2004/05–2014/15. This policy document has informed provisions in the current Three-Year Plan 2011/12–2013/14.

The Local Self-Governance Act (LSGA) 1999 has devolved power and responsibility to Nepal's 75 districts through District Development Committees (DDCs), municipalities and Village Development Committees (VDCs) for decentralized resource allocation and programme planning. The passage of the LSGA provided an opportunity to bring about good governance through better inter-sectoral coordination and based on greater popular participation in development. The Act promises a role for civil society in contributing to both service delivery and good governance.

UNICEF's support for CFLG in Nepal

UNICEF Nepal has been supporting the Government of Nepal for many years through various joint agreements, the latest being the Country Programme Action Plan (CPAP) 2008–2010. The overall goal of this agreement is the realization of the rights of all children and women through support to the interlinked objectives of peace, reconciliation, and achievement of the MDGs. UNICEF's main partner for promoting CFLG is the Ministry of Local Development (MLD). Specifically, the CPAP 2008–2010 provided the impetus for formalizing CFLG, with the MLD as the lead government agency for piloting CFLG initiatives in selected districts and municipalities.

UNICEF's support for CFLG has evolved out of the agency's Decentralized Action for Children and Women Program (DACAW) that channels a range of interventions to some of the hardest-to-reach communities in 23 of the most disadvantaged districts. The goal of DACAW is to ensure the progressive realization of the rights of children and women in disadvantaged areas through rights-based and bottom-up approaches that focus on the most vulnerable and marginalized. The program is a coordinated and sustained effort aimed at alleviating poverty and addressing the MDGs. DACAW focuses on: promotion of quality basic education; protection of children and women against violence, exploitation and abuse; improvement of maternal and neonatal health; improved management of common childhood illnesses; improved psychosocial and cognitive development of children; greater access to safe drinking water and sanitation; and increased awareness of HIV/AIDS. DACAW includes a Community Action Process (CAP) that enhances the capacities of individuals, families and communities to assess their situation, analyse its various causes, and plan appropriate actions by mobilizing internal and external resources needed to bring about change in the community. 10,681 community organisations and 395 women federations have been supported through DACAW. The program also seeks to make local administrations and service-delivery institutions more responsive by building their capacity to work on child-rights and women's-rights issues. Communities create demand for better services by informing people about their rights and mobilizing them to utilize local services. Village facilitators serve as the link between the community, local decision-making bodies and other service-delivery institutions at the district, municipal and village level.

DACAW has initiated various community-based mechanisms to address specific issues related to improving the lives of children and women. One such mechanism is the establishment of school- and community-based child clubs that promote child rights and empower children to participate in local development. These have been very successful and have now been taken to scale across Nepal. There are currently some 4,263 child clubs, with a membership of 119,591 children aged 12-18 years.

The MLD is the main government partner for DACAW and, with support from the National Planning Commission, is responsible for overall coordination of the program. DACAW activities are implemented in collaboration with the central and district-level branches of the Ministry of Health and Population, Ministry of Education, Ministry of Finance, Department of Women's Development, and Department of Drinking Water Supply and Sewerage. All the sectoral and line agencies' activities are integral parts of the district annual plan prepared by the DDC. Since 2004, DACAW funds have been channelled through the District Development Fund in support of the fiscal decentralization policy, and are thus reflected in the accounts of the central treasury. Over the years, results-based indicators have demonstrated that DACAW has been able to improve the lives of children and women in disadvantaged areas. DACAW has utilized DDCs and VDCs and expanded their membership to bring together sectoral actors and local bodies to plan and implement activities aimed at achieving results for children and women.

As a result of its positive experiences with DACAW, the MLD started to formalize its initiatives for CFLG in 2007. In particular, DACAW's rights-based approach and capacity to ensure sectoral convergence showed the MLD how CFLG could function and sparked its interest in and commitment to the concept. Learning from DACAW provided examples of structures and processes that would ensure empowerment of community-based groups, participation by children, and convergence of sectoral programmes in the preparation of an integrated plan at the local level. Prior to 2007, a district child action plan had been developed in each of seven DACAW districts, inspiring the preparation of a district periodic plan. These plans had proved effective at focusing development on the needs of children and women.

DACAW is now being mainstreamed into the MLD's Local Governance and Community Development Programme (LGCDP). LGCDP is a local governance sector wide programme supported by a range of multilateral and bilateral development partners. Local bodies receive a block grant from central government to improve local development. The block grant represents contributions from both government and development partners and contains a capital and recurrent cost allocation. MLD guidelines stipulate that every DDC, municipality and VDC must allocate at least 10% of the capital portion of the block grant for children and 10% for women. Through this provision, local bodies are compelled to allocate minimum fiscal resources for children and women. Some local bodies are allocating more money than defined by the guideline.

As outlined in the CPAP 2008–2010 and in the extended CPAP 2011-2012, institutional development of CFLG has been a priority in this phase of DACAW's implementation. Policies together with institutional and procedural arrangements, necessary for the purpose, have been developed at both central and local levels. For example, the Child-Friendly Local Governance National Committee, a policy structure for child-friendly governance, and a national framework alongside operational guidelines have been developed at the central level. At local level, administrative capacity is being strengthened through the development of periodic and annual plans, networks, policies, situation papers and strategies for the promotion of CFLG. As a result, CFLG has been piloted by a number of local bodies.

South-to-South learning

As part of the CPAP 2008–2010, UNICEF funded a study tour to the Philippines in 2007 for key decision-makers within the MLD as well as policy-makers from the National Planning Commission and the Central Child Welfare Board. This study tour aimed to expose Nepali government officials to a fully functioning CFLG system and is a good example of south-south cooperation. The relevant legislation for enabling CFLG in the Philippines was promulgated in 1991, and consequently that country is a few years ahead of Nepal in developing its system for CFLG. In addition, there was already a strong local government set-up and an active civil society with a strong voice that provided opportunities for children and young people to participate in local development processes.

Three areas of learning were emphasized: local governance and decentralization; the CFLG process; and child participation. Nepal learnt how decentralization functioned in the Philippines with a focus on the structure of local government, harmonization between sectors, localization of the MDGs, and mechanisms for monitoring. The CFLG process was explained through the national framework, the 'four gifts for children' (plan, investment plan, child rights report, and child rights code), and child-friendly recognition and awards for cities and municipalities. Child participation had been institutionalized at each sectoral level and a National Child Participation Framework had been developed.

As a consequence of the Philippines visit, Nepal adopted the following structure of outputs for each district or municipality implementing CFLG, whilst ensure meaningful participation of children.

- Preparation, analysis and publication of a child profile
- Local development plan for children
- Local investment plan for children
- Adaptation and localization of child-friendly policies
- Preparation and publication of a local State of Children Report
- Defining of minimum indicators on survival, development, protection and participation in coordination with all line

agencies, local body associations, civil society, community-based groups (e.g., women's groups, child clubs, etc.) and relevant institution at the local level

The Philippines trip was pivotal in building momentum for establishment of CFLG in Nepal.

MLD's roles in facilitating the implementation of CFLG

The Ministry of Women, Children and Social Welfare (MOWCSW) acts at the national level to develop policies aimed at improving the lives of children and other sectoral ministries have responsibility for ensuring specific outcomes for children in line with the MDGs. The Department of Women Development (DWD) within MOWCSW is one of the key partners in supporting the community action process and other community-based mechanisms such as paralegal committees.

As the ministry responsible for developing policy guidelines for local bodies, the MLD facilitates implementation of local governance initiatives, including CFLG, and allocates resources to DDCs, municipalities and VDCs through provision of block grants. Officials and bureaucrats responsible for development efforts at the local level are located within the MLD. In order to ensure that funding and programmes are available for local development, the MLD is responsible for facilitating the preparation of comprehensive, integrated, district-level periodic plans through coordination of all line ministries and civil society groups.

Local bodies' roles in implementing CFLG

In line with the principles of decentralization and the LGSA, local bodies are responsible for coordinating the delivery of basic services to the people within their jurisdiction. Furthermore, as the government units closest to families and children, local bodies, especially those in municipalities and VDCs, are in the best position to provide and sustain these services. Local bodies also need to prepare periodic plans to guide and coordinate development within their areas.

As well as receiving financial resources from central government, local bodies can also raise their own internal resources from the revenue base provided by the LSGA. Under the forthcoming federal state structure, it is envisaged that devolution of power to local government will be in place.

Piloting of CFLG

Using learning from DACAW and the Philippines study tour, the MLD initiated a pilot in five districts (Jumla, Dang, Sunsari, Tanahun, Kavre) and Biratnagar Municipality in 2008 with the aim of developing a programme to expand and strengthen CFLG.

A recent evaluation of the pilot in Biratnagar disclosed the following findings. The municipality had developed a local-level concept note on CFLG and incorporated children's issues into new policy documents, including (i) the Municipal Periodic Plan; (ii) an Integrated City Profile; (iii) the Municipal Periodic Plan Implementation Strategy and Child-Friendly City Action Plan; (iv) the Municipal Poverty Reduction Strategy; and (v) a Code of Conduct for the Elimination of Child Labour. The CFLG initiative had involved a number of consultations, meetings and workshops between the municipal body and various stakeholders including political parties, government line agencies, civil society, the media and the Working Children of Biratnagar's Child Club. The partnership with the child club had ensured that 2,100 working children (852 boys and 1,295 girls) in all wards of the municipality have been reached and their voices heard, adding great value to the process. Partnerships had also been established with donors, NGOs (such as FOHREN, a national NGO dedicated to promoting child rights, who facilitated participation by the child club), and the Morang Chambers of Commerce and Industry. The municipality had also orientated politicians, media personnel and representatives of the Municipal Building Construction Network on CFLG. As a result of pilot, the municipality has committed NRs 233 million (US\$ 3.1 million) for investment in CFLG initiatives over the coming five years.

One of the most important parts of the pilot was consultation with children. The Working Children's Club was involved throughout the whole process. The municipality not only invited children's representatives to the workshops but also ensured that all child club members were orientated and consulted beforehand, so that their voices, views and recommendations could be fully incorporated in all key policy documents developed by the municipality. As a result,

the following actions have been completed.

- A vision statement to declare the municipality child-friendly by 2015 has been formulated.
- A concept note on children's participation and the role of child clubs in municipal governance has been developed. As a result, the municipality has developed a bylaw on how to engage and enhance children's participation in the municipal governance process, recommending that children's representatives are invitees on the Municipal Board and the Municipal Council. The Municipal Board has in principle endorsed the bylaw and is awaiting formal approval from the Municipal Council in 2010.
- Indicators developed by the children on CFLG have been incorporated into the municipal periodic plan.
- During the consultation processes, children recommended a separate unit for children in the municipality and an information centre for children. These ideas have been incorporated into the Child-Friendly City Action Plan.
- One of the issues raised by working children was the lack of respect that school-going children showed to child workers. Their suggestion was to form child clubs in government schools. Therefore, the municipality provided funds for the working children to initiate child clubs in nine of 89 schools in 2009. This was a very empowering exercise, with working children not only helping to form child clubs in formal schools but also providing an opportunity for them to orient school children on child rights from their perspective. Based on the positive response from the nine schools, the municipality decided to expand child clubs to all remaining government schools in the municipality in 2010.
- The municipality also worked jointly with the Working Children's Club for two major initiatives: the measles campaign, and the birth registration campaign.

Lessons learnt from the pilot provided tangible inputs to development of two important policy documents: (i) the National Framework on Child-Friendly Local Governance and (ii) the Operational Guidelines for Child-Friendly Local Governance.

National Framework on CFLG

This strategic framework approved by the cabinet in July 2011 has been developed in order to mainstream child-rights issues in local governance and institutionalize the concept of CFLG. Its overall objective is to bring uniformity to programme policy, strategy, implementation and outcomes by analysing children's situations and ensuring a policy, institutional and procedural system to establish and promote CFLG. It aims to create an environment conducive to enabling financial and technical cooperation through coordination and partnership among governmental and non-governmental organizations working for children. The framework should also help to improve consistency in Nepal's implementation of international, national and local policies related to child rights, and to provide a basis for enhancing institutional capacity and human resource development in CFLG. Finally, the framework provides guidance on the expansion of CFLG. It is suggested that, by 2015, some 50 districts, 40 municipalities and 1,000 VDCs will be implementing CFLG. This represents nearly three-quarters of the country's administrative units.

Steps for initiating CFLG

Districts and municipalities introducing CFLG are required by the framework to follow a number of steps to ensure a complete and standardized procedure:

- Orientation, development and expansion on the concept of CFLG.
- Formation of district/municipal CFLG promotion committee.
- Preparation of an action plan for the formulation of policies and strategies on CFLG.
- Establishment of CFLG focal sections or units at DDC and municipality.
- Selection of municipal wards and VDCs on the basis of specific indicators/standards.
- Preparation of child profile.
- Establishment of children's fund.

- Formation, development and mobilization of child group/child forum/child club and community organizations.
- Identification, coordination and networking of stakeholders.
- Declaration of commitment of stakeholders for CFLG.
- Development of periodic and annual plans to ensure funds for investment and implementation of work plans.
- Preparation and publication of status report on children.
- Monitoring, review and evaluation.
- Commitment, decision and approval from local council to spend at least 15 per cent of its total capital budget on areas related to children.
- Agreement on minimum service indicators for CFLG.
- Declaration of child-friendly district, village or municipality.

Adoption and declaration

Local bodies adopting CFLG should work in the following areas, ensuring meaningful participation of children:

- Orientation for partner institutions and a collective commitment to adopt the CFLG system.
- Preparation of CFLG promotion action plan.
- Investment plan, with local bodies committing at least 15 per cent of their capital budget resource allocation to child-related activities.
- Formulation of minimum service indicators for CFLG.
- Intuitional setup for the promotion of CFLG (establishment of unit or section, or appointment of a focal point).
- Decision to adopt CFLG from the respective council.

Local bodies may declare their area (district, municipality or VDC) to be child-friendly when the council achieves more than 80 per cent of its minimum service indicators. Achievement of indicators is monitored jointly by the MLD and the DDC. A local body that is declared child-friendly will be awarded with a prize.

Outcomes of CFLG to date

As the national CFLG initiative has progressed, the government has taken a number of actions to ensure that local bodies operate in an environment that is conducive for initiating CFLG. Foremost, the National Strategy on CFLG was approved by the Cabinet on July 5, 2011. A National Steering Committee on CFLG has been formed led by the Ministry of Local Development (MLD). The other outcomes includes the mandatory provision within the new local bodies' Block Grant Guidelines that 10 per cent of the allocation must be used for programmes that directly benefit the most disadvantaged children and 10 per cent for the most disadvantaged women. In addition, the National Framework on CFLG includes a provision for the mandatory allocation of 15 per cent of the total capital investment funds in a VDC/district or municipality that initiates work on CFLG. These steps have ensured that sufficient funds are available to plan activities that improve the lives of children and women.

The strong and clear policy environment, with the National Framework on CFLG and Operational Guidelines, provides districts and municipalities with practical strategic direction and guidance on introducing and mainstreaming CFLG into their annual planning and monitoring processes. This enabling environment is supporting the development of clearer understanding of child-rights issues and creating a positive attitude among stakeholders on what actions to take to improve the lives of children and their families. CFLG is reflected in the National Periodic Plan (TYP). CLFG Capacity building efforts have been initiated in 44 districts and 14 municipalities out of which the adoption process has been initiated and is currently being implemented in 20 districts and four municipalities' across the country. An important measure to scale-up CFLG is the inclusion of CFLG as a decentralization indicator in the government's LGCDP.

The stipulation that children must be involved in the process of collecting information for the child profile and must also be part of planning committees making decisions on how funds are spent ensures that the voices of children are

heard and taken into account within local governance processes. Efforts have been made to ensure that children are represented and their voices heard and mainstreamed in the LGCDP social mobilization structures such as the Ward Citizen Forums, the CFLG VDC, District and Municipal Committees and in the VDC's Integrated Planning Committee (the key committee that decides the allocation of the block grants). These provisions including the budgetary allocations from block grants are encouraging developments that will ensure sustainability of children's participation and their voices in local governance structures and processes. Meaningful child participation is an important aspect of CFLG.

The CFLG process has also enhanced coordination and collaboration among sectoral line agencies, local body associations, civil society organizations and development partners on child-rights issues. In particular, local bodies and service providers are being encouraged to become more accountable and responsive towards child-rights issues.

The stronger focus on child-centred planning has resulted in CFLG districts and VDCs developing several new tools including integrated child profiles, localized poverty reduction strategies, and codes of conduct aimed at reduction in violations of specific child rights, for example, against the worst forms of child labour or the misuse of children for political purposes.

Although CFLG is still at an early stage in Nepal, eventually this type of localized planning should result in a noticeable improvement in MDG indicators aimed at bettering children's lives. This is particularly important in Nepal where local disparities can sometimes be very wide and national policies cannot always reach all intended beneficiaries with equity. The capacity to address local concerns, especially those of remote, hard-to-reach or disadvantaged communities, means that planning can be more effective and have a greater impact on outcomes.

Conclusion

The development of CFLG in Nepal has progressed quickly and would not have been as effective without the learning provided by the Philippines study tour for government officials in 2007. This type of south-south cooperation has inspired the relevant actors and built confidence that change is achievable. Not only has Nepal benefited from this cooperation but the MLD also intends to share its experiences of how it has been able to influence policies and budget allocation and mainstream child rights into local planning processes with other countries. In May of 2010, a high-level delegation visited Brazil to discuss Nepal's approach to CFLG programming with government counterparts in Rio and Salvador and to learn about the use of participatory assessment tools for monitoring child-friendly cities.

Of course, the ultimate aim of CFLG is to improve the lives of children and their families in cities and villages across Nepal and ensure that the MDGs are met. Without doubt, south-south cooperation has played an important role in this endeavour.

Acronyms

AIDS	acquired immunodeficiency syndrome
CAP	Community Action Process
CFLG	child-friendly local governance
CPAP	Country Programme Action Plan
CRC	Convention on the Rights of the Child
DACAW	Decentralized Action for Children and Women
DDC	District Development Committee
HIV	human immunodeficiency virus
ILO	International Labour Organization
LGCDP	Local Governance and Community Development Programme
MDG	Millennium Development Goal

MLD	Ministry of Local Development
UNDP	United Nations Development Programme
VDC	Village Development Committee

Annexure 6

Role of Judicial Activism in Child Rights

By Justice M Imman Ali⁶⁰

As a concept, judicial activism has been in existence for more than a hundred years. However, the meaning has changed over the decades from its earlier pejorative sense to the now more acceptable, and is sometimes considered a laudable practice. Earlier the term was scathingly used to describe decisions which essentially reflected political manipulations. Nowadays, however, the term connotes different meanings to different persons. It commands popularity from the quarter benefitted and scorn from others.

Black's Law Dictionary defines judicial activism as “a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.”

Sometimes it refers to judges making law, ‘legislating from the Bench’). This is beyond the remit of a judge, who has the power only to interpret the law. Only Parliament has the power to make laws.

By the same token, the nomenclature “activist judge” is used to describe a judge who actively and knowingly subverts, misuses, grossly misinterprets, ignores, or otherwise flaunts the law and or legal precedence due to personal opinion, be that opinion ideological, religious, philosophical, or other.

On the other hand, **judicial activism** in litigation is a helpful mechanism used by the courts to assert their powers and jurisdiction and to do justice strictly according to the law, as they would interpret it in the facts and circumstances of each case before them.

Judges who interpret the law by looking to the intendment of the Legislature, in a way so as to cater for the needs of the populous for whose benefit the law was enacted, are not making law.

Thus the conclusion that can be drawn from the above is that through the process of judicial pronouncements only the creation of a certain degree of sensitisation has been possible. Judicial activism in those cases, if it can be called that, was purely an exposition of the existing legal principles, applied to the facts of the case.

The cases mentioned above, like many other similar ones, clearly reflect, not judicial activism, but the Hon'ble Judges' **pro-activism**. The mindset of the judge in reality indicates that he is not necessarily an “activist judge” in the negative sense, but that he is an ‘**active judge**’ meaning that he has made an important decision encompassing the whole panoply of the judicial process and procedure relevant to the matter immediately in issue.

In a similar vein, I may mention the relatively recent decision in the case of ***The State Vs. Md. Roushan Mondal @ Hashem, BCR 2006 HCD 275***. This case highlighted some of the shortcomings of our trial courts in dealing with child offenders. It appears that most of the trial courts are quite oblivious of the provisions of the Children Act, 1974 and have not the faintest idea of how trials under the said Act should be conducted. The numerous covenants and

⁶⁰ Justice M Imman Ali is a judge of the Appellate Division, Supreme Court of Bangladesh.

conventions concerning the welfare of children in conflict with the law, their trial and the sanction to be imposed upon them after due process, were dealt with in some detail in our judgement and certain recommendations were made suggesting provision of new law incorporating the latest international documents concerning children and also with a view to ironing out some of the anomalies remaining within the system of trials of child offenders.

I may also be forgiven for mentioning an article, written by the author, published in the **Human Rights Magazine 2007**.⁶¹ The said article was conceived after a division bench of the High Court, presided over by the author, noted serious malfunctioning of the trial system concerning the process and procedures to be followed when dealing with child offenders.⁶² The said article highlights the various stages at which the appellant in a jail appeal suffered, due to legal provisions not being followed by the concerned authorities, whom he faced during his journey from an allegation being made against him to the final conclusion of his trial, ending in his conviction and imprisonment.

In the two instances mentioned above we have sought to bring to the fore the provisions laid down in the Children Act, 1974, which appeared to be seldom followed properly in accordance with the mandate of the law and the rules promulgated thereunder. I would venture to suggest that this is not judicial activism, although it may be termed as judicial pro-activism, in other words rising to the occasion to interpret the law in its proper perspective with a view to redress the misery of the hapless and downtrodden, but at all times remaining within the ambit of the law. It is also a positive attempt to ensure that provisions of law enacted for the benefit of a certain class should be properly and correctly administered in the true light and spirit of the law itself and of the Constitution.

As was said by Chief Justice Marshall of the USA, "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other is treason to the Constitution." To this I would only add in the context of our laws that the laws are made for a purpose and it is our bounden duty to give effect to them.

It is said, "Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present. Judges must reconcile liberty and authority; the whole and its parts."⁶³ In our judgements, what we have aimed at is to do justice to the case and at the same time ensure that failure of justice is avoided, bearing in mind that the right of the citizen, be s/he accused or victim is to be dealt with even-handedly, in accordance with law, affording to her/him all the facilities and benefits provided by the law.

It is our view that the Supreme Court can come to the aid of the hapless and downtrodden and can act, as it has acted in the past, even on news items published in the media. These are signs of a pro-active judiciary working in aid of the mandate of the Constitution to provide proper application of the law in case of weaker and disadvantaged sections of the citizenry. An example of this was the report in the newspapers regarding children in prison, which resulted in a *suo motu* Rule being issued by the High Court Division. Conceptually this is not as 'activistic' as it might appear at first sight. The Constitution by virtue of Article 28(4) permits enactment of laws allowing positive discrimination in favour of women and children, for example. The Children Act was enacted in 1974 dealing exclusively with children who come into contact with the law. This law specifically excludes alleged child offenders from the prisons during the pendency of the trial. The *suo motu* Rule was therefore amending a wrong done by incarcerating children, contravening legal provisions, namely the Children Act 1974 and the Constitution. It must be borne in mind that where the Constitution empowers the legislature to discriminate in favour of certain sections of the citizenry, then it is all the more incumbent upon judges to ensure that the benefit so enshrined in law, authorised by the Constitution, is given full effect.

As examples of what we have managed to do in the last few years, I may reproduce a list of reported cases concerning various aspects of justice for children:

61 by Human Rights and Peace for Bangladesh (HRPB) titled: "Fundamental Rights of Children: Rights of Youthful Offenders are ensured by the Constitution"

62 Jail Appeal No.552 of 2007

63 Quoted from an article entitled Judicial Activism by M.N. Rao

	Case No.	Parties Name	Reported in
1	Death Reference No.05 of 2004	<i>The State</i> -Versus- Md. Roushan Mondal @ Hashem	59 DLR 72
2	Suo-Motu Rule No.04 of 2008 (Arrest & custody of child)	The State Versus- The Metropolitan Police Commissioner, Khulna and others	60 DLR 660
3	Suo-Motu Rule No.5621 of 2009 (Custody of victim child)	State -Versus- Secretary, Ministry of Law, Justice & Parliamentary Affairs and others	29 BLD 656
4	Suo-Motu Rule No.01 of 2010 (Arrest & Custody of children)	The State -Versus- The Secretary, Ministry of Home Affairs, and others	16 MLR 254
5	Suo-Motu Rule No.15 of 2010 (Custody of children in jail pending trial)	The State -Versus- The Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others	19 BLT 376
6	<i>Writ Petition No.3646 of 2008.</i> (Sentencing child offenders)	Fahima Nasrin, Government of Bangladesh and others	61 DLR 232
7	Criminal Appeal No.4953 of 1991(Dhaka) (Confession of children)	Jaibar Ali Fakir Versus The State	28 BLD 627
8	Writ Petition No.5684 of 2010 (Corporal punishment)	Bangladesh Legal Aid and Services Trust (BLAST), and another Versus Secretary, Ministry of Education, and others	31 BLD 201
9	<i>Writ Petition No.1234 of 2004</i> (Child workers)	Ain O Salish Kendra (ASK), and another VERSUS Bangladesh, represented by the Secretary, Ministry of Labour and Manpower, and others	63 DLR 95
10	Writ Petition No.3598 of 2010 [Child Domestic Workers]	Bangladesh National Women Lawyers Association (BNWLA) -VERSUS- The Cabinet Division	31 BLD 265
11	<i>Writ Petition No.8769</i> [Stalking/Eve-teasing]	Bangladesh National Women Lawyers Association (BNWLA) -VERSUS- Govt. of Bangladesh	31 BLD 324
12	<i>Writ Petition No.8283 of 2005</i> (mandatory Death penalty)	Bangladesh Legal Aid and Services Trust (BLAST) and another -VERSUS- Bangladesh, represented by the Secretary, Ministry of Home Affairs, and others	63 DLR 10
13	<i>Criminal Appeal No. 6036 of 2009</i> (custody of minor)	Nirmal Chandra Shaha -v- The State and others	30 BLD 584

As an inherent characteristic of their appointment, many judges across the globe act with much self-restraint, sometimes doggedly adhering to old norms, which is hardly befitting to the needs of the day. However, judicial activism in its popular sense need not necessarily be the antithesis of self-restraint. In the examples cited above, I believe the judges dealing with cases of violence against women and children as well as those concerning the rights of child offenders, have not been making any new laws, but have propounded the law in its correct spirit and perspective, keeping in mind the subjects whom the laws were enacted to protect and benefit, and always bearing in mind the structure of the society, its cultures, mores, difficulties and drawbacks, and above all keeping in view the rule of law. If while acting under the forgoing urge to do justice in accordance with the law, the judges appear to be 'guilty of judicial activism', then so be it. This, to my mind, is '**beneficent activism**' and not the type to be decried or sneered at. This type of judicial activism is good for the poor and oppressed, who are otherwise prevented from getting proper and

proportional treatment under the law and denied redress due to various hurdles- economic, social, educational etc.

In conclusion, I would say that, what is most necessary on the part of all relevant actors is to combat injustices perpetrated against women and children and other vulnerable classes of the citizenry. It is essential to ensure their rights and to create awareness amongst all actors concerned. The accused, victims, lawyers, welfare agencies, NGOs, probation service, police, investigating agencies, doctors, forensic scientists, magistrates and judges etc., must all be made aware of the provisions of the relevant laws, and all the persons manning the machinery of justice must be sensitised about the peculiar needs of those persons who come into contact with the law enforcing machinery.

I hope that I have been able to establish that I am not an 'activist judge' in the negative sense of the term. My brother and sister Judges will speak for themselves at some opportune moment.

Annexure 7

HAQ Centre For Child Rights, New Delhi

November 9 2011

Reflections on State Obligations to Children in South Asia, and Accountable Governance

Savitri Goonesekere
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The release of a book on children and governance, accompanied with an index of performance assessment on child rights appears as a somewhat unique event in the South Asian region. Our discourse on democratic and good governance generally focuses on issues concerning an adult world. And yet all our countries have Constitutions which either provide for affirmative actions, laws, and policies to protect the interests of children, and or guidelines of State policy that reflect commitment to the well being of children. Our countries committed themselves to the goals of the World Summit for Children in 1990 – a major international policy document, as well as the Millennium Development Goals which set targets of performance in regard to improving the lives of their child populations. One of the Summit goals of 1990 was to achieve global ratification of the Convention on the Rights of the Child, (CRC) (1979). By the nineteen nineties all our countries in South Asia had ratified the Convention, and expanded their commitments in national law to include the realisation of the international standards set by the Convention. This linked our international human rights commitments to children to Constitutional norms and therefore set the framework of good governance for people and child centred human rights based growth and development. I congratulate the HAQ Centre for Child Rights on their commitment to help realise State obligations in our region through their work, and the most recent initiative that can serve both as a model and a tool for comparative assessments on children's rights and governance in our region, especially in a context of economic transformation. I also thank the Centre for inviting me to share some reflections on the theme of Children and Accountable Governance, which is also being discussed in an International Colloquium in Delhi that is in session from today.

I come from Sri Lanka, a country in the region that has gained global accolades on its performance in regard to the wellbeing of children and child survival and growth. A popular folk poem refers to a King who called a child and said, "Speak to me of your joys and sorrows." The poet reflects on the uncommon nature of this concern with the remark, "where else, (but here and now) can we find such a king?" Colonial British writers of the nineteenth century who commented on our society remarked on the concern for children and that too often we spoiled our children with kindness. Our country has seen periods of war and conflict that have challenged the State, and exposed children to great suffering, throughout its history. Our experience demonstrates a reality for all of South Asia – commitment to children can only be realised where there is peace, opportunities for participatory, stable, good governance with respect for the rule of law in conflict and violence free communities. In so far as the adult world impacts on children, we cannot de-link achievements for children from the adult world's capacity to work towards peace inclusive growth and democratic accountable governance, with commitments to constitutional and international standards on human rights and freedoms.

India and Sri Lanka have retained their commitment to parliamentary democracy, and practically all other countries in the region have moved towards governance based on a system of parliamentary democracy. We no longer have systems where good governance is dependant on a single individual or benevolent King or Queen. Bhutan is the only country with a monarchy, but that too is linked to diverse structures of governance and to the norms and standards on the citizen's fundamental freedom spelled out in the Bhutanese Constitution. We in South Asia must therefore ensure that democracy as a form of governance is strengthened and not undermined by our governments if they are to fulfil their commitments to children on the basis of Constitutional principles and CRC. Resolving conflicts peacefully and preventing armed conflicts must be a necessary dimension of our vision of good governance. Where such conflicts do occur, there must be special efforts to conform to the standard set by CRC Art 38 and its Optional Protocols. These norms and the subsequent Security Council Resolutions 1325, 1820, and 1612, are now the benchmarks for assessing State performance on their obligations to children, even in times of armed conflict. Too often governments see international or Non-Governmental monitoring based on international human rights commitments and standards as "external," "foreign," interventions. It is the task of the United Nations and other international organisations to continue to create awareness among parliamentarians, bureaucrats and our leaders that these are obligations of our own States and governments, under our Constitutions that also link to the norms of international law. UNICEF's own programmes in conflict areas in the nineties following the late James Grant, referred to children as "Zones of Peace." The challenge today is for governments to commit themselves to creating "Zones of Peace" throughout our nations by governance that seeks to resolve rather than nurture conflict. By not resolving and mediating conflicting interests in our plural societies, whether in times of conflict or economic transition, the State fails to perform its obligations to the people, including children.

Despite the fact that our governments have been challenged in this regard, and found wanting in the protection of child rights in times of conflict, and economic transformation, we must concede that CRC has promoted greater political will in putting in place laws, policies, and plans to address children's issues in our region. This is remarkable, considering that Asia is the only region in the world that does not have a regional Charter on Human Rights including children's rights. If we engage in a retrospective reflection of the last few decades, many of our countries had Constitutional provisions, laws, court cases and jurisprudence and programmes that focused on the wellbeing of children. ILO standards, especially on working children were accepted as benchmarks in labour law. Countries on the subcontinent and Sri Lanka with English Common law were familiar with the phrase "the child's best interests" incorporated in legislation or court decisions. All children in my country and the Maldives had access to education, reflected in good indicators on literacy. Sri Lanka's visionary public health policies in particular also ensured good indicators on child survival. However issues such as child sexual exploitation, child labour, and child trafficking, the hard areas of infringement of child rights, were considered "politically sensitive" to address in regional or international fora. Even UNICEF described these problems in the pre CRC era in somewhat sanitised language as issues of "children in difficult circumstances." I recall writing a report for an international agency in the 1980s and being advised not to focus on the politically "sensitive" issue of child sexual exploitation and paedophile abuse. In 1992, I was on the Committee appointed to draft the Conference Declaration at a SAARC Regional Conference on Children in Colombo, Sri Lanka. I recall the resistance of members of some delegations on the Committee to including any reference to cross border trafficking in children, as a "bilateral issue" that SAARC was not mandated to include in their discussions. I was fortunate to be present as part of the UNICEF delegation in Geneva at the final sessions of the drafting of CRC in 1988. Article 20 which refers to 'kafala' a North African form of foster care, was negotiated by delegations that emphasised that Islam did not recognise a concept of adoption. This relativism was considered a legitimate response in relation to children's rights.

CRC contributed to changing this scenario significantly. Our region, like many others benefited from the internationalisation of children's rights the message of all rights for all children, and the international and global campaign to prevent exploitation of children particularly from low income families in sex, trafficking, child labour and the suffering caused in armed conflict. We have, despite our plural societies moved towards universal norms and standards on children's rights, in several areas. Our governments are expected to respect and promote child rights in their administration and not violate them. They must protect these rights and prevent Non-State actors violating children's rights. They must allocate maximum resources to fulfil these rights through effective law enforcement and social and economic interventions.

UNICEF under Mr. Grant and his successor Carol Bellamy, in those early years incorporated CRC in their mission

statement and worked intensively with governments to promote ratification and an understanding of CRC commitments. This helped to create political will to engage in law reform, policies, and programmes to realise these norms. Child rights work by other international agencies, and major international organisations like Save the Children, and Defence for Children International also focused on CRC, and strengthened the work of child rights activists and organisations within countries. ILO Convention No. 138 of 1973 was the basis of Article 32 on protecting children from exploitation in child labour. Both Conventions recognise that no child below a minimum age should be in the work place because the State has to ensure his or her rights to development and protection from exploitation. The linking of these two Conventions in my view, could have strengthened law and policy reform and programmes to address this infringement of child rights which has historically been legitimised and entrenched in countries of South Asia. Unfortunately Convention No 182 which introduced a concept of “protecting children from the Worst Forms of Child Labour” diluted these standards. Today, child labour continues in new and emerging areas such as zari and bead work in India, because they are not designated as “hazardous” or “worst forms” of child labour. There is also apparently a new initiative to include domestic service in India, now as a “hazardous” or “worst form” of child labour. It is a measure of the deficit in law and policy promoted by ILO Convention No 182 that this is not invariably defined as a “hazardous” occupation, a “worst form” of child labour, even though it is the site of frequent violence, exploitation and abuse of children in South Asia.

Almost twenty years after CRC ratification we have a great many new laws that prohibit child labour, trafficking, sexual exploitation, cruelty and abuse, and, as in Sri Lanka, forced conscription of children. Governments which considered trafficking sensitive have adopted a South Asian (SAARC) Convention on Trafficking in Women and Children for Prostitution, which has been ratified by a few countries. There has been political will and commitment to harmonise some of the CRC and international human rights standards on children. Children’s Charters or policy documents have sometimes been developed to incorporate these standards. We must not undervalue these initiatives introduced most often because of the advocacy and commitment of civil society including women’s groups and child rights groups, and the collaboration and support of the UN, international and regional agencies and organisations working on children’s issues and human rights issues, including gender equality. Experience in all our countries recorded in evidence based on research indicates that the path to reform was not easy. The most recent initiative to enact Domestic Violence laws that deal with intra familial violence against both women and children for instance, was initially resisted by governments. The passage of such legislation was also not easy, and took many years. Today India, Sri Lanka, Bangladesh and Nepal, have enacted these laws, which also contain innovative provisions on institutional mechanisms and victim support that strengthen law enforcement. Legislation is in the pipeline in Pakistan, and may be enacted in the Maldives.

Our courts too have sometimes pronounced decisions that demonstrate judicial activism in realising child rights. The great child labour and education cases of the Supreme Court of India stand out as a judicial contribution which resulted in Parliament amending the Constitution to give children below 14 years the right of access to education. Article 21 A introduced by this amendment links the right to education to the right to life, making an important conceptual change in harmony with CRC. CRC views exploitation of children in child labour which impacts on education, as an infringement of both the right to development and the right to protection from abuse.

Where then have our governments not met with success? If I were to follow what I believe is the approach of HAQ Centre’s Child Rights Index, I would in my report card flag some areas in which they could have shown greater political will in realising their commitments.

International agencies and activists have devoted much of their attention to child protection rights violated in trafficking (both internal and cross border) sexual abuse and child labour. India has banned sex selective abortions. However inadequate awareness among law enforcement authorities of child rights and rights based approaches, lack of resources for investigation, corruption, a child rights and gender insensitive bureaucracy, and judiciary in trial courts, have combined not to deliver justice to victims through successful prosecutions. This has reinforced the perception in the community of impunity for such violations especially among the wealthy and powerful. It is of even greater concern that the State’s failure to perform on law enforcement is creating a belief among child rights activists and bureaucrats that it is better to ignore these laws and their implementation, and adopt ‘social engineering’ strategies to address infringements. Economic transformation and privatisation is promoting de-regulation, creating the idea that the State need not ensure accountability of Non-State actors. This obligation is recognised in our Constitutional

law and in International law including CRC. It is incorporated into the State's obligation to protect rights holders from infringements by Non-State actors.

Countries and societies need normative standards. International human rights instruments including CRC reflect the acceptance of the community of nations that the Rule of Law is fundamental to accountable governance. Failures of law enforcement challenge the government to perform on the task of implementing laws, and it is the responsibility of political leaders, bureaucrats and child rights activists to find out the causes for these failures and address them. Economic transformation must be combined with promoting corporate social responsibility, rather than the undermining laws and legal processes of the State in the name of economic growth and development.

Concluding Comments of the CRC Committee on country reports from our region have provided guidelines for governments on what should be done, including their responsibility for Non-State actors but they have lacked the political will to systematically introduce necessary changes in their administrations. Law reforms have often been ad hoc rather than holistic, so that loopholes in the law are not addressed. All countries have not clearly harmonised laws on definition of children for various purposes, nor do they have a generic definition of under 18 years for childhood. The norm of non-discrimination in Art 2 of CRC is not followed in holistic changes to law to realise equality standards, especially in the area of gender equality and rights of girls. There is over emphasis on adversarial litigation in Courts, and less emphasis on creating national child rights authorities that initiate policy, co-ordinate public administration efforts, and administration of justice, and monitor impact. Sri Lanka's National Child Protection Authority created by Statute and established in 1998 was such an institution. However its work as an independent agency was not sustained. It has now been placed under a Ministry. Accountable governance requires that changes of government do not dilute the child rights institutions or agenda. The lack of continuity is a problem, when there is a change of government. Courts are necessary, but other institutions are also important to realise the various dimensions of children's rights.

Besides, law enforcement requires resource allocation and social policies and practices on the basis of the people's and children's socio economic rights. Activists know that law alone, as a CNN advertisement consistently reminds, "is not enough." But governments in South Asia have performed poorly on the supportive policies and allocation of resources and budgets to realise children's rights and reduce disparities. Legislation is not combined with either resources or institutions for enforcement – a rare exception being the Domestic Violence Act 2005 in India. This model needs to be followed in other "child protection" areas. Sixty years of political independence has clearly demonstrated that legal prohibitions on child marriage or child labour and trafficking are ineffective, unless there is access to birth registration, access to education and health especially for girls, to give children life chances and alternative livelihoods. These have been identified as essential supports to undermine the infringement of these prohibitions. Though there are ad hoc programmes in countries, the lack of government commitment to give access to public health, education, birth registration and human resource development of low income communities has undermined the capacity to enforce preventive and prohibitive legal measures, also retarding social transformation. An emerging problem of child marriage and infanticide in some of the areas affected by conflict in Sri Lanka demonstrates how environments of disrupted education, personal insecurity, lack of access to livelihoods for adolescents push families to practice child marriage and even child destruction at birth.

Perhaps the greatest failure in all our countries is in regard to a child's participation rights and eliminating discrimination. The cultures of South Asia with their focus on respect for age, and adult (including parental) authority, foster conservative approaches in the classroom and home on hearing adolescent children's voices. While child participation can be encouraged in people's political movements, governments tend to fear the radicalisation of students in politicised youth movements. In some countries, fundamentalist religious and cultural lobbies make governments sensitive about providing information on subjects such as reproductive health in the school system, or in public information programmes. Yet our governments are also great supporters of the IT revolution. Many children even in rural areas have access to information through other sources like the internet and facebook. Cyber crime and sexual abuse and trafficking for sex slavery is encouraged in an environment of sexual repression. Governments also continue to hesitate in law and policy formulation on gender discriminatory family laws which impact negatively, particularly on adolescent girls. Yet national security is relied on to justify interventions in other areas. Sensitivity to fundamentalist cultural or religious lobbies often prevent governments conforming to CRC norms of non-discrimination and equal rights for all children, particularly adolescent girls. Economic transformation is radically changing our

societies but governance is still unable to address, and resolve the contradictions and eliminate the disparities and exploitation of children. It is the task of child rights activists to use their resources and partnerships to study these contradictions, reflect on them, and propose changes that will guide governance, law and policy formulation, on the basis of CRC's message of all rights for all children.

It is the failures in State performance on child rights that makes the focus on child rights and governance an area for continued activism. This focus in my view, also provides a basis for moving away from the exclusive emphasis on child protection, to a more holistic concept of planning to achieve the best interests of children. Those best interests have got to be interpreted, not in a relativist way, but exclusively within the framework of CRCs concept of the governments accountability to prioritise the full range of rights, including protection, for all children. Experience in the last two decades shows that governments cannot commit to making children "a first call," unless they accept and work towards fulfilling their commitments to realise the CRC norms they have accepted, as of the essence of the children's wellbeing.

The Prime Minister of Nepal has been quoted in the Indian Press recently, as commenting that democracy in South Asia is at risk because we have failed to address disadvantage. That comment highlights the relevance of our concern that children's rights should not be ignored in meeting the challenge of good governance.

Annexure 8

International Colloquium on Children & Governance

9-11 November 2011

National Cooperative Union of India (NCUI)

Siri Fort Road, New Delhi...110049

	Name	Organisation
International		
1.	Justice Imman Ali	Judge of the Appellate Division Supreme Court of Bangladesh
2.	Turid Heiberg	Technical expert on Child Rights Governance in Asia Save the Children, Nepal
3.	Andrew Rossi	Regional Advisor on Social Policy UNICEF Regional Office for South Asia
4.	Prof. Savitri Goonesekre	Law Professor and Child Rights Specialist Srilanka
5.	Assefa Bequele	African Child Policy Forum Addis Aababa, Ethiopia
6.	Vanessa Sedletzki	Child Rights Specialist, at the UNICEF Innocenti Research Centre
7.	Najeebullaha Babrakzai National Programme Manager	Afghanistan Independent Human Rights Commission
8.	Teertha Dhakal	Joint Secretary, Ministry of Local Development, Government of Nepal
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