

**NEPAL
CIVIL SOCIETY SUPPLEMENTARY REPORT
ON THE CONVENTION ON**

**OPTIONAL PROTOCOL
ON THE INVOLVEMENT OF CHILDREN IN
ARMED CONFLICT (OPAC)**

CRC REPORTING COALITION NEPAL



Abbreviation and Acronym

ADB	: Asian Development Bank
AIN	: Association of International NGOs in Nepal
APF	: Armed Police Force
BS	: Bikram Sambat (Era): A calendar used in Nepal
CA	: Constituent Assembly
CAAFAG	: Children Associated with Armed Forces and Armed Groups
CBO	: Community Based Organization
CBS	: Central Bureau of Statistics
CCWB	: Central Child Welfare Board
CDC	: Curriculum Development Center
CDO	: District Administrative Officer
CEDAW	: Convention on Elimination of All Forms of Discrimination against Women
CPA	: Comprehensive Peace Accord
CRC	: Convention on the Rights of Child
CRO	: Child Rights Officer
CRPD	: Child Rights Protection Desk (of NHRC)
CSO	: Civil Society Organization
CYP	: Children and Young People
CWIN	: Child Workers in Nepal Concern Center
CZOP	: Children as Zones of Peace
DCWB	: District Child Welfare Board
DDC	: District Development Committee
DEO	: District Education Officer
DFID	: Department for International Development
DPHO	: District Public Health Office
DWD	: Department of Women Development
ECD	: Early Childhood Development
FY	: Fiscal Year
GOs	: Government Organizations
GoN	: Government of Nepal
HIV/AIDS	: Human Immune Deficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	: International Covenant on Civil and Political rights
ICRC	: International Committee of Red Cross
IDP	: Internally Displaced Persons
ILO	: International Labor Organization
INGO	: International Non-governmental Organization
JFPR	: Japan Fund for Poverty Reduction
LDO	: Local Development Officer
MDG	: Millennium Development Goals
MoD	: Ministry of Defence
MoE	: Ministry of Education
MoF	: Ministry of Finance

MoFA	: Ministry of Foreign Affairs
MoLJ	: Ministry of Law and Justice
MoLE	: Ministry of Labour and Employment
MoHA	: Ministry of Home Affairs
MoHP	: Ministry of Health and Populations
MoLD	: Ministry of Local Development
MoWCSW	: Ministry of Women, Children and Social Welfare
MoPR	: Ministry of Peace and Reconstruction
NCC	: National Coordination Committee
NCO	: Nepal Children's Organization
NDC	: National Development Council
NGO	: Non-governmental Organization
NHRC	: National Human Rights Commission
NHRIs	: National Human Rights Institutions
NJA	: National Judicial Academy
NPA	: National Plan of Action
NPC	: National Planning Commission
NRs	: Nepali Rupees
NWC	: National Women's Commission
OHCHR	: Office of the High Commissioner of Human Rights
OP	: Optional Protocol
OPAC	: Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict
PLA	: People's Liberation Army
SAARC	: South Asian Association for Regional Cooperation
SRSR	: Special Representative of Secretary General
SP	: State Party
SWC	: Social Welfare Council
TYIP	: Three Year Interim Plan of Government of Nepal
UCPN (Maoist)	: Unified Communist Party of Nepal (Maoist)
UN	: United Nations
UNDP	: United Nations Development Program
UNICEF	: United Nations Children's Fund
UNHCR	: United Nations High Commissioner for Refugee
UNMIN	: United Nations Mission in Nepal
UNSC	: United Nations Security Council
VDC	: Village Development Committee
WDO	: Women Development Officer
YCL	: Young Communist League

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INTRODUCTION

This report has been prepared by the civil society organizations of Nepal to complement the initial report of Nepal on the implementation of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)*, submitted to the Committee on the Rights of the Child (hereinafter referred to as the Committee) in April 2012.

This report reflects the situation of children in armed conflict in Nepal evaluating the constitutional and legal arrangements, the government's initiatives, programs, policies, mechanisms and actions to combat various activities prohibited by the OPAC. The report attempts to address the issues highlighted by the Committee in its *Concluding Observations* for Nepal. Each section is concluded with the Coalition's recommendations to the Government of Nepal (GoN).

The reporting has followed the format provided in '*A Guide for Non-Governmental Organizations Reporting to the Committee on the Rights of the Child- 2006(3rd Edition)*' prepared by Child Rights Connect-Geneva.

Report Preparation Process

Envisioning the need for synergized efforts among civil society organizations to carry out monitoring and reporting on the Convention on the Rights of the Child (CRC), efforts to form the CRC Reporting Coalition (Nepal) began in 2012. The Coalition was formally created on July 15, 2013. This comprises seven active networks/coalitions working on child rights in Nepal, coordinated by the CRC Committee and the Human Rights Treaty Monitoring Coordination Centre (HRTMCC). The members of CRC Reporting Coalition Nepal are:

- The National Coalition for Children as Zones of Peace and Child Protection (CZOPP),
- The Consortium of Organizations Working for Child Participation (CONSORTIUM),
- The National Alliance of Organizations Working for Street Children Nepal (NAOSC),
- The National Child Protection Alliance (NCPA),
- The Child Care Homes Network Nepal (CNet) and
- The National Alliance of Child Rights Organizations (NACRO).

The Coalition's mandate is to prepare and submit the civil society report on the CRC and its optional protocols, and to be involved in pre-and-post CRC monitoring and reporting as well as follow-up and advocacy activities in Nepal. It comprises an advisory committee, experts' committee and report write-up team. This Coalition will prepare and submit the civil society report of the 3rd/4th/5th consolidated CRC supplementary report as well as the supplementary report on the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), and the child-led report coordinated by CONSORTIUM Nepal. This report has been prepared to carry one voice for all the named child rights organizations as well as the voice of the children of Nepal to the Committee on the Rights of the Child. NGOs working in the sector of child rights were invited to join the report preparation process. A series of meetings was to prepare the supplementary report. Independent experts/consultants were hired to identify the gaps in the report submitted by Nepal under OPAC and to prepare a draft of the supplementary report. A presentation on the gaps in the government report was made followed by discussion. Through this process the supplementary report of Nepal on OPCAC was finalized.

Review of the National Legal Framework: A review was conducted into the existing national legal framework and other legal arrangements regarding the issues of children investigating where there is incompatibility with the CRC and OPAC and other relevant international standards. All plans, policies, commitments and initiatives of Nepal to address the issue of children in armed conflict including its practices were also reviewed.

Data Collection: Primary as well as secondary data were collected as much as possible. Secondary information and statistics from published and unpublished sources were collected from various organizations, government agencies and other stakeholders. Focus Group Discussions and consultations were held with stakeholders, child rights activists, children and victims to gather primary information.

Consultation with various stakeholders: Six consultative meetings were held in five development regions of the country with concerned stakeholders to receive feedback and suggestions and to develop future strategies. Consultations were also held with children affected by the armed conflict. Similarly, consultations were also held with experts of various human rights organizations and children's organizations in the regions.

Review of government programs and activities: The government programs and activities to address the situation of children in armed conflict were reviewed to assess the extent to which they were sufficient to meet Nepal's international obligations.

Analysis and Presentation of Findings: Gaps identified in the state report on OPAC have been analyzed in a qualitative way, to the extent possible, and the findings are presented in statements, as appropriate.

Section I

GENERAL MEASURES TAKEN FOR THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CRC ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Legal status of the Optional Protocol in the Domestic Law

Paragraph 7 of the State report mentions the constitutional provision as an ensuring provision of the Optional Protocol.

Art.22 (5) of Interim Constitution of Nepal, 2007, states that 'no minor shall be employed in factories, mines or in any other hazardous work nor shall be used in army, police or in conflicts.'

Article 32 of the Constitution provides the remedial right to every citizen to submit a petition in the Supreme Court under extraordinary jurisdiction.

Though the provision provides constitutional safeguards and remedial rights to children, application of the provisions of OPAC requires sufficient legal provision to be made under other special or general legal structures that can be adjudicated in the general courts, or by other competent authorities under their ordinary jurisdiction. The remedial right given under Article 32 of the Constitution is itself a last resort and is related to Article 107 (see below) which cannot be exercised in courts other than the Supreme Court. Therefore, it is not feasible for general Nepali citizens to exercise this right.

One important issue to note here is that the government's definition of a 'child' is inconsistent across several laws, making it even more difficult to interpret the constitutional provision of the 'minor'.

Art. 32 Right to constitutional remedies: The right to proceed in the manner set forth in Article 107 for the enforcement of the rights conferred by this Part is guaranteed.

Art. 107 (2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution or for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such right or settle such dispute. For these purposes, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

Paragraphs 8 and 9 of the State report are related to the constitutional provisions under the section of Responsibilities, Directive Principle and Policy of the State. Although, these provisions give a positive impression and commitment from the State to address the issue of justice for marginalized sections of society (34, 35 (9)), and also provides effective implementation of treaties and agreements to which the State is party (Art. 33 M), these provisions are only considered as state directive guidelines. They have no efficiency in the absence of laws, regulations, programs and adequate resources to oblige the

government to guarantee the provisions. It is important to note here that the provision of Article 36(1) of the Interim Constitution is weakened in the sense that no question shall be raised in any court as to whether provisions contained in that Part are implemented or not. Even the fundamental rights provided in the constitution require special Acts and programs in the absence of which their implementation will be unlikely.

Paragraph 10 of the State report mentions the provision of Section 9(1) of the Treaty Act, 1990, as a major legal provision relating to the status of the international treaties to which Nepal is party. This section states that if any provision contained in a treaty to which the state of Nepal or GoN has become a party is inconsistent with the law in force, such law shall be invalid to the extent of such inconsistency, and the provision of that treaty shall be applicable as if it were the law of Nepal. That is, the international treaty shall have precedence over the law in force.

However, in the case of any conflict between the international law and domestic law, it is not possible to execute the provision of international law if there is a lack of a corresponding domestic provision as Nepal has not fully adopted a 'monist' legal system. Therefore, for an international law to be fully applicable, it must also be adopted as a fully domestic law.

The Supreme Court's interpretation on the domestication of international instruments is not consistent because there is no standard principle established. As a first example, in the case of Gyan Raj Rai¹, the Supreme Court interpreted section 9(1) of the Treaty Act, 1990, saying that it is a different matter to be a law and be applicable as law. Anything that is applicable as law does not mean that it stands, for all purposes, on the equal footing of the law enacted after completion of constitutional procedures. However, in the case of Sapana Pradhan Malla², the Supreme Court interpreted the same section with an understanding that the international law to which Nepal is a state party is equivalent to the domestic law. Further, in case of Rajendra Dhakal³, the Supreme Court said that international instruments, to which Nepal is a State Party, cannot be overlooked in respect of application of the relevant domestic laws. The court should provide attention to those instruments while adjudicating.

Clearly, a consistent principle in respect of applicability of international instruments is still lacking. Regardless of the constitutional and legal arrangements for the application of ratified treaty provisions at the domestic level, without the existence of domestic substantive and procedural law, these treaty provisions cannot be invoked in the courts of law in Nepal. Further, the decisions of the Supreme Court of Nepal do not show any consistent stand on the part of Nepal on the applicability of ratified treaty provisions.

Paragraph 10 of the State report also describes the parliamentary practices for adopting international conventions and their endorsement by the Parliament. This paragraph further mentions the requirements to publish the international convention in the National Gazette for its authenticity. However, in practice, the Gazette is still not accessible to the larger portion of the population.

¹ Gyan Raj Rai v. HMG et al, (2003) *Publication of Decisions on Human Rights (Special Issue)*, Kathmandu: The Supreme Court of Nepal, p. 113

² Sapana Pradhan Malla v. Ministry of Law, Justice and Parliamentary Affairs et al, *ibid*, p. 144

³ Rajendra Dhakal v. GoN, Nepal Kanoon Patrika (2007), Issue 2, Decision No. 8717, p. 169

Minimum Age for Voluntary Recruitment

Paragraphs 11 and 12 of the State report explain that the minimum age for voluntary recruitment in national security forces (the Nepal Army, Nepal Police and the Armed Police Force) is 18 years and the recruitment in such security forces shall be voluntary and shall be conducted through open competition.

However, there is no provision to penalize the security forces if they are found to be recruiting under age candidates. Moreover, determination of the age of the candidate is challenging due to a very low rate of birth registration across the country. The age in the citizenship certificate is the only proof of age so far. There is a tendency to obtain citizenship while raising the stated age for several purposes such as accessing passports for foreign employment⁴. In such a circumstance, without having a proper mechanism for age verification, including making birth registration compulsory, it is not possible to eliminate the chance of underage children joining the security forces.

The Government Departments or bodies having Primary Responsibility for the Implementation of the Protocol

Paragraph 13-30 of the State report mentions the role and responsibility of various ministries and government mechanisms that directly or indirectly deal with children's issues. However, the report does not give any details as to how effectively each of those government bodies has been discharging their duties.

The Ministry of Women, Children and Social Welfare (MoWCSW)⁵ is the focal ministry designated to women, children and social welfare issues. The ministry does not have a focal person or unit assigned solely to child protection. In terms of resources, children's issues shared only 6.93 percentage of the total budget of the MOWCW in 2013/2014. Similarly, the Ministry has limited human resources, so capacity in the Ministry is always a question.

The government decided to change the title of the Department of Women Development to the Department of Women and Children. However, even after more than three years since the change in name, the department has not adopted any program specifically targeting children. Neither has the department adjusted job descriptions of any of its officials to incorporate children's issues. Similarly, for the District Women and Children Offices, the change of name was not followed by any change in the department's or district office's agenda.

Paragraph 15 of the State report mentions the role of the Central Child Welfare Board (CCWB) as a coordinating body at the national level, with the District Child Welfare Boards (DCWB) as its extended wings in all 75 districts. CCWB, despite its roles and responsibilities, has not been able to achieve its objectives because of budget restrictions and the government's apparent apathy to children's issue. Most of the programmes, as well as the staff of the board, are supported by external development partners, raising serious concerns about sustainability of its programs and services.

⁴ Based on consultation meetings held during the preparation of this supplementary report.

⁵ Child Sensitivity in Nepal's Budget: An Analysis, CZOPP, 2014, p. 23.

The CCWB does not have any special programme or official to take care of the issue of conflict-affected children and during the reporting period, it has not made any recommendation to the government of Nepal on policy or directives addressing children in armed conflict. The CCWB has provided around US\$190 to the DCWBs annually in the last couple of years. The amount provided under the child welfare programme is generally spent on meeting expenses and stationery. Had the INGOs not supported the DCWBs, these institutions would have ceased to exist. Again, this raises the question of sustainability of the programmes after the termination of INGOs' support.

The CCWB/DCWB structure was created by the Children's Act of 1992, long before the existence of the Ministry of Women, Children and Social Welfare (MoWCSW). However, no action was taken to clarify the roles of the statutory body and the Ministry or its department and district wings, resulting in much confusion in roles and responsibilities between the CCWB and the Department of Women and Children, as well as between the DCWB and Women and Children Offices in the district.

Paragraph 16 of the State report shows that the Ministry of Home Affairs is responsible for maintaining peace and order in the country. Its major functions are licensing and regulating arms and ammunitions, control of explosives and conflict management. Regional and District Administration Offices and prison management also function under this ministry. Nepal police, Nepal Armed Police and the National Investigation Department function under the direct control of this ministry. The report obviously mentions departmental responsibilities but no actual status of the functions discharged, including the state of peace and security. Even after the Comprehensive Peace Accord, children are in a vulnerable condition from the viewpoint of kidnapping throughout the country, especially in the city areas and in the Terai region. No policies, programmes or achievement of the ministry are reflected in this report. It overlooks the scandal the ministry had to undergo due to announcement of recruitment in the departments. And the report is also silent on the dilapidated state of law and order and impunity of the whole country.

Paragraph 17 and 18 of the State report give short introductions to the Nepal Police and Armed Police Force. But the report remains silent in respect to the obligation of the Protocol in terms of ensuring voluntary recruitment in the police. It makes mention of the role as assigned to the police organization rather than showing its efficacy and efficiency; it shows that the bodies are unable to meet the obligations imposed. It does not mention if any of the personnel in either of the institutions was punished for violence against children during the armed conflict in Nepal.

Paragraph 19 of the State report describes the main functions of the Ministry of Law and Justice (MoLJ) in terms of its obligations for making legal structure for effective governance, looking into functional aspects of law and justice administration. However, the report does not state if any new legal structures have been made to amend the current laws in line with the Protocol. No name of any law enacted or amended for this purpose is mentioned in the report.

Paragraphs 21 and 22 of the State report mention the Ministry of Education (MoE) and the Ministry of Health and Population (MoHP). The report mentions only the responsibilities vested upon the ministries but it does not contain any plan, programme or achievement of the ministries. As a result, the state report does not reflect what support the GoN has provided for the children victimized by armed conflict. The government has launched programmes to enroll children affected by armed conflict in school and also to provide them with scholarships. However, most of these children are still not in reach of any

government program. Similarly, the conflict-affected children are still waiting for treatment and psychosocial counseling to come out of the mental trauma of being physically involved in armed conflict or having lost their parents in it.

Paragraph 23 mentions the Ministry for Peace and Reconstruction (MoPR) and clarifies the responsibility of the Ministry. It mentions that the Ministry is particularly significant for fulfilling the obligations of the Protocol. It was established for managing the peace process and is responsible for managing reconstruction of infrastructures and relief and rehabilitation of conflict victims. The report mentions the functional area and responsibilities of the Ministry but does not shed any light on the achievements made, if any, or whether its objectives have been fulfilled or not. The report does not show policies, programmes or the functions performed and thus it also does not reflect the number of people who have benefited from ongoing programmes at an operation level.

On the whole, *paragraphs 13 to 28* give brief introductions to various government institutions which are responsible for addressing the issue of children in armed conflict. However, these paragraphs do not indicate whether those institutions were involved in providing support to the children in need or not. It is silent on coordination among those bodies, on specific programmes conducted, if any, by the institutions, their budget, and accountability, monitoring agencies or their reports or evaluation of the programmes.

There is an extreme lack in coordination among these Ministries, departments and boards. The leadership in these institutions belongs to different political parties, and children's issues are not in their priority list. They do not have any common agenda for child victims and they do not always follow the country's plans and policies, or the budget. There is almost no inter-ministerial coordination mechanism for children's rights. This also creates the possibility of duplication of certain programs and provides no concrete data from the programmes in this sector being run by different government bodies.

Thus the report indicates no change in Nepali children's lives. This is apparently due to the government's limited involvement in providing support specifically aimed at children.

Some positive indication in the State report comes from consideration of the judiciary of Nepal. *Paragraph 29-30* of the State report talks about the role of the judiciary of Nepal. It claims that the Nepali judiciary has shown examples of 'judicial activism' handing down landmark decisions that uphold human rights principles and fundamental freedoms as envisioned in international instruments. However, the report remains silent on any mention of 'principles established by the judiciary in the course of adjudication' or any particular case citation. Therefore, any achievement established by the judiciary cannot be seen in the report. This is unfortunate, as it is necessary to furnish the achievements by mentioning them objectively. The judiciary can play a significant role in interpreting statutes and establishing principles as case law. It may apply international standards in its judgments, especially where Nepal is a state party.

Independent National Human Rights Institutions (NHRIs)

Apart from governmental organs, there are independent institutions working in the areas of human rights such as the National Human Rights Commission (NHRC) and National Women's Commission

Paragraphs 31-35 of the State report mention that the NHRC have jurisdiction to conduct inquiries into incidents of violation of human rights and to recommend action against the perpetrators. It has a list of its responsibilities and authorities. However, as yet it has not created a list of the functions it has performed during the reporting period and any achievements it has made so far. The report does not explain when or how the NHRC fulfilled its responsibilities or executed its authority to guarantee human rights to the children in armed conflict.

The NHRC carried out various activities as part of its strategic plans and its annual projects. Before signing up to the OPAC, the NHRC made recommendations to the GoN for ratification by OPAC and the release of verified minors. Even the NHRC began to make annual reports based on the nine core human rights treaties including in the CRC. Nevertheless, the NHRC could not play any significant role in making the government accountable on its obligation through OPAC nor has made OPAC specific recommendations around developing legal and institutional frameworks to address the issue of children in armed conflict⁶.

In regard to any departmental action against perpetrators or the lodging of cases in court, the government has not responded and its commitment is low. Since its establishment in 2000, only 11 percent of the NHRC's recommendations have been fully implemented by government bodies, while more than 40 percent have received no response at all from the state.

Paragraph 34 of the State report mentions the NHRC's engagement in ensuring that children under the age of 18 years are not involved in armed conflict. However, it is done so only in regard to handling complaints, conducting inquiries, organizing monitoring and observation visits of the child rights violations, and making assessment of human rights situations to ensure rights of the children. Based on these, the NHRC produces its recommendations to the concerned government authorities as well as to the stakeholders but it cannot force the government to follow the recommendations or guarantee justice for the victims.

Paragraph 35 of the State report mentions as an achievement the establishment of Child Rights Desk in the NHRC as a specialized unit within its structure for monitoring violations of children's human rights. This deals with handling of complaints, conducting inquiries or investigations, organizing field visits, inspection and observation, and making assessment of the human rights situation to ensure rights of the children. However, it does not show that children in armed conflict have been a target group of its activities. The desk has no specific policy or program for children affected by armed conflict. It has not made any achievement and the report also does not present any evaluation of the desk. Moreover, at the time of writing, the desk does is not actually in operation at the NHRC.

Furthermore, currently the NHRC is without leadership as no commissioners have been appointed since the former commissioners contracts were completed on 16 September 2013. Lack of leadership at the commission undermines the ability of the institution to function effectively as envisioned under the Principles Relating to the Status of National Institutions and the international guidelines known as the

⁶ Based on the conversation with a Commissioner of NHRC on 26 September 2012 in his chamber

Paris Principles. The government of Nepal needs to comply with the Paris Principles to ensure that the commission functions as a truly independent and empowered protector and promoter of human rights.

Similarly, *paragraph 37* of the reports describes the National Women's Commission (NWC) as one of the independent national Human Rights Institutions. The responsibilities, as provided in the report, make it clear that it is not directly concerned with children in armed conflict.

Dissemination of the Optional Protocol

Paragraph 40 of the State report claims that the CRC and its two Optional Protocols have been disseminated throughout the country by the government in collaboration with UN agencies, national and international organizations and networks. It also says that the text of the Optional Protocol was translated into the Nepali language, published in book form by CCWB and distributed in all 75 districts. However, there is lack of wider dissemination of this publication and it is not reaching its beneficiary groups. Also, there is no mention of the specific titles, number of copies and description of published materials or recipients.

It is also mentioned that the Nepal Army and NHRC published materials on child protection and these have been distributed throughout the country. Again, it does not specify the titles, number of the copies and destinations of distribution. Similarly, it also mentions that various organizations conducted training on child rights and child protection, with no specifics about the nature of this training.

Despite all these claims made by State report, during the consultation meetings the majority of the participants admitted that they are not aware of OPAC and government accountability towards it.

Paragraph 40 (b) of the State report mentions that the national security forces have incorporated principles and provisions of CRC and its optional protocols in their training curriculum and are in principle aware of respecting international human rights and international law. However, in reality, the security forces are still found disregarding the basic principles of human rights. A news report published on Saturday, June 26, 2010 in the Daily Times of Pakistan states that almost one in four children arrested in Nepal have been subjected to physical abuse in police custody. Quoting a report published by a rights group Advocacy Forum, it says that children as young as seven have been detained by police, often for small offences such as stealing a coconut. The report was based on interviews with more than 900 minors who are being held across the country. In all, 22 percent of those interviewed said they had been tortured or abused by police, according to the report, released ahead of the UN International Day in Support of Torture Victims (http://www.dailytimes.com.pk/default.asp?page=2010\06\26\story_26-6-2010_pg20_8).

The UK-based Sky News reported on November 19, 2008 that children detained in Nepal are inhumanely tortured. A human rights group has accused police in Nepal of torturing children - in some cases, by pushing metal nails under their toenails. Human Rights Watch claims police abuse youngsters in custody by kicking, punching and beating them with bamboo canes. The group says it has received credible claims of more than 200 cases of torture or abuse committed by members of the Nepali police against boys and girls - some as young as 13. It added that most of the abused were suspected of committing petty crimes, or were living or working on the streets - and were tortured to extract confessions. Human

Rights Watch has urged Nepal's government to end the abuse and punish those found guilty. (<http://news.sky.com/skynews/Home/World-News/Human-Rights-Group-Says-Nepal-Police-Torture-Children-Boys-And-Girls-Abused-For-Fun/Article/200811315155123>)

The Asian Human Rights Commission has revealed a horrific story of torture the Nepal Police committed against an 11-year-old boy in Kavre district on 24 January, 2011. According to the report, two policemen from Pachuwarghat police station, Kavre District, tortured an eleven-year old boy, while interrogating him in relation to a theft case. After the torture was revealed, a case was filed at the Dhulikhel District Court against the two alleged perpetrators under the Child Rights Act, 1992. Only limited departmental action has been taken against the two officers (<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-010-2011>).

Paragraph 41 mentions the use of the media and local level training. It radio programmes broadcast by MoPR. It also mentions that various organizations through various media publicize the principles and provision of conventions and optional protocols related to women and children. However, they do not show the role of the government in this sector, and the programmes mentioned do not deal with child victims. Further, the paragraphs give no specific or measurable details in regard to achievement.

Despite the State report's claim, few child right organizations and peace building organizations have any clear idea about the optional protocol and the government's effort to implement the spirit of the protocol.

Only a few NGOs are working on children affected by armed conflict and these have some understanding of the Optional Protocol and the government status on it. Other NGOs, working in other sectors of child rights, have no idea about the government's commitment, the efforts and achievement the government has made so far on providing relief and other support for rehabilitation and reintegration of the children affected by conflict.

Paragraph 43 points out that children's clubs disseminate the principles and provisions of the optional protocols among children and adults. Such children's clubs have been in existence since before the conflict started, and they regularly conduct training on various topics related to child rights. There are 17,000 children's clubs across the country⁷. In reality, children do not specifically cover OPAC as a topic, as most of the children's club facilitators themselves are not aware of it.

Paragraph 44 states that efforts are underway to incorporate the principles and provisions of the CRC and its two Optional Protocols in the schools and university curricula as well as curricula of professional training institutions. However, it does not explain on which specific topics the issues will be incorporated in curricula and by which date the topics will be included in the text books.

Data

Paragraphs 45-48 of the State report mention data related to children affected during the period of armed conflict. The report quotes the UNMIN which verified 2,973 Maoist army members were below the age of 18 years. The state report quotes three other sources for data on child victims:

- The NHRC report states that more than 500 children died, 40,000 have been displaced and

⁷ A submission for Child Rights in the New Constitution of Nepal, Consortium-Nepal and CZOPP, June 2014

hundreds injured; 5,000 lost their parents and 11,000 were involved in armed conflict

- TYIP : More than 230 children died, 107 sustained injuries.
- CCWB: 368 children died, 671 children disabled.

It does not provide data from any government body. It also says that the government has completed the process of releasing the minors and disqualified combatants from the cantonments. Although those formally discharged from the cantonments received reintegration support from several agencies, including the UN agencies, children who were informally or self-released do not have easy access to reintegration services. Similarly, there still are many child victims of conflict in the community who have received no relief or other support from the government. Another challenge related to dealing with this issue is that the majority of child victims of conflict have now become adults, requiring different types of support than would be required by children.

The state report does not have any authentic data on the number of deaths of children, nor does it present how many children lost their parents, were forcefully taken out of their schools or had to search for labour in absence of guardians. The regional, economic, ethnic, gender, age and caste-based classifications of the victim children are also missing. It is disappointing that even after eight years of the peace-building process, neither the government, nor any organization, has been able to produce an authentic complete, comprehensive data on the deaths, casualties or losses caused by the biggest man-made crisis of the country's history. Rather, the State report simply copies statements from different organizations and without clarification or comment. Therefore, it is difficult to figure out an authentic version as put forward by the State. Even the given data lacks any information on orphaned children, displaced children, etc.

The Task Force to collect data of persons, families and structures affected by the conflict has stated that the number of the enlisted displaced people was 69,664 till April 2009. This data does not have separate information about affected children. A total of 1,027 persons were disappeared during the period of armed conflict⁸.

Information can be collected also from NGO sectors. A report of CWIN, published in August/September 2004 states that⁹:

- Over 333 children/adolescents were murdered;
- Around 500 children were injured in shootouts, explosion and violence;
- Around 2000 children lost at least one of their parents in murder or were abandoned due to displacement;
- Around 20,000 children were displaced;
- Around 6386 children/adolescents were abducted or arrested.

Again, another document from CCWB states that the conflict claimed 300 children and injured many others¹⁰.

⁸ MoPR, National Plan of Action for the Rehabilitation and Reintegration of Children Affected by Armed Conflict, (MoPR, 2066), p. 13

⁹ Gauri Pradhan, '*Balbalika ra Shanti*', (CWIN-Nepal 2061 Asar) p. 26-27

¹⁰ CCWB, 'The National Plan of Action for Children Nepal, 2004/05 - 2014/15', (CCWB March 2004), p 35.

The total number of children directly affected by the conflict is estimated at between 52,000 and 57,000, including more than 8,000 orphans. The total number of affected children is based on current estimations by UNICEF¹¹. From February 1996 to October 2003, a total of 155 children (below 17 years) were killed by the state while a total of 79 were killed by the Maoists. Among the children killed by the State, 53 were female while a total of 22 (killed by the Maoists) were female.

The UN supported victims of sexual and gender-based violence during the conflict in 14 districts and the reintegration of 7,500 children formerly associated with armed forces and armed groups¹².

Prior to the formal verification procedures called for in the Comprehensive Peace Agreement of November 2006, many children were informally self-released, and in some cases, escaped or went absent after official leave. In other cases, children were released after negotiations by their families or members of the country monitoring and reporting task force.

Recently, news published in the Republica National Daily (dated 27 January 2014) stated that the MoPR is introducing a work procedure to gather true statistics about conflict-hit children. This is intended to make it easier to provide these children with relief, while acknowledging the current context of only a small number of children getting the scholarship in the absence of full statistics. The work procedure will be implemented soon after the peace fund secretariat approves the budget for that purpose. The work procedure has the objective of providing education, employment and additional relief programmes after collecting more robust data on the numbers of conflict-affected children in all districts. (http://www.myrepublica.com/portal/index.php?action=news_details&news_id=68657)

The State report overlooks the horrific situation of children in armed conflict. Consequently, the report does not explain anything about the government's measures to prevent the horrible post-conflict situation. Similarly, the report also does not explain what action the government has taken within the various armed forces and how the state guarantees that the children are safe from the hands of the armed forces.

News published in <http://www.gulf-times.com/nepal/250/details/389476/victims-of-nepal%E2%80%99s-conflict-still-fighting-for-justice,-years-on>

Posted on 23 April 2014

Victims of Nepal's conflict still fighting for justice, years on

At the height of Nepal's civil war in April 2002, Asha was taken for interrogation after the local police station was bombed by rebels. She was 14 years old.

Twelve years later, she is still fighting for justice against the men she says beat and raped her over the following 38 days.

¹¹ NIDP, Nepal Peace and Development Strategy 2010-1015, (Nepal's International Development Partners, 2011), p. 26.

¹² The Cost of War in Nepal, ed. Bishnu Shapkota, (National Peace Campaign, 2004), p. 27.

Victims of violence committed during the Maoist rebellion are struggling to get on with their lives while the parliament slowly hammers out the details of post-conflict government.

Parliament on Sunday tabled a bill to form a Truth and Reconciliation Commission (TRC), amid disagreement over what wartime crimes can be amnestied, and which must be prosecuted.

Rapists have now been specifically excluded from any exoneration by the provisions of a bill on transitional justice that went before the house on April 7.

Asha, who asked to only give her first name, wants to see her abusers punished. "The war came to our village in December 2001, when the Maoists bombed the police station" in Lamki, a town near her village in the plains of far western Nepal, she said.

Five months later she was returning from harvesting wheat and preparing to take a bath when four police vans pulled up.

"They told me I was a Maoist rebel and involved in the Lamki bombing," she said, her eyes focused on the wall.

"They asked me how many people I killed. When I denied it they put their gun against my head and then in my mouth."

She was held for more than a month in a crowded cell, and repeatedly beaten and raped despite her young age.

"They kicked my face with their boots," she said. "They beat me so hard that I still can't walk properly."

The abuse left Asha needing medical treatment for her leg and reproductive organs.

The Maoists and the government forces fought from 1996 to 2006. More than 17,000 people were killed, 14,000 disappeared and 5,000 left maimed.

Much of the conflict played out in rural areas, with locals often caught in the crossfire or shot on suspicion of helping one side or the other.

A peace deal was signed in November 2006, but the difficulties are far from over for many survivors.

Governmental efforts to overcome the past conflict come as reports by human rights bodies found excesses committed by both sides in the conflict.

But the process has been deadlocked by wrangling over the mandate of the TRC, as critics including some opposition parties accuse the government of trying to use the commission to implement a blanket amnesty for its forces.

"If you allow the TRC capacity to barter amnesty for certain benefits, there is no purpose," said constitutional expert Bipin Adhikari. "The process of reconciliation doesn't mean establishing impunity or evading punishment."

UN High Commissioner for Human Rights Navi Pillay said: "While I welcome steps taken by the government of Nepal to take the transitional justice process forward, I am extremely concerned by its new attempt to introduce amnesties for serious human rights violations."

The government has denied it is pushing for a blanket amnesty.

"We should not forget that the peace process and the constitution drafting are intertwined," Nepali Congress lawmaker Krishna Prasad Sitaula told the Kathmandu Post. "We will have to arrest almost everyone if we start bringing up war-era cases."

Victims' rights advocates welcomed the transitional justice bill tabled this month, excluding sexual assault from the list of crimes that can escape prosecution.

"Victims of other crimes against humanity can be sufficiently compensated through reparation measures. Rape, however, attacks a woman's dignity," said Pradeep Gyawali, a parliamentarian and member of the group that drafted the bill.

Rape victims also suffer social stigma, and are therefore "the most in need of state support," she was quoted as saying by Ekantipur news service online.

After her abuse in custody, Asha was ostracised and had to drop out of school, and now runs a fish farm with the help of her family.

Last year she joined a political party, hoping to find a platform, but says she was not heard even within the party.

Asha's appeals to human rights organisations in the capital have not been more successful.

Various national and international organizations conducted extended research on child casualties during the armed conflict and the results were incredibly different from one another. Still, the magnitude of the casualties as well as their socioeconomic effect on surviving children cannot be underestimated.

The State report has overlooked the contribution of the non-government organizations. It does not even have the list of the organizations which are actively working in the field and providing relief support to the needy children. These organizations support the government by building structures in the form of rehabilitation and reintegration of the conflict-affected children, which can provide long-term solutions. Analysis of the factors and difficulties mentioned in the report for fulfillment of obligations under the OPAC

Paragraph 49 of the State report mentions the obstacles for the implementation of obligations under the protocol as: low literacy, technical inadequacy, lack of comprehensive Child Protection Mechanisms,

lack of Community Support Systems, lack of any practical action that includes long term vision or sustainable approaches to address the issues, and lack of uniform systems of data collection.

It can be agreed that the factors mentioned in the State report are genuine obstacles. However, these cannot be cited as excuses for non-fulfillment of the obligations under the Protocol without making considerable efforts to overcome them.

It is recommended that the following questions should be asked of the Government of Nepal:

- What progress has been achieved in Nepal for enacting new laws and amending existing laws for fulfilling the obligation of the Protocol?
- Why has the government not drafted any domestic law or legal provision of international instruments in the case of conflict between international and domestic laws?
- Why has the government not drafted necessary bills to comply with the responsibilities, directive principles and policies of the State?
- What is the provision in Nepal's related laws if underage persons are found recruited in the State forces, i.e., the Nepal Army, Armed Police Force and Nepal Police?
- Has the Nepal Army or Armed Police Force been penalized for proved recruitment of underage people? When and under which circumstances?
- What progress has been made by the Government of Nepal in order to address the issues of conflict affected children in terms of protection, rehabilitation and social reintegration?
- What is the authentic government data on deaths, injuries, displacement, parental loss and social, psychological loss the children had to bear during and due to the armed conflict?
- Why did the government fail to produce any authentic data on children affected by the armed conflict?
- Why did the report overlook the research and relief programmes conducted by NGOs?
- How many and which NGOs are working on children affected by the conflict and what kind of cooperation do they have with the government?
- Why is it taking such a long time to appoint new, qualified, and independent members to the National Human Rights Commission?

Recommendations:

- A domestic substantive and procedural law should be formulated to invoke the existing treaty provisions in the courts of law in Nepal.
- Ratify the 3rd Optional Protocol to the CRC on a communications procedure to ensure that an avenue to access remedy is available when child victims of rights violation fail to access remedies for rights violation following domestic provisions.
- Revise the 2012 Children's Bill and include the provision of legal prohibition of recruitment of children.
- Invest in strengthening vital event registration, particularly timely birth registration, to ensure the mechanism of age verification and authentication while being employed in State security forces.
- Include mainstream child protection in the new constitution and broad ranging legislative reform processes vis-à-vis social protection, decentralization, civil and criminal law, labour, justice, education, health and others in accordance with international norms and standards.

- Strengthen existing inter-ministerial coordination mechanisms administered by the CCWB by upgrading its status to become a National Child Rights Coordination and Monitoring Body. Similar reforms should be undertaken at district level through introducing one single coordination mechanism responsible for children.
- Clarify the roles and responsibilities of the Department of Women and Children and the Central Child Welfare Board, as well as the Women and Children Offices and District Child Welfare Boards in order to ensure effective implementation of both prevention and response interventions related to child protection.
- Expand the coverage of child protection programs at community level, including through developing professional social workers for individual case management.
- Develop a mechanism to ensure that recommendations provided by the NHRC are effectively implemented by concerned wings of the Government of Nepal.
- Allocate sufficient resources to implement the National Plan of Action (NPA) on Children Affected by Armed Conflict and make necessary adjustments in the NPA to address the target group, most of whom are now already above 18 years of age.
- Make special provisions and enabling environments to ensure that children affected by armed conflict access the Truth and Reconciliation Commission.
- Make constitutional provision to establish a separate Child Rights Commissioner within the National Human Rights Commission to ensure respect, protection and fulfillment of children's rights in Nepal.
- Make a strong and independent NHRC to address Nepal's deeply entrenched culture of impunity and to ensure justice for victims of rights abuses during and post conflict context.

Section II: PREVENTION

MEASURES TO ENSURE THAT PERSONS WHO HAVE NOT REACHED THE AGE OF 18 ARE NOT COMPULSORILY RECRUITED INTO THE ARMED FORCES

Paragraphs 50-53 of the State report describe legal provisions related to the age of recruitment in State security forces. The three national forces -the Nepal Army, Nepal Police and the Armed Police Force- do not permit any person who have not attained the age of 18 to join and there is no compulsory recruitment. The report mentions the qualification required for recruitment to various posts of the security forces and also mentions different schools operated by or under the armed forces.

The State does not ensure that all the recruitments in all national forces are genuinely voluntary, and that recruits are fully informed of the duties involved in such military service. Moreover, the State does not ensure that the candidates have provided reliable proof of age prior to acceptance into national security force. Providing the proof of age is challenging due to a poor birth registration system and practice.

During the consultation, the participants stated that because of corruption in different fields related to recruitment of the security forces, the provisions made by the government have not been strictly followed. According to them, even the birth registration is highly manipulated so that underage people could also be sent for recruitment.

Though, the 10-year long armed conflict ended in 2006 after the signing of the Comprehensive Peace Agreement, the State has not given priority to developing long term measures to prevent children from being affected by armed conflict. So far, Nepal has not been able to develop any future perspective for preventive architecture to prevent armed conflict itself. The existing legal measures such as Children's Act, 1992 and other laws are not designed for prevention and protection of conflict affected children in the country.

Currently, Nepal does not have a compulsory recruitment system in its national forces; however, there was ample discussion on such provision of compulsory recruitment in the new constitution. The Committee on Fundamental Rights and Directive Principle of the then CA recommended the provision that "compulsory services upon the interest of State are the duty of the Citizen" (Art 1(d) Sec. Fundamental Duty of Citizen). However, it is not clear that if these services include the National security forces. Also the age group of the citizens was not defined, which may create ambiguity in the future.

Measures Taken to Prevent Recruitment of Children by Armed Forces/Group

Paragraph 54-58 of the State report admits that the decade-long armed conflict created a risk of recruiting children for direct participation in armed groups. The State report does not spell out any measures taken to prevent recruitment of children by armed groups. In fact, the government does not have any mechanism to prevent recruitment of children by armed groups. For example, the Government of Nepal has not taken legal measures to criminalize such recruitment by armed groups.

Certainly, the CAAFAG Working Group provides some support to children associated with the armed forces and armed groups, but without having comprehensive long-term, visionary preventive measures, it is not possible to prevent conflict or protect and prevent children from being recruited by such forces.

There are some armed groups which are still active in various forms and involved in explosions, extortion, kidnapping for ransom, looting and killing people for monetary benefits. The cyclical nature of such locally fueled violence and increasing trends of both forced and voluntary engagement of those groups/forces poses many further challenges. Existing national mechanisms have not been revisited/amended to deal with the post conflict situation and its emerging new consequences.

Instead of presenting the reality, the report tries to prove that the security situation and recruitment of children in the armed forces is completely under the government's control. Not only due to the decade-long armed conflict, but also due to the increasing trend of emerging armed groups/criminal gangs, children and young people continue to be targeted by armed forces/groups and victimized by small arms violence.

Children who are Vulnerable to Armed Conflict

Paragraph 59 of the state report admits that on the basis of available data children living in extreme poverty, from remote areas, out of basic services, and from indigenous communities and so called Dalit communities are found to be among the most vulnerable groups. However, the report does not provide relevant information as to how and through which programs such children's vulnerability can be reduced.

Sameer Yadav (name changed)

Rautahat

My name is Sameer Yadav from Rautahat. During the armed conflict my father was killed by the Police on August 11, 2003 (26th of Aswin of 2060). He was the only breadwinner at our family. Out of anger and frustration towards the Nepal Police, I decided to join the Maoists. I officially became Maoist member on 10 September 2004 (25th of bhadra 2061).

One day, I was involved in an operation in Katharaiya VDC of Rautahat. Many people were killed on that day and I do not even remember how many people I killed. After that incident I went to home and talked to my family about it. They convinced me that I should not go back to that party again. Though the Maoist friends used to visit me regularly and ask me to join them, I refused.

Somewhat I managed to go back to my school in my village and passed SLC examination. I am from a poor family so I had to go through lots of struggle at such a young age. My life was full of difficulties.

My family received Rs. 100,000 as a compensation to my father's death and I received Rs. 10,000 from the Red Cross for my studies.

Measures Taken to Prevent Attacks on Civilian Objects

Paragraphs 63-66 of the State report highlight the government and non-governmental organizations' efforts on preventing attacks on civilian objects. It has stated the provision of Three Year Interim Plan (TYIP) of the GoN that has provision of protecting and preventing attacks on civilians objects - the areas where children remain active will be made peaceful; and courts, schools, hospitals, children homes and the transport sector providing services to the children which will be made child-friendly. Nevertheless, the explanation given in the report is related to non-armed conflict situation and has nothing to do with preventing attacks on civilian objects during armed conflict.

Measures Taken to Raise Awareness among Children

Paragraph 67-68 of the state report claim that the governmental concerned bodies, autonomous bodies like NHRC, NWC, NHRIs, various national coalition on children's rights, national and international organizations, UN agencies, media and children-led organizations are publicizing messages among various target groups. It should be noted that general awareness on child rights cannot fulfill the objective stated in the OPAC. During the consultations held with children and stakeholders in the regions, the majority of them were not aware about the protocol.

We recommend that the committee ask the government the following questions:

- How can the government ensure that recruitment in the national security forces is indeed voluntary?
- How does the government verify the age of candidates when timely birth registration is massively lacking?
- What measures did the government take during the armed conflict to prevent underage children from being recruited?
- What is the government doing to prevent children from being recruited into armed groups?
- The report says (in paragraph 55) that the MoHA is continuously updating the information about the various armed forces. What is the current update? And, what is the status of the strategy to address the issue?
- Does the government have a complete list of the armed groups, presently active in different parts of the country? And their whereabouts?
- How far has the NPA for the Rehabilitation and Reintegration of Children Affected by Armed Conflict been implemented?
- How far have the commitments made in the CPA on children materialized?
- What is the government doing to publicize the protocol to the public? How is its effectiveness being measured?

Recommendations

- The government should ensure that all the recruitment in the national security forces is indeed voluntary.
- The government should take measures to prevent children from being recruited into the armed groups.
- The MoHA should update its information about the various armed groups and make them

public.

- The government should differentiate between armed groups with political motives and criminal gangs and deal with them appropriately to prevent children from being recruited.
- NPA for the Rehabilitation and Reintegration of Children Affected by Armed Conflict should be implemented effectively and the impact should be measurable with adequate resources.
- The government should conduct studies into particular groups of children who are vulnerable to armed conflict and take appropriate measures to address them.
- The government should initiate greater integration of the children in armed conflict agenda with wider debate around conflict prevention, including enhancing efforts to prevent conflict, such as investing in education and system building in the post conflict context.
- The government should strengthen prevention aspects of protection systems in view of potential conflict in future.

Section-III

PROHIBITION AND RELATED MATTERS

The Constitutional Provisions

Paragraph 69 of the state report explains the rights of children as the fundamental rights in the Interim Constitution. Article 22, clause (5) explicitly states that 'no minor shall be employed in factories, mines or in any other such hazardous work or shall be used in army, police or in conflicts'. However, due to the lack of legal provision against those who recruit children, the constitutional provision has turned out to be inefficient. The report's inability to explain the provision of punishment for those who violate the fundamental law has also revealed the state's inability to maintain supremacy of the constitution.

Similarly, other relevant provisions of the Interim Constitution, such as the right to equality and equal protection of law (Article 13), the right to justice, to seek judicial remedy, to consult a legal practitioner of his/her choice and to get fair trial by a competent court or judicial authority (Article 24), the right against exploitation (Article 29), are also equally weak in terms of implementation. The state has not been able to guarantee security of children from different forms of exploitation. The constitution has provisions for protecting children's rights but it requires further legislation for its full application. Moreover none of the armed groups are operating their armed conflict under the constitution. The provisions in the constitution as well as those in other relevant laws are appreciable but due to the lack of efficient and effective implementation bodies and legal frameworks the provisions are not supporting the common people.

Consideration of State Party to Becoming party to i) the Additional Protocol I and II to the 1949 Geneva Convention (1977), ii) the Rome Statute of the International Criminal Court (1998); and iii) the ILO Convention 182.

Although the State report (paragraph 72) states that a new bill on 'Children's Act' will be submitted to the parliament, it does not commit to criminalizing child recruitment. Moreover, the bill has been in the making for more than eight years and it is still not certain as to how long it will take for the bill to be tabled in the parliament.

Legal Provisions that Establish Jurisdiction

The State report (paragraph 75) talks about territorial jurisdiction, which is not justified in the context of the present protocol. It does not talk about the government position on retrospective law in regards to recruitment of children during armed conflict. Nepal does not have any provision to develop retrospective laws, which may undermine justice to conflict-affected children.

We recommend that the committee ask the Government of Nepal the following questions:

- Why is the legal provision for the protection of children from armed conflict still not strong?
- How long will it take for the new Children's Act to be in place?
- When do you think Nepal will be ready to ratify the Rome Statute of the International Criminal Court?
- What mechanisms will the Government of Nepal put in place so that children can get secure

and easy access to the TRC?

- What measures will be adopted to ensure the protection of victim and witness children while they access the TRC mechanism?

Recommendations:

- A Children's Bill should be enacted as early as possible, ensuring that its provisions are compatible with international standards. It should ensure that mechanisms are in place to ensure recruitment in armed forces is completely voluntary and prevent child recruitment. It should also explicitly criminalise child recruitment, including by armed groups.

Section-IV

PROTECTION, RECOVERY AND REINTEGRATION

Measures Adopted to ensure that the Rights and Best Interests of Children who have become Victims are Fully Recognized, Respected and Protected

Paragraphs 78-79 of the state report mention about the National Plan of Action (NPA) for conflict Affected Children as a measure adopted to ensure the rights and best interests of victim children. The NPA, however, has not been resourced and hence not implemented.

Public and Private Demobilization Programmes that Provide Child Victims of Recruitment with Assistance in Social Reintegration

Paragraph 80-82 of the State report give a glimpse of the status of disqualified Maoist combatants including minors. An action plan titled 'Discharge of Disqualified Maoist Army Personnel and Related Tasks' was signed between the GoN, UCPNM and the UN Agencies. However, the action plan was not designed with a long term perspective. In reality those programs became simply a relief program without strong links with regular programs of the government such as health, education, economic development and so on. As a consequence, huge dissatisfaction was expressed by those verified minors and late recruits. Similarly, there were a number of minors who were self-released and were not reached by any formal program.

Relief and Rehabilitation Programmes

Paragraph 83 of the state report mentions strategies of TYIP as i) providing immediate relief to the children affected by conflict and the children of marginal communities, children with disabilities or at risk and ii) enhancing the capacity of agencies and human resources related with children. However, the report does not explain the status of the TYIP. It further discusses the policies and working guidelines of the TYIP, without explaining how many of the victimized children benefited due to the plan.

Paragraphs 84-89 give details of funds spent by the government to support conflict victims in general. There is, however, a lack of data as to how many children were conflict victims, making it hard to assess whether the support provided was sufficient and whether the actual conflict victim children were reached by the program.

A news story published in *Kantipur* on April 6, 2011 stated that in Rukum alone; over 50 children injured during the armed conflict are waiting for treatment. Among them, 12 are living lives of disabled persons.

Three children -- Pragi Thapa, 11, Prapti Thapa, 9, and Ashish Thapa, 5 of Triyuga Municipality, Udayapur after their father Rajendra Thapa disappeared and mother Pramila Thapa entered the Maoists when the armed conflict of the Maoists was on. A news story published in *Naya Patraika* on September 26, 2010 states that their 60-year-old grand mother looks after them, despite acute poverty. The children are studying in a nearby school in scholarship, provided to them by District Education Office.

We recommend that the committee ask the government the following questions:

- How effective has the government been in implementing the NPA?
- Has the government coordinated among the stakeholders to implement the NPA?
- What kind of cooperation is being developed among the government bodies and parties to implement the NPA?

Recommendations:

- The government should join hands with other political parties and NGOs to implement the NPA, while the NPA itself should be adjusted to address the needs of the target group most of which are now already adults.
- Adequate resource should be allocated to implement the NPA on Children Affected by Armed Conflict (CAAC).

Section V:
INTERNATIONAL ASSISTANCE AND COOPERATION

International Cooperation Regarding the Implementation of the OP

Paragraphs 100-108 of the state report describe various UN mechanisms established in or engaged with Nepal's peace process. The OHCHR and UNMIN did their best to monitor the peace process. However, any benefit children received from the operation of these two organizations in Nepal is unclear.

Recommendations:

- Any international cooperation and assistance the government of Nepal receives should be tied to making the government accountable to children.

On the whole, the following recommendations should also be considered while providing concluding observations to the Government of Nepal

- Defining a 'child' as a person under the age of eighteen years, in compliance with international standards and Nepal's international obligation.
- Ensure constitutional and legal provisions to prohibit recruitment or re-recruitment of under age children in armed forces and armed groups along with prohibiting the use/ misuse or exploitation of children in political purposes and activities.
- Ensure the rights to protection, to survival, to development and the right to participation in constitution and legal measures.
- Ensure constitutional and legal rights for special protection and assistance by the State for children affected by armed conflict such as re-integration, family re-union, psychosocial and physical recovery, education, health and social acceptance.
- Ensure protection of the best interest for children in general and that related to Truth and Reconciliation laws and Disappearance laws in particular.
- Ensure special protection rights for girl children affected by armed conflict considering the special needs and situation of girl children with particular regard to social, religious and cultural contexts.
- There should be a specialized independent human rights institution for systematic monitoring of child rights violation. Such a body should be assured in the constitution and subsequent laws and can take the form of either a dedicated Child Rights Commissioner within the National Human Rights Commission or a separate Commission for Children. This body should have the overall responsibility to *ensure* respect, protection and fulfillment of children's rights in Nepal.



Convention on the Rights of the Child

Committee on the Rights of the Child
Sixty-ninth session
25 May-12 June 2015
Item 4 of the provisional agenda
Consideration of reports of States parties

List of issues in relation to the consolidated third to fifth periodic reports of Nepal

The State party is requested to submit in writing additional, updated information, if possible before 15 March 2015 (10,700 words maximum).

The Committee may take up any aspects of the children's rights set out in the Convention during the dialogue with the State party.

Part I

In this section, the State party is requested to submit its responses to the following questions (30 pages maximum).

1. Please provide updated information on the revision process of the 1992 Children's Code and in particular the status of the 2012 draft Act concerning Children. Please indicate whether this draft 1) clarifies and harmonises the definition of the child, 2) provides a coherent child protection system and 3) reforms the statutes of limitations for offences against children. Please also indicate the steps taken to bring local, religious and customary laws in compliance with the Convention.
2. Please indicate how the State party intends to increase spending on children. And what mechanisms are in place to control that budgetary allocations at local level are effectively spent for children in accordance with the "Local Body Resource Allocation, Management and Operation Guidelines".
3. Please provide precise information on the measures in place to put an end to sex-selective abortions of female foetuses, which are reported to be on the rise in the State party.
4. Please inform the Committee of the results achieved by the State party as regard the elimination of discrimination against girls, Dalit children, children belonging to minorities, Tibetan children and children with disabilities. In particular, please describe the measures taken to change attitudes that condone and justify discrimination against those children and their outcome. Please also indicate the reasons why Tibetan children are denied access to education and are obliged to enrol in boarding schools in India and what measure are foreseen to end this situation.
5. Please indicate whether the State party intends to make birth registration compulsory and what measures are taken to address the low rate of birth registration and to eliminate the obstacles encountered by children of single mothers, refugees and asylum seekers children, children born to a foreign father and abandoned children to be registered at birth.
6. Please clarify whether the new Constitution and relevant laws will allow children with only one Nepali parent to acquire the Nepali nationality. Please also inform the Committee of the measures foreseen to address the situation of statelessness of Tibetan refugee children.
7. Please provide information on the concrete actions taken to put an end to the acts of torture and ill treatment of children in detention facilities as well as in residential homes, which are reportedly widespread. Please also indicate which legal provisions criminalise torture and ill-treatment,

- which legal proceedings have been engaged over the reporting period against those suspected of having tortured and ill-treated children and the reparation provided to these children. Please provide detailed information on the sanctions pronounced against policemen who reportedly tortured an 11-year old boy on 24 January 2011 in Pachuwarhat police station in Kavre district.
8. Please clarify whether all forms of violence, including corporal punishment in all settings, will be explicitly prohibited under the new Act concerning Children and whether legislation condoning violence has been repealed. Please also indicate the measures taken to combat the numerous forms of gender-based violence, including sexual abuse, which reportedly affect one third of girls and women, to abolish the 35-day statute of limitation for rape and to ensure that girls are not married with their rapist or rape cases settled through monetary compensation.
 9. Please provide updated information on the measures taken to eradicate harmful practices, which continue to affect primarily girls (Chaupadi, dowry, Badi, accusation of witchcraft, Kumari, child and forced marriage) and their outcome.
 10. Please provide detailed information on the measures taken to develop community and family support programmes in order to prevent the institutionalisation of children. Please also inform the Committee of the measures taken or foreseen to 1) develop family based alternative care; 2) strictly regulate and supervise the conditions of admission and the living conditions in alternative care facilities; 3) reintegrate children separated from their parents and 4) protect all children under the age of 18 deprived of a family environment.
 11. Please provide information on the follow-up given to the 2009 recommendations of the Hague Conference regarding inter-country adoption and clarify whether poverty can still be a legal ground for adoption. Please also comment on the information received by the Committee that many Nepalese adopted children are not orphaned children.
 12. Please provide updated information on the measures taken to reduce child mortality, and on those aimed at eliminating stunting and wasting. Please also indicate the measures taken to address health problems faced by adolescents, in particular drug and alcohol consumption, poor awareness of safe abortion practices as well as all unhygienic conditions in which girls found themselves during their menstruations.
 13. Please provide information on steps taken to develop early detection and early identification of disability, programmes to support families of children with disabilities, inclusive education as well as awareness-raising activities to prevent and combat the social stigmatisation as well as abuse and neglect of these children. Please clarify whether provisions providing for the imprisonment of children with physical and mental impairments will be upheld in the new Act concerning Children. Please also indicate the measures taken to ensure that schools do not deny children with disabilities access to education.
 14. Please explain the impact on the education system of the decrease in the budgetary allocations to the education sector over the past 5 years, especially as regard the elimination of hidden costs which are reported to prevent a large proportion of children from attending schools. Please also inform of the measures taken to ensure that children from disadvantaged and marginalized families are effectively enrolled in primary schools.
 15. With reference to paragraph 257 of the State party's report, please indicate the urgent measures taken to free girls who remain exploited in Kamlari. Please also indicate whether legislation has been adopted to protect all children under the age of 18 from the worst forms of child labour and what results have been achieved since the adoption in 2009 of the National Plan of Action against

- Bonded Labour. Please provide precise information on the monitoring of the prohibition of child labour and in particular the number of child labour inspectors in the State party.
16. Please provide detailed information on the concrete measures taken to put an end to the sexual exploitation of children, especially girls, in the State party and to follow-up on the 2012 recommendations of the Committee under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/NPL/CO) especially as regard the definition of offences under the Optional Protocol (para. 30) and the establishment of an effective system to detect and dismantle brothels and other places where child prostitution takes place (para. 34).
 17. Please indicate the measures taken to put an end to the use of children in political activities, which is reportedly widespread in the State party despite the code of conduct elaborated during the 2013 Constituent Assembly elections.
 18. Please indicate the steps taken to raise the minimum age of criminal responsibility and to build a juvenile justice system in line with international human rights standards. Please also indicate the urgent measures taken to remove children from adult detention facilities.

Part II

In this section the Committee invites the State party to briefly (three pages maximum) update the information presented in its report with regard to:

- (a) New bills or laws, and their respective regulations;
- (b) New institutions (and their mandates) or institutional reforms;
- (c) Recently introduced policies, programmes and action plans and their scope and financing;
- (d) Recent ratifications of human rights instruments.

Part III

Data, statistics and other information, if available

1. Please provide consolidated budget information for the last three years on budget lines regarding children and social sectors, by indicating the percentage of each budget line in terms of the total national budget and gross national product and geographic allocation.
2. Please provide data disaggregated by age, sex, socioeconomic background, ethnic origin and geographical location covering the last three years on:
 - (a) The total number of allegations of abuse and violence against children including all forms of corporal punishment, with additional information on the type of assistance given to child victims and the follow-up provided, including prosecution of the perpetrators and the sentences handed down; and
 - (b) The number of investigations of cases of sexual violence and rape, and the outcome of trials, including information on the penalties to perpetrators, and redress and compensation offered to the victims.
3. Please provide data disaggregated by age, sex, socio-economic background, ethnic origin and geographical location regarding the situation of children deprived of a family environment, covering the past three years, on the number of children:
 - (a) Separated from their parents;
 - (b) Living in child-headed households;
 - (c) Placed in institutions;
 - (d) Placed with foster families;

- (e) Adopted domestically or through inter-country adoptions.
- 4. Please provide data, disaggregated by age, sex, type of disability, ethnic origin and geographical location, for the past three years, on the number of children with disabilities:
 - (a) Attending regular primary schools;
 - (b) Attending regular secondary schools;
 - (c) Attending special schools;
 - (d) Out of school.
- 5. Please provide the Committee with an update of any data in the report which may have been outdated by more recent data collected or other new developments
- 6. In addition, the State party may list areas affecting children that it considers to be of priority with regard to the implementation of the Convention.



Convention on the Rights of the Child

Committee on the Rights of the Child

Sixty-ninth session

25 May-12 June 2015

Item 4 of the provisional agenda

Consideration of reports of States parties

List of issues in relation to the report submitted by Nepal under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The State party is requested to submit in writing additional, updated information (15 pages maximum), if possible before 15 March 2015.

The Committee may take up any aspects of the children's rights set out in the Optional Protocol during the dialogue with the State party.

1. Please provide precise data, disaggregated by age, sex, socioeconomic background, ethnic origin and geographical location on:
 - (a) The number of children demobilised since the signature of the Comprehensive Peace Accord (CPA) in November 2006, the proportion of those reintegrated in their families and the number of children who remain in child care homes or displaced with their families;
 - (b) The number of children left orphans, injured, sexually abused, forcibly separated from their families, displaced, during or as a result of the armed conflict, as well as the services provided to them by the State party;
 - (c) The number of children who faced trial on conflict-related charges and the outcome of the legal proceedings engaged against them;
 - (d) The number of children recruited and used in armed conflict who were provided with reparation as well as rehabilitation and reintegration services and the number of those who had no access to any service; and
 - (e) The number of perpetrators of child recruitment and use in armed conflict and of conflict-related violations of children's rights, including sexual abuse, who were prosecuted, the legal basis of their prosecution and the sanctions they received.
2. Please provide updated information on training activities on the Optional Protocol conducted for professionals working for and with children who are likely to have been involved in armed conflict, especially members of the armed forces, the police, immigration officials, lawyers, judges, as well as medical and social workers. Please also describe the specific measures adopted to raise awareness of children about the Optional Protocol.
3. With reference to paragraph 34 of the State party's report, please elaborate on the activities undertaken by the National Human Rights Commission to ensure that children under the age of 18 are not involved in armed conflict and the results of any investigation conducted in this respect.
4. Please elaborate on the measures taken to prevent children, especially those from the most vulnerable groups of society, from falling victims to offences under the Optional Protocol. Please

inform the Committee of the measures taken to prevent and put an end to the use of schools by security forces, armed groups and political parties. In particular, please indicate the steps taken to ensure an effective implementation of the 2011 Schools as Zones of Peace (SZOP) National Framework and Implementation Guidelines.

5. Please provide information on the measures taken to develop education aims to help students acquire skills for active and responsible action in the society for the promotion of the values of peace.
6. Taking into account that half of the children are not registered at birth, please indicate how the State party proceeds with the age verification of voluntary recruits and how it ensures that recruitments are genuinely voluntary.
7. Please indicate the reasons why the State party has still not adopted a legislation prohibiting and criminalising the recruitment and use of children in armed conflict by State and Non-State armed groups. Please indicate whether the State party defines in its domestic legislation the recruitment of children below the age of 15 as a war crime and whether it intends to ratify the Rome Statute of the International Criminal Court.
8. Please provide detailed information on the measures taken to ensure effective accountability for violations and abuse committed against children by both parties during and after the conflict. With reference to paragraphs 10 and 32 of the 2010 report of the United Nations Secretary General (S/2010/181), please provide updated information on the outcome of the legal proceedings engaged and the sanctions pronounced against the members of the former Royal Nepal Army who tortured and killed Maina Sunuwar.
9. Please clarify whether the Truth and Reconciliation Commission Act of 25 April 2014 contains provisions that enable perpetrators of crimes against children, including the recruitment and use of children in armed conflict, to benefit from impunity. Please also indicate whether the TRC Act specifically deals with the impact of the conflict on children and whether the participation of children in the TRC has been foreseen and under which modalities.
10. Please provide information on the results achieved through the implementation of the 2010 National Plan of Action for Reintegration of Conflict Affected Children. In particular, please indicate the measures taken to :
 - (a) Identify children affected by armed conflict and provide them with programmes and services for their physical and mental recovery as well as their psycho-social reintegration;
 - (b) Address the situation of all the children whose parents were killed or who forcibly disappeared and who were reportedly unable to get compensation or reparation due to the reported lack of information on the availability of relief packages.

Some Glimpses of Civil Society Supplementary Report Preparation, Submission and Participation in Pre-session.



Mr. Krishna Subedi addressing the plenary session of the consultation in Rukum (Mid-West)



Mr Kapil Aryal facilitating consultation with adults at Nepalgunj (Mid-West)



Consultation with Children with disability in Nawalparasi (Western Region)



Mr. Mohan Dangal facilitating consultation with children in Dhankuta (Eastern Region)



Nepal Police Representative during the consultation in Mahendranagar (Far- West)



Children's consultation in first child friendly VDC in Nawalparasi district (Western Region)



Mr. Krishna Subedi addressing the National Consultation Program for CRC Reporting in Kathmandu



Consultation with experts for CRC reporting at National Human Rights Commission



Nepal Civil Society Delegation at Palais Wilson, Geneva, Switzerland



Nepalese Child Representatives speaking in the NGO Forum, Geneva



Group Photo with Chair of UN Committee on the Rights of the Child Ms. Kirsten Sandberg



Nepal Civil Society Delegation participating in 69th Pre-session Geneva, Switzerland

PARTNERS

