

**NEPAL
CIVIL SOCIETY SUPPLEMENTARY REPORT
ON THE IMPLEMENTATION OF
THE OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD (CRC) ON
THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT**

**SUBMITTED TO:
THE UN COMMITTEE ON THE RIGHTS OF THE CHILD**

**Date of Submission:
July 1, 2014**

**SUBMITTED BY:
CRC REPORTING COALITION NEPAL**



Partners



TABLE OF CONTENT

- 1. Introduction**
- 2. General measures of implementation**
- 3. Prevention**
- 4. Prohibition and related matters**
- 5. Protection, recovery and reintegration**
- 6. International assistance and cooperation**

Acronyms and Abbreviations

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
SRSG	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

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 Committee) in April 2012.

This report reflects the situation of the children in armed conflict in Nepal evaluating the constitutional and legal arrangements, government's initiatives, programs, policies, mechanisms and actions to combat various activities prohibited by the OPCA. 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 of synergized efforts among civil society organizations to carry out CRC monitoring and reporting, initiations to form CRC Reporting Coalition, Nepal began from 2012 and formally created on July 15, 2013. It comprises seven active networks/coalitions working on child rights in Nepal. It was coordinated by CRC Committee, Human Rights Treaty Monitoring Coordination Centre (HRTMCC). National Coalition for Children as Zones of Peace and Child Protection (CZOPP), Consortium of Organizations Working for Child Participation (CONSORTIUM), National Alliance of Organizations Working for Street Children Nepal (NAOSC), National Child Protection Alliance (NCPA), Child Care Homes' Network Nepal (CNet) and National Alliance of Child Rights Organizations (NACRO) are the members of CRC Reporting Coalition Nepal. Its mandate is to prepare and submit the civil society report of CRC and its optional protocols and involve in pre-while-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 coordinated to prepare and submit the civil society report of 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 child-led report coordinated by CONSORTIUM Nepal.

This report carries one voice of all the child rights organizations as well as the voice of children of Nepal before the Committee on the Rights of the Child.

NGOs working in the sector of child rights were invited to join the report preparation process. Series of meetings were held to initiate the supplementary report preparation process. Independent expert/consultant was hired to identify the gaps in the report submitted by Nepal under OPCAC and to prepare a draft of the supplementary report. A presentation on the gaps in government report followed by interaction was carried and thus the modality of the supplementary report of Nepal on OPCAC was finalized.

Review of National Legal Framework: Review of the existing national legal framework and other legal arrangements regarding the issues of children seeking incompatibility with the CRC and its OPCAC and

other relevant international standards was conducted. 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 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 OPCAC have been analyzed in 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

The *paragraph 7* of the State report mentions the constitutional provision as an ensuring provision of the Optional Protocol. The 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.' The article 32 of the Constitution provides the remedial right to every citizen to submit a petition in the Supreme Court under the extra-ordinary jurisdiction. Though the provision provides constitutional safeguard and remedial right to the children, application of the provisions of OPAC requires sufficient legal provisions made under other special or general legal structure that can be adjudicated in the general courts or other competent authorities under their ordinary jurisdiction. The remedial right given under the article 32 of the Constitution is itself a last resort and is related to article 107 which cannot be exercised in other courts than the Supreme Court. Therefore, it is not feasible for the general citizens throughout the country 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.

The 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 positive impression and commitments of the State to address the issue of justice and marginalized sections of the society (34, 35 (9)); and effective implementation of treaties and agreement to which State is a party (Art. 33 M); these provisions are only considered as state directive guidelines having no efficiency in absence of the laws, regulations, programs and adequate resources to oblige the government to guarantee the provisions. Important to note here is that the provision of Article 36(1) of the Interim Constitution, are 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 for in the constitution require special Acts and programs in the absence of which their implementation will be sketchy.

The *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 a party. This section states that if any provision contained in a treaty to which the state of Nepal or GoN has become a party following its ratification, acceptance, approval or accession by the Parliament is inconsistent with the law in force, such law shall, for the purpose of that treaty, be invalid to the extent of such inconsistency and the provision of that treaty shall be applicable as if it is the law of Nepal.

However, in 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 the full application of the international laws, they must be fully 'domesticated'.

The Supreme Court's interpretation on the domestication of international instruments is not consistent because there is no standard principle established. In the case of Gyan Raj Rai,¹ the Supreme Court has interpreted the section 9(1) of the Treaty Act, 1990, saying that it is 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. In the case of Sapana Pradhan Malla,² the Supreme Court has interpreted the same section as that recognizes the international law to which Nepal is a state party as equivalent to the domestic law. In case of Rajendra Dhakal,³ the Supreme Court says 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. 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 does not show Nepal's consistent stand on the applicability of ratified treaty provisions.

The *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 it in the National Gazette for its authenticity. However, in practice, the Gazette is still not accessible to a large number of the population.

Minimum Age for Voluntary Recruitment

The *paragraphs 11 and 12* of the State report explain that 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 of penalizing 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

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

far. There is a tendency to obtain citizenship by raising their age arbitrarily, for several purposes such as accessing passports for foreign employment.⁴ 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

The *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) is the focal ministry designated to women, children and social welfare issues. The title of the ministry makes it clear that children are one of the issues it deals with. The ministry does not have a focal person or unit assigned solely to child protection. In terms of resources, children (issues) share only 6.93 percentage of the total budget of the MOWCW in 2013/2014.⁵ Similarly, Ministry has limited human resources, so capacity of the Ministry is always a question.

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

Paragraph 15 of the State report mentions the role of Central Child Welfare Board (CCWB) as a coordinating body at the national level, with District Child Welfare Board (DCWB) as its extended wings in all 75 districts. CCWB, despite its roles and responsibility, has not been able to achieve the objectives because of budget crunch and the government's 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. 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 for issuing policy and directives addressing children in armed conflict. CCWB has been providing around US \$ 190 to DCWB annually from the last couple of years. The amount provided under child welfare programme is generally spent on covering meeting expenses and some stationery. Had the INGOs not supported the DCWBs, these institutions would have ceased to exist. It raises the question of sustainability of the programmes after the termination of INGOs' support.

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/DCWB structure is 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 roles of the statutory body and the Ministry, 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.

The paragraph 16 of the State report shows that the Ministry of Home Affairs is responsible for maintaining peace and order in the country and its major functions are licensing and regulating arms and ammunitions, control of explosives and conflict management. Regional and District Administration Offices and prison management are functioning under this ministry. Nepal police, Nepal Armed Police and National Investigation Department function under the direct control of this ministry. The report obviously mentions the departmental responsibility but no actual status of the function discharged, including the state of the peace and security. Even after the Comprehensive Peace Accord, children are in vulnerable condition from the viewpoint of kidnapping throughout the country, especially in the city areas and in the Terai region. No policies, programmes, and 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 of Nepal Police and Armed Police Force. But the report remains silent in respect of functions performed to achieve the obligation of the Protocol as it has to ensure voluntary recruitment in the police. Just mentioning the role as assigned to the police organization rather than showing its efficacy and efficiency, it shows that the bodies are unable for meeting the obligations imposed. It does not also mention if any of the personnel in either of the institution 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) for reciprocating the obligations as it is responsible for making legal structure for effective governance, looking into functional aspects of law and justice administration. But the report does not state if any new legal structures have been made to amend the current laws in line with the Protocol to address the obligations created by the Protocol. No name of any law enacted or amended for this purpose is mentioned in the report. It is necessary to mention functions performed within the reported period.

Paragraphs 21 and 22 of the State report mention about the Ministry of Education (MoE) and the Ministry of Health and Population (MoHP). The report has mentioned only the responsibilities vested upon the ministries as to be performed. But the report does not contain any plan, programme and achievement of the ministries. As a result the state report does not reflect what support the GoN has provided for the children victimized by the armed conflict.

The government has launched programme to enroll children affected by the armed conflict in school and also provide them with scholarships. But most of the children are still not in the reach of government program. Similarly, the conflict affected children are still waiting for treatment and psycho-social counseling to come out of the mental trauma of being physically involved in the armed conflict or having lost their parents in it.

Paragraph 23 mentions about 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 responsible for managing reconstruction of infrastructures and, relief and rehabilitation of the conflict victims. The report has mentioned the functional area and responsibilities of the ministry but does not shed any light on the achievements made, if any, and whether the objectives are fulfilled or not. The report does not show policies, programmes and the functions performed and thus it also does not reflect the number of benefited people and ongoing programmes at the operation level.

On the whole, paragraphs 13 to 28 give brief introductions of various government institutions, which are responsible to address the issue of the children in armed conflict. But these paragraphs do not indicate whether those institutions were involved in providing support to the children in need. 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 are extreme lacking on coordination among those ministries, departments and boards. The leadership in those institutions belongs to different political parties, and children's issues are not in their priority list, they do not have common agenda for children 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 rights specifically. This also triggers possibility of duplication of certain programs and provides no concrete data of the programmes in this sector being run by different government bodies.

Thus the report shows no change in the children's life due to the government's limited involvement in providing support for the children.

Paragraph 29-30 of the State report talks about the role of judiciary of Nepal. It claims that Nepali judiciary has shown examples of 'judicial activism' handing down the landmark decisions that uphold human rights principles and fundamental freedom as envisioned in international instruments. But the report remains silent in respect of mentioning 'principles established by the judiciary in the course of adjudication' or its contribution with reference to the particular case citation. Any achievement established by the judiciary cannot be seen in the report. It is necessary to furnish the achievements by mentioning them objectively. The judiciary can play significant role for 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 like the National Human Rights Commission (NHRC) and National Women's Commission

Paragraphs 31-35 of the State report mention about the NHRC that have jurisdiction to conduct inquiry, investigation on the incidents of violation of human rights and to recommend to the concern authority for action against the perpetrators. It has a list of its responsibilities and authorities but it has not enlisted the functions performed during the reporting period and achievement it has so far made. The report does not explain when and how the NHRC fulfilled its responsibilities and executed its authority to guarantee human rights to the children in armed conflict.

NHRC carried out various activities as part of its strategic plans and its annual projects. Before signing upon the OPAC, the NHRC made recommendation to GoN for ratification of OPAC and release of verified minors. Even NHRC initiated to make annual reports based on the nine core human rights treaties including the CRC. Nevertheless, NHRC could not play any significant role to make government accountable in order to fulfill the obligation created by OPAC and it has not made OPAC specific recommendations developing legal and institutional framework to address the issue of children in armed conflict.⁶

In terms of departmental action against perpetrators and lodging the cases in the court, the government does not respond and its commitment is also 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. But it is done only through handling the complaint, conducting inquiries or investigations, organizing monitoring and observation visits of the child rights violations, and making assessment of human rights situation to ensure rights of the children. Based on these, the NHRC only 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. It deals with complaint handling, conducting inquiries or investigations, organizing field visits, inspection and observation, and making assessment of human rights situation to ensure rights of the children. But it does not prove that the children in armed conflict have been its target group or any. The desk has no specific policy and program for armed conflict affected children. It has not made any achievement and the report also does not present any evaluation of the desk. Moreover, the desk does not exist anymore at the NHRC.

Moreover, currently, the NHRC is without leadership as no commissioners have been appointed yet, once the timeframe of former commissioners have completed on 16 September 2013. Lack of leadership at the commission in fact undermine 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 Paris Principles. The government of Nepal should comply with the Paris Principles to ensure that the commission functions as a truly independent and empowered protector and promoter of human rights.

Similarly, the paragraph 37 of the reports explains 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 the 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 the UN agencies, national and international organizations and networks. It also says that the text of the Optional Protocol was

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

translated into Nepali language, published in the book form by CCWB and distributed in all 75 districts. However, there is lack of wider dissemination of this publication and reaching its beneficiary groups. Also, the titles, number of copies and description of published materials and recipients as persons, groups, institutions, like schools, training centers, are not mentioned.

It also mentions that Nepal Army and NHRC published materials on child protection and distributed throughout the country. But, again, it also does not specify the titles, number of the copies and destinations of distribution. Similarly, it also mentions that various organizations conducted trainings on child rights and child protections by various organizations, without being specific.

Despite all these claims made by State report, during the consultation meetings the majority of the participants shared that they are not aware about the 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 Daily Times of Pakistan states that almost one in four children arrested in Nepal has 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. Nepal police, seen here arresting a student protester, have been accused of torture. 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>).

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 about the maximum use of the media and local level trainings. It describes about the radio programmes broadcasting by MoPR. It also mentions that various organizations are publicizing the principles and provision of conventions and optional protocols related to women and children through various media. But they do not show the role of the government in this sector, and the mentioned programmes are not related with child victims. And, the paragraphs are not specific and measurable from the point of view of achievement.

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

Only few NGOs are working on children affected by armed conflict and they have some idea about the Optional Protocol and the government status on it. Other NGOs, working on 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 the conflict.

Paragraph 43 points out that child clubs were disseminating the principles and provisions of the optional protocols among the children and adults. Child clubs have been there before the conflict started and they regularly have been conducting trainings etc on various topics related with child rights. There are 17,000 child clubs across the country.⁷ In reality, children do not specifically cover OPAC as a topic for awareness raising, as most of the child club facilitators themselves are not aware about 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. But it does not explain on which specific topics the issues will be incorporated in curricula and by which date it will be successful when the topics will really be included in the text books.

Data

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

- NHRC report: More than 500 children died, 40,000 have been displaced and hundreds injured, 5,000 lost their parents, 11,000 involved in armed conflict
- TYIP : More than 230 children died, 107 sustained injuries
- CCWB: 368 children died, 671 children disabled.

It does not come up with the authentic 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 have not got an easy

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

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 majority of child victims of conflict have now become adults, requiring different type of support mechanism than that would be required for children.

The state report does not have any authentic data on the number of death of children, nor does it present how many children lost their parents, were forcefully taken out of their schools and had to search for labour in absence of guardians. The regional, economic, ethnic, gender-wise, age-wise and caste-based classification of the victim children are also missing. It is disappointing that even after eight years of peace-building process, the government or any organization has not been able to produce an authentic complete, comprehensive data of deaths, casualties or loses by the biggest man-made crisis of the country's history. Rather, the state reports simply copies from different organizations and puts them as they are. So it is difficult to figure out the authentic version of the State. Even the given data by two sources lack any information about the orphaned children, displaced children, etc.

To add, 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 are 69,664 till April 2009. This data does not have separate information about the affected children. A total of 1,027 persons were disappeared during the period of armed conflict.⁸

Information can be collected also from NGO sectors. A report of CWIN, published in 2004 August/September 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 parent 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 of CCWB states that the conflict claimed 300 children and injured many others.¹⁰

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 UNICEF.¹¹ 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 had 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 groups.¹²

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.

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, 200*)4, p. 27.

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 MoPR is bringing the work procedure for gathering true statistics about the conflict-hit children so that it would be easy to provide them with relief in the context of only a small number of children getting the scholarship in the absence of full statistics. The work procedure would be implemented soon after the peace fund secretariat approves the budget for that purpose. The work procedure states about the objective of providing education, employment and additional relief programmes after collecting data on the conflict-affected children in all the 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. Thus the report consequently 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 to 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.

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 the casualties of children during the armed conflict and the results were incredibly different from one another. Still, the magnitude of the casualties as well as their socio, economic 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 and also supporting the government to strengthen the structure to provide long-term solution, in the form of rehabilitation and reintegration of the conflict-affected children.

Analysis of the factors and difficulties mentioned in the report for fulfillment of obligations under the OPAC

The *paragraph 49* of the State report mentions low literacy, technical inadequacy, lack of comprehensive Child Protection Mechanism and Community Support System, lack of practical action with longer term vision and sustainable approaches to address the issue, lack of uniform system of data collection as the obstacles for the implementation of obligations under the protocol.

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 question should be asked to the Government of Nepal:

- What progress is achieved in Nepal for enacting new laws and amending existing laws for fulfilling the obligation of the Protocol?
- Why has the government not drafted the domestic law or legal provision of international instrument 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., Nepal Army, Armed Police Force and Nepal Police?
- Has 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 one 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 it is taking such a long time to appoint qualified, independent, and new 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 children 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 getting employed in State security forces
- 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 mechanism administered by CCWB through upgrading its status to become National Child Rights Coordination and Monitoring Body. Similar reforms should be undertaken at the 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; and 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 the 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 already above 18 years of age
- Make special provisions and enabling environment 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 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 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 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 develop long term measures to prevent children from being affected by armed conflict. So far, Nepal has not been able to develop future perspective for preventive architecture to prevent armed conflict itself. The existing legal measures such as Children's Act, 1992 and other laws are virtually not designed for prevention and protection of conflict affected children in the country.

Currently, Nepal does not have a compulsory recruitment system in national forces; however, there was ample discussion on such provision of compulsory recruitment system 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). But, it is not clear that if these services include the National security forces. And also the age group of the citizens was not defined, which may create ambiguity for 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 creates 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, CAAFAG Working Group provides some support to children associated with 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 explosion, 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 pose further challenge. Existing national mechanism is in fact not revisited/amended to deal with 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 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 that children living in extreme poverty, from remote areas, out of basic services, and from indigenous communities and so called *Dalit* communities are found among the 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.

Somehow 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 message 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 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 all the recruitment in the national security forces are 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? And what is the government doing to prevent children from being so in the present context, from the 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 commitment made in the CPA on children been 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 are 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 study about particular group of children who are vulnerable to armed conflict and take appropriate measures to address them.
- Initiate greater integration of the children and armed conflict agenda with wider debates around conflict prevention, including enhancing efforts to prevent conflict, such as investing in education, system building in post conflict context.
- Strengthen prevention aspects of protection systems keeping 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 the 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'. But due to the lack of legal provision against those who recruit children, the constitutional provision has turned out to be inefficient. And 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 - the right to equality and equal protection of law (Article 13), the right to justice, seek judicial remedy, consult a legal practitioner of his/her choice and get fair trial by a competent court or judicial authority (Article 24), the right against exploitation (Article 29) - also are 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 the children's rights but it requires further legislations 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 while preparing the bill. Moreover, the bill is 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 that 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 a

secured 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:

- 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 of children 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 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, even the action plan was not designed from a long term perspective. In reality those programs became just a relief program without having strong link 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 the 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. But 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 to implement the NPA?
- Has the government coordinated among the stakeholders to implement the NPA?
- What kind of cooperation is being built up among the government bodies and parties to implement the NPA?

Recommendations:

- The government should join hands with other NGOs and political parties to implement the NPA, while the NPA itself should be adjusted to address the needs of the target group most of which are already adults now.
- 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. But 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' a person anyone under the age of eighteen years, in compatible with international standards and Nepal's international obligation.
- Ensure constitutional and legal provisions to prohibit recruitment, re-recruitment of under age children in armed forces and armed groups along with the use/ misuse or exploitation of children in political purposes and activities.
- Ensure right to protection, right to survival, right to development, 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 best interest of children in general and that related to Truth and Reconciliation laws and Disappearance laws in particular.
- Ensure special protection rights of girl child affected by armed conflict considering the special needs and situation of girl child in particular social, religious and cultural context.
- There should be a specialized independent human rights institution for children for systematic monitoring of child rights violation. Such a body should be ensured 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.