



A QUEST FOR JUSTICE:

**THE STATUS OF CHILDREN INVOLVED IN NEPAL'S
ARMED CONFLICT**

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REPORT SUBMITTED TO

**THE UNITED NATIONS SPECIAL REPRESENTATIVE OF THE SECRETARY-
GENERAL ON CHILDREN IN ARMED CONFLICT**

THE COMMITTEE ON THE RIGHTS OF THE CHILD

**THE SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE,
REPARATION AND GUARANTEES OF NON-RECURRENCE**

THE SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION

**THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS
DEFENDERS**

**THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY
EXECUTIONS**

**THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT**

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INTRODUCTION

1. This report is a joint submission prepared by Peace Envisioners (former D-PLAN) and TRIAL International, as a result of a joint project implemented in 2017 and 2018, aimed to empowering children involved in the armed conflict and strengthening their advocacy skills. This report hereby raises the voices of children formerly involved in the armed conflict, many of whom are survivors of child recruitment and use by the Maoist guerrillas.
2. This submission provides information on the current situation of those formerly involved in the armed conflict while they were minors (1996 – 2006), with a particular focus on those who were recruited and used as soldiers. The report focuses on their need for justice and reparation as well as on the inaction of the Government of Nepal (hereinafter, the “GoN”) in this regard.
3. This report uses the term “child” to refer to any person below the age of 18 years old.¹ Moreover, in accordance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict² (hereinafter, the “OPAC”), this report will consider that no children under 18 shall be involved in an armed conflict, with the only exception of regulated, early and voluntary recruitment in the State’s armed forces. Hence, this report will deal with the situation of those under 18 years of age at the time of the armed conflict. No distinction will be made between children between 15 and 18 years of age, and children under 15.³
4. According to the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (hereinafter, the “Paris Principles”), the expression “children involved in an armed conflict” encompasses “any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.”⁴ This definition is referenced throughout this report regarding the involvement of children in the conflict and in relation to the Nepalese context.
5. This submission provides an overview of the violations suffered by children during the armed conflict, and the subsequent lack of reparations and rehabilitation measures as well as accountability for perpetrators.

¹ Article 1 of the Convention on the Rights of the Child, 1989.

² Article 2 of the OPAC states: “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.” Article 4.1 of the OPAC states: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”

³ Recruitment and use of children under the age of 15 is prohibited by Article 38 of the Convention on the Rights of the Child, Article 77(2) of the Additional Protocol I to the Geneva Conventions, and Article 4(3) of the Additional Protocol II to the Geneva Conventions. In addition, the Rome Statute qualifies the recruitment and use of children under 15 years of age as a war crime. Nevertheless, this report uses as a reference human rights treaties and laws to establish a minimum age requirement.

⁴ Article 2.1 of the Principles and Guidelines on Children associated with armed forces or armed groups, February 2007.

HISTORICAL BACKGROUND ON THE ARMED CONFLICT IN NEPAL

6. From February 1996 to November 2006, Nepal experienced a 10-year civil war opposing the Communist Party of Nepal – Maoist (hereinafter “CPN-Maoist”) and State forces.
7. The conflict was originated by a climate of raising popular expectations regarding social progress, greater equality and economic improvement, following the restoration of multiparty democracy in 1991.⁵ In March 1995, after unifications and splits between several leftist parties, the Communist Party of Nepal (Unity Centre) was renamed the Communist Party of Nepal – Maoist. The CPN-Maoist canalized communal demands for social, economic and political changes, and presented a 40-point demand to the GoN⁶ that was left unanswered. Consequently, the CPN-Maoist party decided to launch a “People’s War” against Nepalese governmental forces on 13 February 1996.⁷
8. State forces were composed of the Nepal Police (hereinafter “NP”), the Nepal Armed Police Force (hereinafter “APF”) and the Royal Nepal Army (hereinafter “RNA”). The APF was created through an ordinance in January 2001, as an elite para-military force to fight against increased violence, organized crime and violent insurgency, given that the NP was unable to stop the violent activities of the CPN-Maoist.⁸ Moreover, after the declaration of a state of emergency on 26 November 2001, the RNA was deployed to combat the growing insurgency.⁹ Finally, in November 2003, the RNA was assigned to lead the “Unified Command” under which the APF and the NP were placed.¹⁰
9. As for the CPN-Maoist front, it was represented by the People’s Liberation Army (hereinafter “PLA”), the military wing of the party, which was officially constituted in 2001.¹¹ Informal Maoist guerrillas also operated in some parts of the country.
10. On 25 May 2006, both parties to the conflict signed a Code of Conduct for Ceasefire in order to transform the ceasefire between the two parties into a permanent peace agreement and to resolve the conflict through peaceful negotiations.¹² This Code of Conduct brought an end to the hostilities. On 16 June 2006, both parties signed an eight-point Agreement of Peace, which included an agreement for the UN to manage

⁵ OHCHR, Nepal Conflict Report, “An Analysis of Conflict-Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 21 November 2006,” 2012, 37.

⁶ Ibid.

⁷ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 173.

⁸ OHCHR, Nepal Conflict Report, “An Analysis of Conflict-Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 21 November 2006,” 2012, 57.

⁹ OHCHR Nepal Conflict Report, “An Analysis of Conflict-Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 21 November 2006,” 2012, 56.

¹⁰ Ibid.

¹¹ Ibid., 16.

¹² Preamble of the Code of Conduct of Ceasefire, 25 May 2006, available at: <https://peacemaker.un.org/nepal-25pointceasefire2006>. Accessed 1 April 2018.

and monitor arms of both parties.¹³ On 22 November 2006, the Comprehensive Peace Agreement brought the conflict to an end.¹⁴

WIDESPREAD VIOLATIONS OF HUMAN RIGHTS DURING THE ARMED CONFLICT

11. During the conflict, both parties failed to comply with basic international human rights and humanitarian norms. Violations of international human rights and humanitarian law included unlawful killing, torture, enforced disappearance, sexual violence and long-arbitrary arrest. Moreover, many individuals and families were displaced from their home.¹⁵ As a result of the conflict, between 13,000¹⁶ and 17,000¹⁷ people died, and around 10,000 were displaced.¹⁸ The International Committee of the Red Cross reported more than 3,400 missing persons during the conflict, of which 1,300 still remain unaccounted for to date.¹⁹ In addition, more than 30,000 individuals experienced different forms of torture, ill treatment or trauma.²⁰ Thousands of people from both parties to the conflict were unlawfully detained.²¹ Finally, despite being an unreported phenomenon, sexual violence was committed, allegedly implicating government security forces as the perpetrators.²²
12. Children were involved and particularly affected by the Nepalese conflict in various ways, including as victims of some of the six Grave Violations identified by the Special Representative to the Secretary-General on children in armed conflict.²³
13. Children recruited by the CPN-Maoist suffered various human rights violations, including their recruitment into armed groups, forced involvement in hostilities and being used for various activities and agendas of the CPN-Maoist. Considered as combatants, children were detained by government forces and often subjected to torture and inhumane and degrading treatment. Finally, some children were victims of sexual abuse, and a high number of children involved in the conflict were killed during Nepal's 10-year civil war.

¹³ Routledge Contemporary South Asia Studies, "The Maoist Insurgency in Nepal: Revolution in the Twenty-First Century," Mahendra Lawoti and Anup K. Pahari, Special Indian Edition, 2015, 340.

¹⁴ Sophie Hodgson, "Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal," *Journal of Human Rights Practice* 4(2)(2012): 174.

¹⁵ OHCHR, Nepal Conflict Report, "An analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006," 2012, 15.

¹⁶ *Ibid.*, 14.

¹⁷ The National Online Journal on Media and Public Affairs, "Recording the Nepal Conflict: Victims in Numbers," July 2011. Available at: http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html.

¹⁸ Sophie Hodgson, "Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal," *Journal of Human Rights Practice* 4(2)(2012): 172.

¹⁹ OHCHR, Nepal Conflict Report, "An Analysis of Conflict-Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 21 November 2006," 2012, 110.

²⁰ *Ibid.*, 125.

²¹ *Ibid.*, 151.

²² *Ibid.*, 158.

²³ See <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/>. Accessed 1 April 2018.

a. Child recruitment and abduction

14. There are no precise figures on the number of children recruited by the CPN-Maoist, given that, during the conflict, access to children in affected areas was denied to children rights agencies and non-governmental organizations.²⁴ However, Human Rights Watch (hereinafter “HRW”) reported that, during Nepal’s civil war, children might have comprised around 30% of the CPN-Maoist forces, and estimates that as many as 3’500 to 4’500 children were part of the Maoist fighting forces.²⁵ In 2007, the United Nations Mission to Nepal (hereinafter “UNMIN”) verified 23,610 former Maoist combatants, of which 2,973 were known minors at the time of the Comprehensive Peace Agreement of 2006.²⁶
15. The CPN-Maoist party’s leadership has often denied the recruitment, use and training of any children for military activities. The CPN-Maoist explained the presence of children in CPN-Maoist troops by stating they were merely under care of the party, due to their status as orphans or volunteers.²⁷ However, children interviewed by HRW testified regarding their service to the CPN-Maoist forces through participation in various activities.²⁸
16. Various recruitment policies and propaganda strategies used by the CPN-Maoist involved children in the armed conflict. For instance, in rural areas, CPN-Maoist members used a special recruitment campaign entitled “One Family, One Member for the Party.”²⁹ In this campaign, which operated at a high-level capacity between 2004 and 2005, families were compelled to provide a recruit to the CPN-Maoist, or face being subjected to severe punishment.³⁰
17. Furthermore, CPN-Maoist extrajudicial “law enforcement” practices often abducted and captured civilian children as punishment for alleged offences.³¹ Such “law enforcement” practices mostly occurred following the ceasefire of May 2006; this followed the CPN-Maoist practice of openly setting up “people’s courts” with their own forms of justice, during which children as young as 11 years old were accused of alleged crimes, such as sexual violence or public disorder. Abduction, being held captive and being used for forced labour were consequent forms of punishment.³²

²⁴ Report of the Secretary-General on Children and Armed Conflict in Nepal, S/2006/1007 of 20 December 2006, para.14.

²⁵ Human Rights Watch, Briefing Paper, “Nepal’s Civil War: The Conflict Resumes,” March 2006.

²⁶ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 16.

²⁷ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 22.

²⁸ Human Rights Watch, Briefing Paper, “Nepal’s Civil War: The Conflict Resumes,” March 2006.

²⁹ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 173.

³⁰ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 18.

³¹ Report of the Secretary-General on Children and Armed Conflict in Nepal, 2006, para.29.

³² *Ibid.*, para.31.

18. Children were often abducted from their homes or schools. Another recruitment method involved taking children for so-called “short-term campaigns” for 2 to 3 months. However, at the end of these “campaign” periods, children were not allowed to leave, and they would be captured during attempts to escape.³³ For those who escaped, the CPN-Maoist would return to their homes and take them by force – the children often faced torture and death threats if they refused to join the CPN-Maoist forces.³⁴
19. Furthermore, child recruitment was carried out through community activities of CPN-Maoist cultural groups, militias and sister organizations of the party, including the student wing of the CPN-Maoist, the All Nepal National Independent Student Union – Revolutionary (hereinafter “ANNISU-R”).³⁵ The CPN-Maoist also recruited children through different campaigns or propaganda programmes conducted in schools. Attracting children through the use of songs, dances and theatrical performances was part of their recruitment strategy. The CPN-Maoist also provided educational sessions, whereby children were taught the Maoist doctrines, and threats of violence were often used to compel entire schools to listen to their propaganda. In 2003, HRW reported on mass propaganda rallies at which the presence of children was compulsory.³⁶
20. Former Maoist children explained that they had joined the CPN-Maoist forces voluntarily due to indoctrination into Maoist ideology, enrolment into Maoist campaigns or because they viewed enlistment as their best option for survival in context of poverty, violence and social inequality. Provided that these children responded to economic, cultural, social and political pressures, the “voluntary” nature of these decisions remains questionable: according to their physical and mental immaturity, many did not realize the dangers and abuses to which they would be subjected.³⁷ Furthermore, whether the enrolment of children was voluntary or coercive, this does not change the fact that the recruitment of children in armed forces is illegal.³⁸
21. In the December 2006 Report of the UN Secretary-General on Children and Armed Conflict in Nepal, the continuous and active recruitment of children by the CPN-Maoist, following the ceasefire of April 2006, raised concerns. The recruitment of young people into the CPN-Maoist forces did not halt with the cessation of hostilities. In fact, a total of 154 new recruitments were reported between May and September 2006, 72 of which were recruited into the PLA, and 82 of which were recruited into other CPN-Maoist-affiliated organizations, including militias. The total number of newly recruited children is believed to be much higher. Among the 154 cases, 2 occurred in May, 3 in June, 24 in

³³ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 33.

³⁴ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, p.34.

³⁵ Report of the Secretary-General on Children and Armed Conflict in Nepal, S/2006/1007, 20 December 2006, para.16.

³⁶ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 27.

³⁷ UN Secretary-General, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children: Note by the Secretary-General*, 18, UN Doc A/51/306, August 1996.

³⁸ Article 6 of the Principles and Guidelines on Children associated with armed forces or armed groups, February 2007.

July, 84 in August and 41 in September.³⁹ In November 2006, recruitment campaigns reached their highest intensity. The UN Secretary-General's task force reported 1,576 cases of child recruitment by the CPN-Maoist between October and December 2006, according to families who reported on their children.⁴⁰ Child recruitment into CPN-Maoist forces continued between the ceasefire of April 2006 and the Comprehensive Peace Agreement of November 2006.⁴¹ It lasted even until December 2006, therefore breaching the Comprehensive Peace Agreement.⁴²

b. Levels of child involvement in the conflict

22. After being recruited, children also suffered from ill treatment whilst being obliged to take part in combat or in other activities of the CPN-Maoist. Children were forced to participate directly in hostilities, and were also used to support the military, to provide medical assistance and to undertake propaganda activities on behalf of the CPN-Maoist. During the propaganda activities, one of the children's main tasks was to recruit other children.⁴³
23. Children recruited not only in the PLA, but also in other militias serving the CPN-Maoist, had to provide support to the PLA by acting as fundraisers, mobilizers, messengers, spies, sentries, bodyguards and logistics assistants.⁴⁴ According to information gathered during interviews with former child soldiers, children recruited by the CPN-Maoist had training sessions starting at 4am, and their duties often ended late in the evening.
24. As part of their activity in the CPN-Maoist forces, recruited children were also trained to use weapons. At least 7 children interviewed by HRW shared that, following their recruitment by the CPN-Maoist, they were given rudimentary weapons training with instructions on how to use a grenade or socket bomb. They also stated that apart from the rudimentary training, more sophisticated training in the use of firearms was also provided. In one testimony gathered by HRW, a recruit reported that one training included 100 people under the age of 18.⁴⁵
25. Moreover, children associated with the CPN-Maoist intelligence department had to travel to various guerillas locations to collect information on political and military conditions.⁴⁶

³⁹ Report of the Secretary-General on Children and Armed Conflict in Nepal, S/2006/1007, 20 December 2006, para.21.

⁴⁰ Report of the Secretary-General on Children and Armed Conflict in Nepal, S/2008/259, 18 April 2008, para.14.

⁴¹ Sophie Hodgson, "Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal," *Journal of Human Rights Practice* 4(2)(2012): 175.

⁴² Article 5.1.2 of the Comprehensive Peace Agreement, 22 November 2006.

⁴³ Human Rights Watch, "Children in the Ranks, The Maoists' Use of Child Soldiers in Nepal," February 2007, 39.

⁴⁴ Report of the Secretary-General on Children and Armed Conflict in Nepal, S/2006/1007, 20 December 2006, para.17.

⁴⁵ Human Rights Watch, "Children in the Ranks, The Maoists' Use of Child Soldiers in Nepal," February 2007, 43.

⁴⁶ Information gathered from interviews of former child soldiers in a workshop organized by Trial International in 2016 and 2017.

26. Finally, given that children were mainly recruited for combat, many were forced to take part in hostilities and stand in the line of fire, thus becoming targets of attacks by government forces, which considered them combatants.⁴⁷

c. The detention, ill-treatment and torture of children in the conflict

27. Children allegedly associated with the CPN-Maoist were often arrested, detained and imprisoned by security forces. A number of children recruited by the CPN-Maoist endured ill-treatment while in detention, following capture by the Nepalese government forces.

28. Even before being captured, children often suffered from extreme stress due to the pressures inflicted upon them by the CPN-Maoist, warning them of the treatment they would endure if government forces found them.⁴⁸

29. In 2002, the Terrorist and Disruptive Acts, Prevention and Punishment Act (hereinafter “TADO Act”) established counter-terrorism measures, allowing governmental forces to detain any person, “if there is reasonable ground for believing that this person would commit any activity that could result in a terrorist and disruptive act.”⁴⁹ In addition, a subsequent amendment to the TADO Act in 2004 allowed government security forces to treat children in the same manner as adults in the absence of separate procedures, guidelines or rules to deal with children involved in the armed conflict.⁵⁰

30. Children that had connections with the CPN-Maoist were often detained under the TADO Act. According to the 2006 SRSG’s report, more than 80% of the 101 children interviewed by the task force provided testimonies of ill-treatment and torture while under arrest and detention by government forces under the TADO Act.⁵¹ The methods of torture included blindfolding, handcuffing, beating, kicking, electric shocks and water immersion until suffocation.⁵² Children were detained for an indefinite period of time that could lead up to one year without trial, pursuant to the 2004 amendment of the TADO Act.⁵³

31. The task force documented 195 cases of juveniles held in army barracks, prisons and high security centres pursuant to the TADO Act. Among the 195 children held in detention, 43% were below the age of 16 at the time of their arrest.⁵⁴ However, given that this report sets the minimum age at 18, the number of children held in detention could arguably be higher.

⁴⁷ United Nations Children’s Funds, Report on the Situation of Children and Women in Nepal, 2006, 58.

⁴⁸ Human Rights Watch, “Children in the Ranks: The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 41.

⁴⁹ Article 9, Terrorist and Disruptive Acts (Prevention and Punishment Act), 2002.

⁵⁰ The United Nations Children’s Fund (UNICEF), “Report on the Situation of Children and Women in Nepal, 2006,” 58.

⁵¹ Report of the Secretary-General on Children in Armed Conflict in Nepal, S/2006/1007, 20 December 2006, p.8

⁵² Ibid., 8.

⁵³ UNICEF, “Report on the Situation of Children and Women in Nepal, 2006,” 58.

⁵⁴ Report of the Secretary-General on Children in Armed Conflict in Nepal, S/2006/1007, 20 December 2006, 7.

d. Child abuse and sexual violence

32. The report of the GoN to the Committee on the Rights of the Child mentioned a total of 172 reported cases of sexual violence committed against children between April 2004 and October 2010.⁵⁵ However, these data do not refer explicitly to conflict-related sexual violence. In fact, no official data concerning sexual violence that occurred specifically during the conflict between 1996 and 2006 are available. CWIN reported the sexual abuse of 5 girls who had been recruited by the CPN-Maoist.⁵⁶ As for the SRSG, it was reported that late in 2005 one girl was sexually assaulted by government security forces while being interrogated in army custody.⁵⁷
33. Nevertheless, considering the nature of the crime and associated stigmas, cases of sexual violence that occurred during the conflict are an unreported phenomenon. Fears of retaliation, the risks of being further victimized and weak institutional support for sexual violence victims all contribute to this reality.

e. The extrajudicial killing of children

34. The third, fourth and fifth combined periodic reports of Nepal on the implementation of the Convention on the Rights of the Child (hereinafter “CRC”) mentioned the death of 297 children (191 boys and 106 girls) due to the armed conflict.⁵⁸ On the other hand, INSEC reported that since the beginning of the conflict (to mid-2005), 172 children had been killed by the State, and 166 by the CPN-Maoist. In a report from UNICEF, it was stated that Child Workers in Nepal Concerned Centre (hereinafter “CWIN”), a child rights organization in Nepal, reported the killing of 410 children, 395 of whom were seriously injured during the same period.⁵⁹
35. Between August 2005 and September 2006 there were 63 documented incidents related to explosive devices, which killed 29 children and injured 70 others.⁶⁰ Likewise, the Three Year Interim Plan (TYIP) of the National Planning Commission of the GoN mentioned that during the armed conflict more than 230 children lost their lives, and 107 children sustained injuries and became permanently disabled.⁶¹

⁵⁵ Committee on the Rights of the Child, Consideration of the reports submitted by States parties under article 44 of the Convention, Third to fifth periodic reports of States parties due in 2010, Nepal, C/NPL/3-5, 23 December 2013, 54.

⁵⁶ UNICEF, “Report on the Situation of Children and Women in Nepal, 2006,” 58.

⁵⁷ Report of the Secretary-General Report on Children and Armed Conflict in Nepal, S/2006/1007, 20 December 2006, 11.

⁵⁸ Committee on the Rights of the Child, Consideration of the report submitted by States parties under article 44 of the Convention, Third to fifth periodic reports of States parties due in 2010, Nepal, 11 October 2012, 54.

⁵⁹ UNICEF, “Situation of Children and Women in Nepal, 2006,” 57.

⁶⁰ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008*, Available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_NGO_NPL_14605_E.pdf. Accessed 24 December 2017.

⁶¹ Three Year Interim Plan of the Government of Nepal National Planning Commission, (2007/08-2009/10), 16.

EFFORTS TO VERIFY, DEMOBILIZE AND REHABILITATE CHILDREN INVOLVED IN THE ARMED CONFLICT

36. On 22 November 2006, the Comprehensive Peace Agreement brought the conflict to an end.⁶² Through the Comprehensive Peace Agreement, the GoN and the CPN-Maoist committed to establish the truth about the conduct of the war, and to ensure both justice and reparations for victims of the conflict.⁶³
37. In the aftermath of the conflict, children under the control of the PLA were put in cantonments. They stayed in cantonment more than five years until the issues of combatant integration, management of arms and other political demands were fully settled.⁶⁴
38. On 8 December 2006, both parties signed the Agreement for Monitoring the Management of Arms and Armies (hereinafter “AMMAA”).⁶⁵ Through the AMMAA, both parties agreed to seek the assistance of the UN in order to monitor the management of arms and armies of both sides. The UN deployed qualified civilian personnel to monitor the confinement of the CPN-Maoist army combatants and their weapons within designated cantonments areas, and to ensure that the Nepal Army remained in its barracks and their weapons were not used.⁶⁶ This agreement prohibited the use of children in armed forces⁶⁷ and both parties agreed to take the necessary measures to provide rehabilitation for children involved in the conflict.⁶⁸
39. In November 2005, an in-country task force, chaired by UNICEF and OHCHR, and supported by other UN agencies, was established following Resolution 1612 of the UN Security Council.⁶⁹ This resolution allowed the creation of an organized system at the country level to collect and verify information on grave violations against children. It also provided a monitoring and reporting mechanism (hereinafter “MRM”) in order to ensure greater protection of children in armed conflict. The rehabilitation and reintegration of former CPN-Maoist combatants, especially concerning children involved in the armed conflict, was one of the core issues dealt with by the task force.⁷⁰
40. When the GoN and the CPN-Maoist signed the Comprehensive Peace Agreement on the 22 November 2006, both parties committed to rehabilitating persons who had been

⁶² Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 174.

⁶³ Article 7.1.3, Comprehensive Peace Agreement, 22 November 2006.

⁶⁴ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 7-17.

⁶⁵ Agreement for Monitoring the Management of Arms and Armies, available at: <https://peacemaker.un.org/nepal-monitoringarmies2006>. Accessed 1 April 2018.

⁶⁶ *Ibid.*, Preamble.

⁶⁷ *Ibid.*, Article 5.1(18).

⁶⁸ *Ibid.*, Article 1(1).

⁶⁹ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 175.

⁷⁰ United Nations Inter-Agency Rehabilitation Programme, Independent evaluation of the UNIRP in Nepal, final report, 21 March 2013, 1.

forcibly displaced due to the conflict⁷¹ and who were victims of the conflict.⁷² Moreover, the SRSG, in a 2006 Report on Children and Armed Conflict in Nepal, called on the international community and donors to raise their attention and to ensure sufficient resources to support the release, return and reintegration of children associated with the PLA and other CPN-Maoist-affiliated militias.⁷³

41. In this context, the UNMIN, established on 23 January 2007, initiated a verification and registration process of the CPN-Maoist combatants to verify whether or not they were adults at the time of their recruitment.⁷⁴
42. When the UNMIN conducted its verification process in 2007, 4,008 combatants were found to be minors at the time of their recruitment, or were recruited after the ceasefire of 25 May 2006, and were consequently labelled “disqualified.” This term appeared to be extremely harmful, as it literally means “unqualified” (*ayogya*) in Nepalese and has extremely negative and stigmatizing connotations. The “disqualified” thus felt neglected, and considered their status a personal failure, despite their loyalty and years given to the service of the CPN-Maoist forces. Following the peace agreement, many former child soldiers, now labelled as “disqualified” and associated with the CPN-Maoist, were considered a burden to their families and communities. Social reintegration was a challenge as many children had left their families, friends and villages during their childhood or adolescence. Society viewed many of the children as criminals involved in killing and looting. The use of the term “disqualified” was therefore an additional obstacle to the social, political and economic reintegration of children recruited during the conflict. The UNMIN accordingly began to use the alternate term “verified minors and late recruits” (hereinafter “VMLR”).⁷⁵
43. On 16 December 2009, representatives of both parties to the conflict and the UN signed an action plan established through the MRM.⁷⁶ This action plan provided for the discharge and rehabilitation of CPN-Maoist combatants who were verified as minors at the time of the Comprehensive Peace Agreement, or who were recruited after the ceasefire of May 2006. Moreover, the action plan mandated a UN interagency monitoring team to monitor and report on the discharge and rehabilitation process of the verified minors.⁷⁷ UNICEF and representatives of OHCHR and UNMIN led the discharge and rehabilitation processes.
44. The formal process of releasing minors from cantonments eventually began in January 2010, and was completed by February 2010.⁷⁸ All 4,008 VMLRs were demobilized in

⁷¹ Article 5.2.8 of the Comprehensive Peace Agreement, 22 November 2006.

⁷² Article 5.2.4 of the Comprehensive Peace Agreement, 22 November 2006.

⁷³ Report of the Secretary-General on Children in Armed Conflict in Nepal, 20 December 2006, 17.

⁷⁴ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 16.

⁷⁵ *Ibid.*

⁷⁶ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 177.

⁷⁷ *Ibid.*, 179.

⁷⁸ Transcultural Psychosocial Organization, A Longitudinal Psycho-Social Assessment among Verified Minors and Recruits during the Reintegration Process, Study Commissioned by UNICEF, October 2012, 7, available at: mptf.undp.org/document/download/10831.

2010, after years of staying in cantonments.⁷⁹ Indeed, the CPN-Maoist did not fulfil their obligation under the Comprehensive Peace Agreement to discharge all children from the cantonments during the course of three years.⁸⁰

45. In 2012, the PLA was dissolved and CPN-Maoist cadres were demobilized.⁸¹ Cantonments were also closed, and around 1,400 cadres were qualified to join the Nepalese Army, which they chose to do.⁸² Some verified minors were interested in joining the Nepalese Army, but as they were under the age of 18 at the time of verification, they were not allowed to do so, thereby encouraging further sentiments of frustration and exclusion, despite their loyal service.⁸³
46. In 2010, through the UN Interagency Rehabilitation Programme (hereinafter “UNIRP”), together with the GoN, rehabilitation packages were provided to verified minors, and opportunities were offered to access trainings and education and transition back into civilian life. The rehabilitation package consisted of (1) support for formal education (school/college); (2) vocational skills training; (3) micro-enterprise training/support and (4) health sector training.⁸⁴ The VMLRs had the possibility to choose between the four options of the rehabilitation package.
47. Support for formal education included a four-year education in government schools, including admission fees, uniforms, stationery, a monthly stipend and gender-specific support. Vocational skills training provided literacy, numeral training and also practical training for the new work place of the VMLRs. Furthermore, for those interested in setting up a business, the micro-enterprise training/support provided an 11-day introductory business course concluding with a training course on an enterprise of choice for the VMLRs. It also provided a stipend, once the business plan was approved, to help the VMLRs start their business. Finally, for training in the health sector, 15 to 18 months of courses were offered to VMLRs, including both institutional and practical trainings.⁸⁵
48. 2,684 out of 4,008 VMLRs contacted UNIRP at the end of September 2011 to receive information regarding the rehabilitation package. 2,079 of them started or completed the rehabilitation package.⁸⁶ 433 pursued education, 67 received health training, 436

⁷⁹ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 8.

⁸⁰ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 175.

⁸¹ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 8.

⁸² Ibid.

⁸³ Information gathered by TRIAL international during a workshop with former child soldiers in 2016 and 2017.

⁸⁴ Transcultural Psychosocial Organization (TPO), *A Longitudinal Psycho-Social Assessment among Verified Minors and Recruits during the Reintegration Process*, Study Commissioned by UNICEF, October 2012, p.7, available at: mptf.undp.org/document/download/10831.

⁸⁵ TPO, *A Longitudinal Psycho-Social Assessment among Verified Minors and Recruits during the Reintegration Process*, Study Commissioned by UNICEF, October 2012, 7.

⁸⁶ Ibid.

pursued vocational skills training (371 completed the training) and 1,142 VMLRs pursued micro-enterprise training (519 graduated).⁸⁷

49. However, approximately 3% of the VMLRs stopped the programme before completion, and around half of the VMLRs, because of dissatisfaction regarding the content of the rehabilitation package, decided not to participate at all.
50. According to the testimonies gathered, the VMLRs were dissatisfied by the rehabilitation package because of a confusion regarding the content. The training programs were not conceptualized in consultation with the VMLRs and, according to them, they did not address their needs and they did not offer real long-term employability prospects. Moreover, it was announced in the media that VMLRs who would enrol in the programme would get a financial benefit; however, this benefit was not included in the rehabilitation package. Therefore, unlike other combatants, the VMLRs did not receive any financial benefits. Many saw the UNIRP programme as costly, with minimal results. Moreover, the dissatisfaction was also due to the stigmatization of the VMLRs and influence from their own party.⁸⁸
51. The process of reintegration and rehabilitation appeared to be challenging for discharged and “disqualified” combatants due to incomprehension regarding the rehabilitation process and a lack of cooperation on the part of the CPN-Maoist and the GoN. In 2011, an independent evaluation of the UN rehabilitation programme reported that the limited support from the government and the CPN-Maoist increased challenges to the smooth implementation of the rehabilitation programme.⁸⁹ Concerns were brought up when various high-level CPN-Maoist speakers actively dissuaded the “dischargees” from accessing the UN rehabilitation packages. Moreover, the presence of senior CPN-Maoist commanders at the registration sessions compromised the confidentiality of the registration process.⁹⁰ Similarly, the GoN showed a lack of political will and resources regarding the rehabilitation of children involved in the conflict.⁹¹
52. One of the rehabilitation priorities was to reintegrate minor combatants into their communities and families.⁹² Nonetheless, due to the denial of the CPN-Maoist regarding child recruitment and/or the coercive nature of such recruitment, minor combatants were not seen as victims of the conflict.⁹³ This represented one of the obstacles to the implementation of an efficient rehabilitation and reparation process.
53. The planning of rehabilitation packages for children involved in armed conflicts should have the aim of enabling children to play a role as civilian members of society, to remain

⁸⁷ Ibid., 7-8.

⁸⁸ Ibid., 8.

⁸⁹ Transitional International, “Independent Evaluation of the UN interagency Rehabilitation Programme (UNIRP) in Nepal,” final report, 21 March 2013, 2.

⁹⁰ Sophie Hodgson, “Whose Action Plan? An Analysis of the UN Security Council Resolution 1612 Action Plan and Monitoring Mechanism in Nepal,” *Journal of Human Rights Practice* 4(2)(2012): 179.

⁹¹ Human Rights Watch, “Children in the Ranks, The Maoists’ Use of Child Soldiers in Nepal,” February 2007, 58.

⁹² Trial International’s submission to the Committee on the Rights of the Child on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2016, para.12.

⁹³ Ibid.

integrated in their communities and, whenever possible, reconciled with their families.⁹⁴ One of the most common demands of the VMLRs is the need for employment. A high number of them belonged to poor families and are now married with children. Without any formal education or professional training, and with limited or no family or social support, they struggle to have a normal life.⁹⁵

54. A study conducted between 2011 and 2012 by the Transcultural Psychosocial Organization and commissioned by UNICEF revealed that one-third (33.2%) of the VMLRs taking part in the study faced reintegration problems in their communities because of the stigma associated with being “disqualified.” Blame and accusations received from their families and communities were the main obstacles.
55. For some, their own place, friends and surroundings felt novel, for they had joined the CPN-Maoist at a very young age.⁹⁶ All of these elements drove ex-PLA members to seek urban environments where their background could be hidden, or where they would not feel rejected.
56. Considering the VMLRs as a vulnerable group, susceptible to physical and mental health problems, various programmes studied different ways to best ensure their rehabilitation and reintegration.⁹⁷ According to UNIRP, more than 1,200 VMLRs underwent psychosocial assessment during the period of January – March 2011, and around 30% of the cases required intensive and long-term support. 26 of the most severe cases were immediately referred to long-term clinical assistance programmes.⁹⁸
57. There is no exact data available on the number of verified minors living with wounds or disabilities or requiring medical treatment. Nevertheless, numerous former combatants are in need of medical and psychological rehabilitation. Many have been left with untreated physical injuries and severe psychological trauma, leading to several suicides.⁹⁹ So far, 9 cases of suicide among verified minors have been registered.¹⁰⁰

PREVAILING IMPUNITY FOR THOSE RESPONSIBLE FOR THE RECRUITMENT AND USE OF CHILDREN DURING THE ARMED CONFLICT

58. It remains a fact that, to date, not a single person has been prosecuted or punished for the recruitment and use of child soldiers in Nepal. This is due to two factors: on the one

⁹⁴ Article 7 of the Principles and Guidelines on Children associated with armed forces or armed groups, February 2007.

⁹⁵ Information gathered from interviews of former child soldiers in a workshop organized by Trial International in 2016 and 2017.

⁹⁶ TPO, *A Longitudinal Psycho-Social Assessment among Verified Minors and Recruits during the Reintegration Process*, Study Commissioned by UNICEF, October 2012, 8.

⁹⁷ Ibid.

⁹⁸ United Nations Interagency Rehabilitation programme, available at: <http://www.unirp.org.np/AboutUs.aspx>. Accessed 1 April 2018.

⁹⁹ Trial International's submission to the Committee on the Rights of the Child on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2016, para.20.

¹⁰⁰ Information gathered from interviews of former child soldiers in a workshop organized by Trial International in 2016 and 2017.

hand, an inadequate legal framework in relation to this crime; and on the other hand, a flawed transitional justice process that is failing to deliver justice to conflict victims more broadly.

a. Criminalization issues regarding child recruitment and use in armed forces within the Nepalese legal framework

59. Despite Nepal's ratification of several international human rights and humanitarian law instruments that address the involvement of children in armed conflict – such as the four Geneva Conventions¹⁰¹ in 1964, the Convention on the Rights of the Child (hereinafter, "CRC") in 1990, and its Optional Protocol on the Involvement of Children in Armed Conflict (hereinafter "OPAC") in 2007, and the ILO Convention on the Worst Forms of Child Labour in 2002¹⁰² – Nepal has failed to implement its international obligations by transposing these norms into its domestic legal system.
60. Indeed, in the Constitution of Nepal (2015), Article 39(6) states, "*no child shall be subjected to recruitment or any kind of use in the army, police or armed groups.*"¹⁰³ Likewise, the Constitution has ensured protection against abduction, kidnapping or hostage taking¹⁰⁴ and, in Article 22, the right against torture.¹⁰⁵
61. However, there is no explicit legislation in Nepal that criminalizes the forced involvement and recruitment of children in armed forces.¹⁰⁶ Indeed, the 2017 Country Penal Code (that entered into force in August 2018) does not criminalize the recruitment and participation of children in armed conflict and hostilities as a separate offence.¹⁰⁷ Thus, impunity prevails for those responsible of the recruitment and use of children in armed conflict. Even if the new Penal Code would have criminalized the use and recruitment of child soldiers, its application would not be retroactive; thus, it would not apply to conflict-era cases and would only further perpetuate impunity for those who recruited children during civil war.
62. The GoN has cited existing rules related to the recruitment practices of Nepal's national security forces; such rules do not permit the recruitment of any person under the age of 18.¹⁰⁸ These rules apply to all of Nepal's national security forces, including the Nepal

¹⁰¹ International Committee of the Red Cross, "The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"; "The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Member Forces at Sea"; "The Geneva Convention relative to the Treatment of Prisoners of War"; and "The Geneva Convention relative to the Protection of Civilian Persons in Time of War," 12 August 1949.

¹⁰² International Labor Organization, Worst Forms of Child Labor Convention, C182, 12 June 1999.

¹⁰³ Article 39(6) of the Constitution of Nepal, 2015.

¹⁰⁴ *Ibid.*, Article 39(5).

¹⁰⁵ *Ibid.*, Article 22.

¹⁰⁶ *Ibid.*, Article 133(2).

¹⁰⁷ Trial International's submission to the Committee on the Rights of the Child on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2016, para.7., in relation to previous applicable legislation.

¹⁰⁸ Royal Army New Recruitment Rules, 1962.

- police force, army and the Armed Police Force.¹⁰⁹ However, these rules do not apply to rebel-armed groups, which have no formal prohibition against the recruitment of children.
63. Despite the rights enshrined in the Constitution, and the administrative norms prohibiting State forces from recruiting children, the prosecution of persons responsible for child recruitment remains impossible in the absence of criminal legislation that lists the recruitment and use of children as a separate offence.
64. In light of this, the existing legislation therefore not only fails to adequately criminalize future offences, but it presently remains an obstacle for both the prosecution of perpetrators and the reparation process for victims of the internal armed conflict.
65. The lack of Nepalese legislation on the criminalization of child recruitment in armed forces should be read and understood within the context of a flawed legislation framework that also fails to criminalize other international crimes such as torture, enforced disappearance, war crimes and crimes against humanity. Nepalese courts are politically influenced and contribute to the perpetuation of a climate of impunity, either through their inability to inflict proper penalties upon the perpetrators of human rights violations, or through an inability to demonstrate serious and effective intentions to investigate the facts and ensure an efficient prosecution process.¹¹⁰

b. Flaws of the transitional justice mechanism

66. The transitional justice process, ongoing since the adoption of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (hereinafter, "TRC Act") in 2014, has shown no meaningful results so far, thereby further damaging victims' hopes of obtaining justice. Two commissions – the Truth and Reconciliation Commission (TRC) and the Commission for the Investigation of Enforced Disappeared People (CIEDP) – were established in 2015 with the power of investigating crimes and recommending prosecution. As human rights stakeholders have repeatedly pointed out, the process is faulty and in contravention of international standards. Since their inception and until today, the commissions have faced serious deficiencies in terms of resources, expertise, independence and political support.
67. In February 2019, the commission mandates were formally extended for the third time. Despite the extension of their mandates for yet another year, the aforementioned limitations remain, and raise serious concerns about the commissions' capacity to fulfill their tasks and provide satisfaction to victims within the given timeframe. At the time of writing, a process is ongoing to appoint new commissioners for both commissioners.
68. Despite known loopholes, as many as 60,000 victims registered their complaints before the TRC, and another 3,000 before the CIED, most of whom registered during the spring

¹⁰⁹ CRC, List of issues in relation to the report submitted by Nepal under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Replies of Nepal to the list of Issues, (CRC/C/OPAC/NPL/Q/1/Add.1), 2015, 10-11.

¹¹⁰ Trial International's submission to the Committee on the Rights of the Child on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2015, para.12.

and early summer registration processes of 2016. Three years later, the commissions affirm they have begun to investigate some cases, but their investigative standards have not yet been disclosed. As it is, not a single case has been publicly "resolved", and not a single recommendation for criminal prosecution has been issued. Furthermore, pursuant to the TRC Act, a Special Court will be created to deal with the criminal prosecution of conflict-era crimes. Nevertheless, the timeframe, applicable legal framework and logistical aspects of such a court remain unknown.

69. During the last decade, every demand for justice (by victims, but also by the international community) has been answered by a government argument that the transitional justice mechanisms will provide the answers sought. Most conflict-era cases registered in the ordinary criminal justice system, as well as before the UN Human Rights Committee, have been systematically referred by the GoN to the "jurisdiction" of the transitional justice bodies. As a result, high expectations regarding the outputs of these commissions were created. Today, victims are increasingly realizing the unlikelihood of their expectations being met, and are seeking other possibilities for obtaining redress.
70. Alternative paths for justice, however, remain unclear. The main reason for this lies in the inadequacy of the existing legal framework as described above.
71. Furthermore, on 26 February 2015, the Nepalese Supreme Court annulled the wording of Section 26(2) and 29(1) of the TRC Act, which enabled the transitional justice mechanisms to have discretionary power to recommend amnesty, and which allowed the Ministry of Peace and Reconstruction to determine whether or not to prosecute perpetrators of crimes of a serious nature. Nevertheless, this decision remains unimplemented and legislation has yet to be amended accordingly. Furthermore, the GoN appealed this decision before the Supreme Court, the outcome being still pending.
72. The necessary amendment would include a list of "offences of a grave nature", for which amnesty for perpetrators could not be recommended. The list is not exhaustive¹¹¹ and includes "any kind of inhuman acts inconsistent with the international human rights or humanitarian law or other crime against humanity," thereby leaving room for the possible inclusion of the recruitment and use of children in armed conflict. However, the fact that any specific mention of this crime, and one so widely known by the commissions, was not considered by the legislator, already shows signs of the limited political support available for the prosecution of perpetrators on these grounds.
73. Finally, the rehabilitation of children involved in the conflict was not adequately incorporated into the design of the transitional justice process.¹¹² In 2009, before the adoption of the TRC Act, numerous consultations were conducted with victims of enforced disappearance or torture. However, children involved in the armed conflict were never consulted or invited to be part of the initiative. In fact, even when transitional justice and child rights advocates tried to ensure consultations with children, these were

¹¹¹ Article 2(j) of the TRC Act.

¹¹² Trial International's submission to the Committee on the Rights of the Child on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2016, para.12.

not ultimately included in the TRC Act regarding the situation of children involved in armed forces.¹¹³

74. As stated in the report to the Committee on the Rights of the Child in 2016, in recognition of the violations and abuses suffered by children during the armed conflict, children's rights and experiences should constitute an integral part of the Nepalese transitional justice process. It is indeed fundamental that the voices of those who were under 18 years old during the war are heard, and that accountability for perpetrators of child recruitment and use in conflict is promoted.¹¹⁴

ADVOCACY EFFORTS

75. Due to the limited political interest in addressing crimes committed during the armed conflict, the CPN-Maoist's denial concerning the recruitment of children and their coerced nature, and widespread conceptions that fail to see child soldiers as victims but rather as perpetrators, the situation of children previously involved in the armed conflict has not been effectively discussed. Issues related to their rehabilitation and reparation, including justice, have not been appropriately addressed.
76. Due to problems with their verification process, and in response to their discharge from the cantonments in 2010 and their labelling as "disqualified" without reception of any relief package, former child PLA members decided to unite as a committee and started to raise their voice and ask for action.¹¹⁵ They formally registered as an organization named Peace Envisioners in 2018. Previously, they called themselves Discharged Peoples' Liberation Army Nepal struggle committee (D-PLAN).
77. Since 2010, D-PLAN has used various non-violent strategies to raise their voice to pressure the authorities, political parties and donors.¹¹⁶ Now, Peace Envisioners continues to work to independently advocate for different interests of former child soldier and youth.¹¹⁷
78. Furthermore, according to information gathered through interviews with children involved in the armed conflict, a number of cases have been reported in 2014 and 2015 whereby former PLA combatants were arrested on charges of public disorder, vandalism, arms possession and ammunition, and were imprisoned. This practice has been taken as a measure to discourage them from seeking justice. Notably, in October 2018, Mr. Lenin Bista, former child soldier and current human rights defender, was banned by the GoN from travelling to Thailand to attend an international conference. The incident triggered a communication to the GoN signed by five Special Rapporteurs on 12 November 2018.¹¹⁸

¹¹³ Ibid.

¹¹⁴ Ibid., para.13.

¹¹⁵ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 56.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Communication available here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24167>

79. D-PLAN wrote a memorandum with their key demands to the authorities:¹¹⁹

- a. The government has to abandon the term “disqualified” without delay and honour the discharged ex-PLA as republican fighters for their role in the struggle for change;
 - b. The authorities have to treat the 4,008 discharged PLA as other PLA members and address their demands in a sustainable way;
 - c. The government and concerned parties have to take responsibility for the abuse of rights of the child around child recruitment;
 - d. To ensure child rights, justice must be based on domestic and international principles, and the State and rebel parties must be held accountable;
 - e. Since ex-child soldiers have been deprived of the fundamental human right to education, the GoN must address youth former combatants’ practical concerns based on a social and economic package based on the principles of social justice;
 - f. The Government to release unconditionally all discharged PLA who have been detained;
 - g. The Government has to provide medical treatment, psychosocial counselling and special support schemes to the injured, mentally ill and traumatised, and disabled members of the discharged PLA.¹²⁰
80. To date, the Peace Envisioners is still fighting for these demands. They need to be heard and reintegrated into society with the guarantee of decent employment and opportunities to acquire life skills.
81. Former children involved in the armed conflict complained that the lack of adequate and effective investigation, prosecution and sanction of perpetrators of the violations mentioned in this report continues. Nepalese authorities are not taking any efficient measures in order to provide reparations for children recruited and involved in the conflict.¹²¹
82. Effective and sustainable reintegration of former children combatants into civilian life requires commitment from the national government and the international community.¹²² It specially requires the will of the government of Nepal to implement international norms that protect children in armed conflict and to use its national legal framework to criminalize the recruitment of children in armed forces and armed groups.

¹¹⁹ The Discharged People’s Liberation Army did not established any public document for their demands; however, they are available on their blog: <http://pravashacharya.com/demo/dplan/index.php>. Accessed 1 April 2018.

¹²⁰ The University of York Center for Applied Human Rights, *Poverty, Stigma and Alienation: Reintegration Challenges of Ex-Maoist Combatants in Nepal*, May 2016, 57.

¹²¹ Trial International’s submission to the Committee on the Rights of the Child on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by Nepal, (CCPR/C/OPAC/NPL/1), May 2016, 22.

¹²² UNICEF programme for the reintegration of children associated with armed forces and armed groups in Nepal, Evaluation Report, May 2008, 24.

INVOLVEMENT OF THE UNITED NATIONS

83. The Special Representative of the Secretary-General on Children in Armed Conflict, in her previous reports on children in armed conflict of 2006, 2008 and 2010, to the GoN and the CPN-Maoist in relation to Nepal:¹²³

- a. urged the CPN-Maoist to immediately end the recruitment of children, to meet its obligation under international humanitarian law and provide free access to humanitarian actors;
- b. called upon the CPN-Maoist and the GoN to cooperate closely to ensure the full implementation of the action plan with the United Nations, in order to implement its commitment for the release of children in CPN-Maoist army cantonments;
- c. urged the GoN to take the necessary measures to ensure the effective reintegration of children associated with armed forces, and the CPN-Maoist to guarantee that CPN-Maoist army personnel disqualified as minors have unhindered access to the rehabilitation packages offered by the government and supported by the UN;
- d. called upon the GoN to ensure that the draft Bills on the Truth and Reconciliation Commission and the Disappearances Commission are fully consistent with international standards and establish special provisions for children. The meaningful and safe participation of children in the transitional justice process should also be guaranteed; and
- e. urged the GoN to end impunity for abuses and violations against children by criminalizing the recruitment of children in armed conflict and strengthening its legal institutions to guarantee the protection of children's rights.

84. The Committee on the Rights of the Child, in its 2016 Concluding Observations on Nepal concerning the OPAC, recommended the *GoN, inter alia*, to:

- a. "explicitly prohibiting and criminalizing the recruitment and use of children under the age of 18 by armed forces, non-State armed groups and private security companies and defence contractors, and their use in hostilities, without exception" (para. 20);
- b. "ensure prompt and impartial investigations into reports of recruitment and use of children by armed forces and groups, as well as prosecution of alleged perpetrators and adequate punishment of those convicted" (para 22.b);
- c. "intensify its efforts to investigate, prosecute and bring to justice the perpetrators of offences covered under the Optional Protocol during its past internal armed conflict" (para. 22.c);
- d. "ensure that all children recruited into armed forces or groups or used in hostilities are provided with physical and psychological recovery and have access to rehabilitation and reintegration programmes. (para. 28).

¹²³ Reports of the Secretary-General on Children in Armed Conflict in Nepal, S/2006/1007, S/2008/259, S/2010/183.

CONCLUSION AND RECOMMENDATIONS

85. In light of the above, Peace Envisioners and TRIAL International respectfully submit to the Special Representative of the Secretary-General on Children in Armed Conflict, to the Committee on the Rights of the Child and to concerned Special Procedures, that:
- a. Even if the civil war ended ten years ago, former child soldiers are still suffering from different violations that occurred during this period;
 - b. Nepal is not in line with its international legal obligations as a party to the Convention on the Rights of the Child and the OPAC. Those legal obligations comprise the need for State parties to:
 - i. guarantee that children in armed forces do not take part in hostilities;¹²⁴
 - ii. protect children from recruitment in armed forces and armed groups;¹²⁵
 - iii. and guarantee the prevention of such recruitment and criminalize the involvement of children in armed conflict;¹²⁶
 - c. Measures that were taken to provide rehabilitation to former child soldiers have not been effective, and issues of reintegration still remain today; and
 - d. Former child soldiers have not been given sufficient space during the transitional justice process.
86. Therefore, the Human Rights and Justice Centre Nepal, Children Vision Nepal and TRIAL International respectfully request the Special Representative of the Secretary-General on Children in Armed Conflict to:
- a. Ensure that the situation of former child soldiers in Nepal remains a priority in the SRSG's agenda, given that the situation is not improving;
 - b. Urge the GoN to ensure the inclusion of the rehabilitation, compensation and reparation of former child soldiers in the transitional justice process;
 - c. Urge the Nepalese government to take necessary measures to guarantee the effective rehabilitation and protection of the rights of child involved in the armed conflict;
 - d. Urge Nepal to amend its legislation to get in line with its international legal obligations as party to the CRC and the OPAC; and
 - e. Express its concerns to the government of Nepal regarding the different points developed in this report and in order to improve the visibility and consideration of the situation of child soldiers at the international level.

¹²⁴ Article 1 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2002.

¹²⁵ Ibid., Articles 2 and 4.

¹²⁶ Ibid., Article 4(2).

ABOUT THE ORGANIZATION SUBMITTING THIS REPORT

Peace Envisioners

Peace Envisioners is a non-profit distributing company working for keeping peace inside the nation. We are doing awareness program from every level. We are working for the cybersecurity, youth development and to aware people against negativity.

TRIAL International

TRIAL International is a Geneva-based non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.