



UPDATED 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)

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Submitted by

TRIAL (Track Impunity Always)

About TRIAL

Founded in 2002, [TRIAL \(Track Impunity Always\)](#), is a Geneva based international organization with offices in Bosnia & Herzegovina, the Democratic Republic of Congo, and Nepal, which **puts law at the service of victims of international crimes** (genocide, crimes against humanity, war crimes, torture and enforced disappearances).

TRIAL fights against the impunity of perpetrators, instigators and accomplices of the most serious international crimes; **defends victims' interests** before domestic courts and international human rights mechanisms; and **raises awareness** among the authorities and the general public about the necessity for an efficient national and international justice system to prosecute the most serious crimes.

In the past 12 years, TRIAL has defended close to 370 victims through 150 international procedures concerning Algeria, Bosnia and Herzegovina, Burundi, Libya, Nepal, the Democratic Republic of Congo, Russia and Tunisia. The organization has submitted 50 reports to the UN and filed, or supported, over 130 domestic proceedings in Algeria, Bosnia and Herzegovina, Burundi, France, Nepal, Switzerland, Tunisia and the United Kingdom – a significant number of which have resulted in investigations, convictions or are currently still pending.

Background

1. On 3 January 2007, Nepal ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (hereinafter, “OPAC”).
2. On 15 October 2012, Nepal presented to the Committee on the Rights of the Child (hereinafter, “the Committee”) its Initial Report (CRC/C/OPAC/NPL/1) pursuant to Article 8, para. 1, of the OPAC.
3. On 26 June 2014, TRIAL submitted an alternative report (hereinafter, “the June 2014 report”) to the Committee containing information regarding the implementation of the OPAC by Nepal.¹ In particular, the report focused on the obligations contained in Articles 1, 2, 4 and 6 of the OPAC regarding the prohibition and prosecution of crimes related to the involvement of children in armed conflicts. Initially scheduled for the 69th session for the Convention on the Rights of the Child (hereinafter “the CRC”) between May and June 2015, the review of Nepal was postponed to 2016 following the earthquake that hit the country in April 2015.² As a result, in May 2015 TRIAL submitted an update to the June 2014 report (hereinafter, “the May 2015 update”).³
4. On 26 September 2014, the Committee issued its “List of issues in relation to the report submitted by Nepal under article 8, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict” (CRC/C/OPAC/NPL/Q/1, hereinafter, “List of Issues”), whereby Nepal was requested to submit its written responses by 15 March 2015. The written responses to the List of Issues were submitted by the State in August 2015.
5. TRIAL wishes to provide additional information to the Committee on recent developments related to the questions addressed in the June 2014 report, as well as in the List of Issues. The present submission outlines updated information specifically with regard to the implementation of the OPAC by Nepal.
6. The present document provides complementary information and only refers to specific issues that were brought to TRIAL’s attention after the submission of the June 2014 report.

I. The Marginalisation of Child Soldiers in the Nepalese Transitional Justice Process

7. As highlighted in the June 2014 report, as well as in the May 2015 update, **the Nepalese Criminal Code (1992 State Cases Act) does not criminalize the recruitment and participation of children in hostilities as separate offences.** Furthermore, within the context of a flawed domestic legislative framework that fails to criminalize torture, enforced disappearance, and other crimes under international law, the recruitment and participation of children below the age of 18 has yet to be defined as a war crime.⁴ While in its written responses to the List of Issues (hereinafter, “written responses”), the State argues that it is in the process of becoming a party to the Rome Statute, it has indeed *noted* the recommendations to do so during the Universal Periodic Review in March 2016.

¹ TRIAL, Report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, June 2014. Available at: http://tbinternet.ohchr.org/Treaties/CRC-OPAC/Shared%20Documents/NPL/INT_CRC-OP-AC_NGO_NPL_17969_E.pdf.

² Nepal will be reviewed during the 72nd session for the Convention on the Rights of the Child, between 17 May and 3 June 2016.

³ TRIAL, 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, May 2015.

⁴ Pursuant to the Nepalese legislative framework, and more particularly Section 2(a) of the Children’s Act, 2048 (1992), a child is anyone under 16 years of age. Similarly, and at odds with international standards, the Children’s Act, Section 11(1) and (2) provides that the minimal age for criminal responsibility is 10 years old.

8. In its written responses, the State refers to the new Bill on Children Act, which criminalizes the recruitment and use of children in armed groups and conflict.⁵ **However, the Bill, drafted in 2012, is still pending and does not authorize retroactive application.** As a result, it does not concern minor combatants involved in the Nepalese civil war, and does not cover any of the crimes committed during the conflict. Similarly, the existing legislative framework that prevents the recruitment of any person under the age of 18, and to which the State refers in para. 24 of its written responses, does not amount to the criminalization of the act.⁶
9. Despite the lack of criminalization for the abovementioned crimes, transitional justice mechanisms have been established to investigate gross human rights violations that occurred during the internal armed conflict, provide reparation to the victims, and promote reconciliation. While they do not constitute criminal jurisdictions, the Truth and Reconciliation Commission (hereinafter, “TRC”), as well as the Commission of Investigation on Enforced Disappeared Persons (hereinafter, “CIEDP”) have the capacity to express recommendation for legal action against individuals identified as perpetrators of gross human rights violations. Although these mechanisms have symbolic significance for many conflict victims, they do not replace the ordinary criminal justice system.⁷
10. More particularly, **former child soldiers are not explicitly referred to in the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071** (hereinafter, “TRC Act), which entered into force on 11 May 2014.⁸ While the legal framework established under Article 2, para. j, subsection 9, encompasses “[a]ny kind of inhuman acts inconsistent with the international human rights of humanitarian law or other crimes against humanity, ”**it is crucial to ensure that former child soldiers are indeed guaranteed the possibility to submit complaints before the TRC.** In this regard, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence has expressed concerns in relation to reparation programmes that “[...]have ignored types of violations that perhaps could and should have been included. These exclusions have disproportionately affected women and marginalized groups.”⁹ Additionally, “[...]there are exclusions that not only contravene specific legal obligations but also general principles including equal treatment, which would weaken the legitimacy of the effort overall.”¹⁰
11. Similarly, if former child soldiers are granted the possibility to receive compensation as stated under Article 23, para. 2, of the TRC Act, they must be consulted with regard to the definition of the reparation packages, in order to ensure that the latter adequately correspond to the identified needs. It is in fact fundamental to recognize the recruitment and use of minors in armed forces that occurred during the conflict, and acknowledge the various impacts of the war on these children. In this regard, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence underlines that participatory processes allow for “[...]a positive contribution to the programmes’ completeness, to their ability to turn every victim into a beneficiary[...].”¹¹ Moreover, “[v]ictim participation can help increase the ‘fit’ between the benefits on offer and the expectations of victims.”¹²

⁵ Reply to the List of Issues to the Initial Report of Nepal on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, CRC/C/NPL/Q/3-5/Add.1, July 2015.

⁶ *Ibid.*, para. 24.

⁷ For a more detailed analysis of the shortcomings of the Nepalese transitional justice process, please refer to the May 2015 update.

⁸ Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 11 May 2014, available at: <http://trc.gov.np/base/file/actsrulesguidelines.pdf>

⁹ Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, doc. A/69/518, October 2014, para. 27.

¹⁰ *Ibid.*, para.28.

¹¹ *Ibid.*, para.74.

¹² *Ibid.*, para.77.

12. The experiences of former **child soldiers were neither adequately nor substantially incorporated in the designing of the transitional justice process in Nepal**. First, priority was given to the reintegration of minor combatants into their respective communities: because the Maoist party maintained that all recruitments were voluntary, former child soldiers were not originally perceived as victims. Second, while transitional justice and child-rights advocates worked together in order to ensure consultations with children on the draft TRC bill in November 2009, the interim report of the TRC makes no reference to minor combatants.¹³ Simple formalities, the consultations led by the civil society did not result in a substantial inclusion of the concerns of former child soldiers in the TRC bill. Excluded from official consultation with victims' representatives, they are yet to be perceived as an official category of conflict victims.
13. In recognition of the violations and abuses suffered by children during the armed conflict – in particular by minor combatants – 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**. Given the flawed legislative framework within which the recruitment and use of minors in armed conflict are not criminalized, it is first and foremost important to guarantee that the TRC and CIEDP indeed recommend prosecution for these crimes, regardless of their definition as criminal offences under domestic legislation. Moreover, concrete legal steps with regard to the criminalization of child recruitment and use in armed conflicts should be taken so as to ensure that recommendations to prosecute can indeed be implemented by the Attorney General Office.
14. Similarly, it should be ensured that **complaints submitted by former minor combatants are taken into consideration and dealt with by the TRC**. Indeed, the Commission has stressed that it is "[...] not going to look into all cases [...]" but "[...] only some major violations of human rights that occurred during the conflict [...]"¹⁴ More specifically, while it has recently accepted complaints submitted by child soldiers' representatives, the TRC indicated that the recruitment and the use of child soldiers do not fall under its mandate.
15. Finally, victims of human rights violations – including former child soldiers – and their families, as well as witnesses who report to the TRC, **shall be granted effective protection measures**. In spite of Article 17, para. 1, of the TRC Act, perpetrators have been reported in the physical vicinity of victims seeking to submit a complaint on numerous instances.¹⁵ It is crucial to guarantee that victims, their families, and witnesses are neither intimidated nor deterred from reporting to the TRC.

II. Rehabilitation, Compensation, and Satisfaction Measures, and Guarantees of Non-Repetition for Former Child Soldiers

16. The Government of Nepal, the UCPN-M, and the United Nations Mission in Nepal (hereinafter, "UNMIN") have repeatedly referred to combatants recruited as minors and those who joined the Maoist ranks after the ceasefire agreement, **through the use of the term 'disqualified'. This definition has been perceived as denigrating and causing re-victimisation among the community of former child soldiers, as it possesses strong negative connotations**. In the

¹³ The International Center for Transitional Justice, *Children Through a New Lens: A Child-sensitive Approach to Transitional Justice*, August 2011, pp.13-14

¹⁴ Without support of the victims the TRC will not succeed, *The Kathmandu Post*, (2016, April 4), retrieved from: <http://kathmandupost.ekantipur.com/news/2016-04-04/without-support-of-the-victims-the-trc-will-not-succeed.html>

¹⁵ Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 11 May 2014, available at: <http://trc.gov.np/base/file/actsrulesguidelines.pdf>

wake of the peace agreement, combatants who had been recruited as minors did not understand the reasons behind their identification as ‘disqualified’ personnel, and felt rejected by a community to which they often felt they belonged.

17. Despite the setting of a National Plan of Action for the Rehabilitation and Reintegration of Children Affected by Armed Conflict in 2010, and the monitoring mechanism established through the Nepal Task Force for Children and Armed Conflict in 2005, former child soldiers have not been granted an adequate, effective, and inclusive right to reparation.¹⁶
18. 2,973 minors¹⁷ were initially included within the framework of a specific discharge and rehabilitation process, signed in 2009 between the Government of Nepal, the Unified Communist Party of Nepal (hereinafter, “UCPN-M”) and the United Nations. Together with recruits who had joined the Maoist army after the ceasefire agreement of 25 May 2006, former child soldiers were offered a choice between four rehabilitation measures: education grant, vocational training, business training, or health-care training.¹⁸
19. While discharged minor recruits have indeed access to vocational training, the latter adequately addresses neither aptitudes nor needs. Effective rehabilitation of former child soldiers can only be achieved through a multidimensional approach that takes into consideration the complex impact of conflict on this specific group of victims. Nepalese former minor combatants struggle to adjust to reintegration processes that do not address their experiences during the conflict. As a result, many former child soldiers would benefit from vocational trainings that better acknowledge and integrate the skills developed in the Maoist ranks.
20. In addition, numerous former minor combatants are in need of medical and psychological rehabilitation. Many have been left with untreated physical injuries and severe psychological trauma – which caused several suicides. If child soldiers are indeed guaranteed representation under the TRC Act, it is essential to ensure that they can benefit from a recommendation for medical treatment, as expressed in Article 23, para. 2.¹⁹
21. Furthermore, **Nepalese former child soldiers have not received any financial compensation as reparation for their recruitment and use in hostilities.** Recruited as minors, these individuals are victims of crimes under international law and shall therefore be provided with adequate redress – including fair, and prompt compensation.²⁰
22. Similarly, while proceeding to the demobilization of former child soldiers, **Nepalese authorities did not take any measure to promote accountability for those responsible for the crimes of child recruitment and use in hostilities.** The lack of adequate and effective investigation, prosecution, and sanction of perpetrators of these crimes continues to date, and constitutes a violation of Articles 6, para. 1, and 4, para. 2, of the OPAC.²¹
23. As expressed above, and detailed in the June 2014 report, the OPAC entrenches the responsibility of State parties to investigate, prosecute, and sanction those responsible for the use of child

¹⁶ See *supra*, note 1, for a more complete analysis.

¹⁷ Although no exact data is available, it is estimated that approximately 3,500 to 4,500 Nepalese children were recruited in the Maoist ranks. See e.g. Human Rights Watch, *Children in the Ranks, the Maoists’ Use of Child Soldiers in Nepal*, February 2007.

¹⁸ UN Security Council, Report of the Secretary-General on Children and Armed Conflict in Nepal, UN Doc. S/2010/183, April 2010, para. 13.

¹⁹ Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 11 May 2014, available at: <http://trc.gov.np/base/file/actsrulesguidelines.pdf>

²⁰ See e.g. Article 8, para. 2(b)(xxvi), and (e)(vii), of the 1998 Rome Statute; Article 77, para. 2, of the 1977 Additional Protocol I.

²¹ See *supra*, note 1, for a more complete analysis.

recruitment and use in hostilities. **Nepal is therefore under an obligation to guarantee accountability of the perpetrators of: a) compulsory recruitment of children under 18 years of age in State security forces; b) direct involvement of children in hostilities; c) recruitment and use of children in hostilities by armed groups.**

24. To date, the regulation of the transitional justice Commissions does not encompass measures of satisfaction for victims of human rights violations committed during the armed conflict. It is however essential to include satisfaction measures within the transitional justice reparation framework. In this context, **former child soldiers shall be granted satisfaction through an official apology by concerned authorities** regarding their recruitment and use in hostilities and the subsequent reference to the inappropriate term 'disqualified'.²²
25. Similarly, the TRC Act does not address guarantees of non-repetition within the framework of integral redress for victims of crimes committed during the conflict. With regard to the recruitment and use of minors in combat, **Nepalese former child shall be provided with comprehensive guarantees of non-repetition**, including ensuring effective civilian control of military forces, and training security forces on international human rights law and international humanitarian law.

III. Recommendations

26. TRIAL respectfully requests the Committee to recommend to the Government of Nepal to:
- Criminalise the compulsory recruitment of persons under the age of 18 years in the State's armed forces and their involvement in hostilities.
 - Criminalise the recruitment and use in hostilities of persons under the age of 18 years by non-State armed groups.
 - Following the preliminary adoption of a legislation that will allow for the prosecution and sanction of those responsible of child recruitment, conduct a thorough, impartial, independent and effective investigation on the recruitment and use in hostilities of persons under the age of 18 years during the Nepalese armed conflict, and ensure that those responsible for these crimes are prosecuted and sanctioned.
 - Ensure that domestic legislation is amended to make all conducts prohibited by the OPAC subject to universal jurisdiction.
 - Ensure that former child soldiers are expressly recognised as a category of conflict victims by the TRC and CIEDP and that their right to submit complaints to these transitional justice mechanisms is duly ensured. To enable former child soldiers to exercise this right, Nepal must develop means of informing them and provide them with adequate assistance.
 - Avoid the use of the denigrating term "disqualified" to refer to former child soldiers and issue an official apology in this regard.
 - Ensure the full participation of former child soldiers in every stage of the reparation process to be established by the TRC and CIEDP, including design, implementation, evaluation and decision-making.

²² The term «authorities » here refers to the Maoists who, while a rebel group during the civil war, are today part of the ruling authorities.

- Ensure that former child soldiers obtain integral redress for the harm suffered, including:
 - a) fair, adequate and prompt compensation;
 - b) measures of rehabilitation, including medical and psychological care as well as vocational trainings that duly take into account their aptitudes and needs;
 - c) measures of satisfaction, including a public acknowledgement of the facts and acceptance of responsibility;
 - d) guarantees of non-repetition, including ensuring effective civilian control of military forces, and providing regular human rights and humanitarian law training to security forces.