The Monitoring and Reporting Mechanism on Grave Violations against Children in Armed Conflict in Nepal 2005 – 2012

A Civil Society Perspective

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Partnerships for Protecting
Children in Armed Conflict

About Partnerships to Protect Children in Armed Conflict (PPCC)

PPCC is a network of NGOs established in August 2005 that builds on partnerships within Nepalese civil society to protect children by monitoring, reporting and responding to child rights violations and advocating for the adoption and effective implementation of adequate policies and programs. PPCC was a member of the 1612 Country-level Task Force on Monitoring and Reporting from 2006 and has conducted extensive advocacy on children and armed conflict in Nepal and internationally, in partnership with the Watchlist on Children and Armed Conflict.

Acknowledgments

Acronyms

CPA	Comprehensive Peace Accord
CPN	Communist Party of Nepal
CTFMR	Country Task Force on Monitoring and Reporting
CWIN	Child Workers in Nepal
Himrights	Himalayan Human Rights Monitors
INSEC	Informal Sector Service Center
MRM	Monitoring and Reporting Mechanism
NGO	Non-Governmental Organization
OCHA	Office of Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PLA	People's Liberation Army
PPCC	Partnerships to Protect Children in Conflict
TRC	Truth and Reconciliation Commission
UCPN-M	Unified Communist Party of Nepal - Maoists
UNICEF	United Nations Children's Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNMIN	United Nations Mission in Nepal

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Introduction

Between 1996 and 2006, Nepal was plagued by a civil war between the Nepal army and insurgents of the Unified Communist Party of Nepal–Maoists (UCPN-M), a radical splinter group of the Communist Party of Nepal (CPN). The stated intention of this "People's War" – as the Maoists called it - was to overthrow the constitutional monarchy and establish a republic through a constituent assembly. Hostilities scaled up in 2001 with a series of massive attacks by the Maoists against police and army outposts, the declaration of a state of emergency by the government and the full engagement of the Nepal army against the Maoists. In the following years, the Maoists controlled large areas of the countryside, establishing parallel administration structures, such as people's courts, and conducting attacks against government targets and infrastructure.

The Maoists and the government signed a Comprehensive Peace Accord (CPA) on 21 November 2006, which formally ended the war. Provisions of the CPA included commitments on the respect for human rights, cessation of hostilities and all movement of weapons and temporary cantonment of Maoist fighters in preparation for their integration in the Nepal Army. It also prescribed the dismantlement of parallel administration structures set up by the Maoists in areas under their control and allowed the UCPN-M to join the government. Nepal requested the United Nations for assistance with the monitoring of the implementation of the CPA. The United Nations Mission in Nepal (UNMIN) was established on 23 January 2007 by Security Council Resolution 1740, to monitor ceasefire arrangements, the management of arms and armed personnel and to provide technical support in the preparation of elections for a Constituent Assembly.

The impact of the armed conflict on Nepal's children was tremendous. Indiscriminate and disproportionate use of force by both parties led to killing and maiming of children. Schools were used as battlegrounds by both parties and children were killed or injured in cross-fire and by unexploded ordinances left behind by fighters. Children were also used by the Maoists as messengers, spies, sentries, porters, and also as combatants. Children were abducted from school grounds and forcibly recruited into the ranks of the People's Liberation Army (PLA) – the armed wing of the UCPN-M - or lured into supporting the armed group through community activities and cultural groups instituted by the Maoists to gather popular support for the "cause" in their areas of control. Children were in turn accused by State security forces of collaborating with the Maoists, detained and subjected them to ill treatment and even torture during interrogations. After the signature of the CPA, levels of violence naturally scaled down, but reports of recruitment of children by the Maoists continued to surface for a period of time.

Considerable international attention was paid to the particular situation of children affected by the armed conflict in Nepal. The UCPN-M was one of the first parties to conflict listed in the Secretary-General's report on Children and Armed Conflict for recruiting and using children in their ranks. The group was consistently listed from 2003 to 2011. With the adoption of Security Council Resolution 1612 in 2005 and the creation of the Monitoring and Reporting Mechanism (MRM), a Country Task Force on Monitoring and Reporting (CTFMR) was also established in Nepal in November 2005 to systematically document and report on grave violations against children. The CTFMR was co-chaired by UNICEF and OHCHR. In addition to the co-chairs, the Nepal CTFMR was composed of representatives of UNMIN, UNHCR, and of seven international and national NGOs, namely Save the Children and six national

NGOs: Advocacy Forum, CWIN, HimRights, INSEC, Jagaran Media Center and Partnerships for Protecting Children in Armed Conflict (PPCC).

On 16 December 2009, the UCPN-M signed an action plan with the UN for the release and the rehabilitation of almost 3,000 verified minors in the Maoist army cantonments created in the framework of the CPA. The discharge of the verified minors was completed in March 2010 and was followed by a period of follow-up monitoring.

The UCPN-M was delisted from the annex of the Secretary-General's annual report on Children and Armed Conflict in 2012 and the MRM has now phased out of Nepal. Nepal is thus one of the first cases in the children and armed conflict agenda so far, where a full MRM "cycle" was implemented (listing, establishment of a CTFMR, action plan, delisting). It is also a case where local NGOs were formally and very actively involved in this UN-led mechanism.

In this framework, the purpose of this study is to offer an overview of the MRM "experience" in Nepal from 2005 to 2012 from the perspective of local civil society organizations who participated in it. It recalls the modalities and rationale of NGO involvement in MRM in Nepal, highlights best practices, challenges and gaps encountered and makes recommendations for future MRM activities in other contexts.

Methodology

This study is based on secondary and primary data collection from face-to-face individual and telephone interviews and a review of documents, literature and archives related to the MRM in Nepal. As the study focused on the civil society perspective, the interviews were conducted with representatives of NGOs and communities involved in the MRM. Altogether 41 interviews were conducted with civil society and community stakeholders/representatives at district and central level (9 central level NGO representatives, 25 district level NGO representatives, 6 victims of the conflict and 1 service provider). Open ended interview guidelines were developed for primary data collection. There were four individual interview guidelines for central level, district level, service providers and victims respectively. In order to have representational information, the study districts were selected on the basis of five development regions and geo-ecological zones of Nepal, taking into account the areas that were affected by the conflict.

The interviews were carried out between 18 June and 6 August 2012.

1. The involvement of national NGOs in the MRM

1.1. Involvement of NGOs in establishing MRM structures in Nepal

Before the establishment of the CTFMR in Nepal, a handful of NGOs were already working on child rights and/or monitoring human rights violations in their respective project districts. Those NGOs were also in close contact with UNICEF in the course of other cross-cutting programs and regular coordination meetings were held to discuss child protection issues. These meetings were in a way a pre-setup/preparation to the CTFMR.

When the CTFMR was established at the end of 2005, some of the NGOs involved in these meetings were given membership of the taskforce. The Terms of Reference was prepared with inputs from all taskforce members. The main responsibility of national NGOs in that framework was to monitor child rights violations at community level and to report cases to UNICEF and OHCHR. At that time, the conflict was active, but NGOs had good access to affected areas and communities and were given the responsibility for data collection for that reason.

1.2. Training of NGOs on the MRM

Trainings on various levels were provided to the organizations and their staff working on the MRM. This started slowly with regional level trainings provided by the taskforce and was then followed up by the NGOs themselves, as part of projects funded by UNICEF. This also allowed for in-house capacity building for staff assigned to the MRM within the NGOs themselves, as NGOs involved in the MRM organized the trainings for their respective organization's staff working on the MRM once or twice a year. Representatives from the UN and other international agencies contributed in the trainings as resource persons.

These trainings focused on the following issues: child rights, child protection, Security Council Resolution 1612, the MRM and the core violations, guidelines and TOR of the CTFMR, monitoring, reporting and documentation guidelines, child-sensitive interview techniques, security of monitoring staff, data management and referral mechanisms for immediate response to victims. The scope of violations to be monitored was clear for most of the monitors at the field level, and the trainings helped clarify it for the remaining monitors.

1.3. The role of national NGOs in monitoring and reporting on grave violations in the framework of the MRM in Nepal

The geographical area that was covered by the MRM was wide, as it included all the five development regions of the country and 49 of the 75 districts of Nepal. In addition to this, the documentation requirements for the MRM were very detailed and

extensive. For these reasons, monitoring required additional financial and human resources.

Initially, only those NGOs that were able to find their own funding were able to conduct monitoring of grave violations. NGOs that could not find funding did not implement the MRM, but they were involved in the assistance to victims, as part of their prior and usual activities. Eventually, the UN granted funding to NGOs which allowed for a better implementation of the MRM. The NGOs conducted monitoring in districts where they had been implementing other projects and had established an office or at least an official work capacity. Additionally, the MRM also focused on districts covered by UNICEF's Decentralized Action for Children and Women program to capitalize on existing local experience and knowledge.

NGOs had district monitors and central level focal persons assigned to work on the MRM. District level monitors were usually recruited locally. At the district level, after information on a grave violation was received, field visits were conducted to get further detailed information based on the MRM reporting guidelines and format. Information was usually received from human rights defenders, governmental and non-governmental local organizations/bodies and networks, victims and victims' families, witnesses, media, community members and leaders, health workers, political leaders, school teachers, students, youth clubs members and the police. Information on violations also surfaced during or after community-level awareness programs. The information was then compiled in the prescribed MRM format and sent to the NGOs' central office on a monthly basis. If a case required immediate response, coordination was done with the NGOs' central level focal point following an agreed referral pathway and services were provided to the victim as soon as possible.

Without the NGOs the information that came [to the MRM] would not have come.

(Central-level civil society representative)

NGOs reported the cases to the UN in a prescribed excel format on a monthly basis. The excel format consisted of 5 different sheets to report on abduction, killing and maiming, sexual violence, attacks against schools and use and recruitment of children. All cases were verified by the field monitors and district coordinators, according to the guidelines established by the CTFMR. This process involved collecting primary information from the victim, if possible the perpetrator, witnesses, and corroborating it with secondary information from the victim's family, local people, school teachers, students, child/youth clubs hospitals, village development committees, district administration and police, where relevant. In addition, official documents were also reviewed, in particular for the purposes of age verification.

The UN then screened the data to select cases for the purposes of official reporting under the MRM framework. However, this process did not involve NGOs (including NGOs members of the CTFMR).

Field level respondents felt that monitoring grave violations in the framework of the MRM was riskier than their usual human rights monitoring. The level of detail required by the MRM was high, in particular the verification requirements. Moreover, because of the active conflict, monitoring had to be done particularly discreetly in the first phases of the MRM. This created potential safety risk for monitors and victims themselves. These risks were addressed in a variety of ways. The CTFMR had guidelines and a code of conduct for better safety of monitors and victims. Monitors were also trained on personal and data security on regular basis. Group monitoring and collaboration with local networks was done in particularly risky cases. To minimize safety risks for monitors, contacts were maintained with influential individuals within affected communities, who often facilitated the access/dialogue with the victims and their families. In the cases where monitoring was risky to the point of being a threat to life or injury, monitors were taken out of the case. Monitors

always kept their respective district, regional and central offices informed of threats received.

2.   Civil society perspectives on the 1612 MRM in Nepal - successes and challenges

2.1. The MRM built on and strengthened existing capacities and expertise of NGOs

NGOs received and organized extensive orientation and training, namely for their staff involved in the implementation of the MRM at field level. It was widely accepted that the tools used in the MRM were more detailed and technical than those used in general human rights monitoring by local NGOs. Local organizations learned to do rights monitoring in a more comprehensive and with more thorough methods thanks to their experience with the MRM.

While monitoring in the framework of the MRM was more risky, it further strengthened NGOs' capacities in terms of safety and security as they developed their existing expertise and processes to address the additional risks potential raised by MRM work.   Additionally, NGOs were also capacitated on how ethical and confidentiality issues should be maintained in the relationship with victims and concerned stakeholders by adopting a neutral position as human rights monitors.

By giving NGOs a central role in documenting grave violations in conflict-affected areas in Nepal, the MRM capitalized on existing capacities and on existing confidence and trust with affected communities. NGO respondents believe that victims were indeed more comfortable sharing information with local NGOs than with the UN as an external agency [1].

The capacity of NGOs in terms of monitoring and documentation became better because of the UN.

(Central-level civil society representative)

2.2. The MRM left an invaluable record of the impact of the conflict on Nepal's children

The conflict in Nepal has had an adverse impact on all strata of society. Conflict has victimized everyone, but children and women were particularly severely affected. As Nepal steps up on its transition to a post-conflict stage, it is important that the wrongdoings of the past are corrected and the needs of the victims addressed, so that the country can move forward towards peace and sustainable democracy in a reconciliatory manner. It is in this spirit that the CPA and the Interim Constitution of Nepal provide for a Truth and Reconciliation Commission (TRC) to be formed to address the gross human rights violations and crimes against humanity that took place during the conflict. The TRC has yet to be established and the government's first draft of the Truth and Reconciliation Bill (2007), failed to live up to victims' aspirations towards achieving justice. Among the flaws pointed out by human rights activists in this bill, was the concern that the text was not sensitive to the particular needs and expectations of children victims of the conflict. Appropriate measures should be adopted to protect the dignity and privacy of child victims and witnesses, as well as their physical safety and emotional, psychological and spiritual well-being.

Against this background, the legacy of the MRM, in particular the strengthened child rights expertise it has left behind provides a good basis for human rights activists in Nepal to advocate for adequate child-sensitive measures to be integrated in future transitional justice mechanisms. Most importantly, the MRM left a sizeable evidence-based database of violations that concern children exclusively. This will allow for children to be better profiled in the reconstitution of the memory of the conflict and in the measures to bring reparations to victims.

2.3. The challenge of setting up an adequate and efficient assistance to victims

The MRM does not have the mandate to assist victims. "Response" under the framework of the MRM is defined in terms of high-level advocacy and diplomacy and adoption of action plans. However in practice, more is expected and needed from this mechanism. All respondents strongly pointed out the importance of linking monitoring and assistance to victims, in particular medical assistance, psychosocial support and legal aid. Lack of assistance is a strong disincentive for victims to report the violence they suffered, in particular if they take risks to do it, which creates a challenge for the effectiveness and credibility of the monitoring work as such. Moreover, it is a moral obligation that monitors who have direct contact with victims naturally feel especially strongly about.

The issue of assistance was vigorously raised by NGO members of the CTFMR as something that would make the MRM stronger and more efficient. A referral mechanism was eventually adopted in the CTFMR to react to the needs of victims. It was initiated with the concept that the organizations which were involved in monitoring the six grave violations cases were not fully equipped to provide necessary immediate support to the victims at all levels. So the referral mechanism sought to link those organizations and local service providers for assistance to victims. At the same time, funds for emergency assistance to children victims of conflict were included in MRM project budgets used by NGOs involved in monitoring work.

Respondents indicated that the referral mechanism was difficult to implement in practice, due to insufficient and outdated mapping and limited financial resources. Moreover, cumbersome payment procedures obliged field staff to make requests via their central office which delayed access to cash that was urgently needed, in particular in the case of medical emergencies.

The biggest challenge of providing assistance to victims was the high expectations from children victims of conflict and their families and communities, especially as the economic status of most victims was low. This is a problem that occurs in any situation where there is limited assistance for many needs. In contexts of poverty in particular, children have many needs that are not necessarily related only to the impact of the conflict on their lives.

This challenge does however not mean that linking monitoring and assistance to victims is impossible. A balance is necessary between urgent needs and chronic needs of children living in conflict areas and an assistance component can be effectively implemented and it can strengthen the MRM if necessary resources are made available and if victims' expectations are managed adequately.

J., aged 13 years old, was playing ball outside his house when he was hit by a stray bullet coming from military training nearby. The bullet hit his stomach and he was taken to the hospital to be operated, but nerve damage affected his leg and he needed further treatment. Some financial assistance was provided by civil society organizations and the State, but his family still had to pay over $2,000 for his treatment and is in debt to this day.

2.4. The challenge of empowering NGOs beyond the data collection role

NGO members of the CTFMR were heavily involved in the MRM by providing input at the onset stage, but also by doing the day-to-day monitoring of grave violations across the country. Two single aspects however frustrated their expectations: their exclusion from database analysis and their exclusion from the action plan discussions.

NGOs fed detailed case information to the UN on a monthly basis, but they were not involved in the screening of the case database and did not receive feedback on what was done with the cases they submitted. OHCHR monitored and verified general human rights violations, but the link between general human rights monitoring and the MRM was unclear to NGOs, as they were not aware of what other cases were being considered for the purposes of official reporting under the MRM, since they were not involved in screening the case database. As a result, NGO respondents felt that the UN was not itself very involved in monitoring work, except in very serious cases.

NGOs were excluded from action plan negotiations due to conditions imposed by the UCPN-M, who perceived the UN as a more neutral body. For this reason, there was no involvement of NGOs in the negotiation and set up of action plan [2]. While this exclusion was discussed with NGO members of the CTFMR, such dialogue did not continue and NGOs had in fact very limited information about the action plan during the entire negotiation process. The insufficient communication created a feeling of imbalance and even disempowerment on the side of NGO CTFMR members.

The rehabilitation of children was not smooth enough because civil society was not involved in the action plan.

(Central-level civil society representative)

2.5. The challenge of addressing impunity

In Nepal, while the action plan led to an end to use and recruitment of children by the Maoists, it did not end impunity. The action plan included a provision on internal disciplinary action but only in cases of recruitment of children after the signature of the action plan. There were no reported cases of new recruitment after action plan was signed, but even if such cases had occurred, disciplinary action would have been a weak measure and would have failed to afford justice to victims. Use and recruitment of children by armed forces or groups is not criminalized in Nepal until now and as a result not a single perpetrator has been prosecuted till date[3]. While all respondents considered the de-listing of the UCPN-M a positive development, the issue of impunity was raised by several respondents as a gap in the MRM, not only concerning recruitment and use of child soldiers, but also other grave violations, in particular sexual violence and killing and maiming. Such a gap negatively affects the credibility of the MRM.

2.6. The challenge of capturing the changing dynamics of the conflict and conflict-inherited violence

The MRM looks at armed conflict from a narrow perspective. In the Nepal context, as the conflict between the government and the Maoists scaled down, other types of violence emerged, in particular in the Central and Eastern Terai and Eastern Hills. As is often the case in conflict and post-conflict areas, there was a thin line between armed political activities and general criminal activities. Many young males were involved in these activities using widely available arms and threat of violence, which often affected children in these regions. UNICEF carried out fact finding missions in 2009 and in 2011 to assess the nature of the situation in the Terai and it was concluded that it fell outside the scope of the MRM. The situation in the area was monitored and used by the CTFMR, but for trend analysis only. Respondents felt, however, that such violence is conflict-inherited and that it should have been fully included in the MRM. Similar concerns exist regarding continuing incidents of sexual violence against children by civilians, another conflict-inherited problem due to the climate of impunity that has prevailed since the conflict and the vulnerability of displaced communities.

SCR 1612 tools only covered the parties to the conflict (then the Maoists) but there were 50-60 armed groups in the Terai which were active at that time and used children which did not fall under the MRM.

(District-level civil society representative)

Similarly, as the MRM phased out of Nepal, it is now unclear what steps would be taken by the UN and by NGOs if hostilities resumed and grave violations against children started again. The response to child rights violations is to be done by national institutions now. However, the communication structures and procedures set up during the MRM were not reproduced with national bodies, so there is no effective mechanism to report and act on child rights violations at national level. Moreover, the level of violations of child rights by different violent groups in the Terai warrants an increased monitoring and documentation, especially as the level of political instability at the national level could cause a resurgence of political violence in those areas. However, current monitoring and reporting mechanisms are failing to provide a clear picture of the impact of different groups in Terai on children. The characteristics of the different groups and the nature of their activities are constantly changing and this requires a great level of flexibility in the monitoring methodology. Without strong follow-up structures, there is a risk that the MRM legacy will fade.

3. Recommendations

To the UN Security Council and its Working Group on Children and Armed Conflict:

- Consistently highlight the importance of involving local civil society organizations in the MRM in resolutions, statements and country conclusions, in accordance with paragraphs 2(b) and 17 of Security Council Resolution 1612 (2005), as a means to foster local ownership, empowerment and sustainability of the MRM;

- In order to foster real accountability of perpetrators, systematically call on governments to ensure that national mechanisms are swiftly set in place to provide adequate justice and reparation for children victims of the conflict.

To the Office of the SRSG / UNICEF in New York

- Wherever possible, integrate in action plan templates concrete and time-bound requirements of criminal prosecution (rather than disciplinary punishment only) of those responsible for serious crimes against children committed after the signature of action plans and hold action plan signatories accountable to this standard before de-listing them;

- Strengthen the links between the MRM and immediate assistance to the needs of children victims of conflict by systematically encouraging CTFMRs to setup referral mechanisms for immediate assistance and by conducting, where relevant, vigorous advocacy with the relevant authorities on urgent cases;

- In situations of transition post-MRM, devise clear protocols for communication by local civil society organizations of information concerning grave violations in the event that hostilities resurge.

To UN Country Teams and CTFMR co-chairs in MRM countries:

- Engage local civil society organizations in the MRM, including in Task Forces, from the outset and capitalize on their knowledge of social and cultural dynamics of the country, in order to tailor MRM tools to the local context;

- Consider setting up a common fund for immediate assistance to children victims of the conflict, with clear criteria and swift allocation procedures;

- Systematically develop adequate referral pathways for immediate assistance in connection with monitoring and reporting activities;

- Devise processes to provide regular feedback to NGOs, victims and communities;

- Communicate and discuss openly with NGOs any necessary restrictions or limitations on their participation in the MRM and seek as much as possible to keep them abreast of developments on those matters.

To local NGOs in MRM countries:

- Provide feedback to victims and their communities whenever possible, after an incident is reported;

- Diligently use existing referral pathways to help victims get the assistance they need, while carefully managing their expectations;

- Build on your expertise on the MRM to continue monitoring the situation of children in the country, alerting the relevant entities and the UN, in the event of a resurgence of the conflict.

To UN Member States and the donor community:

- Prioritize funding to MRM activities globally and at country level;

- Consider establishing a fund for children victims of armed conflict to allow for a speedy response to urgent needs identified through the MRM.

End Notes

1. Victims' openness to share information about violations nonetheless varied greatly depending on the case. For instance, it was easier to obtain information on attack against schools and teachers and killing maiming than on use and recruitment, abduction and sexual violence.

2. Some NGO service providers were involved at a later stage for rehabilitation and reintegration of former child soldiers.

3. The Children's Act 1998 is currently being amended and may include a provision to criminalize use and recruitment of children. If concretized, this would be a positive development however, it would not address past crimes.