



# Convention on the Rights of the Child

Distr.: General  
8 July 2016

Original: English

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## Committee on the Rights of the Child

### Concluding observations on the report submitted by Nepal under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict\*

1. The Committee considered the initial report of Nepal (CRC/C/OPAC/NPL/1) at its 2112th meeting (see CRC/C/SR.2112), held on 20 May 2016, and adopted the present concluding observations at its 2132nd meeting (see CRC/C/SR.2132), held on 3 June 2016.

#### I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPAC/NPL/Q/1/Add.1). The Committee expresses its appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third to fifth periodic reports submitted by the State party under the Convention (CRC/C/NPL/CO/3-5), adopted on 3 June 2016, and on the initial report of the State party submitted under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/NPL/CO/1), adopted on 15 June 2012.

#### II. General observations

##### Positive aspects

4. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular:

(a) The provisions of the 2015 Constitution prohibiting the recruitment of children by armed forces;

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\* Adopted by the Committee at its seventy-second session (17 May-3 June 2016).



(b) The establishment of the Truth and Reconciliation Commission and the Commission of Inquiry on Enforced Disappearances, in 2015;

(c) The national framework on schools and zones of peace and its implementation guidelines, in 2011;

(d) The national plan of action for reintegration of conflict-affected children, in 2010.

### **III. General measures of implementation**

#### **Coordination**

5. The Committee welcomes the establishment in November 2006 of the Ministry of Peace and Reconstruction for the facilitation of all peacebuilding processes in the State party, which may include issues relating to the involvement of children in armed conflict. However, the Committee is concerned that the Central Child Welfare Board, which is the main body for facilitating coordination among relevant agencies on issues related to children, does not have decision-making powers. This results in the absence of a clearly mandated coordination mechanism with adequate authority.

**6. The Committee draws the attention of the State party to its obligations under the Optional Protocol to establish a coordination mechanism among all relevant entities at all levels. The Committee also recommends that the State party ensure that such a mechanism, be it the Central Child Welfare Board or another mechanism to be established, is provided with adequate capacity and authority to coordinate the implementation and evaluation of activities under the Optional Protocol and provide it with all necessary human, technical and financial resources to carry out its mandate at all levels.**

#### **Comprehensive policy and strategy**

7. The Committee welcomes the national plan of action for reintegration of conflict-affected children launched in 2010. It also welcomes the programme to enrol children affected by the armed conflict in school and provide them with scholarships. However, the Committee is concerned that, in practice, not all children affected by the conflict, especially those who were child soldiers and victims of violations during the conflict, have been able to access the benefits from these initiatives.

**8. The Committee recommends that the State party conduct an evaluation of its national plan of action, with a view to including all children that were directly affected by the conflict, such as child soldiers or victims, or indirectly by the loss of a parent or parents. In doing so, the State party should pay particular attention to the needs of children in vulnerable situations, including Dalit and minority children and/or children in rural areas.**

#### **Allocation of resources**

9. The Committee regrets the lack of specific budget allocations for the implementation of the Optional Protocol.

10. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of all areas of the Optional Protocol.**

### **Dissemination and awareness-raising**

11. The Committee welcomes the integration of peace, human rights and civic education by the State party into curricula and curricular materials for primary and secondary education. However, the Committee is concerned that the Optional Protocol is not widely known. The Committee is also concerned that members of relevant professional categories do not receive adequate training on the Optional Protocol.

12. **The Committee recommends that the State party widely disseminate the principles and provisions of the Optional Protocol among the general public, targeting children in particular, including through the media. Furthermore, the State party should develop systematic and comprehensive training activities on the provisions of the Optional Protocol for all relevant professional groups, including those responsible for law enforcement, judges, immigration officials, social workers and medical personnel.**

### **Data**

13. The Committee notes with concern the lack of a systematic mechanism of data collection, analysis and monitoring for all areas covered by the Optional Protocol.

14. **The Committee recommends that the State party establish a comprehensive data collection system for all areas relevant to the implementation of the Optional Protocol and use the information collected as a basis for designing comprehensive policies and programmes with respect to the protection of children affected by and involved in armed conflict.**

## **IV. Prevention**

### **Age verification procedures**

15. The Committee notes that, under the State party's Royal Army Recruitment Rules (1962), children under 18 years of age are not eligible to join the army. However, the Committee is concerned that, in practice, age verification for those joining the security forces in Nepal is not reliable owing to the current lack of effective universal birth registration. This results in possible recruitment by security forces prior to the age of 18 owing to irregularities in birth registration or falsification of birth certificates.

16. **The Committee urges the State party to ensure consistent and systematic verification of the age of individual recruits to effectively prevent the recruitment of children into the armed forces. The Committee further reaffirms its concluding observations under the Convention (see CRC/C/NPL/CO/3-5, para. 25) and recommends that the State party continue to strengthen its efforts to ensure universal birth registration and access to identity documents for all children in the State party.**

## **Human rights and peace education**

17. The Committee regrets the lack of information on whether conscripts and soldiers on active duty are provided with regular and mandatory education on the provisions of the Optional Protocol.

18. **The Committee recommends that the State party take the necessary measures to include education on the provisions of the Optional Protocol in the compulsory curriculum for conscripts and persons in active military service.**

## **V. Prohibition and related matters**

### **Criminal legislation and regulations in force**

19. The Committee welcomes article 39.6 of the new Constitution prohibiting the recruitment of children by armed forces. It further notes the State party's explanation that the minimum age for voluntary recruitment by national security forces (the Nepalese Army, the Nepal Police and the Armed Police Force) is 18 years, and that the recruitment by such security forces shall be voluntary and shall be conducted through open competition. However, the Committee is concerned that there is no specific legislation penalizing the recruitment of a child by security forces or non-State armed groups.

20. **The Committee recommends that the State party accelerate the process of revising its Criminal Code with a view to 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. The State party should also define and punish the recruitment of children under the age of 15 as a war crime and consider ratifying the Rome Statute of the International Criminal Court.**

### **Impunity**

21. The Committee welcomes the February 2015 Supreme Court judgment nullifying several provisions of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014). However, while the Committee notes the ongoing work of the State party's Ministry of Peace and Reconstruction, it regrets the lack of information on the number and outcomes of investigations, prosecutions and convictions in cases relating to the use and recruitment of children by armed forces and non-State armed groups. The Committee is deeply concerned about the Act, which does not explicitly establish the recruitment of children by State or non-State armed forces as a crime, with the risk of leaving these acts unpunished.

22. **The Committee recommends that the State party:**

(a) **Respect and implement its February 2015 Supreme Court judgment on the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act in its entirety;**

(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;**

(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.**

### **Extraterritorial jurisdiction and extradition**

23. The Committee notes that the State party's legislation provides for extraterritorial jurisdiction over crimes against the interests of the State party or its inhabitants committed by foreigners without permanent residence permits in the State party. However, the Committee is concerned that dual criminality is a requirement for extradition.

24. **The Committee recommends that the State party establish extraterritorial jurisdiction over acts prohibited under the Optional Protocol, including the conscription or enlistment of children into the armed forces or armed groups, or their use to participate actively in hostilities, if such crimes are committed by or against a Nepalese national or a person who otherwise has a close link with the State party. The Committee also recommends that the State party take steps to ensure that a dual criminality requirement is not applied in cases of extradition for crimes covered by the Optional Protocol.**

## **VI. Protection, recovery and reintegration**

### **Measures adopted to protect the rights of child victims**

25. The Committee is concerned at the lack of mechanisms in place to identify, at an early stage, refugee, asylum-seeking and migrant children, including unaccompanied children who enter the State party and may have been recruited or used in hostilities abroad.

26. **The Committee recommends that the State party put in place mechanisms to identify, at an early stage, refugee, asylum-seeking or migrant children, including unaccompanied children coming from countries with past or ongoing armed conflicts and who may have been involved in hostilities. It also recommends that the State party ensure that the personnel responsible for such identification are trained in children's rights, child protection and interviewing skills. The Committee further recommends that the State party develop protocols and specialized services to ensure that such children are provided with appropriate assistance for their physical and psychological recovery and social reintegration.**

### **Assistance for physical and psychological recovery and social reintegration**

27. The Committee notes that 2,973 child soldiers 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 and the United Nations. However, the Committee is concerned that those children were only offered educational measures and did not receive psychosocial treatment, counselling for mental trauma resulting from their direct involvement in armed conflict, or appropriate reparation as victims of the conflict. The Committee is also concerned that many child soldiers were not included in this programme and currently face many hindrances to gaining recognition as victims and access to proper assistance and reparation.

28. The Committee recommends that the State party take all necessary measures to 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. Such measures should include careful assessment of the situation of those children, reinforcement of the legal advisory services available for them and the provision of immediate, culturally responsive, child- and gender-sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration. The State party should provide further information on measures adopted in that regard and the number of children benefiting from such measures in its next report under the Convention on the Rights of the Child.

## **VII. International assistance and cooperation**

### **International cooperation**

29. The Committee welcomes the establishment of the Nepal Peace Trust Fund in January 2007 to support the implementation of the Comprehensive Peace Accord and other agreements.

30. The Committee recommends that the State party continue and strengthen its cooperation with the International Committee of the Red Cross and with the Special Representative of the Secretary-General for Children and Armed Conflict, and that it explore increased cooperation with the United Nations Children's Fund and other United Nations entities in the implementation of the Optional Protocol.

## **VIII. Ratification of the Optional Protocol on a communications procedure**

31. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol on a communications procedure.

## **IX. Follow-up and dissemination**

32. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations by, inter alia, transmitting them to the Parliament, relevant ministries, including the Ministry of Defence, the Supreme Court and local authorities, for appropriate consideration and further action.

33. The Committee recommends that the initial report and written replies submitted by the State party and the present concluding observations be made widely available, including but not exclusively through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol and its implementation and monitoring.

## **X. Next report**

34. **In accordance with article 8 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report, to be submitted in accordance with article 44 of the Convention.**

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