The precedent and potential of the MRM for the full protection of civilians

This paper is a briefing note on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict. It looks at how an MRM is established and how it operates, and draws some lessons from its functioning that could be valuable to consider in the broader context of protection of civilians.

Key messages

× Efforts to better protect civilians in conflict have struggled to match effective action on the ground with progress made at the global normative level.

× The MRM (Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict) is a structure for driving accountability and action, and has proved an effective tool for translating protection of civilians norms into practical measures.

× Effective cooperation between armed actors (both States and non-state armed groups), civil society, and United Nations agencies at the national and headquarter level has been key to the MRM's successes.

Reflections

× A wider focus on identifying trends and patterns of harm, rather than a narrower focus on individual legal cases and remedy, allows actors to tackle more broadly challenges to the protection of civilians in conflict and allows for the consideration of root causes and structural change.

× Collaborative action (including work to build the buy-in of various armed actors), a clear mandate, and a focus on results are some of the most useful tools in translating protection of civilians norms into real protection for civilians.

× Clear leadership and research rigour are essential in maintaining the integrity of a process which, with its strong focus on action to protect civilians, some states may find challenging and seek to undermine.

Introduction

In 2019 the 20th anniversary of the inclusion of 'protection of civilians' as an item on the agenda of the UN Security Council prompted examination and reflection – among States, civil society and within the UN – on the state of the protection of civilians in armed conflict (PoC) agenda, its achievements and shortcomings. There was widespread acknowledgement that the significant normative progress made in the protection of civilians has not translated into concrete, tangible gains for millions of civilians who continue to bear the brunt of conflict. In his report that year, the UN Secretary-General reflected the commonly held sentiment that "the state of the protection of civilians today is tragically similar to that of 20 years ago".[1] Civilians continue to account for the vast majority of casualties in conflict in the immediate sense, and often continue to suffer long after conflict has ended or moved on. Conflict continues to see use of gender-based and sexual violence, and further undermines the rights of already vulnerable or marginalised groups including women, children, older people, minorities, and persons with disabilities. Strengthening the protection of civilians therefore remains a moral and humanitarian imperative and has been highlighted as such in the United Nations' Secretary-General's recent Call to Action for Human Rights.[2]

One of the weaknesses of the current protection of civilians agenda is the distinct absence of systematic monitoring and reporting – both in terms of how civilians are being harmed in conflict (and where there are failures or gaps in ensuring the protection of civilians) and in terms of the impact of activities that fall under the UN Security Council's agenda for the protection of civilians. So, for example, whilst there are several studies that have found that peacekeeping missions can reduce violence against civilians, monitoring and evaluation of specific activities undertaken by peacekeepers that may help to reduce violence are lacking.[3] Not only does the protection of civilians lack a results-based approach, the absence of systematic monitoring and reporting means that we lack a true picture of the key protection concerns that arise in contemporary conflicts which, in turn, impairs efforts to address them and to strengthen the protection of civilians. In 2010 the UN Secretary-General recognised this in his annual report on the protection of civilians, emphasising the need to "systematically monitor, review and report on the protection of civilians in all relevant situations and, moreover, on the role of all relevant actors in the response… We need to systematically assess and report on the extent to which our actions are making civilians safer".[4]

Progress towards this goal over the last decade has been halting at best. Over the same period, the deep-seated divisions among the Council's members, fraught relations between the five permanent members, and the desire among some (including non-permanent members) to constrain the Council's engagement with certain conflict situations and emerging crises have meant that the Security Council's limita-

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1 'Protection of Civilians in Armed Conflict, Report of the Secretary-General', S/2019/373. 7 May 2019.

2 'Call to Action for Human Rights: Rights in Times of Crisis', UN Info Sheet.

3 Aditi Gorur, 'The Need for Monitoring and Evaluation in Advancing Protection of Civilians', IPI Global Observatory, 2 October 2019.

4 In this report the UN Secretary-General asked the Emergency Relief Coordinator to develop indicators for systematic monitoring and reporting on the protection of civilians in armed conflict (para.109): 'Report of the Secretary-General on the protection of civilians in armed conflict', S/2010/579, 11 November 2010.

tions have very much been on display.[5] Despite this, people continue to look to the UN, including the Security Council, for conflict prevention, peacekeeping and protection of civilians efforts among others.

In the context of protection of civilians, the Council has a wide range of mechanisms and procedures, including tools to strengthen compliance with international law, that would allow it to play a significant role in responding concretely to protection of civilians concerns – even if a lack of political will means they are not necessarily deployed to full effect. These range from referrals to the International Criminal Court and/or the use of sanctions to the monitoring, analysis and reporting arrangements (MARA) on conflict-related sexual violence and the Monitoring and Reporting Mechanism (MRM) on Grave Violations against Children in Situations of Armed Conflict.

Of these, the (MRM) on Grave Violations has been a standout example. It has for over fifteen years worked to document and verify failures to protect children in armed conflict – namely, instances where there have been grave violations against them - and has encouraged dozens of parties to conflict to engage with the UN towards making concrete changes that have positively affected the lives of children living through conflict.

Background and chronology of the Monitoring and Reporting Mechanism (MRM)

Born of a longstanding concern over the plight of children in war, the MRM on grave violations against children in situations of armed conflict was established in 2005 by UN Security Council Resolution 1612. Responding to a call made in the 1996 ground-breaking report by Graça Machel on the impact of armed conflict on children[6] for systematic research on the issue, its establishment came on the heels of a series of resolutions[7] aimed at providing a stronger mandate for international action to better protect the security and rights of children in situations of armed conflict.

The MRM is a tool for monitoring the behaviour of parties to conflict, and for responding to grave violations of children's rights. Its purpose is to systematically monitor, document and report on violations committed against children in conflict situations around the world. At the global level, the MRM is supported by the Special Representative of the Secretary General on Children in Armed Conflict (SRSG-CAAC) – whose establishment in 1997, following the Graça Machel report, served as a catalyst for attention on this issue within the international community – in close

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5   See, for example, 'Learning to Live with a Limited Security Council', International Crisis Group, 29 July 2019.

6   'Promotion and Protection of the Rights of Children: Impact of armed conflict on children, note by the Secretary-General', A/51/306, 26 August 1996. One of the main conclusions of the report was that while the international and national legal frameworks for the protection of children in armed conflict were already well advanced, there was very little knowledge about what was happening to children in conflict situations.

7   Resolution 1261 (1999) saw the UN Security Council put the issue of children and armed conflict on its agenda and condemned the recruitment and use of children by armed forces and armed groups; Resolution 1379 (2001) created a mechanism to list parties to conflict that recruit and use children, and Resolution 1460 (2003) supported the UN Secretary-General's call for "an era of application" of international norms and standards for the protection of children affected by armed conflict and called for parties listed in the Secretary General's report to report on progress and steps taken; Resolution 1539 (2004) asked the Secretary-General to prepare an Action Plan to establish a monitoring and reporting mechanism on grave violations against children.

cooperation with UNICEF as well as the then UN Department of Peacekeeping Operations (DPKO).

At its inception in 2005, the MRM's listing mechanism and monitoring was focused on the recruitment and use of children by armed forces or armed groups, reflecting its origins in a strong international consensus that children must never be used in such a role. Its mandate has, however, since grown: UN Security Council Resolutions 1882(2009), 1998 (2011) and 2225 (2015) added, respectively, killing and maiming and sexual violence, attacks against schools and hospitals, and abduction as violations that trigger the listing (in the UN Secretary-General's annual report on children and armed conflict – hereafter referred to as the SG's annual report) of parties to conflict as perpetrators of grave violations against children. A sixth violation – denial of humanitarian access to children – is monitored and reported on but does not trigger the listing of parties in the annexes of the SG's annual report.

Currently the MRM monitors six grave violations which serve as the basis for gathering information: (i) killing and maiming of children; (ii) recruitment or use of children by armed forces or armed groups; (iii) sexual violence against children; (iv) abduction of children; (v) attacks against schools or hospitals; (vi) denial of humanitarian access for children.[8] Each violation has a basis in international law and as such may constitute a grave breach of the Geneva Conventions; a war crime and/or crime against humanity under the Rome Statute of the International Criminal Court; a contravention of regional and/or international human rights treaties including the Convention on the Rights of the Child; and/or a violation of customary international law.

The functioning of the MRM

The functioning of the MRM is rooted in country-level research, monitoring and reporting. It is established automatically in a country when at least one party to the conflict has been listed in the annexes of Secretary-General's annual report on Children and Armed Conflict. The *main body* of the report gives an overview and update on children in armed conflict as well as information on grave violations (including on whether the information gathered is verified or unverified), which are reported on a country-by-country basis.

Those situations that are on the agenda of the UN Security Council are usually included, though the report may also (and often does) include 'situations not on the agenda of the Security Council or other situations of concern'. The decision to include the latter two is taken at the political level by the Office of the Secretary-General based on information received from the country-level about the experiences of children in armed conflict[9] and following consultations with the state concerned.

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8   These six grave violations were identified and condemned in the first resolution on Children and armed conflict adopted by the United Nations Security Council in 1999.

9   Monitoring and reporting on human rights violations is a core mandate of the UN and is routinely undertaken by in-country UN agencies. It does not require the prior agreement of government.

Structure of the UN Secretary-General's Annual Report on Children and Armed Conflict

The annual report is usually released in June or July and soon thereafter discussed by Security Council and other UN Member States in an open debate on children and armed conflict that could result in a Security Council Resolution or Presidential Statement. The report covers information gathered during the preceding calendar year and follows a set structure, starting with an introduction (section I) and then an overview of the situation of children and armed conflict (section II). Section III covers information on grave violations, with subsection A focused on 'situations on the agenda of the Security Council' and subsection B on 'situations not on the agenda of the Security Council or other situations'. Section IV contains recommendations and section V explains the lists contained in the annexes to the report.

The annexes are key to the functioning of the MRM. The listing of a party to conflict in one of the annexes automatically triggers the establishment of the MRM in the relevant country. Annex I covers parties that commit grave violations affecting children in situations of armed conflict on the agenda of the Security Council. Annex II does the same for situations of armed conflict not on the Council's agenda, and 'other situations'. Each annex is divided in to two sections, with section A covering listed parties that have **not** put in place measures during the reporting period to improve the protection of civilians, and section B covering those listed parties that **have** put in place measures.

The listing mechanism

The listing mechanism – the decision to include a party to conflict in the annexes of the Secretary-General's annual report – is the mainstay of the system of accountability[10] that includes and emanates from the MRM. Listing triggers establishment of a formal MRM, and essentially acts as a lever for action. It relies on the naming and shaming of certain parties to compel engagement with UN bodies (and often civil society) through the development of Action Plans to promote better practice and protection of children during conflict.[11]

Responding to a request from the UN Security Council[12], in 2010 the UN Secretary General laid out the criteria used for listing and delisting perpetrators of grave violations in his annual report.[13] He laid out that inclusion would require a certain threshold to be met – there should be evidence of a pattern, or the "multiple commission of

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10 This accountability is not legal accountability: it would more commonly be found through the Security Council and Action Plans and other actions within the UN system through the General Assembly or human rights mechanisms, though can also include justice mechanisms such as international and domestic courts and/or truth and reconciliation processes.

11 Of course, the naming and shaming of parties, as well as engagement with them, can happen in any situation included in the Secretary-General's report, but the MRM listing mechanism gives additional teeth to this endeavour as listed parties cannot be de-listed until they have ceased violations and implemented an Action Plan agreed with the UN.

12 See UN Security Council Resolution 1882 (2009), S/RES/1882, 4 August 2009.

13 'Children and armed conflict: Report of the Secretary-General', A/64/742-S/2010/181, 13 April 2010.

acts" involving multiple victims. For a party to be delisted, they would need to "enter into dialogue with the UN to prepare and implement a concrete, time-bound action plan to cease and prevent grave violations committed against children for which the party has been listed" and then, on condition that there is UN-verified information that said party has ceased commission of all grave violations for at least one reporting cycle (i.e. one year). Monitoring continues following de-listing to ensure non-recurrence.

In recent years the listing mechanism has been the subject of allegations of politicisation, with decisions to list and de-list parties being influenced by pressure brought to bear on the Office of the Secretary-General and others involved in the process at the political level. In 2020, an independent review of the UN's annual list of perpetrators of grave violations against children noted that "especially since 2015, the process for listing perpetrators of grave violations has become increasingly tainted by political considerations" with "[i]nfluential Member states… successfully evad[ing] listing, some lobbying to be dropped from the list or to avoid being listed altogether, despite committing grave violations".[14] The report concluded that there were "persistent and disturbing discrepancies and double standards in the listing of perpetrators". In May 2021, eighteen civil society organisations issued an open letter to the UN Secretary-General expressing their disappointment at "the significant disparities between the evidence presented in last year's annual report and the parties listed in its annexes for committing grave violations" and urging him to "ensure the publication of a complete list of perpetrators of grave violations that is evidence-based and accurately reflects data collected and verified by the United Nations Monitoring and Reporting Mechanism (MRM)".[15]

Despite these recent concerns, the MRM and listing mechanism remain highly regarded as an example of robust monitoring and reporting in the context of protection of civilians, and an important vehicle for fostering greater compliance with international law, changing the behaviour of parties to conflict, and informing effective programmatic responses to assist victims.

Information gathering

When a party is listed in the Secretary-General's report, this triggers the establishment of a formal MRM led by the Country Task Force on Monitoring and Reporting (CTFMRs). The CTFMRs are co-chaired by the in-country UNICEF representative and the highest UN representative in-country – usually the Resident/Humanitarian Coordinator or SRSG. They consist of relevant UN entities[16] and, if invited, international & national NGOs. These NGOs must be neutral, impartial, and independent, and can participate by providing information on violations, whether documented cases or simple alerts, as well as by responding to violations through their programs. Government representatives are not members of these task forces.

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14 Eminent Persons Group (2021), 'Keeping the Promise: An Independent Review of the UN's Annual List of Perpetrators of Grave Violations against Children, 2010 to 2020'.

15 Ibid.

16 Depending on the country, these often include: the Office for the Coordination of Humanitarian Affairs (OCHA), UNHCR, UNHCHR, and the UN Development Programme (UNDP).

The CTFMRs are mandated to collect and verify violations against children[17], in particular the six grave violations[18], as well as the military use of schools[19] and hospitals, and the deprivation of liberty of children for their alleged or actual association with groups designated as terrorist or on the grounds of national security.[20] Although only five of the six violations act as triggers for listing (denial of humanitarian access is not currently a trigger), once the MRM is established it covers all six grave violations.

The CTFMR monitors and reports on the conduct of all parties to conflict, including government forces and non-state armed groups. CTFMRs collect and verify data and prepare confidential quarterly Global Horizontal Notes and information to inform the Secretary-General's (usually bi-annual) country-specific reports on the six grave violations against children in armed conflict. These reports are finalised by the SRSG-CAAC who compiles them and transmits them to the Secretary-General. The Security Council Working Group on Children and Armed Conflict, comprised of representatives of Security Council Member States (which can also conduct country visits) reviews both the Global Horizontal Notes and country reports, and uses the latter to inform the development of the Security Council's conclusions and recommendations. These are adopted by consensus and can range from referrals to sanction committees, recommendations to governments and armed actors, or even suggested referral by the Security Council of a given situation to the International Criminal Court.

The country reports, which are publicly available, are more in-depth and focused than the Secretary-General's annual report, and detail progress and setbacks in-country related to the six violations – where relevant, in comparison to previous reporting periods. The information in the reports is divided into 'verified' information – that which has been collected and cross-checked to minimum UN standards of verification – and 'non-verified'.

Responses

As well as monitoring and reporting, the MRM in-country structures led by the CTFMRs play a significant role in responses to and prevention of violations. First, the information gathered informs program responses for children affected by armed conflict and is linked to a referral system that seeks to ensure that victims and survivors receive immediate and lasting assistance. It also, at the macro level, provides evidence on prevalence, trends and vulnerabilities that can inform concerted

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17   Information is not collected for the purposes of criminal prosecution at the national or international level but may inform a referral to the International Criminal Court (ICC) by the UN Security Council and/or an address by the SRSG-CAAC to the ICC as *amicus curiae*

18   Note that in cases of sexual and gender-based violence, the case is cross-referenced in both the MRM and the Monitoring, Analysis and Reporting Arrangements on Conflict-Related Sexual Violence (MARA). The UN system as a whole has adopted a common working definition of conflict-related sexual violence (see S/2012/33) which facilitates this. The MARA, established in 2010 by Security Council Resolution 1960, is also based on the listing of perpetrators and regular reporting to the UN Security Council.

19   The military use of schools is not necessarily a violation of international humanitarian law, but nevertheless hampers children's access to education and puts children at risk of attack. Recognising this, the UN Security Council has repeatedly requested the Secretary-General continue monitoring and reporting on these incidents.

20   The latter two issues have been the subject of discussion for inclusion as potential triggers for listing, but for now remain additional areas of concern that do not constitute grave violations nor triggers.

and effective advocacy at the national, regional, and global levels. The MRM is not set up to comprehensively monitor and respond to individual grave violations, but to understand overall trends and patterns and to provide solid data to identify these as such, and to inform prevention and response efforts.

Second, engaging parties to conflict on the development and implementation of the Action Plans (which are the sole means through which a listed party can be 'delisted') provides a crucial tool for strengthening the protection of children in the conflict concerned.

An Action Plan is an agreement between a listed party and the UN which sets out concrete time-bound activities to stop and prevent further violations as well as plans for remedial action. Generally, they contain several commitments and a detailed workplan that covers activities related to awareness-raising, capacity-building, accountability and support to victims and survivors. These activities can range from legislative measures and military policies and procedures to practical measures such as military training, barracks inspections and the adoption of procedures to hand over and reintegrate children. The Action Plans are confidential and are only made publicly available if all listed parties agree (which is rare). They also usually only focus on those grave violations for which the party has been listed, though that could include all six grave violations. Each concrete, time-bound activity contained in an Action Plan is mandatory, but the way in which they are implemented varies according to the context, as well as the capacity and abilities of the listed parties. Implementation is discussed during the development of an Action Plan and formulation of its activities, a phase which often acts as an entry point for a broad-spectrum conversation between the UN agencies involved[21] and parties to conflict – including non-state armed groups – on how grave violations against children can be prevented through different means, including changes to legislation, policy and practice.

Implementation of the Action Plans is rigorously monitored, with the CTFMRs periodically and systematically updating UN Headquarters and the parties to conflict on the situation and progress made. Monitoring is primarily undertaken by the UN agencies that belong to the CTFMRs, but civil society may also play a role. Although CTFMRs operate separately from the UN-led humanitarian system in the country and the different operational clusters – including the child protection area responsibility which falls under the protection cluster – they are expected to work closely with (and where relevant seek support from) the clusters and keep them informed and updated on its work.

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21   Negotiation of the Action Plan usually involves the SRSG-CAAC, country-level coordinators or SRSGs, UNICEF and other UN entities engaged in the CTFMR. Civil society is not generally not involved in this phase.

Monitoring and reporting on protection of civilians: Key lessons from the successes of the MRM

This paper has given a narrative of the MRM's establishment and functioning towards better protecting civilians from six grave violations in armed conflict. The activities of the MRM, though child-focussed, serve the goal of translating protection of civilians norms into effective action. As such, the MRM's ways of working and successes suggest a number of useful lessons when considering the how to better ensure the full protection of civilians in conflict:

1. Clarity and flexibility

The MRM has a very clear focus on monitoring and reporting on the six grave violations. These grave violations have a basis in the UN Security Council resolutions and international law, and there is clear guidance available within the MRM system on what they are and what the threshold is for inclusion as a grave violation. Though the number of grave violations has increased and their scope has evolved over time, efforts have been made to ensure a clear understanding among UN agencies, civil society and other actors over what exactly they are monitoring and reporting on and what constitutes a grave violation.[22] In the MRM context, the definitional and subject-matter clarity does not, however, come at the expense of progressive implementation of the child protection agenda – as noted, these six violations have been added over time, and there is – in theory at least - flexibility to add others, based on an acknowledgement that protection children in conflict is an open-ended endeavour towards which more can always be done.

2. Leadership and architecture

The MRM enjoys the strong and clear leadership essential to its success. Though the CTFMRs include a variety of UN agencies and, usually, civil society, UNICEF and the highest level in-country UN official have a clear mandate to co-chair and lead the work. This helps in both the rapid establishment of an MRM – with an emphasis on integrating the MRM within existing structures, staffing and activities in-country – as well as with communications with the SRSG and others in UN headquarters. The CTFMR structure plays an essential role in the functioning of the MRM both as a source of information and in implementing response measures for conflict affected children and communities. It remains relatively focused and streamlined whilst at the same time encouraging a collective and inclusive approach to improving protection.

3. Action driven by identification of patterns and trends

Though the six grave violations have a legal basis and framework, the work of the MRM is not driven by strict legal determinations (which often rely on narrower individual-focussed cases) but rather by the identification and documentation of overall trends patterns of harm. Similarly, while referral to legal remedies can be an aspect of the MRM's work, the remedies it focuses on through the Action Plans it develops with

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22   See, for example, the MRM Guidelines, Field Manual, Training Toolkit and Good Practices Study provided to all actors engaged: https://www.mrmtools.org/

States and other armed actors are intended to break these patterns of harm. The MRM as a whole is thus based on a system of collaboration towards the reduction of patterns of harms.

4. Focus on results and impact

The 'listing' element of the MRM is its most preventive and visible aspect, while the Action Plans are an engine of change and remedy. Through the Action Plans the MRM translates efforts to address the plight of children in conflict into practical measures that run the gamut from legislative change to detailed practical measures, based on an analysis of the data gathered by the UN and civil society. The detailed workplans contained in the annexes of each Action Plan help to ensure that the commitments contained in the Plan have a clear pathway to implementation and give a clear structure for monitoring and reporting on the implementation of these Action Plans to follow. As the de-listing process requires the completion of these Action Plans, the monitoring of their implementation is fully integrated within the system in a way that encourages real progress in country and for affected groups. In this way, progress is clear and measurable, and the MRM more broadly is focussed on practical results.

5. Research rigour

Though in recent years the listing part of the MRM process has been vulnerable to politicisation, the system has managed to retain a relatively high degree of trust due to its rigorous verifications methods and the clear differentiation made in the monitoring and reporting process between verified and unverified information. This has meant that though the system has detractors among states, the information it contains has continued to be seen as a reliable source of information for the SRSG-CAAC, the Security Council Working Group, the Office of the Secretary-General, and the Security Council as a whole. The knowledge that they have strong and reliable data at their disposal allows the SRSG and the Working Group to act as strong advocacy bodies on the issue of children and armed conflict in particular country contexts, and shores-up the MRM against those who would like to see its influence diminished.