



# **COALITION TO STOP THE USE OF CHILD SOLDIERS**

**Myanmar**

**Report to the Committee on the Rights of the Child  
in advance of the examination of Myanmar's report on the  
Convention on the Rights of the Child**

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**Who are child soldiers?**

The Coalition considers the term child soldier to be equivalent to the following description of children associated with armed forces or groups:

*A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.*

Source: Paris Principles and guidelines on children associated with armed forces or armed groups, UNICEF, February 2007.

The Coalition to Stop the Use of Child Soldiers (the Coalition) is an international human rights research and advocacy organization. The Coalition seeks to end and prevent the military recruitment and use in hostilities of child soldiers (boys and girls below the age of 18), and other human rights abuses resulting from their association with armed forces or groups. It seeks the release of child soldiers from armed forces or groups, promotes their successful return to civilian life and accountability for those who recruit and use them. The Coalition promotes global adherence to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

**www.child-soldiers.org**

## Contents

Executive summary and key recommendations .....	1
Background .....	4
1. Legislation and policy .....	4
Questions .....	6
Recommendations .....	6
2. Underage recruitment and conscription by state armed forces .....	6
Questions .....	9
Recommendations .....	10
3. Recruitment by armed groups .....	10
Recruitment by government-linked armed groups .....	10
Recruitment by armed opposition groups .....	12
Questions .....	13
Recommendations .....	13
4. Accountability for violations .....	14
Questions .....	15
Recommendations .....	15
5. Detention of former child soldiers .....	16
Questions .....	17
Recommendations .....	18
6. Release, reintegration and assistance .....	18
Questions .....	19
Recommendations .....	19

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## Executive summary and key recommendations

The Coalition to Stop the Use of Child Soldiers (the Coalition) submits this report to the Committee on the Rights of the Child (CRC) in view of its forthcoming examination of Myanmar's 3<sup>rd</sup> and 4<sup>th</sup> periodic reports under the Convention on the Rights of the Child. This report provides information in relation to issues arising under Article 38 on the involvement of children in armed conflict, in conjunction with Article 41. The report is intended to assist the CRC in formulating its questions and recommendations to the Myanmar government aimed at ending the recruitment and use of child soldiers, and ensuring that they are provided with appropriate assistance to successfully return to civilian life.<sup>1</sup>

For over a decade, consistent reports from the UN and other independent sources have documented widespread recruitment and use of children as soldiers in Myanmar.<sup>2</sup> The Myanmar government is one of the few remaining governments whose national army (*Tatmadaw Kyi*) continues to systematically recruit and use children in armed conflict, and has been listed in the UN Secretary-General's report on children in armed conflict in seven consecutive reports since 2003.

The government claims that the *Tatmadaw Kyi* is an all-volunteer force and that the minimum age for recruitment is 18. However, low salaries and extremely poor working conditions have combined to create disincentives for voluntary recruitment into the army. The *Tatmadaw Kyi* military officers and informal recruiting agents continue to use intimidation, coercion, and physical violence to gain new recruits, a sizeable number of which are underage. There are no reliable figures on the number of underage soldiers in the Myanmar army. The Coalition's information indicates that patterns of underage recruitment by the *Tatmadaw Kyi* remain unchanged from those reported previously by UN and NGO sources, including forced recruitment directly by military officers and informal recruiting agents. A system of incentives to reward recruiters still exists and the use of tricks, bribery, threats and force are widely reported. On 4 November 2010, the government gazetted a new military law, the 2010 People's Military Service Law, which contains provisions for eligible citizens to be called up for two years military service (or three years' for those with technical skills). It is widely perceived that this law will not contribute to preventing child recruitment, unless adequate safeguards are implemented to regulate and professionalise the conscription process.

Once recruited child soldiers are required to perform a range of tasks which include combat, exploding landmines, scouting, spying, guarding camps, portering, cooking and other support functions. They are transferred with their battalions and often sent to the front lines of conflict areas, where they are exposed to grave risks of physical harm. Many children who attempt to escape from the army are arrested on charges of desertion, tried in military courts and commonly sentenced to imprisonment, ranging from between one and two years. They are not allowed access to legal counsel and cannot challenge the lawfulness of the detention before independent civilian courts, in violation of international human rights law. Contrary to international standards, child soldiers accused of desertion are detained with adults in prison, where they are reported to suffer torture and other ill-treatment,

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<sup>1</sup> This report is based on the Coalition's research, including field research to border areas on the Thai side of the Thailand-Myanmar border in March 2011 and continuing updates from Coalition contacts based within Myanmar. The 7 day mission involved 30 interviews with a range of stakeholders including representatives of international and national NGOs, media and the UN. The Coalition also interviewed two former child soldiers recruited by the Myanmar military, three former political prisoners and a representative of the Karen National Union (KNU).

<sup>2</sup> See for example: Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers*, Save the Children Sweden, 1998; UNICEF, "Adult Wars, Child Soldiers: Voices of Children Involved in Armed Conflict in the East Asia and Pacific Region," October 2002; Human Rights Watch (HRW), *"My Gun Was as Tall as Me": Child Soldiers in Burma*, 2002; Human Rights Education Institute of Burma (HREIB), "Despite Promises: Child Soldiers in Burma's Armed Forces," 2006; HRW, *"Sold to be Soldiers"*, 2007; HREIB, *"Forgotten Future: children affected by armed conflict in Burma"*, 2008.

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including sexual abuse. Access restrictions to detainees imposed by the government hinder reporting and responses.

Child soldiers are also present in the majority of Myanmar's non-state armed groups, however, numbers remain unknown. Some of these armed groups have taken steps to reduce the number of child soldiers among their forces, but other groups continue to recruit and use children. Several of these armed groups have been listed in the UN Secretary-General's annual report on children and armed conflict. Some armed groups have signed voluntary deeds of commitment with the UN pledging to stop recruiting underage soldiers and release those present in their ranks.

The government's relationship with the 30-odd armed groups, which operate within Myanmar and on its borders, is complex and varied: some groups have entered into ceasefire agreements with the government; some of these ceasefire groups have transformed into Border Guard Forces (BGF); and other armed groups continue to fight the government. While not all ceasefire groups have transformed into BGF, those who have clearly fall under the *Tatmadaw Kyi*'s authority. In the case of armed opposition groups, primary responsibility to ensure that children are not recruited or used as soldiers rests with the respective armed groups. However, the government has a responsibility to support and facilitate efforts to protect children from association with them. The government has, however, failed to take adequate measures to prevent child recruitment by these groups, or facilitate the release of children already in their ranks. The government has also prevented UN actors from engaging with armed groups in a meaningful dialogue aimed at demobilizing and rehabilitating children, and preventing recruitment.

The government has responded to international criticism of its child recruitment practices by implementing a range of measures, which included establishing, in 2004, a high-level Committee for Prevention of Military Recruitment of Underage Children, and in February 2006 the Working Committee for the Prevention of Recruiting Child Soldiers. In accordance with UN Security Council Resolution 1612 (2005), a UN-led country Task Force for monitoring and reporting was established in Myanmar in June 2007, to monitor and report on six grave violations against children in armed conflict using information from the UN, in collaboration with NGOs. Evidence gathered by the Coalition during field research in March 2011 indicates that steps taken by the government have had limited impact on ending the recruitment and use of children as soldiers.

Despite its stated commitments, the state has, in practice, failed to effectively investigate and prosecute perpetrators responsible for underage recruitment, thereby reinforcing the climate of impunity. Lack of effective accountability, in violation of applicable international and national laws, has deterred victims from reporting violations and emboldened officials, civilians and members of armed groups to commit serious human rights abuses. Government programs to support the release and reintegration of children associated with the armed forces or armed groups are inadequate. Instead children suspected of desertion or of association with armed groups continue to be arbitrarily detained by *Tatmadaw Kyi* soldiers whilst trying to flee. As a result many former child soldiers, who have escaped from the *Tatmadaw Kyi* or who were previously involved with non-state armed groups, flee to seek asylum in neighbouring countries, including Thailand, India and China, where their situation remains precarious.

Current information shows that all the conditions for continuing military recruitment and use of children remain firmly in place in Myanmar. While the government has taken some steps, by way of creating committees to prevent child recruitment and released some underage children within its ranks, its response has been far from adequate. To be effective, the government's response, supported by international assistance, must demonstrate stronger political will to end child recruitment and use of children. Measures needed include: providing universal, free-of-charge birth registration and

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national registration cards (NRC); ending the system of offering rewards, including financial incentives, to those enlisting new recruits; enforcing effective age verification procedures; and establishing accountability, through effective investigation and prosecution of those suspected of recruiting and using children in armed forces and groups. Other measures should include the provision of education and economic opportunities to support the protection and recovery of former child soldiers within Myanmar.

### **Key recommendations to the government of Myanmar**

- **Immediately end recruitment and use of children as soldiers into the military, by ensuring, through a range of practical measures, that all recruits to the military are at least 18 years old. The measures should include providing free national registration cards to all, ensuring mandatory checking of these cards at the time of recruitment, ensuring, through a range of measures, that records of age are not falsified during recruitment, and immediate release of those found under 18 years of age.**
- **Issue directives to eliminate all incentives, including monetary compensation, promotions, or military discharge for soldiers and civilian brokers, and enforce accountability to ensure these are effectively implemented.**
- **Conduct effective and systematic investigations into recruitment of children, and prosecute individuals suspected of recruiting and/or using children in armed forces or armed groups, including civilian brokers and those responsible for aiding and abetting the recruitment of children. Ensure that investigations and prosecutions of individuals suspected of recruitment and use, or other serious crimes against children are conducted by independent and impartial courts in proceedings that meet international fair trial standards by independent civilian courts.**
- **Allow and facilitate access by the UN country Task Force for monitoring and reporting to non-State armed groups, as well as to contested and ceasefire areas, in order to enable the UN country Task Force to enter into dialogue with such groups, and to monitor and report on progress made towards protecting children from association with them.**

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## Background

Although a new system of government has been established, following parliamentary elections in November 2010, power continues to rest in the hands of the military, and the new cabinet is dominated by former generals. Conflict between the Myanmar government and various ethnic groups continues to disrupt lives of communities in the Karen, Karenni and Shan states of eastern Myanmar, and parts of western Myanmar in the Chin and Arakan states. Tensions have recently increased within ethnic armed groups that had agreed to ceasefires with the government, such as the Kachin Independence Organization (KIO) and the United Wa State Army (UWSA), over the government's plans to transform these armed groups into Border Guard Force (BGF) units.

The Myanmar government and non-state armed groups are both responsible for grave human rights abuses against civilians. Abuses by the government against civilians, in violation of international humanitarian and human rights law, include the widespread use of anti-personnel landmines, sexual violence against women and girls, extrajudicial executions, forced labor, torture and other ill-treatment, beatings, targeting of food production and means of civilian livelihood, and arbitrary confiscation of land and property. Approximately half-a-million people are internally displaced due to the conflict in eastern Myanmar, with more than 140,000 refugees in camps in Thailand. In Bangladesh, there are 28,000 Rohingya refugees in official camps, and another 200,000 live in makeshift settlements or are mixed in with the local population around border areas<sup>3</sup>.

Corruption and mismanagement under military rule has made Myanmar one of the poorest countries in Asia, where 32 per cent of the population lives in poverty.<sup>4</sup> Existing poverty, wide income inequalities, poor governance and corruption are exacerbated by the fact that budgetary allocations on social services are paltry in comparison to military expenditure.<sup>5</sup> School fees and other expenses for school materials, along with pressures on supporting the family, cause 50% of secondary school age children to be out of school.<sup>6</sup> Under pressure to work and out of school, children become exposed and vulnerable to recruitment. In his report to the Human Rights Council in March 2011, the Special Rapporteur on the situation of human rights in Myanmar noted<sup>7</sup>: "Although the Government claims that education is a high priority for national development, the resources allocated to education are woefully insufficient and do not reflect this".

## 1. Legislation and policy

Myanmar ratified the Convention on the Rights of the Child (the Convention) in 1991. It signed but has not ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Myanmar national legislation prohibits recruitment of under-18s into the armed forces. In accordance with Article 41 of the Convention, the lower age limit set in Article 38 of the Convention shall not affect the provision of national legislation, which sets an age limit that is more conducive to the realization of the rights of the child. Myanmar is not a party to the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, nor of the Rome Statute of the International Criminal Court.

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<sup>3</sup> *World Report*, Human Rights Watch, January 2011.

<sup>4</sup> Joint UNDP-Government of Myanmar Integrated Household Living Conditions Assessment, 2007.

<sup>5</sup> *Annual Economic Outlook*, Economist Intelligence Unit, *The Economist*, April 2011.

<sup>6</sup> The state of the world's children, UNICEF, 2011.

<sup>7</sup> Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, released on 7 March 2011.

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The Child Law entered into force on 14 July 1993 and Rules of Procedure were adopted in 2001<sup>8</sup>. The Child Law does not supersede most existing law; therefore the rights of children in Myanmar remain subject to pre-existing national legislation. The law defines penalties for offences, including the abuse and torture of children, and states that “employing or permitting a child to perform work which is hazardous to the life of the child or which may cause disease to the child or which is harmful to the child’s moral character” is punishable by imprisonment of up to six months or a fine, or both (Section 65). However, under the Child Law, a child is classified as anyone under the age of 16. Those aged 16 to 18 are considered to be “youths”. It is not clear, consequently, whether the prohibition on hazardous labour and other measures to protect children’s rights are applicable to those aged 16 and 17.

Section 374 of the Myanmar Penal Code criminalizes forced labour, by stating that “compelling any person to labour against the persons will is a criminal offence which could result in imprisonment for up to 12 months, or a fine, or both”. There is no provision in the Penal Code explicitly criminalizing unlawful recruitment and use of children by armed forces or groups.

Under the provisions of Directive No 13/73 (1974) of the Myanmar Defence Services and War Office Council under-18s are not permitted to be recruited into the armed forces. In January 2004 the State Peace and Development Council (SPDC)<sup>9</sup> formed the Committee for Prevention of Military Recruitment of Underage Children (the Committee). The Committee’s “Plan of Action” establishes three objectives: to prevent the forced recruitment of underage children as soldiers; to protect the interests of underage children; and to ensure faithful adherence to the orders and instructions issued for the protection of underage children. The Committee’s Plan of Action briefly elaborates five types of activities: the demobilization of child soldiers; the reintegration of former child soldiers; public awareness raising; the punishment of persons who violate recruitment laws and procedures; and cooperation with international agencies.

In July 2004 the SPDC established the Directorate of Military Strength to supervise military recruitment and ensure that minimum age requirements are met. The Directorate of Military Strength reportedly oversees all aspects relating to armed forces recruitment, including the supervision of the armed forces recruitment units and recruitment holding centres, and their adherence to *Tatmadaw Kyi* recruitment quotas and directives on the minimum standards for recruits. In September 2007 the SPDC established a Working Group for the Prevention of Military Recruitment of Underage Children, which engaged at a working level with the Task Force on monitoring and reporting (established by the UN country team).

Despite these measures, current evidence indicates that the government has made little progress in achieving its stated objectives, and has failed to substantially address the *Tatmadaw Kyi*’s institutionalized and pervasive forcible recruitment of children. An absence of genuine political will obstructs effective implementation of the government’s laws and policies to protect children from recruitment into the armed forces and armed groups. Government initiatives to spread awareness of the law, within the armed forces and the public, remain patchy. For instance: training in legal provisions relating to underage recruitment has not been provided to the police, who conduct arrests of children suspected of desertion; and general public education efforts through various forms of media, as outlined in the Plan of Action, have been extremely limited.

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<sup>8</sup> In 1993, Myanmar formed the National Committee on the Rights of the Child (NCRC) as a main coordinating body for the implementation of the Child Law, and subsequently established state, division, district, and township Child Rights Committees.

<sup>9</sup> The SPDC, previously known as the State Law and Order Restoration Council (SLORC), assumed political power in 1988 and governed the country till March 2011.

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## Questions

- What legal provisions exist to safeguard the rights of “youths” aged 16 to 18, including prohibiting their employment in hazardous labour and prohibiting their forced recruitment into military service?
- What measures has the government taken to ensure that those responsible for “employing or permitting a child to perform work which is hazardous to the life of the child” are prosecuted and convicted in civilian courts? How many cases have been prosecuted under Section 65?
- Has the government given any consideration to reviewing the 1950 Emergency Provisions Act and other legislations to ensure that they are consistent with the international standards required by the CRC?

## Recommendations

- Explicitly criminalize the recruitment and use in hostilities of any persons under the age of 18 into the armed forces, paramilitaries, and any other armed groups.
- Review and amend all national legislation, including the 1950 Emergency Provisions Act, to bring it in line with the provisions of the Convention of the Rights of the Child.
- Ratify and implement at national level the following international treaties: the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and the Rome Statute of the International Criminal Court.

## 2. Underage recruitment and conscription by state armed forces

The *Tatmadaw Kyi* has been listed in the annexes of seven consecutive UN Secretary-General’s annual reports on children and armed conflict, as a party that recruits and uses children in hostilities. No precise figures exist on the current number of underage soldiers in the *Tatmadaw Kyi* or scale of child recruitment over the past 10 years of conflict.

### *Targeting of children for recruitment*

The Coalition’s information from the Thailand-Myanmar border indicates that patterns of recruitment remain similar to those reported in the past. Recruitment of children into the *Tatmadaw Kyi* is conducted by civilian brokers, non-commissioned soldiers and junior police officers for cash, food and other incentives. The Coalition learnt that recruiters receive between 20-40,000 Kyats (approximately US\$ 20-40)<sup>10</sup>, a bag of rice and occasionally a tin of cooking oil for each recruit. The recruiter normally receives payment from military officials after the child soldier’s registration formalities are completed. A large number of children continue to be recruited by soldiers, either on recruiting duty or those seeking retirement from their battalions, since discharge from the army is generally not permitted unless the soldier brings in three to five new recruits to replace himself.<sup>11</sup>

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<sup>10</sup> The official exchange rate is 6 Kyat per US\$. The market rate, which is used on a day-to-day basis, is 850-900 Kyat per US\$

<sup>11</sup> Coalition interviews, Thailand, March 2011.

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Information gathered by the Coalition shows that battalion commanders, on occasion, order village headmen to recruit a certain number of soldiers from their village and children become easy targets.

### ***How recruitment takes place***

Reliable interlocutors say that some of the children ‘volunteer’ for recruitment, and enlistment is driven by a range of factors including poverty, family disputes, and the glamour of being in the military. However, the majority of children, are reportedly tricked, threatened or bribed into recruitment by the *Tatmadaw Kyi*. Recruiters target public places, including markets, bus and train stations. Unaccompanied children, orphans, young monks and children on their way back from school are often targeted for recruitment.

A common tactic practiced by public officials is to demand to see the individual’s NRC<sup>12</sup>, knowing that children generally do not carry them. If the child presents a student identity card, he is often told that it is an unacceptable form of identification and the recruiter then offers him a choice of joining the army, or facing a long prison term for failure to carry a card.

On being told that they have to join the army, children are taken to a recruitment centre where recruiters are known to coerce children to sign or thumb print a document which states they are 18. As with adult recruiters, all children are required to go through a medical exam but are reportedly recruited even if they do not meet the physical requirements and cannot pass the medical exam. In some cases, recruits have been threatened and beaten into saying they are 18 and then listed as such, in violation of national and international law. In the absence of other age verification procedures, for instance the NRC, there is a likelihood that the signed registration document, with a falsified date of birth, could be the child soldiers only proof of age, making their identification for the purpose of release and reintegration very difficult.

Coalition interviews with former child soldiers clearly indicate that army recruiters frequently violate recruitment rules and regulations by coercing underage recruits to join the armed forces and falsifying their ages. In some cases recruiters have even changed the names of underage recruits, presumably to prevent parents or guardians from locating them. The *Tatmadaw Kyi*’s staffing needs continue to remain the dominant push factor behind child recruitment into the armed forces. Penalties for failing to meet recruitment targets are high and include loss in rank. In contrast disciplinary sanctions against child recruiters remain variable where harsh action, involving loss in rank and salary and imprisonment, are reported in some cases, whilst the majority is dealt with official reprimands and monetary fines.

### ***Birth registration and age verification***

Section 24 of the Rules of Procedure relating to the Child Law prescribes that parents/guardians must carry out registration of a child at the time of his/her birth, 10 years and 18 years of age. The birth registration, undertaken as part of the national birth registration system, does not always provide children in remote areas with birth certificates.<sup>13</sup> Children without a birth certificate or national registration card are at higher risk of recruitment, as some children are forcibly recruited for not possessing the required documents.

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<sup>12</sup> Section 24 of the Rules relating to the Child Law: “parents/guardians must carry out registration of a child at the time of his/her birth, at 10 years and 18 years of age. Children are issued a temporary national registration card which is converted into a permanent one at 18”.

<sup>13</sup> Report of the UN Secretary-General on children and armed conflict in Myanmar, November 2007, UN Doc: S/2007/666, 16 November 2007.

In practice, the system for obtaining a NRC is difficult and expensive to access. The applicant has to travel to the township headquarters, which may be at a distance from their towns or villages, to pay the township immigration department, a fee which varies between 5000-8000 Kyats (US\$ 5-8). Converting a temporary card to a permanent one also carries a fee which varies between 3,000-4,000 Kyats (US\$ 3-4) which is a key obstacle in preventing parents from registering their children before they are 18.<sup>14</sup>

### ***Treatment of child soldiers***

The Coalition's interviews with former child soldiers indicate that conditions in the centres where they are initially held after recruitment and in the training camps are extremely poor. The barracks are overcrowded, the quality of food is poor and nutritionally inadequate, and child soldiers are routinely beaten by seniors. Sources say that children who resist being recruited are routinely shackled and fettered. Child recruits are required to undertake approximately four and a half months of training before being sent to their duty station. Treatment during training is harsh and beatings are frequently reported. Child soldiers face greater dangers when deployed to conflict situations because of their lack of experience.

The Coalition's field research in March 2011 indicates that child soldiers recruited by the *Tatmadaw Kyi* have increasingly been deployed in front-line battalions. This was observed in the recent fighting in the Eastern border areas, that had intensified following an attack and brief seizure of the border town of Myawaddy by ethnic Karen armed groups on 7 November 2010.<sup>15</sup> The assignments given to child soldiers in hostile situations vary depending on the location and role of their battalion. Children deployed in the front line are used to carry weaponry, detonate land mines and work as porters to carry goods and rations. On the front line, child soldiers are exposed to situations of active fighting and often sustain serious injuries, or die both due to the fighting and mine injuries. Information provided to the Coalition indicates that bodies of children killed during fighting are, on occasion, dumped into rivers.<sup>16</sup>

There are indications that child soldier escapees are, reportedly, used in hostilities after being arrested and imprisoned. The *Tatmadaw Kyi* is known to have used prisoners in the front line for portering and mine clearing, and there are unconfirmed reports that children accused of desertion are sent to the frontline with other adult prisoners. The Coalition has also received credible reports of child soldiers accused of desertion being sexually abused by fellow prisoners while in detention (see below section on detention).

### ***Conscription (compulsory recruitment)***

On 4 November 2010, the government gazetted the People's Military Service Law, which provides for every man, between 18 and 45, and women, aged 18 to 35, to be conscripted into the *Tatmadaw Kyi* for two years, which could be increased to five years in times of national emergencies. The law has not yet been brought into force but lays down provisions and procedures for conscription. Those who fail to report for military service could be sentenced to three years in prison, a fine or both, and those who deliberately inflict injury upon themselves to avoid conscription could be imprisoned for up to five years, fined or both. The law temporarily exempts civil servants, students, people serving prison terms or those taking care of elderly parents from conscription, but this category could be called to service later. Members of religious orders, married women or divorcees with children and disabled people will be fully exempt.

<sup>14</sup> Mizzima News "Muslims in Arakan state get Temporary national ID cards", 22 February 2010.

<sup>15</sup> Coalition interviews, Thailand, March 2011.

<sup>16</sup> Coalition interviews with two former child soldiers, Mae Sot, March 2011.

The new People's Military Service Law does not envision universal military service, but rather the creation of lists of eligible people who may be called to be conscripted as and when required, following medical examinations. The intention appears to be to ensure a recruitment stream for the military, which has been suffering from a steady decline in voluntary recruits since 1988, due to low salaries, poor working conditions and low morale. One report has estimated that Myanmar's armed forces currently sustain an average monthly desertion rate of 1,600 troops.<sup>17</sup> On-going armed conflict and low chances of an early resolution have created pressure on the Myanmar military and the new law is widely interpreted as a way of satisfying staffing needs.

The People's Military Service Law contains no safeguards to ensure that children below the age of 18 years are not included in the lists of persons eligible for conscription. It simply requires local authorities to compile lists of citizens who reach the age of conscription. At no point does the law require the authorities to verify the age of individuals, nor is there a provision for documenting the age of conscripts. While officials are required to investigate if an individual makes a written request form for exemption, there is no independent body mandated to conduct such investigations, or to oversee the application of the law. The law, as it stands, does not address the serious concerns, described above, regarding the issuance of national registration cards and the practice of falsifying conscripts' age. Given high levels of corruption in the country, there are also concerns that implementation of the law may create a situation where those eligible for conscription will pay money to avoid being included in the list, and vulnerable children from economically disadvantaged families could be victimized.

## Questions

- What steps has the government taken to remove all personal incentives, including monetary compensation or military discharge for soldiers and civilian recruiters?
- What monitoring mechanisms has the government put in place to prevent the widespread falsification of age documents by civilians and the military in recruitment centres? How many cases has the government prosecuted for falsifying ages of recruits?
- What measures has the government put in place to ensure that national registration cards and birth certificates are made accessible to all within Myanmar?
- What measures has the government put in place to ensure that child soldier escapees are not deployed with prisoners in conflict situations?
- What steps has the government taken to verify the ages of conscripts prior to entry into military service, including in the case of individuals who do not have a birth certificate? What penalties will apply to conscription officers who fail to verify the age of conscripts?
- What independent monitoring mechanisms has the government put in place to ensure that children will not be conscripted through the People's Military Service Law?

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<sup>17</sup> Min Lwin, "Burmese Armed Forces Day Celebrated in Naypyidaw," *The Irrawaddy*, March 27th 2009 cited in Karen Human Rights Group, "Forced recruitment, child soldiers and abuse in the army: Interviews with SPDC deserters", February 2009.

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## Recommendations

- Issue directives to eliminate all incentives, including monetary compensation, promotions, or military discharge for soldiers and civilian brokers, and enforce accountability to ensure these are effectively implemented.
- Standardize recruitment procedures and train recruitment officers in township committees to ensure consistent and effective verification of the age of individual recruits. Widely circulate guidelines on verifying age, and instruct recruiters that in the case of doubt over an individual's age they should not be recruited. Ensure that the minimum age for recruits is strictly enforced and that recruitment offices and military training camps are regularly monitored in order to prevent and detect any underage recruitment.
- Collaborate with the UN country Task Force for reporting and monitoring, including by providing unhindered access to recruitment centres, military camps and training centres, to systematically screen all *Tatmadaw Kyi* units to ensure the release of children.
- Postpone enforcement of the People's Military Service Law until due safeguards to protect children from conscription are implemented.
- Reform the civil registration system to ensure that all children are registered at birth, free of charge, and without discriminatory conditions, through, inter alia, conducting awareness-raising campaigns and setting up mobile registration units for remote areas.

### 3. Recruitment by armed groups

Non-state armed groups, some in conflict with the *Tatmadaw Kyi* and some in alliance with them, continue to recruit and use child soldiers. The UN Secretary-General's April 2011 annual report on children and armed conflict lists seven armed groups and notes that "credible information indicates that children are also present in the ranks of other armed groups but the country task force on monitoring and reporting has been unable to establish contact with these groups or to directly monitor the presence of children in these groups owing to access restrictions placed on it by the Government".<sup>18</sup> The government is directly responsible for grave human rights abuses, including child recruitment and use, committed by those groups which operate under government control. More generally, the government has a responsibility to take all feasible measures to prevent recruitment and use of children by such groups, and promote and facilitate their release and reintegration.

#### Recruitment by government-linked armed groups

A range of cease-fire, non-state armed groups in Myanmar operate indirectly or directly under the authority of the state. The armed groups, which have, or have previously had ceasefire agreements with the government, have been consecutively listed in the annexes of the UN Secretary-General's annual reports as parties to the armed conflict which recruit and use children.<sup>19</sup> Following a directive issued by the Myanmar government in April 2009, some of these armed groups have recently

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<sup>18</sup> Report of the Secretary-General to the Security Council, children and armed conflict, April 2011 UN. doc A/65/820–S/2011/250, 23 April 2011.

<sup>19</sup> The Democratic Karen Buddhist Army (DKBA); the Karen National Union-Karen National Liberation Army Peace Council (KNU-KNLAPC); Kachin Independence Army (KIA); Karenni National People's Liberation Front (KNPLF); Myanmar National Democratic Alliance Army (MNDAA); and United Wa State Army (UWSA).

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transformed into Border Guard Forces (BGF) subordinate to *Tatmadaw Kyi* regional commanders.<sup>20</sup> BGF is a paramilitary force and, as such, the state is directly responsible for its actions. The extent of the government's control over these units may vary, but they are officially recognized as part of the state armed forces and are formally under the command of the *Tatmadaw Kyi*. While not all ceasefire groups have transformed into the BGF, those who have clearly fall under the *Tatmadaw Kyi*'s authority.

The government supports a range of militias and paramilitary groups, which operate as allies of the state military, and continue to recruit and use children in fighting proxy conflicts for the state. The militias are not listed in the UN Secretary-General's annual reports, as only those groups on whom the UN country Task Force has current or past verified information on child recruitment are listed. The Coalition has information that one group, based in Putao in Kachin state - referred to as the Rebellion Resistance Force, Taung Kyan ("Anti-subversive"), or Adang's Group (after one of its leaders) - and the Homaing militia, based in the Shan state, reportedly operate in alliance with the government and are known to recruit and use under-18s. Access and security restrictions imposed on the UN country Task Force for reporting and monitoring by the government pose a serious challenge in gathering information on recruitment and use of children.

The Coalition has received information that a faction of the Democratic Karen Buddhist Army (DKBA), which has transformed into BGF, has recently actively scaled up its recruitment of soldiers, including children, and imposed recruitment quotas on villages to meet the requisite quotas to form border guards. Those who can afford to make a payment in lieu of recruitment can mostly escape recruitment. The payment is said to vary between 15-20,000 Kyats (approx US\$ 15-20) per recruit. Since early 2010, DKBA has reportedly operated a lottery system through which they have asked each family in a village to draw a ticket which decides whether or not they are required to send a soldier.<sup>21</sup> In many cases, families have sent a child under-18 for recruitment either to retain the older, more productive family members needed for family survival, or because they have no children over 18.

The Myanmar National Democratic Alliance Army (MNDAA) (Kokang Army) is reported to have issued instructions to every household with more than one child in their area to provide at least one child to the group. According to reports by the UN country Task Force for monitoring and reporting underage boys and girls are recruited, and families that have more daughters than sons will, in most cases, send their girls.<sup>22</sup>

The Coalition has received information that the government maintains contact with these armed groups which have entered into ceasefire agreements and is believed to have influence over many commanders, since many are government allies. Yet the government does not appear to prioritize child soldier release in these contacts and has not facilitated access of the UN country Task Force for monitoring and reporting to these armed groups, despite the UN Security Council Working Group's recommendations.<sup>23</sup>

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<sup>20</sup> For example, the Karenni Nationalities People's Liberation Front (KNPLF) joined the BGF on 8 November 2009 and factions of the DKBA transformed into BGF in August 2010. In addition some factions of the Myanmar National Democratic Alliance Army (MNDAA) have reportedly transformed into BGF. In addition, the New Democratic Army in Kachin state; Lahu militia in Tachilek and Mongton (Maington) in Shan state; Akha militia, Mongyu (Maingyu) in Shan state; Wa militia, Markmang (Metman) in Shan state; and the Karen Peace Force (ex-KNU 16th battalion) in Karen State, are reported to have transformed into BGF.

<sup>21</sup> Coalition interviews, Mae Sot, Thailand, March 2011.

<sup>22</sup> Report of the UN Secretary-General to the Security Council on children and armed conflict, April 2010, UN doc.A/64/742-S/2010/181, 13 April 2010.

<sup>23</sup> In July 2009, the Security Council Working Group on Children and Armed Conflict urged the government of Myanmar "to facilitate the access of United Nations personnel to areas under the control of the Government of Myanmar and to the

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## Recruitment by armed opposition groups

Among the armed opposition groups which have been known to recruit and use children, and have subsequently been listed in the annexes of the UN Secretary-General's reports, are the DKBA<sup>24</sup>, Kachin Independence Army (KIA), Karen National Liberation Army (KNLA), Karen National Union-Karen National Liberation Army Peace Council (KNU-KNLAPC), Karenni Army (KA), Shan State Army-South (SSA-S) and the United Wa State Army (UWSA).<sup>25</sup>

The government continues to conduct military operations against these groups, often at a significant humanitarian cost, but has failed to facilitate initiatives aimed at ensuring the release of children from these groups. This is despite the fact that some armed groups, like the KNU/KNLA and the Karenni National Peoples Party/Karenni Army (KNPP/KA), expressed intent to end child recruitment by signing deeds of commitment not to recruit or use children in 2007. In March 2009, the Chin National Front/Chin National Army (CNF/CNA) signed a unilateral deed of commitment pledging not to recruit and use child soldiers.<sup>26</sup> Representatives of the Kachin Independence Organization/Kachin Independence Army (KIO/KIA) have also indicated their willingness to sign deeds of commitment not to use or recruit child soldiers.<sup>27</sup>

The process of signing deeds of commitment has been supported by a network of national and international NGOs. Whilst primary responsibility to ensure that children are not recruited and used rests with the respective armed groups, the government has a responsibility to take all feasible measures to prevent recruitment and use of children by such groups, and promote and facilitate their release and reintegration. However, the Myanmar government has obstructed engagement with these armed groups by imposing restrictions on UN access to armed groups on its territory.<sup>28</sup>

A resolution adopted on 25 March 2011 at the 16<sup>th</sup> Session of the Human Rights Council "*Also strongly calls upon the Government of Myanmar to put an immediate end to the recruitment and use of child soldiers in violation of international law by all parties, welcomes the recent engagement of the Government on this issue and urges it to intensify measures to ensure the protection of children from armed conflict and to pursue its collaboration with the Special Representative of the Secretary-General for children and armed conflict, including by granting access to areas where children are recruited, for the purpose of implementing an action plan to halt this practice*".<sup>29</sup>

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areas under the control of armed groups with which it has a ceasefire accord where illegal recruitment is taking place, in order to expedite the development of action plans by armed groups, in line with Security Council resolutions 1612 (2005) and 1882 (2009)".

<sup>24</sup> A large faction of the DKBA has joined the BGF and therefore operates under the control of the *Tamadaw Kyi*, however, DKBA (Brigade 5) remains opposed to the government.

<sup>25</sup> Report of the UN Secretary-General to the Security Council on children and armed conflict, 23 April 2011.

<sup>26</sup> A copy of the Deed of Commitment was transmitted by the CNF/CNA to the UN in March 2009 together with a request for assistance in its implementation.

<sup>27</sup> Joint Briefing Note to the UN Security Council Working Group on Children and Armed Conflict on the Situation of Child Soldiers in Myanmar submitted by the Coalition, Watchlist, Karen Human Rights Group (KHRG) and Human Rights Education Institute of Burma (HREIB), 23 June 2009.

<sup>28</sup> In 2007, the government of Thailand also imposed restrictions on UN engagement with armed groups on its territory thereby limiting attempts to secure changes in policies and practices by these groups.

<sup>29</sup> Resolution adopted for the situation of human rights in Myanmar, 16<sup>th</sup> Session of the Human Rights Council, March 2011, UN doc A/HRC/RES/16/24, 25 March 2011

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## Questions

- What steps has the government taken to ensure that no under-18s are present in the ranks of BGF? What measures has the government taken to protect under-18s from being recruited by these groups and ensure their release, recovery and reintegration? What steps have been taken to release and demobilize under-18s within the ranks of the ceasefire groups listed in consecutive reports by the UN Secretary-General?
- What steps is the government taking to facilitate UN access to areas under the control of the armed groups where unlawful recruitment is taking place, in order to expedite the development of action plans by armed groups in line with Security Council Resolution 1882 (2009), which encourages states to work with UN country-level Task Forces on monitoring and reporting to facilitate the development and implementation of action plans?
- Clarify the legal status of armed groups and militias who have entered into ceasefire agreements and transformed into BGF under the Myanmar government. What support does the government provide to these groups and what are their functions?
- What steps is the government taking to facilitate dialogue with armed groups to ensure that they cease the recruitment and use of children and release those currently within their ranks?

## Recommendations

- Take responsibility to stop the recruitment and use of children by armed groups that operate under the government's control. Measures should include stopping all material assistance and support to the groups until they cease recruitment and use of children.
- Allow and facilitate access by the UN country Task Force for reporting and monitoring to non-state armed groups, as well as to contested and ceasefire areas, in order that the UN country Task Force enters into dialogue with such groups, and monitors and reports on progress made towards protecting children from association with them.
- Insist on the verifiable release of children by armed groups as a prerequisite for entry into the Border Guard Forces.
- Ensure that the release, recovery and reintegration of children associated with armed groups is addressed in all peace or ceasefire negotiations and agreements with armed groups, in line with the UN operational guidelines on addressing children's issues in peace agreements.
- Conduct public education campaigns to inform children and parents within the group's area of influence of the rights of children, including their right not to be recruited into armed forces or groups.

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## 4. Accountability for violations

The UN Security Council Working Group, in its conclusions adopted on 28 October 2009, urged the government of Myanmar “[t]o prosecute as a matter of priority persons responsible for crimes committed against children and to share details of those investigations, where appropriate, with United Nations monitors, to systematize and institutionalize disciplinary processes and/or action against those responsible for aiding and abetting the recruitment of children and, in this regard, to take the appropriate measures, while bearing in mind the importance of making those processes fair and transparent, with due regard to the best interest of the child”.

This is consistent with the concerns expressed by the Human Rights Council over the widespread impunity for serious human rights violations in Myanmar.<sup>30</sup> The Coalition has serious concerns about the independence and impartiality of the justice system in Myanmar and, therefore, its capacity or willingness to investigate and try members of the military for serious human rights violations, including child recruitment and use. Concerns have been expressed that provisions of national law, including the Constitution, may provide immunity to officials for human rights violations.<sup>31</sup> It is accepted that the removal of existing legal obstacles to try suspected perpetrators of serious human rights violations needs to be accompanied by far reaching reforms of the justice system in Myanmar, to ensure the independence of the courts and the adherence to international standards of fair trial.

In an effort to ensure accountability, the current UN Special Rapporteur for the situation of human rights in Myanmar, Tomas Ojea Quintana, called for the establishment of an international commission of inquiry into crimes in violation of international law.<sup>32</sup> This call has found the support of 16 countries, including Australia, United States and the United Kingdom.

The UN Secretary-General’s April 2011 report on the involvement of children in armed conflict notes that: “The Government shared documents that indicated that from January to May 2010, 43 *Tatmadaw Kyi* soldiers were either warned, demoted, had their pay and allowance cut, received a serious reprimand or were imprisoned in military and civilian jails, in connection with the illegal recruitment of children.” In its January 2011 submission to the Universal Periodic Review (UPR), the government stated that it had taken actions against 108 military personnel as perpetrators of ineligible recruitments.<sup>33</sup>

However, the government’s actions have not worked as effective deterrents in ending the recruitment and use of children as soldiers in Myanmar, particularly as penalties for failing to meet recruitment targets are usually more severe than those applicable for underage recruitment. Most of those punished have been non-commissioned officers (NCOs) - sergeants, corporals and some privates - and only one civilian broker has been referred to the criminal courts. In one case, an officer was dismissed

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<sup>30</sup> In its March 2011 resolution the Human Rights Council expressed “*serious concern* that previous calls to end impunity have not been heeded.” In the resolution the Human Rights Council strongly renewed its call upon the Government of Myanmar to undertake, “...without delay, a full, transparent, effective, impartial and independent investigation into all reports of human rights violations [...], and to bring to justice those responsible in order to end impunity for violations of human rights, and also strongly calls on the Government of Myanmar to do so as a matter of priority and with appropriate attention from the United Nations”.

<sup>31</sup> Amnesty International, Myanmar: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, AI Index Number: ASA 16/008/2010, January 2011; Human Rights Watch, Burma: Letter to the Judge Advocate General regarding the promotion of respect for International Humanitarian Law, 24 March 2011.

<sup>32</sup> See A/HRC/13/48, March 2010

<sup>33</sup> National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1\*Myanmar, Human Rights Council Working Group on the Universal Periodic Review, Tenth session Geneva, 24 January – 4 February 2011.

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from the military and sentenced to one year with hard labour in a civilian prison in December 2009 for underage recruitment. These cases have not been widely publicised within the military or the media.

With regard to underage recruitment cases received and verified by ILO (see Section 6 on Reintegration, below), although perpetrators have been identified under its mechanism, to date none of them have been prosecuted under the Penal Code for their actions<sup>34</sup>.

## Questions

- How many prosecutions of officials and civilians responsible for the recruitment and use of children have taken place so far? How many cases are currently being investigated by the authorities?
- What steps has the government taken to ensure that individuals with command responsibility for the recruitment and use in hostilities of children can be brought to justice?
- What steps is the government taking to publicize information about prosecutions? What other action is being taken against those responsible for child recruitment to ensure that it works as a deterrent against future abuses?
- What steps is the government taking to facilitate ILO's work in both, allowing victim's access to the mechanism without fear of reprisals, and removing access restrictions in reaching conflict and contested areas? What measures has the government taken to ensure that ILO has access to military sites, training facilities and detention centres?

## Recommendations

- Conduct effective and systematic investigations into reports of recruitment of children under the age of 18 years, and prosecute individuals suspected of recruiting and/or using children under the age of 18 years in armed forces or armed groups, including civilian brokers and those responsible for aiding and abetting the recruitment of children. Ensure that investigations and prosecutions of individuals suspected of recruitment and use, or other serious crimes against children, are conducted by independent and impartial civilian courts in proceedings that meet international fair trial standards. Civilians should not be tried in military courts.
- Suspend from duty military personnel suspected of these offences pending completion of investigations, and take appropriate disciplinary actions against them.
- Extend full cooperation to ILO by lifting access restrictions to its work and support the expansion of its mandate to include recovery and rehabilitation of former child soldiers.
- Support the establishment of an international commission of inquiry to investigate crimes under international law, including the unlawful recruitment and use of children.

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<sup>34</sup> Report of the UN Secretary-General on children and armed conflict in Myanmar, June 2009, UN doc. S/2009/278, 1 June 2009: "ILO notes that, the administrative penalties imposed on military personnel held responsible for underage recruitment had been extended beyond the previous standard of a reprimand recorded on the personnel file to include more serious reprimands, the loss of wages or the loss of seniority but no cases have yet been brought to a civilian court".

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## 5. Detention of former child soldiers

In its third and fourth state party report on the implementation of the Convention on the Rights of the Child<sup>35</sup>, the government notes:

“Rule 79 of the Rules provides clarification mentioned below on child imprisonment under section 46 of the Child Law, which stipulates that a child shall only in extraordinary cases be imprisoned:

- (1) A child shall not ordinarily be sentenced to imprisonment;
- (2) Only if the Juvenile Court is satisfied that the child has committed an offence which is punishable with death or transportation for life under any existing law and that the child is of so unruly or depraved a character or absolutely uncontrollable, he shall be sentenced to imprisonment;
- (3) Such sentence of imprisonment shall not exceed a term of 7 years;”

The government also noted that it was currently amending the age of criminal responsibility:

“Regarding exemption from the penal action, preparation is being made to amend the age of a child from 7 years to 10 years in section 28 (a) and to amend the range of age of a child from 7 to 12 years to 10 to 12 years in section 28 (b) of the Child Law as a child under 10 years of age is considered not to have sufficient knowledge and maturity to be able to make sound judgement of the nature and consequences of his conduct”.<sup>36</sup>

In its state party report to the CRC, the government also states that: “In accordance with Section 3 (f) of the Child Law, juvenile offences are tried separately with the objective of reforming the character of such children. Juvenile courts have been established in Yangon and Mandalay, and the judges in other townships have been entrusted with special powers to try juvenile cases, proceedings of which are to be conducted in a separate building”.

In violation of its own rules under the Child Law, the government has routinely arrested and detained child soldiers on charges of desertion. Figures on the scale of detention of child soldier escapees are not available, as independent monitoring of prisons is limited by access restrictions imposed by the government to places of detention, including prisons.<sup>37</sup> However, information gathered by the Coalition, including testimonies of former political prisoners, shows that many children who attempted to escape from the army were arrested by the police, tried by the military court and sentenced to one to two years’ imprisonment, possibly longer, for the crime of “desertion”.

Information indicates that since a large number of child soldiers possess falsified age documents (national registration cards or signed certificates at the time of registration, see Section 2 above) they are not treated as juveniles and are detained in regular prisons with adult prisoners. No efforts are apparently made to establish the true age of these children. As a result, children who escape the army and are arrested are not sent to juvenile remand homes but to regular prisons, where they become vulnerable to sexual and other forms of abuse by fellow prisoners. The fact that these children are associated with the *Tatmadaw Kyi*, albeit forcibly, further stigmatises them in the prison context.

The Coalition has received reports of sexual violence being used against child soldiers detained in prisons with adults, and has received specific information on sexual abuse of child soldiers detained in Thayet prison, Magwe division by fellow prisoners, and torture and other ill-treatment by prison staff.

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<sup>35</sup> Third and fourth national report on the implementation of the Convention on the Rights of the Child (2001-2006) Para 11, Chapter 2, UN doc CRC/C/MMR/3-4, April 2011

<sup>36</sup> Third and Fourth national report on the implementation of the Convention on the rights of the Child (2001-2006), Para 29, Chapter 3, UN doc CRC/C/MMR/3-4, April 2011.

<sup>37</sup> International Committee of the Red Cross has been denied access to prisons since 2005.

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Two former political prisoners told the Coalition that ‘younger, feminine looking child soldier escapees’ are targeted by fellow prisoners. Such abuse is facilitated by the lack of segregation of adult and child prisoners and a complete absence of outside oversight into prisons. Torture, including forcing child soldiers to perform sexual acts publicly after they are deployed in battalions, has also been reported.<sup>38</sup> The Coalition has no information of the effective investigation and prosecution of those suspected of these crimes.

The Coalition’s information indicates that, on occasion, child soldiers who try to escape and are caught by their recruiting units are punished by being detained at the battalion camp for a month or more and then returned to duty without being formally charged. Some reports indicate that underage soldiers who run away are charged under military regulations for being absent from duty without permission. The sentences vary, but tend to be related to the length of time that they have been absent—some up to seven years. In some cases, children are reportedly charged under section 374 of the Myanmar Penal Code after they are discharged for being underage and then try to get re-recruited. On 7 May 2010, the government announced a decision to release 10 underage recruits currently in prison for desertion under an amnesty scheme.<sup>39</sup> The government has, in the past, used amnesties largely to clear spaces in prisons for planned arrests. The amnesties do not remove the conviction but remit the sentence.

The practice of detaining and prosecuting children for desertion undermines the government’s stated intention to prevent the recruitment and use of child soldiers, and support their rehabilitation. International standards stipulate that children who have been unlawfully recruited or used by armed forces should not be treated as deserters.<sup>40</sup> While the government has accepted the principle that an underage recruit cannot be found guilty of desertion, it is not clear whether the policy itself has been amended to ensure that minors are not charged with desertion in the first place.<sup>41</sup> Indeed, the threat of incarceration for desertion is such that children formerly associated with the *Tatmadaw Kyi* but currently living in refugee camps along the eastern Myanmar border areas are reportedly too afraid to return to Myanmar, fearing imprisonment for desertion. Many child soldiers, during their orientation to the army, are first warned that any attempt to escape would result in a jail sentence.<sup>42</sup>

## Questions

- What policies and practical measures are in place to ensure that the age of individuals arrested on suspicion of desertion is verified?
- When suspected “deserters” are found to be under the age of 18, what measures are in place to ensure they are returned to their families and provided with support for reintegration?
- What procedures has the government implemented to ensure that children are always detained in juvenile detention centres and always separated from adult prisoners?

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<sup>38</sup> Coalition interviews, Thailand, March 2011.

<sup>39</sup> Confidential information provided to the Coalition, 8 May 2011.

<sup>40</sup> See, for example, Paris Commitments to Protect children from Unlawful Recruitment or Use by Armed Forces or Groups, which states: To ensure that all children under 18 years of age who are detained on criminal charges are treated in accordance with relevant international law and standards, including those provisions which are specifically applicable to children; and that children who have been unlawfully recruited or used by armed forces are not considered as deserters under applicable domestic law.”

<sup>41</sup> UN Secretary-General’s report on children and armed conflict in Myanmar, July 2009.

<sup>42</sup> Coalition interviews, Thailand, March 2011.

- What procedures is the government putting in place to ensure that representatives of international bodies, directly mandated to act on the issue, have access to prisons, holding centres and training camps?

## Recommendations

- Implement necessary legislation and administrative measures to ensure that children cannot be detained, arrested or charged with “desertion” from the army.
- Permit unannounced and unhindered inspection of prisons and other detention centres by the UN country Task Force and other international bodies mandated to protect the rights of children and other detainees.
- Ensure that captured child soldiers are not arbitrarily detained and are always treated in accordance with international human rights and humanitarian law, and promptly handed over to child protection actors, including by implementing training programs for army, police and other security officers.

## 6. Release, reintegration and assistance

According to the Plan of Action laid down by the Committee for Prevention of Military Recruitment of Underage Children (the Committee), the Ministry of Social Welfare is responsible for returning demobilized child soldiers to their parents and guardians, and "making arrangements to give vocational training, other alternative educational options and livelihood supports, with special focus on orphans, those without guardians and other vulnerable underage children."<sup>43</sup>

In February 2007, the Myanmar government signed a Supplementary Understanding (SU) with the International Labour Organization (ILO) which provided for a complaints mechanism, under which individuals could bring cases of forced labour under ILO Convention 29 Concerning Forced Labour, which included forced and under-age recruitment, to the ILO liaison officer in Yangon. Since February 2007, the ILO has received 420 complaints of underage recruitment and has successfully released 157 child soldiers and returned them to their families.<sup>44</sup> ILO is currently processing 120 cases and assessing 110 cases of underage recruitment by the *Tatmadaw Kyi*. However, the current number of cases gathered by ILO is widely regarded as not being demonstrative of the current scale of child recruitment. The reasons for this are: lack of awareness of the complaints mechanism; a fear of government reprisals for using the ILO mechanism, following incidents of arrests and harassment of complainants under unrelated charges<sup>45</sup>; difficulties in accessing ILO by families of victims based in isolated, rural areas; access restrictions imposed by the government; and the ILO's own capacity constraints, which result in slow responses to complaints.

In February 2008, the government informed the UN country Task Force for reporting and monitoring that it had put procedures in place for the rehabilitation and reintegration of underage recruits. The government has shared details of children released as a result of ILO interventions, and verified as being in the care of their families with UNICEF for rehabilitation and reintegration. While UNICEF is working towards offering them support under its existing child-protection program, subject to

<sup>43</sup> Plan of Action, Committee for Prevention of Military Recruitment of Underage Children, 2004, p. 3.

<sup>44</sup> Coalition interviews, Thailand March 2011.

<sup>45</sup> Thet Wei, Chairman of the Sanchaung Township National League for Democracy (NLD), for example, was sentenced to two years in prison in 2008 for communicating with the ILO on the use of child soldiers. He was convicted by the Rangoon, Pabedan Township court of 'obstructing discharge of duty by public servant'.

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Government approval, no government-led initiative is available.<sup>46</sup> In cases of children released through government mechanisms, the UN was not provided with addresses or other contact details, or the permission to access these children for follow-up purposes. Many escaped child soldiers flee to Thailand and end up in refugee camps or in the migrant community where their situation remains precarious.

Despite its commitment in the Plan of Action, there is no indication that the government of Myanmar has granted a right of voluntary discharge to adult members of the state army who were recruited as minors. Information gathered by the Coalition suggests that children are released from military service only when a parent or guardian advocates on their behalf. The Coalition has also received information on a recent case which shows that parents had to pay bribes to secure the release of their children.

Commitments made by the government in its Plan of Action should result in the setting up of a mechanism to allow anyone with a reasonable claim of having been recruited when under-18 to be discharged. Such a mechanism should include independent age verification, and provide that, in cases of doubt regarding the age at the time of recruitment, it should be assumed that the individual was a child, and therefore should now be eligible for discharge.

## Questions

- What measures are being taken to bring about the speedy reunification of children formerly associated with armed groups with their families, and to ensure that a safe environment is provided to these children to ensure that they are not at risk of re-recruitment?
- What measures have been taken to assess the long-term reintegration needs of children formerly associated with armed groups and other conflict-affected children, and what programs are being developed and implemented to support these needs including, in the areas of schooling, skills training and job creation?
- What steps have been taken to identify the psycho-social needs of former child soldiers and other conflict-affected children, and what programs have been, or will be, established to respond to these needs?

## Recommendations

- Establish reintegration programs for children formerly associated with the *Tatmadaw Kyi* and other armed forces or groups, and ensure that programs for release, recovery and rehabilitation are consistent with international standards. Seek international cooperation with relevant agencies in order to ensure that recovery and rehabilitation mechanisms are in line with international standards.
- Ensure that educational opportunities offered to former child soldiers are not conditioned on military service, either during, or after, completion.

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<sup>46</sup> UN Secretary-General's report on children and armed conflict in Myanmar, July 2009.





**COALITION TO STOP THE USE OF CHILD SOLDIERS**

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