

NOTES

STOLEN INNOCENCE: THE UNITED NATIONS' BATTLE AGAINST THE FORCED RECRUITMENT AND USE OF CHILD SOLDIERS IN MYANMAR

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I. INTRODUCTION

The section leader ordered us to take cover and open fire. There were seven of us, and seven or ten of the enemy. I was too afraid to look, so I put my face in the ground and shot my gun up at the sky. I was afraid their bullets would hit my head. . . . I was afraid that if I didn't fire the section leader would punish me . . . The corporal beat the soldiers, the sergeant beat the corporal and sometimes the 2nd lieutenant beat the sergeant. It's always like that in the army.

Khin Maung Than, age twelve¹

More child soldiers are reported to serve in the country known today as Myanmar,² formerly Burma, than anywhere else in the world.³ The majority of these Burmese child soldiers are part of the national army, the Tatmadaw Kyi.⁴ Non-state opposition groups recruit children as well, though in smaller numbers.⁵ In recent years promising efforts have been made to squelch the practice of child soldiering. Most notably, the signing of a Joint Action Plan on June 27, 2012 between the Government of Myanmar and the United Nations committed Myanmar to end and prevent the recruitment and use of children in the Tatmadaw.⁶ The Action Plan sets a timetable and measurable activities for the release and reintegration of children soldiers in the

¹ HUMAN RIGHTS WATCH, MY GUN WAS AS TALL AS ME: CHILD SOLDIERS IN BURMA 2 (2002).

² The correct name to use for this country is a contentious point. The country, originally known as the Union of Burma, had its name changed in 1989 by the military-led government to the Union of Myanmar for the purpose of lessening ethnic tensions. This name change was not accepted by all political groups within the country. For the purposes of this Note I will follow the lead of David I. Steinberg: Burma will be used when discussing all periods prior to 1988, and Myanmar for all events after 1988. Burma/Myanmar is used to indicate a continuity of action. The term Burman will be used to refer to the majority ethnic group of the country, while Burmese will be used to refer to all citizens of the country, regardless of ethnicity. See DAVID I. STEINBERG, BURMA/MYANMAR: WHAT EVERYONE NEEDS TO KNOW, at xxi (2010).

³ HUMAN RIGHTS WATCH, *supra* note 1, at 2.

⁴ The focus of this Note will primarily be on the use and recruitment of child soldiers by Myanmar's armed forces, the Tatmadaw Kyi, which recruits the overwhelming majority of child soldiers. See *id.*

⁵ *Id.*

⁶ U.N. Secretary-General, *Rep. of the Secretary-General on Children and Armed Conflict in Myanmar*, ¶ 40, U.N. Doc. S/2013/258 (May 1, 2013) [hereinafter Secretary-General Country Report Myanmar 2013].

government armed forces.⁷ Special Representative to the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, stated in a news release, "This is an ambitious plan agreed by the Government and the United Nations to deal with this long standing issue, and the international community must support it. This is a testament but also a test of Myanmar's engagement for children."⁸

A political transformation occurred in Myanmar in 2010: a general election was held for the first time in twenty years, resulting in the establishment of a civilian government in 2011 under President Thein Sein.⁹ The new government has advanced needed measures, such as the signing of the Joint Action Plan, to end the use and recruitment of children.¹⁰ Despite the positive steps taken since the country's political transformation, it has been suggested that the issue is not receiving the attention it deserves. Richard Clarke, director of Child Soldier's International, an independent human rights organization, stated, "Political reforms have led to some progress in the security and human rights situation in Myanmar . . . [but the] government and the international community need to ensure that protection of children in armed conflict is provided the highest priority in this reform agenda."¹¹

The signing of the Joint Action Plan is an achievement in its own right for Myanmar, yet the Action Plan alone does not resolve the issue of ending the use of child soldiers. The Action Plan expired by its own terms in December 2013.¹² It has been reported that the government of Myanmar is reviewing the potential extension of the plan.¹³ As a party to the plan, the government would have to agree to an extension in order for it to go into effect. Given

⁷ Press Release, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Myanmar Commits to Child-Free Armed Forces (June 27, 2012), available at <http://childrenandarmedconflict.un.org/press-release/myanmar-commits-to-child-free-armed-forces/> [hereinafter SRS Press Release].

⁸ *U.N. and Myanmar Sign Plan to Prevent Child Recruitment in Armed Forces*, U.N. NEWS CENTRE (June 27, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42333#.Uo18jGSxN6u>.

⁹ See *Timeline: Myanmar's Reforms Under Civilian Government*, REUTERS (Oct. 10, 2011), <http://www.reuters.com/article/2011/10/14/us-myanmar-timeline-jdUSTRE79D19720111014>.

¹⁰ See Chloe Gotterson, *Myanmar's Child Soldiers*, SMALL WARS J. (Aug. 10, 2013), <http://smallwarsjournal.com/jrnl/art/myanmar%E2%80%99s-child-soldiers>.

¹¹ Rachel Vandenbrink, *Burma Still Using Child Soldiers*, RADIO FREE ASIA (Jan. 23, 2013), <http://www.rfa.org/english/news/myanmar/child-soldiers-01232013180152.html>.

¹² See Aung Kyaw Zin, *Myanmar Still Enlisting Child Soldiers: U.N. Working Group*, MYANMAR FREEDOM DAILY, <http://www.mmfreedom-daily.com/?p=12323> (last visited Jan. 12, 2014).

¹³ *Id.*

the limited success of the Action Plan during its set eighteen-month time frame,¹⁴ an extension of the plan is essential. The goals of the plan, the ending of the use of child soldiers and the subsequent delisting of the Tatmadaw Kyi from the U.N. Secretary-General reports, can only be realized when there is full compliance.

Part II of this Note will discuss the ethnographic composition of Myanmar and will explore the history of Myanmar to illuminate why the use of child soldiers is so prevalent in the country, specifically focusing on the deeply rooted ideology of militaristic nationalism and the trend of interethnic tension. Part III will focus on the phenomenon of child soldiering in modern day Myanmar. Part IV will examine the international legal and institutional framework for the abolition of child soldiering, specifically focusing on the background of the U.N. Security Council's involvement with the issue of child soldiering. Part V will assess particular measures taken by the United Nations to end child soldiering in Myanmar, specifically examining the process of the U.N. Security Council. Part VI of this Note will discuss the contents of the Joint Action Plan. Part VII of this Note will explore the measures necessary, principally the actualization of the Action Plan, to put a full and final stop on child soldiering in Myanmar.

II. BURMA/MYANMAR: HISTORICAL BACKGROUND

A. *Ethnographic Composition*

Myanmar, formerly Burma, is located in Southeast Asia.¹⁵ Myanmar is the largest of the Southeast Asian mainland states and is roughly the size of the state of Texas.¹⁶ The population is 52.8 million, as reported by World Bank in 2012.¹⁷

Myanmar is an ethnically diverse country with more than 135 different ethnic groups.¹⁸ The Burman are the largest ethnic group, comprising 69% of the population according to the most recent official census held in 1983.¹⁹ Burmans are a powerful group controlling both the government and the

¹⁴ See Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 44.

¹⁵ *Union of Myanmar/Burma*, ONE WORLD NATIONS ONLINE, <http://www.nationonline.org/oneworld/Myanmar.htm> (last visited Aug. 29, 2014).

¹⁶ STEINBERG, *supra* note 2, at xxvi.

¹⁷ *Myanmar Population*, TRADING ECONOMICS, <http://www.tradingeconomics.com/myanmar/population> (last visited Jan. 10, 2014).

¹⁸ *Ethnic Nationalities of Burma*, OXFORD BURMA ALLIANCE, <http://www.oxfordburmaalliance.org/ethnic-groups.html> (last visited Jan. 10, 2014).

¹⁹ STEINBERG, *supra* note 2, at xxiv.

military.²⁰ The Burman people speak Burmese, the official language of the country and predominately practice the Theravada Buddhist religion.²¹

The Karen people are one of the largest ethnic minorities in Myanmar, comprising 6.2% of the population.²² The religious makeup of the group is a combination of Buddhism, Animism, and Christianity, with the majority of the group practicing Buddhism and about 20% practicing Christianity.²³

Extreme tension exists between the Karen and the Burmans. Fighting has been ongoing since the Karen sided with the Allied Forces in World War II in hopes of gaining independence from Burma.²⁴ However, the Karen did not gain independence, and Karen State remained part of Burma following decolonization.²⁵ The failure to gain independence led to an armed uprising by the Karen National Liberation Army, which began one of the longest running civil wars in history.²⁶

January 2012 produced hope that over sixty years of fighting between the Karen and the Tatmadaw would come to an end when a ceasefire agreement was signed between the Karen National Union and the Burmese government.²⁷ However, the potential for peace was short-lived when allegations arose in March 2012 that the Tatmadaw breached the agreement by attacking frontline positions of the Karen National Union in the northern Karen State.²⁸ Currently, fighting between the Tatmadaw and the Karen is ongoing.²⁹

The Shan is a large ethnic minority in Myanmar, comprising 8.5% of the population.³⁰ Most of the Shan people live in Shan State in eastern Myanmar.³¹ The majority of the Shan people practice Theravada Buddhism.³² Shan State is home to ethnic armies, including the Shan State Army-South.³³

²⁰ *Ethnic Nationalities of Burma*, *supra* note 18.

²¹ *Id.*

²² STEINBERG, *supra* note 2, at xxiv.

²³ ASHLEY SOUTH, BURMA'S LONGEST WAR ANATOMY OF THE KAREN CONFLICT 2 (Nick Bruxton ed., 2011), available at <http://www.tni.org/sites/www.tni.org/files/download/Burma%27s%20Longest%20War.pdf>.

²⁴ *Ethnic Nationalities of Burma*, *supra* note 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Saw Yan Naing, *Burmese Army Breaches Karen Ceasefire*, IRRRAWADDY (Mar. 14, 2012), http://www2.irrawaddy.org/article.php?art_id=23211.

²⁹ *Ethnic Nationalities of Burma*, *supra* note 18.

³⁰ STEINBERG, *supra* note 2, at xxiv.

³¹ *Ethnic Nationalities of Burma*, *supra* note 18.

³² *Id.*

³³ *Id.*

A ceasefire was signed between the Shan State Army-South and the Tatmadaw in December 2011, but ultimately broke down in February 2012.³⁴ The Tatmadaw and other government authorities have reportedly subjected civilians in Shan State to numerous human rights violations, such as forced labor.³⁵

The Arakanese are an ethnic minority in Myanmar that comprises approximately 4.5% of the population.³⁶ The Arakanese are predominantly Theravada Buddhists.³⁷ The Arakanese are the largest ethnic group in Rakhine State, which is located in western Myanmar and extends along the Bay of Bengal.³⁸ Rakhine State suffers from a severe lack of infrastructure, and a large proportion of the population—approximately 60%—is reportedly malnourished.³⁹ Rakhine State has a history of striving for independence that predates the country's colonization by the British.⁴⁰ In the 1950s there was a movement that promoted the secession of Rakhine State from Burma; however, the movement was ultimately unsuccessful.⁴¹

The Mon people comprise 2.4% of the population.⁴² The Mon people primarily live in Mon State located in southern Myanmar.⁴³ The Mon are considered the first people to settle in Burma and the group has an ancient and rich culture that has had a major influence on the dominant Burmese culture.⁴⁴ The Mon practice Theravada Buddhism, and are responsible for the spread of the religion throughout Burma.⁴⁵ Following Burma's independence, the Mon sought self-determination and were repressed by the Burmese regime. The tensions between the Mon and the government continued until 1996 when the groups entered into a ceasefire agreement.⁴⁶

The Chin ethnic group comprises 2.2% of the population.⁴⁷ The Chin people mainly live in the Chin State located in Northwestern Myanmar.⁴⁸ Approximately 80%–90% of the Chin population is Christian, due to the

³⁴ *Id.*

³⁵ *Id.*

³⁶ STEINBERG, *supra* note 2, at xxiv.

³⁷ *Ethnic Nationalities of Burma*, *supra* note 18.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² STEINBERG, *supra* note 2, at xxiv.

⁴³ *Ethnic Nationalities of Burma*, *supra* note 18.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ STEINBERG, *supra* note 2, at xxiv.

⁴⁸ *Ethnic Nationalities of Burma*, *supra* note 18.

influence of Baptist missionaries during British colonization.⁴⁹ A minority of the Chin people adhere to traditional tribal beliefs that predate colonization, and the remaining portion of the population practices Theravada Buddhism.⁵⁰ The Chin are one of the most persecuted minority groups in Myanmar,⁵¹ and are subjected to grave human rights violations by the Burmese government that are carried out in an effort to suppress the Chin minority.⁵² Food consumption in Chin State is believed to be the lowest in the country according to the United Nations World Food Program.⁵³

The Kachin people make up 1.4% of the population in Myanmar.⁵⁴ The majority of the Kachin population resides in Kachin State located in northeastern Myanmar, while a smaller population resides in northern Shan State.⁵⁵ Since the time of the British colonization, Christianity has been the predominate religion practiced by the Kachin.⁵⁶ Following the country's independence after colonization, the Kachin were subjected to discriminatory treatment by the Burmese government. This discrimination led to the launch of a Kachin armed resistance movement comprised of the Kachin Independence Organization and its armed wing the Kachin Independence Army, one of the largest ethnic resistance forces in the country.⁵⁷ In 1994, a ceasefire agreement was signed between the Kachin Independence Organization and the Tatmadaw.⁵⁸ The fifteen-year agreement was broken in 2009 when the Burmese government demanded that all ethnic ceasefire groups transform into Border Guard Forces subject to the control of the Tatmadaw.⁵⁹ The Border Guard Forces were established in 2009 by the government of Myanmar and are comprised of former armed groups that have entered into ceasefire agreements with the government.⁶⁰ The Border Guard Forces operate under the control of the Tatmadaw.⁶¹ The Kachin

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Sam Bagnall, *Burma's 'Forgotten' Chin People Suffer Abuse*, BBC NEWS (Apr. 19, 2010), available at <http://news.bbc.co.uk/2/hi/asia-pacific/8626008.stm>.

⁵² *Ethnic Nationalities of Burma*, *supra* note 18.

⁵³ Bagnall, *supra* note 51.

⁵⁴ STEINBERG, *supra* note 2, at xxiv.

⁵⁵ *Ethnic Nationalities of Burma*, *supra* note 18.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ CHILD SOLDIERS INT'L, CHANCE FOR CHANGE 23 (2013) [hereinafter CHANCE FOR CHANGE], available at http://www.child-soldiers.org/research_report_reader.php?id=624.

⁶¹ *Id.*

Independence Army refused to join the Border Guard Forces and the Tatmadaw violently responded, thus breaking the ceasefire agreement.⁶²

Fighting between the Tatmadaw and ethnic armed groups is ongoing in Myanmar, despite the establishment of a civilian government in 2011 and subsequent ceasefire agreements entered into between the government and certain minority groups, including the Mon and Arakan.⁶³ These agreements are fragile,⁶⁴ and years of internal conflict have resulted in wounded relationships that are not easily mended.

B. Ethnic Tensions and Militaristic Nationalism

The long history of ethnic tension and militaristic nationalism in Burma/Myanmar provides insight into why the country has become a nation that engages in the egregious practice of child soldiering.⁶⁵ The children of Burma/Myanmar, both past and present, have grown up surrounded by ethnic tensions and civil armed conflict.⁶⁶ The pervasive presence of militaristic nationalism throughout the history of Burma/Myanmar has led the youth population to associate nationalist pride with participation in the armed forces.⁶⁷ The divide that exists between the Tatmadaw and the smaller minority opposition groups illustrates the ethnic tensions ingrained in the country.⁶⁸ Children raised in this type of politicized environment are easy prey to military factions that are trying to bolster their numbers at any cost.⁶⁹

In precolonial times, many Burmese communities were historically multi-ethnic, and there were cultural and inter-ethnic exchanges between communities.⁷⁰ Britain's intrusion into Burma greatly disrupted this harmony, and the "divide and rule" fixed state approach of the British intensified ethnic divides.⁷¹ British colonization also initiated the trend of militaristic nationalism that is still ubiquitous in Myanmar today.⁷²

⁶² *Ethnic Nationalities of Burma*, *supra* note 18.

⁶³ See CHANCE FOR CHANGE, *supra* note 60, at 8.

⁶⁴ *Id.*

⁶⁵ RUTH CONSTANTINE, EXPLAINING CHILD SOLDIERING IN CONTEMPORARY BURMA 7 (2010), available at http://www.academia.edu/521739/Explaining_Child_Soldiering_in_Contemporary_Burma.

⁶⁶ *Id.*

⁶⁷ *Id.* at 14.

⁶⁸ See CONSTANTINE, *supra* note 65, at 23.

⁶⁹ *Id.* at 30.

⁷⁰ MARTIN SMITH & ANNE ALLSEBROOK, ANTI-SLAVERY INT'L, ETHNIC GROUPS IN BURMA: DEVELOPMENT, DEMOCRACY AND HUMAN RIGHTS 22 (Anne-Marie Sharman ed., 2004).

⁷¹ *Id.* But see STEINBERG, *supra* note 2, at 20.

⁷² CONSTANTINE, *supra* note 65, at 18.

The 1885 British colonization of Upper Burma set off a rebellion that pervaded many regions of the country by 1886.⁷³ The British response to this eruption of violence was swift and brutish; any indigenous person caught pillaging or carrying firearms was shot, and villages suspected of resistance were burned.⁷⁴ During the resistance the British ruled by martial law,⁷⁵ thereby setting the stage for the beginning of militaristic nationalism in Burma. The indigenous people fought as nationalists in an effort to maintain control of their country, forging a link between nationalism and military force that would become, and remain, inextricable in the minds of many of the Burmese people.⁷⁶ The British suppressed the rebellion by 1890, but maintained a military presence in the country.⁷⁷

Colonial rule brought changes to Burma that primarily benefited the British and disadvantaged the majority of the indigenous people.⁷⁸ One of these changes was the Western notion of a fixed and bound state, a notion that led the British to quickly define territory within the country.⁷⁹ The lowlands of Burma, traditionally ruled by monarchs and inhabited by Burmans, were taken over directly by the British.⁸⁰ In contrast, the mountainous "frontier regions," inhabited by indigenous ethnic minorities, were ruled indirectly by the British.⁸¹ The local authorities of the frontier regions, chiefs and headmen, were relied on to carry out administrative duties, yet the actual authority of these leaders was frozen.⁸² This imbalanced imposition of power resulted in differing reactions to British rule.⁸³ The majority of the Burmese were resentful of British colonization.⁸⁴ However, the minority groups accepted British rule because lowland armies no longer came through the upland regions on war campaigns.⁸⁵ The British also allowed missionaries to establish schools and hospitals throughout the country, including in the upland regions.⁸⁶

⁷³ MARY P. CALLAHAN, MAKING ENEMIES: WAR AND STATE BUILDING IN BURMA 24–25 (2003).

⁷⁴ *Id.* at 25.

⁷⁵ *Id.* at 24.

⁷⁶ See CONSTANTINE, *supra* note 65, at 30.

⁷⁷ CALLAHAN, *supra* note 73, at 26.

⁷⁸ *Id.* at 23.

⁷⁹ CHRISTINA FINK, LIVING SILENCE: BURMA UNDER MILITARY RULE 17 (2001).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 17–18.

⁸⁴ *Id.* at 18.

⁸⁵ FINK, *supra* note 79.

⁸⁶ *Id.*

At the beginning of the twentieth century, the British attempted to centralize law enforcement administration by establishing a civilian police force.⁸⁷ The inefficiency of the civilian force led the British to send in the military to handle all types of local criminal activity.⁸⁸ This in turn set a quasi-custom for conflict resolution, “when local affairs get unruly, the state sends in the military.”⁸⁹

The eventual recruitment of indigenous minorities into the British military, to the exclusion of ethnic-majority Burmans, increased ethnic tensions between Burmans and ethnic minorities and fostered militarization by Burmans.⁹⁰ The imbalance in recruitment signaled to the Burmans that the British’s policy was meant to segregate the races.⁹¹ Burmans reacted to non-recruitment by forming nationalist political organizations.⁹²

The Burman-led nationalist organizations formed armies, known as “tats.”⁹³ Throughout the 1930s, various religious organizations, university student unions, and politicians formed their individual tats.⁹⁴ The tats provided military training to persons who could not obtain such training elsewhere and led to the “Burmanization” of military terminology, institutions, and symbols.⁹⁵ These “political pocket armies”⁹⁶ illustrate the link that was strengthening between the mindset of nationalism and the military. Further, the recruitment of youths, mainly students, into these organizations ensured that they, too, were associating participation in a military effort with the idea of nationalism.

World War II only furthered distrust and division between ethnic groups. Burmans predominantly sided and fought with the Japanese.⁹⁷ Most indigenous minorities, including the Karen, remained loyal to the British.⁹⁸ After the Allied forces ejected the Japanese from Burma, the British attempted to reinstate colonial rule.⁹⁹ Burmese nationalists resisted by going on strikes, and the British, who no longer had the aid of Indian troops and

⁸⁷ CALLAHAN, *supra* note 73, at 29.

⁸⁸ *Id.* at 30–31.

⁸⁹ *Id.*

⁹⁰ *Id.* at 35.

⁹¹ *Id.*

⁹² *Id.* at 35–36.

⁹³ *Id.* at 36.

⁹⁴ *Id.* at 36–37.

⁹⁵ *Id.* at 36, 39.

⁹⁶ *Id.* at 36.

⁹⁷ *Id.* at 47–48.

⁹⁸ SMITH, *supra* note 70, at 23.

⁹⁹ FINK, *supra* note 79, at 21.

had insufficient funds to maintain their forces, eventually yielded.¹⁰⁰ One of the stipulations placed on independence by the British was that of determining the political status of the ethnic minorities in the frontier areas.¹⁰¹ Due to ethnic tensions created during colonial rule and World War II, many ethnic leaders were hesitant to become part of the new state of Burma.¹⁰²

The visionary General Aung San, considered the father of modern Burmese independence,¹⁰³ represented the hope of bridging the gap between the Burmans and ethnic minorities.¹⁰⁴ Aung San reached out to non-Burmans; among other things, he placed ethnic troops that had previously served under the British into the new army of Burma, appointed a Karen commander-in-chief to lead the new army, and selected ethnic minorities for high-ranking positions in the new government.¹⁰⁵ Aung San also organized a multi-ethnic conference in 1947, the Panglong Conference, with the aim of devising a political structure to which both Burmans and minorities could agree.¹⁰⁶

The ethnic minorities' fear of the British defaulting on their promise of independence caused the hasty drafting of a constitution for the new union.¹⁰⁷ The rushed process operated to disregard many ethnic minorities' disagreements over boundary lines as well as their opposition to the new union, and this offset Aung San's efforts to bring together the Burmans and ethnic minorities.¹⁰⁸ This loss of momentum in unifying the indigenous population of Burma was further thwarted by the assassination of Aung San on July 19, 1947, six months before Burma gained independence on January 4, 1948.¹⁰⁹

On their face, provisions within the constitution afforded rights to and disbursed power amongst ethnic minorities; in reality, however, these provisions gave very little to minority groups.¹¹⁰ Minorities held various

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 22.

¹⁰³ STEINBERG, *supra* note 2, at 42.

¹⁰⁴ FINK, *supra* note 79, at 22.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 23.

¹⁰⁷ *Id.* at 22.

¹⁰⁸ *Id.* at 23.

¹⁰⁹ *Id.*

¹¹⁰ STEINBERG, *supra* note 2, at 57.

positions within the government, but such positions were dictated by the “Burman rules,” the rules that represented the majority of the population.¹¹¹

Following the drafting of the constitution, Burma experienced a short-lived democracy under the rule of Prime Minister U Nu.¹¹² Insurgent armed groups sprang up during the time of the democracy, so that just one year after its establishment the democratic government was faced with rebellion by Karen forces.¹¹³ In 1958, the democratic government was replaced by a caretaker government led by General Ne Win.¹¹⁴ This temporary government achieved success in areas in which the democratic government had not.¹¹⁵ In a feeble attempt to restore democracy, elections were held in 1960, and U Nu regained power.¹¹⁶ Again, there were several flaws in his leadership, including the institution of Buddhism as the official state religion, an act that displeased ethnic minorities.¹¹⁷

In 1962, Ne Win staged a coup, overthrew the civilian government, and established a military government that reigned until 2010.¹¹⁸ Ne Win began military rule by establishing the Revolutionary Council as the head of the military regime.¹¹⁹ Military officials replaced civilian members of the administration, and military-guided Security Councils were established at all local levels.¹²⁰ These Security Councils ripped away what little autonomy was left to the ethnic states.¹²¹

In 1988, mass, nationwide peace demonstrations broke out.¹²² The military violently responded to the demonstrations, opening fire against the large groups of protesters.¹²³ An estimated 3,000 people were killed.¹²⁴ Following the outbreak the government reformed into a military junta that called itself the State Law and Order Restoration Council (SLORC).¹²⁵ In 1990, the SLORC held elections; however, the SLORC refused to concede

¹¹¹ *Id.*

¹¹² FINK, *supra* note 79, at 26–27.

¹¹³ *Id.* at 24.

¹¹⁴ *Id.* at 27–28.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 28.

¹¹⁷ *Id.*

¹¹⁸ FINK, *supra* note 79, at 29–30 (noting that the military government takeover was not difficult because “democracy was only superficially rooted in Burma”).

¹¹⁹ *Id.* at 32.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² HUMAN RIGHTS WATCH, *supra* note 1, at 16.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

power when opposition leader Aung San Suu Kyi, the daughter of Aung San, won for the National League of Democracy.¹²⁶

Elections were not held again for another twenty years.¹²⁷ In 2010, general elections were held, and in March 2011 a civilian government was installed under President Thein Sein.¹²⁸ Since then, the government has released Aung San Suu Kyi from house arrest, entered into eleven ceasefire agreements with non-state armed groups, established a National Human Rights Commission, and relaxed press censorship.¹²⁹ The government has also shown a willingness to enter into commitments such as the Joint Action Plan.¹³⁰

III. CHILD SOLDIERS IN MYANMAR

A. History and Status of Child Soldiering in Myanmar

Both the Tatmadaw Kyi and non-state opposition groups have been reported to engage in the recruitment and use of children in armed conflict.¹³¹ The Tatmadaw is said to use and recruit children to a greater degree than all of the opposition groups combined.¹³² The exact number of child soldiers currently in the Tatmadaw and in non-state armed forces is difficult to estimate.¹³³ Human Rights Watch provided a rough estimate in a 2002 report, based on interviews with former Burmese child soldiers, that placed the number of child soldiers in the Tatmadaw at 70,000 and the total number in non-state armed groups at 6,000–7,000.¹³⁴ Current estimates of the number of child soldiers in the Tatmadaw are often not given; rather, numbers of children released through the International Labor Organization's forced labor complaint mechanism are referenced.¹³⁵ A recent CBS article reported that, "Analysts say it's unclear how many children are in Burma's military. About 500 boys have been discharged in the past few years," followed by a statement by Steve Marshall, the International Labor

¹²⁶ *Id.*

¹²⁷ *Myanmar Profile*, BBC NEWS ASIA (July 16, 2013), <http://www.bbc.co.uk/news/world-asia-pacific-12990563>.

¹²⁸ *Id.*

¹²⁹ Gotterson, *supra* note 10.

¹³⁰ *Id.*

¹³¹ See HUMAN RIGHTS WATCH, *supra* note 1, at 2; CHANCE FOR CHANGE, *supra* note 60, at 13.

¹³² HUMAN RIGHTS WATCH, *supra* note 1, at 17.

¹³³ *Id.* at 3; see CHANCE FOR CHANGE, *supra* note 60, at 16.

¹³⁴ HUMAN RIGHTS WATCH, *supra* note 1, at 187.

¹³⁵ CHANCE FOR CHANGE, *supra* note 60, at 16.

Organization's Liaison Officer in Myanmar, describing that number as a "small proportion" of Myanmar's total number of child soldiers.¹³⁶

Following the suppression of the nationwide democracy demonstrations of 1988, the military government, SLORC, began an ongoing initiative to modernize and expand the armed forces.¹³⁷ This expansion marked the beginning of the widespread recruitment of children by the Tatmadaw.¹³⁸ Given the scant number of willing volunteers, this expansion has relied heavily on forced conscription.¹³⁹ Children, particularly between the ages of twelve to seventeen years old, are especially vulnerable targets for forced recruitment into the armed forces.¹⁴⁰

In direct contrast to the practice of child recruitment by both the Tatmadaw and non-state armed groups, Myanmar national law, Directive No. 13/73 of the Myanmar Defense Services and War Office Council, prohibits the recruitment of persons under the age of eighteen years old.¹⁴¹ Other laws of the country reach to the prohibition of child soldiering, albeit not as directly, such as section 374 of the Myanmar Penal Code, which criminalizes forced labor.¹⁴² Violation of the penal code section could result in up to twelve months of imprisonment, a fine, or both.¹⁴³

In 1993 Myanmar enacted the Child Law which penalizes offenses against children, including the abuse and threatening of children and the employment of children in hazardous or harmful work.¹⁴⁴ Following the enactment of the Child Law, Myanmar formed the National Committee on the Rights of the Child, which serves as a coordinating body that monitors the implementation of the Child Law.¹⁴⁵

In January 2004, the State Peace and Development Council formed the Committee for the Prevention of Military Recruitment of Underage Children.¹⁴⁶ The Committee's Action Plan has three core objectives: to prevent the forced recruitment of underage children, to protect the interests

¹³⁶ *Burma Continues to Enlist Child Soldiers*, CBS NEWS (Dec. 2, 2013), <http://www.cbsnews.com/news/burma-continues-to-enlist-children-soldiers/>.

¹³⁷ HUMAN RIGHTS WATCH, *supra* note 1, at 3; *see also* CHANCE FOR CHANGE, *supra* note 60, at 13.

¹³⁸ RACHEL BRETT & MARGARET MCCALLIN, *CHILDREN: THE INVISIBLE SOLDIERS* 34 (Radda Barnen ed., 1998).

¹³⁹ HUMAN RIGHTS WATCH, *supra* note 1, at 17.

¹⁴⁰ *Id.*

¹⁴¹ Myanmar Defense Council Directive No. 13/73 (1974).

¹⁴² Myanmar Penal Code § 374 (1861); *see also* CHANCE FOR CHANGE, *supra* note 60, at 12.

¹⁴³ CHANCE FOR CHANGE, *supra* note 60, at 12.

¹⁴⁴ Myanmar Child Law (1993). *See also* CHANCE FOR CHANGE, *supra* note 60, at 12–13.

¹⁴⁵ CHANCE FOR CHANGE, *supra* note 60, at 12–13.

¹⁴⁶ *Sold to be Soldiers: The Recruitment and Use of Child Soldiers in Burma*, HUMAN RIGHTS WATCH § V (Oct. 2007), http://www.hrw.org/reports/2007/burma1007/6.htm#_ftnref140.

of underage children, and to ensure adherence to orders and instructions issued for the protection of underage children.¹⁴⁷ Thein Sein, now the President of Myanmar, is the Chair of the Committee.¹⁴⁸

Democratic leader and Nobel Peace Prize winner Aung San Suu Kyi has taken some action since her release from a fifteen-year-long house arrest in 2010 to address child soldiering in Myanmar. In 2010, Suu Kyi visited the International Labor Organization to discuss the needed investment in Myanmar to strengthen the country's democracy.¹⁴⁹ During her address she noted the ongoing relationship between her political party and the ILO on issues such as child soldiers: "[W]e cooperated to the best of our ability with the ILO and other interested organizations and individuals over the issue of forced labor and child soldiers."¹⁵⁰

B. The Experiences of Myanmar's Child Soldiers

Army camps abound throughout Myanmar.¹⁵¹ Many are located in non-conflict areas.¹⁵² Camps in civilian areas function both to restrict the activities of the community and to make demands for forced labor and money.¹⁵³ This constant military presence puts civilian children at risk for recruitment.¹⁵⁴

Reports of child recruitment have included voluntary enlistment, although many children say that they were forcibly recruited by threat or deception.¹⁵⁵ The Tatmadaw has certain common trends of recruitment including recruitment from streets and pagodas of poor and unaccompanied children.¹⁵⁶ There is also a practice of using "brokers" to recruit children.¹⁵⁷ Brokers are tied to local commanders or recruitment officers and receive a fee for each

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Aid, Investment Needed to Strengthen Democracy in Myanmar: Suu Kyi*, ILO NEWS (June 14, 2012), http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_183340/lang-en/index.htm.

¹⁵⁰ *Id.*

¹⁵¹ HUMAN RIGHTS WATCH, *supra* note 1, at 17.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 12.

¹⁵⁶ U.N. Secretary-General, *Rep. of the Secretary-General on Children and Armed Conflict in Myanmar*, ¶ 9, U.N. Doc. S/2007/666 (Nov. 16, 2007) [hereinafter Secretary-General Country Report Myanmar 2007].

¹⁵⁷ *Id.*

recruit they obtain.¹⁵⁸ Brokers commonly lure children into recruitment with promises of food and shelter.¹⁵⁹ The local police also play a role in forced recruitment.¹⁶⁰ The police have been known to stop children who are not carrying national identification cards and have given them the “choice” of being put under arrest or joining the army.¹⁶¹ Children who have joined the armed forces voluntarily proffered the following reasons for enlisting: poverty, desire to join peers, avoidance of school, and troubles with family members.¹⁶²

Roles of children in the armed forces vary. Children are sometimes used as porters and unarmed sentries.¹⁶³ Other times, children have been made to walk in front of marching units in areas suspected of landmine contamination.¹⁶⁴ It was reported in the U.N. Secretary-General’s 2013 Report on Myanmar that children are known to be deployed to the frontline and partake in combat duties.¹⁶⁵

Children who attempt to escape from the armed forces are often captured and convicted of desertion; these convictions often result in prison terms lasting up to five years.¹⁶⁶ International law prohibits the categorization of children as deserters when they have been illegally recruited into an armed group.¹⁶⁷ Many children remain in armed groups and refugee camps, fearing that they will be arrested and imprisoned if they return to their communities.¹⁶⁸

IV. INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE ABOLITION OF CHILD SOLDIERING

Myanmar is a state party to four pertinent treaties that relate to the prohibition of child soldiering. These treaties include the Convention on the Rights of the Child,¹⁶⁹ the International Labour Organization Forced Labor

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 12.

¹⁶³ HUMAN RIGHTS WATCH, *supra* note 1, at 17.

¹⁶⁴ *Id.*

¹⁶⁵ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 13.

¹⁶⁶ Secretary-General Country Report Myanmar 2007, *supra* note 156, ¶ 11.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

Convention,¹⁷⁰ the International Labor Organization Worst Forms of Child Labour Convention,¹⁷¹ and the U.N. Charter¹⁷²—which in turn makes Myanmar subject to oversight by the U.N. Security Council.

A. Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is the most widely accepted human rights treaty among the U.N. member states, with only two states having failed to ratify it.¹⁷³ The CRC is the first international treaty to include the full range of human rights, including civil, cultural, economic, political, and social rights.¹⁷⁴ The four core principles of the Convention are: non-discrimination; devotion to the best interests of the child; the right to life, survival, and development; and respect for the views of the child.¹⁷⁵ By ratifying the CRC, a country agrees to undertake the responsibilities established by the Convention and to hold itself accountable for this commitment before the international community.¹⁷⁶

Myanmar ratified the CRC on July 16, 1991.¹⁷⁷ By ratifying the Convention, Myanmar committed itself to protecting the rights of children, including the rights laid out in Article 38 of the CRC.¹⁷⁸ Article 38 of the CRC reads:

1. States Parties undertake to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

¹⁷⁰ Convention Concerning Forced and Compulsory Labour (No. 29), June 28, 1930, 39 U.N.T.S. 55 [hereinafter Forced Labour Convention].

¹⁷¹ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention, June 17, 1999, 2133 U.N.T.S. 161 [hereinafter Worst Forms of Child Labour Convention].

¹⁷² U.N. Charter art. 2, para. 4.

¹⁷³ *Protect Children's Human Rights*, AMNESTY INTERNATIONAL, <http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child> (last visited Jan. 12, 2014).

¹⁷⁴ *Convention on the Rights of the Child*, UNICEF (Apr. 4, 2013), <http://www.unicef.org/crc/>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Comm. on the Rights of the Child, U.N. Doc. CRC/C/70/Add.21 (Nov. 5, 2003), available at <http://www.refworld.org/pdfid/403a0f364.pdf>.

¹⁷⁸ CHANCE FOR CHANGE, *supra* note 60, at 12.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.¹⁷⁹

Reports of child soldiers under the age of fifteen in the Tatmadaw contradict Myanmar's commitment under the CRC. Further, the lack of age verification that takes place in recruitment¹⁸⁰ suggests that Myanmar and the country's armed forces are not taking the necessary steps to confirm age. This lack of age verification fails to give priority to the oldest youth—ages fifteen to eighteen—that voluntarily enlist in the armed forces.

B. International Labour Organization Forced Labour Convention

Myanmar ratified the International Labour Organization Forced Labour Convention on March 4, 1955.¹⁸¹ The Convention's aim is to prohibit all forced and compulsory labor, aside from enumerated exceptions laid out in Article 2.¹⁸² The pertinent article of the Convention as it relates to the prohibition of child soldiering is Article 11, which defines individuals that can be required to engage in permitted forced or compulsory labor as "adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years."¹⁸³ Article 11 thus prohibits the use of persons under the age of eighteen for forced labor. By ratifying the Convention, Myanmar committed to refraining from using children in forced labor. The use of children soldiers under the age of eighteen who did not voluntarily enlist

¹⁷⁹ Convention on the Rights of the Child, *supra* note 169, art. 38.

¹⁸⁰ CHANCE FOR CHANGE, *supra* note 60, at 2.

¹⁸¹ *Resolution on the Widespread Use of Forced Labour in Myanmar*, ILO (June 2007), <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-myan.htm>.

¹⁸² Forced Labour Convention, *supra* note 170, art. 2 (exceptions include compulsory military service, civic obligations, court ordered work, emergency service, and communal services).

¹⁸³ *Id.* art. 11.

qualifies as forced labor, thus its practice is in direct violation of the Convention.

C. International Labour Organization Worst Forms of Child Labour Convention

On December 18, 2013, Myanmar ratified the Worst Forms of Child Labour Convention.¹⁸⁴ Article 3 of the Convention includes in its definition of the “worst forms of child labor” the “forced or compulsory recruitment of children for use in armed conflict.”¹⁸⁵ The Convention requires signatories to immediately secure the prohibition and elimination of the worst forms of child labor¹⁸⁶ through the use of monitoring mechanisms¹⁸⁷ and the implementation of action programs.¹⁸⁸ Ratification of the Convention demonstrates that Myanmar recognizes that the forced recruitment of children into the military is egregious and that its elimination is essential. Due to the recent nature of Myanmar’s ratification it is yet to be determined if Myanmar will act in accordance with the Convention.

D. U.N. Security Council’s Involvement in the Issue of Children and Armed Conflict

In 1996, the Graça Machel report on the “Impact of Armed Conflict on Children” was published, and ultimately led to major developments by the U.N. regarding children and armed conflict.¹⁸⁹ The Machel Report focused on articulating an agenda for action by U.N. member states and the international community to improve the protection and care of children in armed conflict situations.¹⁹⁰ The Machel Report spurred the U.N. General Assembly to call for the appointment of a Special Representative on the

¹⁸⁴ *Myanmar Ratifies the Worst Forms of Child Labour Convention*, ILO (Dec. 19, 2013), http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_233060/lang-en/index.htm.

¹⁸⁵ Worst Forms of Child Labour Convention, *supra* note 171, art. 3.

¹⁸⁶ *Id.* art. 1.

¹⁸⁷ *Id.* art. 5.

¹⁸⁸ *Id.* art. 6.

¹⁸⁹ U.N. General Assembly, *Promotion and Protection of the Rights of Children, Impact of Armed Conflict on Children*, U.N. Doc. A/51/306 (Aug. 26, 1996) [hereinafter Machel Report]. The report was prepared by Graça Machel, a humanitarian and an international advocate for women and children’s rights. See Graça Simbine Mahel, SOUTH AFRICAN HISTORY OF ONLINE, <http://www.sahistory.org.za/people/machel-g> (last visited Dec. 120, 2013).

¹⁹⁰ Machel Report, *supra* note 189, at 1.

Impact of Armed Conflict on Children.¹⁹¹ In 1998, Mr. Olara Otunnu was appointed Special Representative of the Secretary-General to Children and Armed Conflict.¹⁹² In 1999, Mr. Otunnu presented the Security Council with information about the use of child soldiers.¹⁹³

The Special Representative's findings led the Security Council to adopt significant resolutions pertaining to children and armed conflict. In 1999, the Security Council adopted Resolution 1261 which stated that international law prohibits the use of children as soldiers and urged states to strengthen efforts to end the use and recruitment of children in armed conflict.¹⁹⁴ Resolution 1261 gave "full legitimacy" to placing the issue of the protection of children exposed to conflict on the agenda of the Security Council.¹⁹⁵ The following year, the Security Council adopted Resolution 1314, which is notable for linking the mandatory power of the Security Council with the issue of children and armed conflict.¹⁹⁶ In 2001, the Council adopted Resolution 1379, which requested the Secretary-General attach a list to his future reports of parties to armed conflict, that were also on the Security Council's agenda, that recruit or use children in violation of international obligations applicable to them under the U.N. Charter.¹⁹⁷ The listing of violators of children's rights has been utilized by the Secretary-General in each report since 2002. Resolution 1460, adopted in 2003, expanded the listing practice to include "parties to other armed conflicts that recruit or use children which are mentioned in the report." This resolution swept more broadly than 1379, to include parties that were not considered part of the Security Council's agenda.¹⁹⁸

¹⁹¹ G.A. Res. 51/77, ¶ 35, U.N. Doc. A/RES/51/77 (Feb. 20, 1997).

¹⁹² Olara Otunnu, CHILDREN AND ARMED CONFLICT, <http://childrenandarmedconflict.un.org/about-us/olara-otunnu/> (last visited Jan. 8, 2014).

¹⁹³ See Olara A. Otunnu, *Promotion and Protection of the Rights of the Children*, U.N. General Assembly, Third Committee, Introductory Statement (Oct. 27, 1999).

¹⁹⁴ S.C. Res. 1261, U.N. Doc. S/RES/1261 (Aug. 30, 1999) (international law referred to in this resolution includes the Geneva Conventions of Aug. 12, 1949, Additional Protocols of 1977, and the U.N. Convention on the Rights of the Child of 1989).

¹⁹⁵ U.N. Secretary-General, *Children and Armed Conflict*, ¶ 1, U.N. Doc. A/55/163-S/2000/712 (July 19, 2000).

¹⁹⁶ S.C. Res. 1314, U.N. Doc. S/RES/1314 (Aug. 11, 2000); see Mukul Saxena Vimug, *Left Out By the Pied Piper: The U.N. Response To Children In Localized Conflict Settings*, 9 NW. J. INT'L HUM. RTS. 59, 72 (2010).

¹⁹⁷ S.C. Res. 1379, ¶ 16, U.N. Doc. S/RES/1379 (Nov. 20, 2001); see U.N. Charter art. 99 ("The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.").

¹⁹⁸ S.C. Res. 1460, U.N. Doc. S/RES/1460 (Jan. 30, 2003) (this expansion of the listing practice translated into the Secretary-General appending two annexes to his annual reports, Annex I for parties on the Security Council's agenda—in adherence to Resolution 1379, and

Resolution 1539, adopted in 2004, expanded the protection afforded children in armed conflict in that it condemned additional violations against children.¹⁹⁹ The listed violations would eventually become known as the “six grave violations,” and would subsequently become the foundation of the U.N. monitoring and reporting mechanism on children and armed conflict.²⁰⁰ Resolution 1539 asked the Secretary-General to devise an “action plan for a systematic and comprehensive monitoring and reporting mechanism.”²⁰¹ The Secretary-General complied with this request, and included such an action plan in his 2005 report on children and armed conflict.²⁰²

In 2005, the Security Council adopted Resolution 1612, which called for the adoption of a Monitoring and Reporting Mechanism for parties listed in Annex I of the Secretary-General’s reports.²⁰³ Resolution 1612 also established the Security Council Working Group on Children and Armed Conflict.²⁰⁴

The Monitoring and Reporting Mechanism works through country task forces that are comprised of representatives from different U.N. bodies as well as representatives of non-governmental organizations.²⁰⁵ The country task forces monitor violations at the country level and then report to the Special Representative of the Secretary-General on Children and Armed Conflict.²⁰⁶ The Special Representative, with assistance from a U.N. committee, sends reports to the Secretary-General, who then presents them to the Security Council Working Group.²⁰⁷ The Working Group, composed of fifteen Security Council members, meets in closed sessions to review reports from the Secretary-General as well as progress made in the enactment of

Annex II for parties that were not on the agenda but were nonetheless included in the report—in adherence with Resolution 1460).

¹⁹⁹ S.C. Res. 1539, ¶ 1, U.N. Doc. S/RES/1539 (Apr. 22, 2004).

²⁰⁰ *UN Security Council Resolution 1539: The Six Grave Violations*, WATCHLIST ON CHILDREN AND ARMED CONFLICT, <http://watchlist.org/un-security-council-resolution-1539-of-2004-the-six-grave-violations/> (last visited Oct. 23, 2013) (what became known as the “six grave violations” include “killing or maiming of children, recruitment or use of child soldiers, rape and other forms of sexual violence against children, abduction of children, attacks against schools or hospitals, and denial of humanitarian access to children”).

²⁰¹ S.C. Res. 1539, *supra* note 199, ¶ 2.

²⁰² See U.N. Secretary-General, *Children and Armed Conflict*, U.N. Doc. A/59/695-S/2005/72 (Feb. 9, 2005) [hereinafter Secretary-General Report 2005].

²⁰³ S.C. Res. 1612, U.N. Doc. S/RES/1612 (July 26, 2005).

²⁰⁴ Matthew Happold, *Protecting Children in Armed Conflict: Harnessing the Security Council’s “Soft Power,”* 43 ISR. L. REV. 360, 366 (2010).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

action plans.²⁰⁸ At the close of these sessions, the Working Group renders conclusions that include recommendations to parties to conflict, to governments, and to U.N. actors on methods to foster the protection of children affected by armed conflict.²⁰⁹

Despite the monitoring of the six grave violations, the majority of attention has been placed on one particular violation: the recruitment and use of children as soldiers.²¹⁰ Commission of this violation is likely to lead to the listing of a party in annexes of the Secretary-General's annual report on this issue.²¹¹

V. THE UNITED NATIONS' EFFORTS TO END CHILD SOLDIERING IN MYANMAR

A. U.N. Actions Pertaining to Children and Armed Conflict in Myanmar from 2000 to 2007: The Secretary-General's Annual Reports

The Secretary-General provides the Security Council's Working Group on Children and Armed Conflict with an annual report that gives an overview of the situation of children in conflict zones and of child-protection measures. The Secretary-General began issuing reports on children and armed conflict in 2000.²¹² Myanmar was not expressly mentioned in this first report,²¹³ and was only briefly mentioned in the 2001 report.²¹⁴ The 2002 report contained a list of violating parties as requested under resolution 1379. But Myanmar was not included on this list; rather, Myanmar was discussed as an area that was not on the agenda of the Security Council.²¹⁵ The 2002 report noted that Human Rights Watch, a non-governmental organization, had reported that large numbers of children were forcibly

²⁰⁸ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Role of the Security Council Working Group on Children and Armed Conflict*, <http://childrenandarmedconflict.un.org/our-work/security-council-working-group/> (last visited Oct. 23, 2013).

²⁰⁹ *Id.*

²¹⁰ Happold, *supra* note 204, at 367.

²¹¹ *Id.*

²¹² U.N. Secretary-General, *Children and Armed Conflict*, U.N. Doc. A/55/163-S/2000/712 (July 19, 2000).

²¹³ *Id.*

²¹⁴ U.N. Secretary-General, *Children and Armed Conflict*, ¶ 40, U.N. Doc. A/56/342-S/2001/852 (Sept. 7, 2001).

²¹⁵ U.N. Secretary-General, *Rep. of the Secretary-General on Children and Armed Conflict*, ¶ 42, U.N. Doc. S/2002/1299 (Nov. 16, 2002).

recruited into the Tatmadaw, and that UNICEF had confirmed the report.²¹⁶ Further, in 2002, the Secretary-General wrote about the recruitment of children by other non-state opposition groups.²¹⁷

The Secretary-General's 2003 report briefly discussed Myanmar and stated that children were still being forcibly recruited by government armed forces.²¹⁸ For the first time, the 2003 report included two annexes listing parties that committed the violation of recruiting and using children in armed conflict.²¹⁹ Myanmar was included in Annex II, which pertained to "other parties" that were not on the Security Council's agenda but that had been mentioned in the previous report. Three Burmese groups were listed as committing the violation of recruitment and use of children in armed conflict. Included were the government armed forces, the Tatmadaw Kyi, as well as two non-state opposition groups, the Karen National Union, and the Karenni National Liberation Army.²²⁰

The Secretary-General did not issue a general annual report on children and armed conflict in 2004. In his 2005 report, the Secretary-General included a section on developments in Myanmar. For the first time, a report noted positive progress in Myanmar. The Myanmar Government was reported to have concluded ceasefire agreements with seventeen armed groups, and in January 2004 the Government established the Committee for the Prevention of Military Recruitment of Underage Children.²²¹ In October 2004 the Committee developed a plan of action that provided for the discharge of children less than eighteen years of age from military service and for reintegration of those children back into their families and communities.²²² Despite the improvements discussed, the report also mentioned the U.N. country team had reported the continued recruitment and use of children.²²³ Two offenders, the KNLA and KA, were reported not to have committed to ending the practice.²²⁴ Myanmar again was listed in

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ U.N. Secretary-General Report, *Children and Armed Conflict*, ¶ 56, U.N. Doc. A/58/546-S/2003/1053 (Nov. 10, 2003) [hereinafter Secretary-General Report 2003].

²¹⁹ See S.C. Res. 1460, *supra* note 198, ¶ 16(a) (requesting the Secretary-General to include in his next report progress made by parties to other armed conflicts that recruit or use children which are mentioned in his previous reports, as distinct from parties listed in the Annex in accordance with Resolution 1379).

²²⁰ Secretary-General Report 2003, *supra* note 218, Annex II.

²²¹ See Secretary-General Report 2005, *supra* note 202, ¶ 39.

²²² *Id.*

²²³ *Id.* ¶¶ 39–40.

²²⁴ *Id.*

Annex II in the 2005 report,²²⁵ an indication that Myanmar was still not on the agenda of the Security Council.

The Secretary-General's 2006 report contained substantially more information regarding developments in Myanmar. The report is especially notable because it is the first to provide the number of children recruited by the Tatmadaw, citing twelve "detailed and credible" allegations of forced recruitment since the beginning of 2005.²²⁶ This figure does not seem representative of the reality of child recruitment in the country, but it indicates progress in gaining reliable information regarding child recruitment. The report stated that there was continued recruitment and training of children not only by the Tatmadaw, but also by non-state armed forces; it observed, however, that limitations on access made these reports difficult to verify.²²⁷ It later stated that a "fundamental problem" in Myanmar was the limitations put on the access of humanitarian actors to communities in conflict zones.²²⁸ The Government was said to have put these limitations in place for alleged "security reasons."²²⁹ The Government continues to limit access to conflict zones, which hinders both the verification progress and the provision of humanitarian support. Child Soldiers International reported in January 2013 that Myanmar was limiting the access of the U.N. and other humanitarian organizations to certain conflict-affected areas and contested regions of the country.²³⁰

The developments section of the 2006 report also tracked the progress of Myanmar's Committee for the Prevention of Military Recruitment of Underage Children. It noted that the Committee convened on February 3, 2006 and was engaged in efforts to promote awareness among military establishments, training institutions, and local communities.²³¹ It also stated that UNICEF and the Government had discussed the need to develop the Committee's plan of action in order to prevent the recruitment of child soldiers.²³² The report stated that the U.N. country team was aware that children had been released from the army, but was unable to verify the

²²⁵ *Id.* Annex II. The parties listed in Annex II are the same parties listed in the Secretary-General's 2003 Report- KNLA, KA, and the Tatmadaw Kyi.

²²⁶ U.N. Secretary-General Report, *Children and Armed Conflict*, ¶ 57, U.N. Doc. A/61/529-S/2006/826 (Oct. 26, 2006) [hereinafter Secretary-General Report 2006].

²²⁷ *Id.*

²²⁸ *Id.* ¶ 59.

²²⁹ *Id.*

²³⁰ CHANCE FOR CHANGE, *supra* note 60, at 5.

²³¹ Secretary-General Report 2006, *supra* note 226, ¶ 57.

²³² *Id.*

effectiveness of the plan.²³³ The 2006 report was the first report in which Myanmar was listed in Annex I.²³⁴ This alteration would seem to indicate that Myanmar had been placed on the Working Group's agenda, although the Secretary-General's report in 2007 stated that Myanmar was not put on the Working Group's agenda until April 2007.²³⁵

B. Myanmar's Placement on the Working Group's Agenda: The Secretary-General's Country Reports and the Working Group's Conclusions

The Secretary-General's 2007 report was thus significant in that it both announced Myanmar's addition to the Working Group's agenda and stated that Myanmar had agreed to establish a monitoring and reporting mechanism in accordance with Resolution 1612.²³⁶ Despite these positive developments, the Secretary-General expressed continued concern regarding limited access to conflict-affected areas as a potential hindrance to the effective and independent functioning of the monitoring and reporting mechanism.²³⁷

Once Myanmar was placed on the agenda of the Security Council's Working Group, the Secretary-General began to issue country reports focused exclusively on children and armed conflict in Myanmar. The three reports issued for the country thus far cover lengthy reporting periods spanning anywhere from a year and a half to over three years.

The Working Group on Children and Armed Conflict examines the Secretary-General's country reports and adopts conclusions that are later issued as an official document of the Security Council.²³⁸ The conclusions include the Working Group's reaction to the report, as well as recommendations to the Security Council, the government of Myanmar, and to the Secretary-General.

The Secretary-General issued his first country report focused on children in armed conflict in Myanmar on November 16, 2007.²³⁹ The report covered the period of July 2005 through September 2007.²⁴⁰ The report commended the Government's establishment of a formal monitoring and reporting

²³³ *Id.*

²³⁴ *Id.* Annex II.

²³⁵ U.N. Secretary-General, *Children and Armed Conflict*, ¶ 150, U.N. Doc. A/62/609-S/2007/757 (Dec. 21, 2007) [hereinafter Secretary-General Report 2007].

²³⁶ *Id.* ¶ 144.

²³⁷ *Id.* ¶ 150.

²³⁸ *Security Council Working Group on Children and Armed Conflict*, U.N., <http://www.un.org/sc/committees/WGCAAC/> (last visited Nov. 18, 2014).

²³⁹ Secretary-General Country Report Myanmar 2007, *supra* note 156.

²⁴⁰ *Id.* ¶ 1.

mechanism, in accordance with Resolution 1612, during the Special Representative Ms. Radhika Coomaraswamy's visit in June 2007.²⁴¹ The Secretary-General reported that in September 2007 the Government established a working group for the mechanism. In conjunction with the U.N. Country Task Force, that group was to engage in monitoring and reporting, in training on relevant laws, and in submitting allegations of child recruitment to the authorities.

The 2007 report noted that the Government and the International Labor Organization had entered into a Supplementary Understanding establishing a complaint mechanism under which individuals can submit complaints of forced labor, including child recruitment, to an ILO liaison officer in Yangon, the former capital of Burma.²⁴² The ILO Forced Labour Convention was the treaty under which the Supplementary Understanding was formed.²⁴³ Since January 2013, the ILO has received 778 complaints and has prompted the successful release of 267 child soldiers.²⁴⁴

Despite the progress of the Government, the Secretary-General expressed trepidation in his 2007 report about the limited access to locations of concern.²⁴⁵ Access to those locations is vital in order to monitor the implementation of mechanisms as well as verify efforts purportedly taken by the Government to end recruitment.²⁴⁶ In the portion of the report centered upon the recruitment and use of children by armed groups, incidents and trends tied to continued recruitment were discussed, including the pressure for the Tatmadaw to accelerate recruitment, patterns in underage recruitment, and age verification issues.²⁴⁷ Likely due to the restrictions placed on access, the report only discussed three verified cases of child recruitment by the Tatmadaw.²⁴⁸ Further, despite the Government Committee's presentation of reports to the U.N. on awareness raising programs and information on released children, the Secretary-General noted that "to date cooperation on concrete action remains very limited," due to the inability of the U.N. to confirm any of these actions because of access restrictions.²⁴⁹

The Secretary-General's first report commended the positive steps taken by the Government of Myanmar while retaining a stern stance that further

²⁴¹ *Id.* ¶ 5.

²⁴² *Id.* ¶ 42; *see also* CHANCE FOR CHANGE, *supra* note 60, at 20.

²⁴³ CHANCE FOR CHANGE, *supra* note 60, at 20.

²⁴⁴ *Id.*

²⁴⁵ Secretary-General Country Report 2007, *supra* note 156, ¶¶ 1, 5, 55.

²⁴⁶ *Id.*

²⁴⁷ *Id.* ¶¶ 9, 10.

²⁴⁸ *Id.* ¶¶ 13–15.

²⁴⁹ *Id.* ¶ 44.

measures were required to achieve the end of recruitment. The Working Group's conclusions to the report recommended that the Government increase public awareness about child soldiering, allow access for the Country Task Force where illegal recruitment had been reported, and prosecute persons found responsible for the illegal recruitment of children.²⁵⁰

The Secretary-General issued the second country report in 2009, fewer than two years after the issuance of the first report. The second report addressed positive initiatives undertaken by the Government during the reporting period. These initiatives included: the detection and release of seventy-six children in military schools; the implementation of procedures to aid in the rehabilitation and reintegration of children released from the armed forces; and the dismissal of nine military officials found to have engaged in illegal recruiting.²⁵¹ Although he lauded the initiatives, the Secretary-General stressed that the Government's actions could not be verified due to continued restricted access to contested areas.²⁵² Additionally, the Secretary-General expressed disapproval of the Government's reliance on the ILO complaint mechanism as the sole means of obtaining reports of illegal child recruitment and urged an expanded, more developed monitoring program.²⁵³

The Secretary-General's report identified core issues restraining the U.N., including restricted access, the lack of security measures for victims and witnesses who report illegal recruitment, and the absence of an agreed action plan.²⁵⁴ The second report placed particular emphasis on the necessity of an action plan to close the gap between the policy of ending child recruitment and its actual application.²⁵⁵

The report noted discussions that took place between the U.N. Country Task Force and the Government on the development and implementation of an action plan, and the submission of a draft action plan to the Government.²⁵⁶ The highlighted components of the action plan included independent access for the U.N. to recruitment centers and camps, reporting and verification of compliance, access to non-state actors to facilitate

²⁵⁰ Working Group on Children and Armed Conflict, *Conclusions on Children and Armed Conflict in Myanmar*, ¶ 5, U.N. Doc. S/AC.51/2008/8 (July 25, 2008).

²⁵¹ U.N. Secretary-General, *Rep. of the Secretary-General on Children and Armed Conflict in Myanmar*, U.N. Doc. S/2009/278 (June 1, 2009).

²⁵² *Id.* ¶ 5.

²⁵³ *Id.* ¶ 16 ("Without a specific ILO complaint, the Government does not actively seek out children in the army or take proactive action on requests to investigate, even when released children confirm the presence of other children in their units.").

²⁵⁴ *Id.* ¶ 2.

²⁵⁵ *Id.* ¶ 56.

²⁵⁶ *Id.* ¶ 44.

dialogue for action plans, and assurance of the safety of monitors and witnesses.²⁵⁷ Despite the discussions with the Government's monitoring and reporting, the U.N. Country Task Force had not yet been able to discuss the action plan formally with the Government's high-level committee.²⁵⁸

The Working Group's conclusions to the second country report indicated that a meeting eventually did take place between the U.N. Country Task Force and the government high-level committee on August 2009, a few months after the Secretary-General's 2009 report had been issued.²⁵⁹ The Working Group encouraged the finalization of the action plan in its recommendations to the government of Myanmar.²⁶⁰ The conclusions also urged the Government to facilitate access for the U.N. Country Task Force, to increase accountability for persons found to recruit children illegally, and to expand the ILO complaint mechanism.²⁶¹

The Secretary-General's third, and most recent, country report was issued on May 1, 2013.²⁶² The report covered the longest reporting period to date: three years and nine months. During the third reporting period, substantial changes occurred in Myanmar, including the establishment of a civilian-led administration in March 2011 under President Thein Sein. The third report noted progress made by the new government, including discussion with non-state armed groups, which resulted in ceasefire agreements with ten of the country's eleven ethnic groups.²⁶³ The report also expressed appreciation for Sein's efforts to lead a peace-building and reconciliation process by establishing peacemaking committees.²⁶⁴ Despite the positive change in the legal landscape, however, the report pointed out that access restrictions remained and continued to impede the monitoring and reporting functions of the group during the reporting period.²⁶⁵

Notwithstanding the positive actions undertaken by the Government in accordance with the country's laws and military directives, the Tatmadaw reportedly continued to recruit children during the third reporting period.²⁶⁶ However, the ILO complaint mechanism reported 802 cases of underage

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ Working Group on Children and Armed Conflict, *Conclusions on Children and Armed Conflict in Myanmar*, U.N. Doc. S/AC.51/2009/4 (Oct. 28, 2009).

²⁶⁰ *Id.* ¶ 7.

²⁶¹ *Id.*

²⁶² Secretary-General Country Report Myanmar 2013, *supra* note 6.

²⁶³ *Id.* ¶ 3.

²⁶⁴ *Id.* ¶ 4.

²⁶⁵ *Id.* ¶ 6.

²⁶⁶ *Id.* ¶ 7.

recruitment, 770 of these complaints were verified.²⁶⁷ The increased number of complaints filed each year between 2009 and 2012 indicated greater public awareness of the complaint mechanism.²⁶⁸ As of December 2012, the Country Task Force had been told that the Tatmadaw had released 448 recruits, and that the number of children recruited each year from 2009 to 2012 decreased.²⁶⁹

The third country report was especially significant in that it reported the signing of an action plan between the government of Myanmar and the U.N. Country Task Force. For many years, both the Secretary-General and the Working Group had encouraged the action plan.²⁷⁰ The signing of the plan symbolized the hope that the gap between the policy of ending child recruitment and application would finally be filled.

VI. THE JOINT ACTION PLAN

After six years of negotiations, on June 27, 2012, the government of Myanmar and the U.N. Country Task Force signed a Joint Action Plan to end and prevent the recruitment and use of children in the Tatmadaw, including the integrated Border Guard Forces.²⁷¹ The Action Plan was negotiated under Resolution 1612.²⁷² The Special Representative of the Secretary-General for Children and Armed Conflict Radhika Coomaraswamy, the Myanmar Minister of Defense Hla Min, and high-ranking officers of the Myanmar armed forces were present at the signing of the plan in Myanmar's capital, Nay Pyi Taw.²⁷³

The press release issued by the U.N. regarding the action plan provided little information regarding the plan's substance, stating only that "the action plan sets a timetable and measurable activities for the release and reintegration of children associated with Government armed forces, and for the prevention of further recruitment."²⁷⁴ In fact, the Action Plan is not a

²⁶⁷ *Id.* ¶ 9.

²⁶⁸ *Id.* ¶ 10.

²⁶⁹ *Id.* ¶ 8.

²⁷⁰ *Id.* at Summary.

²⁷¹ *Id.* ¶ 40.

²⁷² U.N. News Centre, *U.N. and Myanmar Sign Plan to Prevent Child Recruitment in Armed Forces*, U.N. NEWS CENTRE (June 27, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42333#.Uo18jGSxN6u>.

²⁷³ SRSG Press Release, *supra* note 7.

²⁷⁴ *Id.*

public document.²⁷⁵ Action plans entered into between the United Nations and parties to armed conflict are not made public unless the listed party chooses to make the document public.²⁷⁶ As can be seen from the Action Plan in Myanmar, the signing of such plans is typically widely reported,²⁷⁷ but the disclosure of the contents of the actual action plan seems only to have extended to senior-level officials in the Tatmadaw.²⁷⁸

Despite the nonpublic nature of the Action Plan, much can be gleaned about the substance of the plan from the Secretary-General's third country report on Myanmar. The 2013 report stated that the Action Plan contains a set of commitments to be pursued by the Government of Myanmar and the U.N. Country Task Force over an initial eighteen-month period.²⁷⁹ The commitments included the systematic identification, registration, and release of all children under the age of eighteen who were recruited and used in the Tatmadaw; the reintegration of such children back into their communities; the strengthening of recruitment procedures to ensure the prevention of further child recruitment by the Tatmadaw; the raising of public awareness on how to prevent underage recruitment; training and capacity-building for the Tatmadaw on international human rights, including child protection; and the strengthening of disciplinary actions against persons found to participate in underage recruitment.²⁸⁰ The commitments explicitly listed in the report likely do not provide a comprehensive description of the plan, but they, along with other information included in the Secretary-General's report, provide valuable insight into the goals of the plan.

Following the June 2012 signing of the Action Plan, the Tatmadaw appointed a senior liaison officer to oversee the plan's implementation.²⁸¹ At the time the Secretary-General's third report was issued in May 2013, efforts to implement the Action Plan included the development of detailed operational procedures for identifying, verifying, and discharging children recruited or present in the armed forces.²⁸²

In September 2012, the Tatmadaw reported that trainings on the Action Plan had been carried out at military focal points in each regional command,

²⁷⁵ WATCHLIST ON CHILDREN AND ARMED CONFLICT, ACTION PLANS TO PREVENT AND END VIOLATIONS AGAINST CHILDREN 9 (2013), *available at* <http://watchlist.org/wordpress/wp-content/uploads/FINAL-Discussion-Paper-Action-Plans.pdf>.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 45.

²⁷⁹ *Id.* ¶ 41.

²⁸⁰ *Id.*

²⁸¹ *Id.* ¶ 42.

²⁸² *Id.* ¶ 43.

and forty-two children had been discharged from the Tatmadaw at a ceremony in Yangon.²⁸³ The Tatmadaw also reportedly issued instructions on the implementation of the action plan and made materials on the plan to distribute to military personnel.²⁸⁴

The ILO complaint mechanism, established in 2007, has worked in conjunction with the Action Plan.²⁸⁵ In October 2012, the Country Task Force submitted twenty-five cases of underage recruitment, received through the complaints mechanism, to the Tatmadaw senior liaison officer.²⁸⁶ By December 2012, the Tatmadaw identified twenty-four child recruits and discharged them in February 2013.²⁸⁷

The Secretary-General's 2013 report expressed optimism that the slow start and low numbers during the first six months of the Action Plan would increase in the following months once the new identification process was implemented in all military units, the Country Task Force was granted access to operational regiments of the military, and materials on the Action Plan were dispersed among the Tatmadaw and general public.²⁸⁸

The ubiquitous problem of restricted access was still a noted concern. The 2013 report explicitly stated that access for the Country Task Force to "military bases, prisons and other places where children may be present" was stipulated in the Action Plan for purposes of monitoring and verifying the implementation of the plan.²⁸⁹ Despite this commitment, in December 2012 the Tatmadaw had notified the Country Task Force that access to operational regiments would be subject to their consideration.²⁹⁰ As of January 2013, the Country Task Force was only permitted access to regional commands, recruitment units, and training schools.²⁹¹ The Country Task Force also expressed concern about the limited dissemination of the Action Plan.²⁹² The task force expressed the necessity that the plan be disseminated to all levels of the military to ensure effective implementation of the key commitments of the plan.²⁹³

²⁸³ *Id.* ¶ 44.

²⁸⁴ *Id.* ¶ 43.

²⁸⁵ Telephone Interview with Charu Lata Hogg, Asia Program Manager, Child Soldiers International (Nov. 8, 2013) [hereinafter Hogg Interview].

²⁸⁶ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 44.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.* ¶ 45c.

²⁹³ *Id.*

As of October 2013, two months before the expiration of the Action Plan, 176 children had been discharged from the Tatmadaw, and sixty-eight of those children were released in August 2013.²⁹⁴ At the time of the October 2013 discharge it remained unclear how many children were serving in the Tatmadaw. According to Steve Marshall, the International Labor Organization Myanmar Liaison Officer, “the belief is it’s considerably more than the number who have currently been discharged.”²⁹⁵ It has been postulated that the number of children released during the term of the Action Plan constitute only a fraction of those believed to be to be in the Tatmadaw.²⁹⁶

The eighteen-month time frame stipulated in the Joint Action Plan expired in December 2013. Since the expiration of the Action Plan the Tatmadaw has continued to steadily release children from its ranks.²⁹⁷ In August 2014 ninety-one children were released from the Tatmadaw.²⁹⁸ On September 25, 2013 the Tatmadaw, in the largest discharge since the signing of the Action Plan, released 109 children during a ceremony attended by the Union Minister for Defense Lieutenant General Wai Lwin.²⁹⁹ Myanmar’s government was commended for the September release by Ms. Renata Lok-Dessallien, the U.N. Resident and Humanitarian Coordinator in Myanmar and co-chair of the Country Task Force, who said, “[t]he United Nations welcomes today’s release of a further 109 children and young people. We are witnessing an increasing number of children coming out of the Tatmadaw, indicating the accelerated efforts of the Government . . . and the Tatmadaw to put an end to the harmful practice of recruiting and using children.”³⁰⁰ Since the signing of the Action Plan a total of 472 children have been released from the Tatmadaw’s ranks.³⁰¹

Despite the progress being made by the Tatmadaw the forced recruitment of children is still occurring and the exact number of children present in the

²⁹⁴ Hillary Whiteman, *The Fight to Free Myanmar’s Child Soldiers*, CNN (Nov. 1, 2013), <http://www.cnn.com/2013/10/15/world/asia/myanmar-burma-child-soldiers/>.

²⁹⁵ *Id.*

²⁹⁶ Gotterson, *supra* note 10.

²⁹⁷ See Thomas Kean, *Military Frees Child Soldiers Before Review*, MYANMAR TIMES (Sept. 26, 2014), <http://www.mmtimes.com/index.php/national-news/11759-tatmadaw-releases-child-soldiers-one-day-before-action-plan-review.html>.

²⁹⁸ *Id.*

²⁹⁹ *Myanmar Military Speeds Up Release of Children*, U.N. INFORMATION CENTRE YANGON (Sept. 25, 2014), <http://yangon.sites.unicnetwork.org/>.

³⁰⁰ *Id.*

³⁰¹ *Id.*

Government's armed forces remains unknown.³⁰² Charu Hogg, the Asia Program Manager at Child Soldiers International, an independent human rights organization, illustrated continued concern notwithstanding the recent releases of children soldiers, "recruitment and use of children by the Tatmdaw continues to date, despite the signing of the Action Plan. The numbers have been reduced but the practice has not been eliminated."³⁰³ Until the practice is completely eradicated it is indisputable that the Action Plan term will need to be reinstated and extended. On September 26, 2014, the day after the major discharge of children from the Tatmadaw, the U.N. Country Task Force and Myanmar's government were scheduled to meet to review the Action Plan.³⁰⁴ At the meeting the two sides were to discuss the progress made under the Action Plan and to identify the remaining steps needed to end the recruitment and use of children by the Tatmadaw.³⁰⁵ The Action Plan provides for the necessary measures to end recruitment, if the Plan is reinstated for a longer term and the Government fully commits to adhering to the Plan, there would be a realistic hope of ending the practice of child soldiering by the Tatmadaw.

VII. ATTAINING THE GOAL: THE ACTUALIZATION OF THE JOINT ACTION PLAN

Reinstating the Action Plan and extending its term, albeit a necessary step, is only the beginning of achieving the actualization of the Action Plan and, in turn, ending the recruitment and use of child soldiers. The Government and the Tatmadaw will have to make considerable efforts to implement the commitments contained in the Action Plan. The U.N. Country Task Force stated their concerns regarding barriers to the successful implementation of the Action Plan in the Secretary-General's third report.³⁰⁶ These concerns echo the remedial measures advocated by many international human rights groups. Charu Hogg, the Asia Program Manager at Child Soldiers International, identified five key characteristics that make action plans successful: access, demobilization, prevention, accountability, and

³⁰² Dani Patteran, *Burmese Army Releases 108 Child Soldiers*, IRRAWADDY (Sept. 25, 2014), <http://www.irrawaddy.org/burma/burmese-army-releases-108-child-soldiers.html>; *see also Myanmar Army Releases More Than 100 Soldiers*, WORLD BULL. (Sept. 25, 2014), <http://www.worldbulletin.net/todays-news/145110/myanmar-army-releases-more-than-100-child-soldiers>.

³⁰³ Patteran, *supra* note 302.

³⁰⁴ Kean, *supra* note 297.

³⁰⁵ *Id.*

³⁰⁶ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 45.

reintegration.³⁰⁷ These characteristics are likely contained in the substance of the Action Plan, but the true understanding and actual implementation of these particular measures provide the best road map for the action plan's eventual success.

Access has been a constant hindrance to the U.N. Country Task Force. Without unimpeded access the Country Task Force is unable to carry out its most critical role: monitoring and verifying the implementation of the Action Plan by the Tatmadaw. Without access the Country Task Force is left to rely solely on reports of the Tatmadaw. Hogg explained that the ideal scenario would be unimpeded access for the Country Task Force without any prior notice requirements.³⁰⁸ Although it seems unlikely that this scenario will be attained given the actions of the Tatmadaw, the Government should honor the commitments set forth in the Action Plan which stipulate that the Country Task Force will have access to military bases, prisons, and other places where children may be present.³⁰⁹

Demobilization is obviously the core goal of the Action Plan. Access is required to ensure that goal is obtained and prevention is necessary to ensure that the egregious practice does not continue. Effective prevention of underage recruitment begins with the establishment of a reliable system for age verification of recruits.³¹⁰ Verification begins with birth registration; Myanmar law advises parents or guardians to register children at birth, when they reach the age of ten, and again when they turn eighteen.³¹¹ Unfortunately, birth registration is not a common practice in rural areas.³¹² When a child turns ten she is eligible for a National Registration Card, although the process of obtaining this documentation is difficult and expensive.³¹³ The Government should make the process of birth registration easier and more accessible. The process for obtaining a National Registration card should also be more accessible and should only have to be done once. The Government should make the falsification of documents more difficult. With a strengthened age verification system and documents that cannot easily be forged, the risk of children without authentic documentation or falsified documents would be greatly reduced, and these children would no longer be easy prey for recruiters.

³⁰⁷ Hogg Interview, *supra* note 285.

³⁰⁸ *Id.*

³⁰⁹ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 41.

³¹⁰ CHANCE FOR CHANGE, *supra* note 60, at 18–19.

³¹¹ *Id.* at 17.

³¹² *Id.*

³¹³ *Id.*

Another preventive step that should be taken is the professionalization of the recruitment process. Tatmadaw recruiters should receive proper training on age verification measures, and a centralized database should be established that contains the names, ages, and supporting documentation for all recruits.³¹⁴ The database should also name the recruiting officer responsible for the new recruit³¹⁵ to incentivize proper recruitment and to enhance accountability when underage recruitment is detected. Another, broader preventive measure would be the overall professionalization of the Tatmadaw.³¹⁶ Presently there are high desertion rates that put pressure on recruitment. If the Tatmadaw improved pay and conditions, desertion rates would likely decrease.³¹⁷ Additionally, a leaner, more professional army would reduce recruitment pressures and in turn eliminate the temptation of recruiting children.³¹⁸

A key component to ending the cycle of child recruitment is identifying those responsible and holding them accountable for their actions. The Secretary-General's third country report on Myanmar stated that the commander-in-chief of the Tatmadaw issued a directive on April 20, 2012, indicating that action would be taken against those who took part in illegal recruitment under the Myanmar Penal Code.³¹⁹ The Government reported increasing numbers of disciplinary actions were taken between 2009 and 2012.³²⁰ These included rank demotion, salary deduction, imprisonment, reprimand, pension reduction, and dismissal.³²¹ Yet, the majority of the persons disciplined were only reprimanded.³²² Disciplinary action must go beyond reprimands and reflect the seriousness of the horrendous act of child recruitment. The practice of child recruitment is illegal and punishable under the Myanmar Penal Code, but issues arise during the prosecution of the offense. The judicial system in Myanmar must undergo a reform to ensure that effective prosecution is taking place.³²³ Charu Hogg said that, to her knowledge, there has been only one case of a civilian broker being prosecuted in the court system.³²⁴ Thus, the Government should provide a

³¹⁴ Hogg Interview, *supra* note 285; *see also* Gotterson, *supra* note 10.

³¹⁵ Gotterson, *supra* note 10.

³¹⁶ Hogg Interview, *supra* note 285.

³¹⁷ Gotterson, *supra* note 10.

³¹⁸ Hogg Interview, *supra* note 285.

³¹⁹ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 53.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

judicial system that is capable of effectively prosecuting those found to engage in this activity. The appropriate disposition for persons convicted should include dismissal and imprisonment. A strong message needs to be sent in order to end the cycle of underage recruitment.

In the process of ending the use and recruitment of children, it is crucial not to forget the psychological health of the discharged children. Reintegration of discharged child soldiers is necessary for the wellbeing of both the child and society. In October 2002, Carol Bellamy, then UNICEF Executive Director, said, “[S]uccessful . . . demobilization programs serve to take the guns out of their hands, but we will still be failing these children if [we] do not find ways to reunite them with their families and communities and provide for their psycho-social care and recovery.”³²⁵ During their time in the armed forces, children can become asocial³²⁶ and traumatized³²⁷ by their experiences. A father who believed he had lost his son in Cyclone Nargis later found out that his son had been recruited by the Tatmadaw. After serving three and a half years in the army, the boy’s father was able to lobby for his son’s release. Since his return, the father said that his son was changed, describing the son’s “attitudes and behaviors” as “very rude.”³²⁸ To help children renew positive social relations and productive civilian lives, it is preferable to reintegrate children into their families and communities, as opposed to utilizing specialized reintegration centers.³²⁹ Children also should not have to miss out on educational opportunities because of their lost years spent in the Tatmadaw. Flexible educational opportunities should be made available to them³³⁰ so they can pursue careers of their choice and contribute to society.

VIII. CONCLUSION

The history of the country now known as Myanmar is riddled with ethnic tensions and ingrained with militaristic nationalism. Both of those pressures contribute to the pervasive use of child soldiers in the armed forces. Recent developments, most notably the establishment of a civilian government, have inspired optimism in the international community that the country would

³²⁵ Press Release, UNICEF, UNICEF Urges Demobilization and Reintegration of Child Soldiers (Oct. 30, 2002), *available at* <http://www.unicef.org/newsline/02pr58soldiers.htm>.

³²⁶ Gotterson, *supra* note 10.

³²⁷ Preethi Nalluu & Kim Jolliffe, *Myanmar’s Former Child Soldiers Speak Out*, ALJAZEERA (Aug. 4, 2012), <http://www.aljazeera.com/indepth/features/2012/07/201273171937269780.html>.

³²⁸ *Id.*

³²⁹ Gotterson, *supra* note 10.

³³⁰ *Id.*

begin to take steps towards ending the grave violation of the use and recruitment of children in the armed forces.³³¹ The Joint Action Plan signed in June 2012 between the Government and the U.N. Country Task Force symbolized Myanmar's willingness to reform and illustrated the Government's commitment to not violate the pertinent treaties to which Myanmar is a party.³³²

The implementation of the Action Plan did not proceed at an ideal pace.³³³ The eighteen-month time frame stipulated in the action plan expired in December 2013.³³⁴ To achieve the goal of complete demobilization of child soldiers, the Action Plan will unquestionably have to be reinstated and its time frame extended.

The key components to the success of the action plan are as follows: unrestricted access for the U.N. Country Task Force to areas stipulated in the Action Plan; demobilization; prevention; accountability; and reintegration.³³⁵ Based on a reading of the Secretary-General's 2013 report, these components are, to some extent, provided for in the Action Plan. Demobilization is the core goal of the Action Plan; this goal, however, is entirely dependent on the Government and Tatmadaw's adherence and commitment to the components laid out above. Unrestricted access without required prior notice for the U.N. Country Task Force will ensure that the effective monitoring and verification of the plan's implementation is taking place.

Yet, access in itself is not enough. Preventive measures need to be put in place to guarantee that the Tatmadaw is sustaining the commitment to non-recruitment once the Country Task Force is not present. Such preventive measures should be adopted immediately by the Government and the Tatmadaw, and should include a centralized recruitment database listing the names and ages of recruits, as well as the name of their recruiting officer, thus supporting age verification documentation. The database would function more smoothly were the Government to create more accessible birth registration and take measures to make the process of falsifying documents more difficult. Naming the recruitment officer in the centralized database would enhance accountability measures.

During the process of demobilization the discharged child soldiers cannot be forgotten. These children are returning to their communities as very different people, and must be provided with the resources and support to

³³¹ *See id.*

³³² *Id.*

³³³ Secretary-General Country Report Myanmar 2013, *supra* note 6, ¶ 44.

³³⁴ Whiteman, *supra* note 294.

³³⁵ *Id.*

effectively reintegrate back into their civilian lives. Discharged children should interact with trained professionals who can assist them in re-engaging in positive social relations. Additionally, flexible educational opportunities should be made available to allow children to compensate for time lost while in the armed forces.³³⁶

Myanmar is at a pivotal point in redressing this grave violation committed against children. The new civilian government has signed onto reform efforts, like the Joint Action Plan, and continues to enter ceasefire agreements with non-state armed groups. This progression signals an optimistic future for the elimination of the use and recruitment of children soldiers, but the goal must be kept in sight. The Government and the Tatmadaw must honor the commitments laid out in the Action Plan to ensure the ongoing protection of all of its children.

³³⁶ Gotterson, *supra* note 10.

