

# BURMA

## CHILDREN'S RIGHTS AND THE RULE OF LAW

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## I. SUMMARY AND RECOMMENDATIONS

Burma acceded to the Convention on the Rights of the Child (CRC) in 1991. Since then, however, there has been little progress towards the implementation of the convention, and the underlying problems which impede implementation have not changed. These include a total lack of the rule of law and accountability of the government, as well as draconian restrictions on freedom of expression, association and peaceful assembly which prevent local reporting and monitoring of the human rights situation of children. Events of October and December 1996 in Burma, which saw hundreds of high school and university students take to the streets to demand the protection of their rights, especially the right to form student unions, highlight the urgent need for reform. Over three hundred students and youths were arrested during the December demonstrations, at least fifty of whom remain unaccounted for.

This report examines the context within which children and their parents must struggle to exercise their rights and looks in detail at the legal provisions which deny them even the most basic rights and freedoms. It also reports on the current situation of children in Burma and the daily practices used by the military and other government agents which violate international law. These include abuses of international humanitarian law in ethnic minority areas, including the use of children as porters for the army and the forcible relocation of tens of thousands of civilians; the recruitment of children under the age of sixteen into the armed forces, often forcibly; arbitrary arrest and detention, often without charge or trial; the routine use of children as unpaid laborers on government construction projects; the arrest of high school students for writing or distributing leaflets, or for simply calling out slogans, under censorship laws which also severely limit the publication of children's books and magazines; and the use of forced labor.

Frequently children used as porters die from beatings, a lack of medical care and exhaustion. Boys as young as thirteen are forcibly recruited into the army and see military action by the age of fourteen and fifteen. Even younger boys are "adopted" by the army and institutionalized as military recruits by the time they reach the age of fourteen. In some cases, where children are adopted under Buddhist customary law, they work in slave-like conditions as domestic servants or in other businesses. In some cases girls are trafficked into Thailand, through border checkpoints administered by the State Law and Order Restoration Council (SLORC, the military government), where they become bonded laborers working in slave-like conditions. If these girls are returned to Burma by the Thai immigration authorities, they face arrest under Burma's immigration laws for having left the country illegally. Given the lack of due process and corruption within the judiciary, they do not receive a fair trial. Until April 1992 children who were arrested for having exercised their right to freedom of association and expression were tried under summary justice in military tribunals. Today some of those children remain in adult jails, where conditions are often appalling. Those sentenced to prison with hard labor are sent to prison labor camps across the country where death rates are extremely high.

The report concludes that the government has shown little political will to implement the terms of the CRC, suggesting that its accession was not so much an indication of its desire to protect the rights of children as an empty gesture designed to improve its image abroad. Nevertheless, Human Rights Watch welcomes the efforts of the Committee on the Rights of the Child to engage the government in constructive dialogue regarding implementation and urges the international community to support the committee's work.

This report is based on research which Human Rights Watch/Asia has conducted since 1990. Some of the information comes from sources inside the country and from U.N. agencies and international non-governmental organizations (NGOs), but most is based on first-hand observations and interviews with Burmese refugees in Thailand and Bangladesh. To protect these people, we have not included names and other details which could identify the interviewees.

## **Human Rights Watch recommends that the State Law and Order Restoration Council**

- Take steps to ensure independence of the judiciary and the rule of law. Laws which are incompatible with international norms should be repealed or revised, including the 1982 Citizenship Act; Unlawful Association Act (1908, amended 1957), Printers and Publishers Registration Law of 1962 and the 1989 law amending it; the 1985 Video Law; the Wireless and Telegraphy Act of 1985 and the 1996 amendment; the 1950 Emergency Provisions Act; SLORC Order 2/88; and the 1996 Law to Protect the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition.
- Ensure that the 1993 Child Law is revised to make it and all other laws compatible with the Convention on the Rights of the Child.
- Permit and encourage the formation of independent nongovernmental organizations that wish to work with children and their parents. Such organizations should also be permitted to receive training from international NGOs, either in Burma or abroad.
- Enable full implementation of the Convention on the Rights of the Child by permitting international agencies, including human rights organizations, access to children throughout Burma on a regular basis to monitor progress. In accordance with Article 42 of the convention, the SLORC must also “make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”
- Immediately take steps to ensure that all children who have been proven guilty of a punishable offense are detained in juvenile centers and to improve conditions in all places of detention where children are held. The International Committee of the Red Cross and other appropriate international bodies should be allowed regular access to these places.
- Allow all children and youths sentenced by military tribunals before 1992 who remain in jail to appeal their sentences in juvenile courts. Those sentenced solely for their peaceful political protests or for exercising their right to freedom of expression should be immediately released. All children held in adult jails or prison labor camps should be transferred immediately to suitable juvenile accommodation.
- Educate the armed forces and give strict instructions on the treatment of civilians, especially children, during military campaigns. In particular, the use of civilians, particularly of children, as forced porters for the military must cease immediately. Those members of the armed forces who violate the provisions of the Geneva Conventions must be prosecuted and punished.
- Demobilize all children under the age of sixteen who have been recruited into the army. No children under the age of sixteen should be permitted to join the military, even where they are non-combatants or where recruitment is disguised as education. The practice of forced recruitment, particularly of children under the age of sixteen, which is a violation of Burma’s domestic laws, must cease immediately.
- Take steps to ensure Burma’s adoption laws are brought into line with international standards as established in the convention, so that children can be protected from abuse and exploitation by their guardians.
- Immediately cease the practice of forcing children and their parents to work for no pay.
- Immediately take steps to prevent the trafficking of girls and women into prostitution in Thailand and elsewhere. The SLORC should negotiate with Thailand to establish a system for monitoring the trafficking in

girls, which mainly takes place at official cross-border checkpoints, and investigate and prosecute the traffickers to the fullest extent of the law.

- Burmese girls who return or are returned after having been forced or otherwise lured into prostitution abroad should not be detained on their return under immigration or other laws. The government should take steps to ensure that they are fully rehabilitated and reintegrated when they return and conduct educational programs to discourage parents and children from being involved with trafficking agents.

## II. INTRODUCTION

Burma is a country of forty-five million people, over one-third of whom are ethnic minorities who mainly inhabit the mountainous border regions. Burma was a kingdom until 1823, when the British colonized the southwest of the country. By 1856, the whole of Burma was under British occupation and remained so until independence in 1948. Burma's first post-independence government was elected, and Burma remained a democracy until the military took over in a bloodless coup in 1962. The military, in different guises, has ruled ever since. Immediately after independence the Karen ethnic minority took up arms against the central government, in protest at the lack of constitutional provisions for self-rule in their state. The Karen were soon joined by the Communist Party of Burma and eventually, by the mid-1970s, nearly every major ethnic group in Burma was represented by armed groups. Civil war and ethnic strife have thus dominated Burma's history and have been the *raison d'être* of the armed forces in its thirty-five-year dominance of the country. Between 1962 and 1988 the military adopted a policy of total economic and political isolation from the international community, and though some U.N. agencies, including the U.N. Children's Fund (UNICEF) had offices in Rangoon, there was little international reporting of the human rights situation in the country. Isolation and a reliance on military officers rather than technocrats in the government were to blame for an economic decline which drove the country from once being the rice basket of Asia to being declared a "least developed country" by the U.N. in 1987.

In March 1988 students in Rangoon took to the streets demanding an end to military rule and economic mismanagement, and by August the entire country had joined them in nationwide pro-democracy demonstrations. Six weeks later, realizing that it was losing control, the current military government, the SLORC, took power after killing up to 3,000 unarmed demonstrators. In response, the international community cut off all bilateral aid to Burma, and the U.S. and European Union (EU) imposed an embargo on all arms sales. The SLORC imposed martial law and enacted a series of decrees having the force of law, designed to severely restrict civil freedoms, while in remote ethnic minority areas of the country it stepped up military campaigns designed to boost the army's image as the savior of the nation. In an effort to increase the country's foreign exchange reserves, the SLORC announced an opening of the economy to foreign investment and trade, and the campaigns against ethnic groups were increasingly focused on those groups which had control of major trade routes with Thailand and other neighboring countries.

Realizing the impossibility of militarily defeating the ethnic armies, the SLORC embarked on a new policy of cease-fire negotiations in an effort to enforce control over the countryside. The first cease-fires were all with groups whose primary interests had long ceased to be political but were rather economic, as they were the main opium growers, heroin producers and traffickers in Burma.<sup>1</sup> Since then a further fifteen armed groups have entered into cease-fire agreements, and one group, the Mong Tai Army (MTA) lead by Khun Sa, surrendered in January 1996. In most cases the cease-fires permit the ethnic armies to maintain their weapons and men in the areas designated as their territory and to enter into trading and other business ventures in mainland Burma. The cease-fires do not include any discussion of a political settlement, however, and in some areas, notably the Wa and Mon states, there is a great deal of tension, leading

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<sup>1</sup> This includes ethnic soldiers of the collapsed Communist Party of Burma, the Wa and Kokang who are now represented by four groups which signed cease-fires in 1989. Each of these groups operates mainly in the northern Shan state and is dominated by ethnic Chinese drug warlords. See Bertin Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Colorado: Westview Press, 1995.) It is important to note that, since then, opium and heroin production in Burma has more than tripled.

some analysts to suggest that the military agreements may not hold. The Karen National Union (KNU), Karenni National Progressive Party (KNPP) and the Shan United Revolutionary Army (SURA, formed by former MTA troops who did not agree with Khun Sa's surrender) are the main groups still at war with the Burmese army, and in their areas, violations of humanitarian law against civilians by the army continue to take place.

Despite opening up to foreign investment, Burma remains largely closed to international monitoring and is a party to few international legal instruments to protect human rights.<sup>2</sup> The Burmese government appears to have acceded to a number of these, including the 1949 Geneva Conventions and the 1989 Convention on the Rights of the Child, in an effort to improve its international image. Burma came under international scrutiny for its human rights record shortly after the SLORC took power in 1989. In 1990 the U.N. Commission on Human Rights (UNCHR) ordered an investigation into human rights abuses by the SLORC, appointing a special rapporteur to the country under the confidential 1503 procedure. In 1992, the UNCHR resolved to make the procedure public after conditions failed to improve.<sup>3</sup> The special rapporteur was permitted to conduct a week-long mission to Burma each year, but access was denied the new rapporteur in 1996. No international human rights organizations, including Human Rights Watch, have been officially permitted to enter Burma since 1988. In addition, since December 1994, the U.N. secretary general has been mandated by the General Assembly to assist in the implementation of U.N. General Assembly resolutions concerning Burma, although his office was also denied permission to visit the country in 1996.

The Convention on the Rights of the Child (CRC) was devised to recognize and protect the economic, civil, cultural, political and social rights of children. It came into force in 1990, and by April 1996 there were 187 countries which had become a party to the convention, leaving only six states (including the United States) which have not. Uniquely among United Nations conventions, the CRC includes within its articles (Article 44) a requirement for states parties to report to the Committee on the Rights of the Child, based at the Center for Human Rights in Geneva, detailing progress towards implementation of the CRC. The committee can then make recommendations directly to the state party and may invite other specialized agencies, such as UNICEF, to provide expert advice.

Burma acceded to the CRC in August 1991, although with two significant reservations: Article 15, recognizing the right "to freedom of association and of peaceful assembly"; and Article 37, which states that "No child shall be subjected to torture or other cruel, degrading and inhuman treatment or punishment." These reservations were both withdrawn in October 1993. On July 14, 1993 the government passed a new Child Law (SLORC Law No. 9/93) aimed at protecting "the rights of the child recognized in the U.N. Convention on the Rights of the Child." In order to ensure full implementation of the law, it established of a National Committee on the Rights of the Child, chaired by the minister of social welfare, relief and resettlement. It also provided for the establishment of other committees at the state, divisional, district and township levels and to the dissemination of the Child Law and the CRC throughout the country, in all the major languages.

In accordance with Article 44 of the CRC, the government submitted a report to the Committee on the Rights of the Child in February 1996. The government's report adds little to the limited information on the situation for children in Burma. It is a catalogue of actions which the government will take or is taking but includes few details of progress towards their implementation in the five years since Burma signed the Convention on the Rights of the Child, and there is little information at all about the current situation of children.

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<sup>2</sup> These are the Convention on the Elimination of all Forms of Discrimination against Women; the Slavery Convention and its protocols; the Convention on the Rights of the Child; and the 1949 Geneva Conventions. Burma has also signed, but not acceded to, the Convention on the Political Rights of Women and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.

<sup>3</sup> In 1990 the Special Rapporteur was Mrs. Sadako Ogata, who resigned in order to become the High Commissioner for Refugees. She was followed by Prof. Yozo Yokota in 1991, who held the post until he resigned, citing a lack of political and financial support for his mandate, in March 1996. The current rapporteur is Judge Rajsoomer Lallah, former chief justice of Mauritius.

In most countries which have ratified the Convention on the Rights of the Child, local and international nongovernmental organizations working with children contribute to the report by the government, or present alternative reports to the Committee on the Rights of the Child at the U.N. Center for Human Rights. In the case of Burma, however, there are few, if any, truly independent local NGOs in Burma, and none of them have given information to the committee. Equally, of the few international NGOs working in Burma, none have chosen to submit any information publicly to the committee.

### III. THE LEGAL CONTEXT

*"The Special Rapporteur observes that the absence of the rule of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Myanmar insofar as this absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights."*

—Judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, October 1996<sup>4</sup>

Before discussing the 1993 Child Law and other relevant legislation, it is necessary briefly to review the current legal climate in Burma. The State Law and Order Restoration Council (SLORC) seized power in a bloody takeover on September 18, 1988, bringing to an end six weeks of peaceful pro-democracy demonstrations which had toppled three heads of state. The SLORC, which is composed entirely of senior military officers, is supported by a cabinet of forty-four ministers, of whom only five are not serving military officers. Of those ministers with a special interest in children, only the Ministry of Health is headed by a civilian, U Saw Tun, while the ministries of education and social welfare are both headed by serving military officers.<sup>5</sup>

Immediately after assuming power and imposing martial law, the SLORC announced that it was a temporary government which would oversee general elections once law and order had been secured and would then transfer power to a duly elected civilian government. At the same time, the SLORC suspended the 1974 Constitution and established military tribunals and new civilian courts. Elections were finally held in May 1990, and observers stated that they were free and fair. However, the SLORC did not transfer power to the overwhelming victors, the National League for Democracy (NLD), and instead claimed that the election was for a constituent assembly which would write a new constitution, under which new elections could be held. At the same time, hundreds of NLD members and elected members were arrested. Nearly three years later, in January 1993, a constituent assembly, known as the National Convention, was finally convened, yet less than one hundred of the 702 delegates were elected members of parliament, the rest being hand-picked by the SLORC. In November 1995, the NLD withdrew from the convention in protest at the lack of democratic rights within the forum, removing any semblance of legitimacy the National Convention might have had. Since March 1996 there have been no further meetings of the convention. There are no other signs that the SLORC intends to honor its original pledge and its international obligations (in particular, Article 21 of the Universal Declaration of Human Rights) by transferring power to those duly elected in 1990.

This situation has been described by the Special Rapporteur to Burma as one which raises the question as to:

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<sup>4</sup> Judge Rajsoomer Lallah, "Situation of Human Rights in Myanmar" (New York, U.N. General Assembly, A/51/466, October 8, 1996).

<sup>5</sup> Lt. Col. Pan Aung is the minister for education, and Maj. Gen. Soe Myint is the minister for social welfare. U Saw Tun became the minister of health in May 1996, replacing Vice-Adm. Than Nyunt. Since his appointment he has demoted some of the most respected and capable personnel within the ministry, including the former head of the AIDS control program, Dr. Bo Kywe. Human Rights Watch/Asia

whether any juridical legitimacy that could, arguably, have been derived from past acquiescence in the assumption of power by the Military Forces can any longer provide a defensible basis for the continued maintenance of a non-constitutional system based on the assumption of martial powers, having such an unfavorable impact on human rights in the context of generally accepted international norms and the obligations undertaken by Myanmar.<sup>6</sup>

Thus, the SLORC itself can be considered an illegitimate body, both in terms of national and international law, and any consideration of the rule of law and due process of law in Burma must take this into account. Since coming to power, the SLORC has enacted a series of new laws and decrees while continuing to employ legislation which existed under the old constitution. Many of these laws are contrary to international norms, especially those concerning freedom of thought, expression, association and movement.<sup>7</sup> In addition, there are concerns regarding the independence of the judiciary and increasing corruption and malpractice among lawyers.

While military tribunals were revoked in 1992, there is ample evidence that due process of law and the independence of the judiciary do not apply in politically sensitive cases. Judges are appointed directly by the SLORC, and there has been an increase in retired military judges being promoted to work in the High Court—one example is that of U Tin Htut Aung, a former colonel who was appointed as a high court judge in April 1994. During 1996 alone, over sixty members of the opposition NLD who were arrested had not been charged or tried by the end of the year.<sup>8</sup> This action contravenes national and international law, and insofar as none of these people have had any communication with their families who in most cases do not know where they are being held, it also contravenes Article 9, Section 4 of the CRC.<sup>9</sup> In other cases, NLD members or supporters are often not permitted to have legal representation, and their trials often take place *in camera*.

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<sup>6</sup> Judge Rajsoomer Lallah, "Situation of Human Rights in Myanmar," para 31.

<sup>7</sup> See K. S. Venkateswaran, "Burma: Beyond the Law," (London: Article 19, August 1996); and Lallah, "Situation of Human Rights in Myanmar."

<sup>8</sup> Human Rights Watch/Asia does not have a full list of the names of those detained without charge or trial, but the list includes U Aye Win, a businessman and cousin of Daw Aung San Suu Kyi, who was arrested on May 21, 1996; Dr. Aung Khin Sint, an MP who was arrested (for the third time) on July 22, 1996; U Moe Thu, editor of the popular *Da Na* economics magazine, arrested in May 1996; and Ma Thet Thet Aung, a female student, arrested on August 8, 1996.

<sup>9</sup> Article 9, states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will..." and Section 4 states, "Where such separation results from any action initiated by a State Party, such as detention, imprisonment, deportation or death (including death...while the person is in the custody of the State) of one or both parents of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate another member of the family, with the essential information concerning the whereabouts of the absent member(s) of the family."

Even in nonpolitical cases, both civil and criminal, the rule of law has been undermined by a marked increase in corruption among judges and lawyers, resulting in a system in which there is one rule for the rich and none at all for the poor. Judges are paid around 3,000 Kyats a year (about US\$300) and supplement this meager income by accepting bribes. Concern over the increase in corruption of the courts has even been voiced by Chief Justice U Aung Toe, who told a group of recently graduated advocates in May 1996, "Advocates and lawyers must avoid bribing judges, paving the way to be able to bribe and urging the clients to bribe." He also urged advocates "to be loyal to the State and to direct their efforts toward the welfare of the people without losing sight of the objectives of the State."<sup>10</sup>

This is the context within which children and their parents in Burma have to struggle for justice. Implementation of the CRC, and the SLORC's own Child Law, will continue to be severely handicapped by the lack of accountability and access to justice in Burma.

#### IV. GENERAL MEASURES OF IMPLEMENTATION

The lack of the rule of law and due process in Burma is clearly a serious obstacle to the implementation of the CRC. It is however symptomatic of a far wider problem of a pervasive lack of openness and accountability in the Burmese government which manifests itself also in the government's refusal to allow the formation of independent nongovernmental organizations and to grant access by international monitors and NGOs. The World Bank, the special rapporteur and other analysts have noted that the main concern of the SLORC is its own survival.<sup>11</sup> The primacy of political considerations extends even to the health sector, where over 15,000 doctors were sacked in the first two years of the SLORC's term of office for having "incorrectly" answered questionnaires about their political opinions.<sup>12</sup> In education too, demonstrations by students led to the closure of schools and universities for long periods: all high schools and universities were closed for most of 1988, all of 1989-90 and again in December 1991 for three months. When they reopened, in order to clear the backlog which had developed, the university academic year was reduced to three months, and students completed three-year courses in only one year. From December 6, 1996 universities, colleges and high schools in Rangoon were again closed and had not reopened by the middle of January 1997.

While the government has opened the country to tourism in the past two years, it has restricted access by U.N. personnel at the same time. After Burma ratified the Geneva Conventions in 1992, the International Committee of the Red Cross closed their offices in Rangoon in July 1995, frustrated by the lack of access they had been given. Between December 1992 and October 1996, the U.N. Commission on Human Rights' Special Rapporteur to Burma, Professor Yokota, conducted four one-week missions to Burma (there were also two missions in 1990 and 1991 under the confidential 1503 procedure). However, since Yokota resigned in March 1996, his successor, Judge Rajsoomer Lallah, has not been allowed into the country. Also in 1996, the U.N. secretary-general's representatives were denied access to the country, and thus the secretary-general was unable to fulfill the mandate entrusted to him by the General Assembly.

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<sup>10</sup> *The New Light of Myanmar* (Rangoon) May 4, 1996. Quoted in Foreign Broadcast Information Service (FBIS) May 7, 1996.

<sup>11</sup> See, for example, World Bank, "Myanmar: Policies for Sustaining Economic Reform," (Washington: World Bank, 1995).

<sup>12</sup> All civil servants were ordered to fill in a series of questionnaires between 1989 and 1991, see Martin Smith *State of Fear* (London: Article 19, December 1991), and *Fatal Silence? Freedom of Expression and the Right to Health in Burma* (London: Article 19, July 1996).

The Convention on the Rights of the Child and the committee which it established recognize the important role which NGOs can play in ensuring proper implementation and reporting on progress towards implementation of the convention. It is therefore particularly unfortunate that there are no genuinely independent NGOs in Burma. The government in its report to the committee cites the Myanmar Maternal and Child Welfare Association (MMCWA), the Myanmar Medical Association (MMA), and the Union Solidarity and Development Association (USDA) as groups with which the government is collaborating to ensure implementation of the convention. Despite the fact that many of the members of these organizations are highly committed to improving the lives of those with whom they work, none of these organizations can be said to be independent of government control.<sup>13</sup> The inclusion of the USDA in the list of NGOs is particularly disingenuous, as this organization was established by the government 1993 for overtly political reasons (see below). It is headed by a secretariat comprising three government ministers, all of whom are serving officers in the Burmese army, and the mayor of Rangoon. Its aims are identical to those of the SLORC, with the additional aim of "commission and vitalization of national pride."

Perhaps the only independent organizations in Burma are the Christian churches who together form the Myanmar Council of Churches and the Myanmar Catholic Bishops Conference. However, while the Council of Churches has been permitted to register as an NGO, it has thus far not been allowed to openly work. In June and July 1996, Catholic priests and bishops who attempted to assist the displaced in Shan and Karenni states were prevented from doing so by the local military commander, despite the fact that they had already collected donations.

In accordance with Article 4 of the CRC, which requires that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention," the government promulgated the Child Law which entered into force on July 14, 1993. This law is, so far, the most comprehensive legislation on children in Burma and a step towards harmonization of the Convention on the Rights of the Child with Burma national laws. However, in addition to some of the inadequacies of the Child Law, it did not supersede most existing law; therefore the rights of children in Burma remain subject to pre-existing national legislation. Only the Young Offenders Act of 1930 and the Children's Act of 1955 were repealed by the Child Law. Thus, while section 15(a) of the Child Law states that every child "has the right to freedom of speech and expression *in accordance with the law*," the law, in the form of Section 5(e) of the 1950 Emergency Provisions Act, can sentence a child to seven years of imprisonment for as little as "spread[ing] false news, knowing beforehand that it is untrue."

The law established a National Committee on the Rights of the Child, chaired by the minister of social welfare, relief and resettlement, Maj. Gen. Soe Myint. The law also provides for the establishment of other committees at the state, divisional and township levels. Given the government's record thus far, it is unlikely that these committees will be independent of the government, and unlikely, therefore, that they will be able to advocate on the behalf of children.

## V. GENERAL PRINCIPLES OF THE CONVENTION

### The Principle of Non-Discrimination

The most important principle of the CRC is set forth in Article 2 which provides that state parties "shall respect and ensure the rights set forth in the present convention of *each child within their jurisdiction*, without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, color, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status." Thus, unlike other international instruments, the CRC not only calls for non-discrimination among citizens of a country but also commits state parties to ensure that the rights of all children residing in their territory are protected.

In Burma, despite the frequent reference in the Child Law to "every child," children are discriminated against in the law and in practice on the grounds of citizenship, ethnicity, and religious beliefs.

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<sup>13</sup> See Martin Smith, *Fatal Silence?* pp. 50-55. Smith notes that the General Secretary of the MMCWA is the wife of the SLORC Secretary-1, Lt. Gen. Khin Nyunt, and its president is the wife of the former health minister, Col. Pe Thein.

### **Discrimination on the Basis of Citizenship and Between Classes of Citizens**

To begin with, the Child Law (1993) does not apply to all children residing in Burma because it is subject to other existing laws, for example, the Burma Citizenship Law (1982) and the Socialist Constitution of 1974. Thus, foreigners residing in Burma do not have the right to the same services and benefits under the Child Law as Burmese nationals. According to Section 154(c) of Burma's 1974 constitution, it is only children born of citizens who should enjoy equal rights.

There is further discrimination even among "citizens." The Child Law in Article 10 states that "every child shall have the right to citizenship in accordance with the provisions of the existing law." The notable existing law is the 1982 Citizenship Law, which designates three categories of citizens: (1) full citizens (2) associate citizens and (3) naturalized citizens.

In order to be a full citizen of the country, one must be able to produce evidence of the birthplace and nationality of one's ancestors prior to the first British annexation in 1823. This includes nationals from the Kachin, Karenni (Kayah), Karen, Chin, Mon, Rakhine and Shan ethnic groups, or any other ethnic groups which "have settled in the territories included within the State" prior to 1823. Failing this, one is classified as an associate citizen if only one (or more) post-1823 ancestors was a citizen of another county. No other criteria are stipulated. A naturalized citizen is one who has a parent who was a full citizen and one who was an associate citizen. According to the terms of the law, only full and naturalized citizens are "entitled to enjoy the rights of a citizen under the law, with the exception from time to time of the rights stipulated by the State." All forms of citizenship, "except a citizen by birth," may be revoked by the State.

It is explicitly stated in the law that the three levels of citizenship entitle the holder to different rights, although there are many rights not mentioned in the law which also pertain to citizenship even if they are not always applied. Among other things, associate citizens cannot own land or fixed property; they cannot train to be doctors or engineers (until recent times these were the most sought-after careers in Burma, as qualification enabled the person to leave the country); they cannot be tuition (private) teachers; they cannot work for foreign firms, U.N. agencies or foreign embassies; and they cannot stand for any elected office. Lack of these basic rights has not prevented some people attaining high positions, most notably the foreign minister, U Ohn Gyaw (an associate citizen), but they are the exception which proves the rule.

Every person in Burma must carry at all times his or her identity card. The ID card must be produced in order to obtain a wide range of services and the right to vote, to purchase tickets to travel internally, to stay in hostels or with friends and family outside one's ward of residence, to receive health and educational services and so on. ID cards are also routinely demanded for checking by police and army personnel. Foreigners residing in Burma for more than three months have Foreign Registration Certificates which they must also carry at all times. The ID cards were changed in 1990/91 to a new format, which includes not only the name, address and photo of the holder, but also his or her ethnic origin and religion. From this, anyone checking the card can know what class of citizen the holder is.

Many members of Burma's ethnic minorities who are entitled under the Citizenship Law to be full citizens have no identity cards, especially those who live in areas which were not under government control for long periods. Access to written records, the difficulty of traveling to government-controlled areas for registration, and a general unwillingness of the government to register such people make the process of proving citizenship immensely difficult. Following cease-fire agreements with the ethnic armies, the government has sometimes announced that identity cards will be offered to the families and children of those living within the ethnically controlled areas. For example, in January 1996 it was announced that the SLORC would issue identity cards to residents of the drug baron Khun Sa's base at Homong in Shan state. In October 1996 however, Human Rights Watch/Asia interviewed several former soldiers from Khun Sa's army in Thailand and was told that the ID cards they were given were only temporary and would not be replaced by the official pink cards. Lahu villagers interviewed at the same time told Human Rights Watch/Asia that despite repeated requests, they had not been able to change their old cards for the new cards, even

though the Lahu have had a cease-fire agreement with the government since 1989. Without these cards, they cannot travel freely within Burma or vote, and their children cannot attend high school or university.

For the Rohingya Muslims from Arakan state, becoming a registered citizen is almost impossible. The situation is even worse for their children born in refugee camps in Bangladesh. As foreigners, they experience discrimination in many ways.

Between November 1991 and March 1992, 250,000 Muslims fled Arakan State to seek refuge in neighboring Bangladesh. They cited gross abuses by the Burmese army, in what appeared to be a concerted effort to expel all Muslims from the area. When Human Rights Watch/Asia conducted interviews in the refugee camps in 1992, we found that while some possessed identity cards from the 1950s and 1960s, none had received new cards under the 1982 law. Indeed, many analysts reported at the time that the 1982 law was specifically designed to prevent Rohingyas being recognized as citizens, as the majority of them settled in Burma during the British colonial occupation, that is, after 1823.<sup>14</sup>

By December 1996, only 30,000 refugees remained in Bangladesh, but the citizenship rights of those who have returned, under a UNHCR-sponsored program, remains uncertain. On return to Burma, the refugees are given a card which identifies them as returnees and on production of this card they can claim their resettlement package. However, to our knowledge, not one returnee has yet received a new identity card as any form of citizen, and the government still insists in public meetings that most of the returnees are in fact Bangladesh citizens who came to Burma for seasonal work. Human Rights Watch/Asia is particularly concerned by reports that many of the remaining refugees are women and their children who were born in the refugee camps, whom the government will not recognize as being entitled to citizenship.

Without being considered citizens, the Rohingyas will continue to have their rights violated. Rohingya children will not be able to travel, attend high schools and universities, or own property. In his report of February 1996, the Special Rapporteur to Burma said that according to Lt. Gen. Mya Thinn, the minister for home affairs,

The Muslim population of Rakhine State were [sic] not recognized as citizens of Myanmar under the existing naturalization regulations and they were not even registered as so-called foreign residents. Consequently, the Minister added, their status situation did not permit them to travel in the country....They are also not allowed to serve in the State positions and are barred from attending higher educational institutions.<sup>15</sup>

Therefore, there is a need to harmonize the Child Law, the constitution and the Citizenship Act of 1982 to protect all children within the jurisdiction of Burma against *de jure* discrimination. Current legislation and practice contravene not only the CRC but also the 1961 Convention on the Abolition of Statelessness. Burma has been repeatedly urged by the special rapporteur and in numerous resolutions of the Commission on Human Rights to revise the 1982 Act.

### **Discrimination Against Ethnic Minorities**

We have already seen that ethnic minorities have difficulty in gaining their right to citizenship, but children from ethnic minority groups are also discriminated against in other ways. Minority rights are not adequately protected

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<sup>14</sup> For a full discussion of the Citizenship Law and related legislation, see Human Rights Watch/Asia, "Burma—The Rohingya Muslims: Ending a Cycle of Exodus?," *A Human Rights Watch Report*, vol. 8, no.9 (c) (September 1996).

<sup>15</sup> Quoted by the Special Rapporteur to Burma, Professor Yokota, in his "Report on the Situation of Human Rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1995/72," (Geneva: U.N. ECOSOC, E/CN.4/1996/65, February 5, 1996).

even under the 1974 constitution. According to the constitution, Article 152, "Burmese is the common language, languages of the other national races may also be taught." The word "may" and "shall" mean different things in legislative drafting. Whereas "shall" connotes a mandatory obligation, "may" suggests probability of observance; there is no compulsion to observe in all situations, and in practice this is what obtains. The Child Law is more helpful on this matter. Article 21 states that "Every child shall have the right to maintain his or her own cherished language, literature and culture, to profess his or her own religion and to follow his or her own traditions and customs."

In the three years since the Child Law was promulgated there has been some progress towards enabling children to study in their own language, but there has also been some major setbacks. Prior to 1993, ethnic minority languages were banned from the school curriculum, no magazines could be published in any languages other than Burmese and English, and in 1988 two Mon monks who had completed a scholastic exam using Mon script were sentenced to ten-year prison terms. Now, there are some magazines available in the Shan, Rakhine and Karen languages, and U.N. agencies and NGOs working in Burma have been permitted to publish information leaflets in ethnic languages.

However, the fact remains that the right to be protected against discrimination is still governed more by political expediency than by formal guarantees of rights. Equally important is the lack of central government control over the orders of local and regional military commanders, whose every whim becomes policy in the areas under their control. For example, in Mon state where the New Mon State Party (NMSP) came to a cease-fire agreement with the government in March 1995, the NMSP were at first permitted to continue teaching in the Mon language in all of the schools they administered. There was also an agreement that the SLORC would build more schools in the Mon area, and that in primary schools, Mon language could be taught. In early 1996, however, there were disagreements between the Mon and the SLORC concerning the evacuation of territory which the Mon had previously controlled. Soon after, a new order was sent out by the regional commander prohibiting the teaching of Mon language in any schools which receive government assistance, though the teachers could, should they choose, use the school buildings outside of school hours to teach Mon. By July 1996, this provision was also revoked, and no school buildings were to be used to teach Mon.

### **Discrimination Against Religious Minorities**

It is very important to children's development that they and their parents be permitted the right to freely worship and profess their religious faith. This is recognized in Article 14 of the Convention of the Rights of the Child and in Section 21 of Burma's Child Law. Despite the new law, however, there have been indications of an increasingly intolerant attitude by the government towards the ethnic and religious minorities (and the two groups usually coincide).

Without going so far as to designate Buddhism the state religion, the SLORC has enacted a clear policy to promote Buddhism in Burma, both in order to enhance the legitimacy of the military government and to forge "national solidarity." Thus, while Buddhist monastic schools have been greatly encouraged, especially in ethnic minority areas in recent years, there are no Christian middle or high schools, and in many areas unofficial *madrasahs* (Muslim schools) have either been closed or prayers within the schools have been prohibited.

In response to the 1993 report of the Special Rapporteur on Religious Intolerance, the SLORC claimed that it "is prudent and careful in taking measures so that there is no discrimination against other religious faiths...For this reason, a separate Ministry of Religious Affairs...was established in 1992." The statement did not add that the religious affairs ministry is located in the grounds of the World Peace Pagoda (Kaba Aye) in Rangoon, a compound which also serves as the home of the most senior committee of Buddhist monks, the Sangha Maha Nayaka Committee. Nor did he mention that one of the main functions of the Ministry of Religious Affairs is the propagation of Buddhism, both nationally and internationally, through the publication of Buddhist scriptures and the establishment of Buddhist missionary schools in ethnic minority areas.

The SLORC policy of promoting Buddhism as an essential facet of being a "true" Burman has led to discrimination against non-Buddhist children on ethnic and religious grounds and in some cases to forced conversions. In northern Sagaing division in December 1994, the Naga people of Konkailon village (who are predominantly Christian) were ordered to demolish their church and construct a Buddhist monastery in its place. The following month,

villagers from Konkailon, Kuki, Nurnitmumpi and Pansat were forced to accept *sila* (Buddhist vows) from monks who had been brought in by the army to occupy church buildings. In the Chin state, also a predominantly Christian area, Human Rights Watch/Asia received reports that in May 1994 government authorities offered six villagers the chance to send their children—all of whom were under fourteen years of age—to boarding schools in Rangoon, where educational standards are much higher. Months later, when the parents requested permission to visit their children, they discovered that the children had been taken to a Buddhist monastery where they had been forced to convert. None of the children were permitted to return home. While we have not been able to confirm either of these reports, we remain concerned that children have been taken away from their parents under false pretenses and denied their right to freely practice the religion of their choice.

Muslim children have also been denied the right to freedom of religion. Rakhine Muslims cited religious persecution as one of the factors which drove them to seek refuge in Bangladesh in 1991 and 1992. In northern Arakan state, mosques were destroyed or otherwise closed down, and Muslim children were not permitted to attend madrasahs. More recently, in September 1996 a 600-year-old mosque in the old capital, Mrauk-Oo, was demolished by the army despite appeals by the local Muslim community. In October 1996 Human Rights Watch obtained anti-Muslim leaflets which had been distributed in Rangoon warning all Burmans to be especially vigilant to the “threat” of Muslim dominance. The leaflets told “patriotic Burmese” not to eat at Muslim restaurants, buy from Muslim shops, or employ Muslim workers. The leaflets were not signed by any organization, but Muslims believed they were designed to stir up religious and racial tension to distract from the student demonstrations which had begun in the same month. Similar tactics were employed in 1988.<sup>16</sup>

## VI. CIVIL RIGHTS AND FREEDOMS

The Child Law includes provisions protecting the civil rights and freedoms of children; however, these rights are subject to important qualifications which essentially undermine their efficacy. For example, Section 14 of the Child Law states: “Every child shall, irrespective of race, religion, status, culture, birth or sex be (a) equal before the law and (b) given equal opportunities.” But this is subject to Article 154(c) of the constitution which states that only “Children born of citizens shall enjoy equal rights.”

Further, Section 15 of the Child Law states that every child:

- (a) has the right to freedom of expression in accordance with the law;
- (b) has the right to freedom of thought and conscience and to freely profess any religion
- (c) has the right to participate in organizations relating to the child, social organizations or religious organizations permitted under the law.

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<sup>16</sup> See Bertil Lintner, *Outrage: Burma's Struggle for Democracy* (Bangkok: White Lotus Press, 1990).

Despite these provisions, the Child Law is subject to all existing laws, and in Burma there is a wealth of laws restricting the civil rights of all citizens. The rights of the child to freedom of expression and association are subject to a number of other existing laws, including the Unlawful Association Act (1957); Printers and Publishers Registration Law of 1962 and the 1989 law amending it; the 1985 Video Law; the Wireless and Telegraphy Act of 1985 (amended in October 1996); the 1950 Emergency Provisions Act; and the June 1996 Law to Protect the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition. Each of these laws have been denounced as being contrary to international norms by the U.N. Special Rapporteurs to Burma and by human rights organizations.<sup>17</sup>

### **Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

Given that torture has been reported by the Special Rapporteur to Burma as being “regularly employed against civilians living in insurgency areas, against porters serving the army and in working sites where forced labour is practiced,” and that the government at first omitted Article 37 of the CRC when it was ratified in 1993, particular attention must be paid to the elimination of all forms of torture, cruel, inhuman and degrading punishment of children. The treatment of children in insurgency areas is discussed below, but Human Rights Watch/Asia is also very concerned about the treatment of children in detention centers and jails.

Because students and young people were at the forefront of the pro-democracy demonstrations in 1988, hundreds were arrested and jailed. In many cases, these children and youths died while under interrogation and their bodies were buried in mass graves, as the Special Rapporteur to Burma noted in his 1993 report.<sup>18</sup> There has never been an investigation into any of the deaths which occurred in 1988 and 1989, and many parents are still unaware of the whereabouts of their children. In most cases torture takes place immediately after arrest, when the subject is held in military intelligence centers for interrogation.<sup>19</sup> During this period, which can last for up to two weeks, the suspect is held incommunicado, in contravention of international norms.

Despite concerns over the use of torture by Burmese soldiers, military intelligence personnel and police, the Child Law does not explicitly prohibit these acts of violence against children but merely states in Section 37 that a police officer taking action against a child “shall not handcuff the child or tie with a rope.” There is also no explicit prohibition against the use of rape as a means of torture by government agents, though this is known to have occurred frequently in ethnic minority areas where girls and young women are taken to work as porters for the military or are otherwise kidnapped and held in army camps overnight where they are repeatedly raped (see below). The omission of prohibitions against torture and rape is unacceptable, and the law should be amended not only to prohibit all forms of torture of children but also to impose the terms of punishment for the perpetrators of such acts.

Sections 30 and 31 of the Child Law address the ethics and discipline of a child and impose a number of duties on a child which include “abiding by the school discipline, work discipline and community discipline; cherishing and preserving the race, language, religion, culture, customs and traditions concerned with him.”

Further, Section 65(d) states that whoever willfully mistreats a child, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with a fine of up to Kyats 1000, or with both “*with the*

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<sup>17</sup> See Yokota, “Report on the Situation of Human Rights in Myanmar” (Geneva: U.N. ECOSOC, E/CN.4/1993/37, February 17, 1993); Lallah, “Report on the Situation...” 1996; Venkateswaran, “Burma: Beyond the Law,” Amnesty International, “Myanmar: No Law At All” (London: Amnesty International, ASA 16/11/93, November 1992); Human Rights Watch/Asia, “Burma: Entrenchment or Reform?” *A Human Rights Watch Report*, vol. 7, no.10 (c) (July 1996).

<sup>18</sup> See Yokota, “Report on the Situation...” p. 18.

<sup>19</sup> See Asia Watch “Human Rights in Burma” (New York: Human Rights Watch, May 1990); Amnesty International “No Law At All,” and all reports of the Special Rapporteur to Burma.

*exception of the type of admonition by a parent, teacher, or a person having the right to control the child, which is for the benefit of the child"* (emphasis added). These provisions could be seen as encouraging parents and teachers to use physical punishment, contrary to Article 37 (a) of the convention which protects children from assaults on their dignity and physical integrity.

The Committee on the Rights of the Child has condemned corporal punishment in institutions and at home during its thematic debate held on November 13, 1995 to address the issue of juvenile justice and also during consideration of state party reports. According to the committee, the use of physical punishment as a sentence of the courts or as a punishment within institutions is not compatible with the convention.

### **Freedom of Expression**

Existing censorship laws in Burma are extremely restrictive, and in the past year they have become more so. The SLORC has enacted or amended five laws relating to the freedom of expression. Under the 1962 Printers and Publishers Registration Law, all publications and other media materials (including videos and films) must be assessed by the Press Scrutiny Board before publication or release. This law was amended in 1992 to increase the fines and prison sentences which could be handed to those found guilty of breaking the law to a maximum of seven years imprisonment and/or a fine of 30,000 Kyats (\$300)— this is thirty times the fine and six and half years more than the custodial sentence which can be imposed on those found guilty of maltreating a child. The Press Scrutiny Board reads every novel or book of short stories before it can be published, though the publisher has to furnish the board with a number of copies. Even after passing the censor in draft form, a book must be resubmitted after publication before it can be distributed, and it is not unusual for books to have pages ripped out or entire passages inked over before distribution is permitted. In some cases, entire books have been scrapped, even though they passed the first round. Magazines and periodicals are scrutinized by the board only after printing, so that editors and authors are obliged to operate strict self-censorship. As a result of these methods, the publication of books and magazines can be both extremely costly and risky, and few publishers risk printing anything that may inadvertently arouse the suspicions of the board. The publication of children's books and periodicals, which the CRC recognize as being an essential to assisting children's development, is thus discouraged.

In addition to censoring domestic publications, the import of foreign newspapers and books is strictly controlled and those foreign magazines and publications that find their way to the street markets in Rangoon have politically sensitive articles removed. Scores of writers and artists have been arrested and given long sentences for breaching the 1962 law, including Ma Thida, who was arrested in 1993 and sentenced to twenty years in jail for having distributed anti-government leaflets. Ma Thida is a medical doctor and was twenty-seven years old at the time of her arrest.<sup>20</sup> Other laws also restrict freedom of expression, such as the 1985 Wireless and Telegraphy Act, which was amended in October 1995 to increase the punishment for persons possessing facsimile machines without a license to three years in prison or fine of 30,000 Kyats (\$300). In 1996 the law was further amended to include the need for licenses for all computer modems. This law may prove to be particularly harmful to the education of children, as it is not yet clear how difficult it will be to acquire a license and what arrangements will be made for educational institutions in which more than one person has access to the communications hardware.

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<sup>20</sup> See Martin Smith, *State of Fear: Censorship in Burma* (London: Article 19, December 1991) and "Censorship Prevails: Political Deadlock and Economic Transition in Burma" (London: Article 19, March 1995).

Even while enacting these draconian laws, the SLORC continues to state that it is “committed to the principles contained in the charter of the United Nations and the Universal Declaration of Human Rights” but qualifies this with the often heard disclaimer that “our concept of human rights is based on our values, traditions and culture.”<sup>21</sup> In regard to freedom of expression, the government’s interpretation of “Burmese values” extends to forbidding “anyone speaking, writing, printing, publishing falsities, insulting, organizing, assembling and instigating that can cause the people to get misinformed or confused about the national problems, discrediting the government to turn people against it, and to cause upheavals.”<sup>22</sup> This is also expressed in the June 1996 Law to Protect the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition, which carries a maximum sentence of twenty years in prison with hard labor for anyone found guilty of making an oral or written statement or disseminating any papers in order to “undermine the stability of the State, community peace and tranquility and prevalence of law and order” or “undermine, belittle and make people misunderstand the functions carried out by the National Convention.” Since this law was promulgated, nine students were arrested on September 21, 1996 for distributing leaflets outside Daw San Suu Kyi’s house on charges of “disrupting the nation’s peace and tranquility.”<sup>23</sup> It is not known what sentences they received.

Many other children and youths have been arrested and prosecuted under existing laws for exercising their right to freedom of expression. In December 1991, Amnesty International reported that a fourteen-year-old boy, Ko Win Thein, was arrested in February 1990 for having put up “anti-government” posters in his high school in North Okalapa, Rangoon. He was sentenced to thirteen years in prison.<sup>24</sup> The same report also reported the arrests of nine high school students from Monywa on July 19, 1991. They included Than Zin Hlaing, Soe Win Maung, Kyaw Moe, Htun Ohn, Kyaw Kyaw Lwin, Aung Aung and Aung Naing for similar offenses. Eight others from Mandalay were also arrested for distributing leaflets in the same month: Myo Win Thant, Soe Soe Oo, Kyaw Soe, Lin Lin Zaw, Win Thein, Win Tin, Htun Ohn and Aye Ko. All of these boys were between fourteen and eighteen years old. It is not known if any of these boys have been released. They were all tried by military tribunals in which the defendants were not permitted legal representation or to call witnesses, and there was no right of appeal except to the commander-in-chief of the armed forces. This was in violation of Article 12 of the Convention on the Rights of the Child, in particular 37 (d), which stipulates that “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” Although military tribunals have been disbanded,<sup>25</sup> none of the children tried by them has been permitted to seek a retrial by a civilian court.

### **Freedom of Association and Peaceful Assembly**

The rights of the child to freedom of association and to freedom of peaceful assembly, enshrined in Article 15 of the convention, are constantly under threat in Burma. As with expression, there are several laws which prohibit peaceful assembly, including SLORC Order 2/88 which makes it an offense for more than five people to gather in a public place. Others prohibit free association, most notably the 1957 Unlawful Associations Act, which provides for a sentence of up to five years for anyone who has been a member, given contributions to, or promoted or assisted any

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<sup>21</sup> U Win Mra, Permanent Representative to the United Nations, October 27, 1996

<sup>22</sup> Kyaw Myint Naing (believed to be the pen-name of a senior military officer), “Are the So-called Opposition Elements in Myanmar For or Against Democracy?” *The New Light of Myanmar* (Rangoon), November 8, 1996.

<sup>23</sup> *The New Light of Myanmar*, (Rangoon) September 22, 1996, quoted in “Junta Arrests Nine Youths Distributing Pamphlets” *The Nation* (Bangkok) September 23, 1996.

<sup>24</sup> Amnesty International, “Union of Myanmar: Arrests and Trials of Political Prisoners,” (London: Amnesty International, ASA 16/10/91, September 1991).

<sup>25</sup> SLORC Order 12/92 of September 26, 1992, Revised Order 2/89 which had established military tribunals.

association which “encourages or aids persons to commit an act of violence or intimidation or of which the members habitually commit such acts; or which has been declared unlawful by the President.”<sup>26</sup>

During the uprising in 1988 and in subsequent demonstrations in 1990, 1991 and 1992, hundreds of high school children were arrested for taking part in peaceful political protests, and many of them received long prison terms under military tribunals. Most had to serve their sentences in adult jails or work camps. More recently, on May 16, 1996 six students from Rangoon university, all under the age of twenty, were arrested for having assisted in the organization of a planned NLD congress. The congress was stopped by the government, which detained for up to five days some 294 NLD elected members of parliament and ordinary party members. The six students, however, remain under arrest, though it is not known if they have been charged or tried. Later in the year, high school students in Rangoon demonstrated, calling for improvements in students’ rights and in particular the right to form a student union. The protests were stopped by armed riot police, who in December used water cannons and beatings to disperse the crowds. Over 300 youths were arrested, but most were released after staying overnight on the grounds of a former horse racing track. Others have “disappeared,” and it is not known how many may still be held in detention. There were unconfirmed reports of at least two students being seriously injured when large rocks were thrown at the crowd by the riot police, and two journalists, including a Japanese man, were also injured. Since December 10, all institutes of continuing education in Rangoon, Mandalay, Moulmein and Sittwe have been closed, and all students not resident in those cities were ordered to return to their home villages and towns.

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<sup>26</sup> The government periodically publishes lists of unlawful associations, though this is done so irregularly that it is not always possible to know the legal status of any particular group. Thus, while some of the ethnic rebel armies which have cease-fires with the government have been officially declared no longer unlawful, most have not. In addition, it is interesting to note that if this law was rigorously applied, then the government-created USDA, whose members were found to have committed an act of violence against Daw Aung San Suu Kyi’s motorcade, should be investigated and possibly made unlawful.

While student unions remain prohibited, children and youths are being forced through a variety of measures to join government associations against their will. High school children and university students are threatened with losing their places at school if they do not join the USDA (see above). In other cases, only USDA membership can guarantee access to scarce teaching resources, such as computers and language laboratories. The USDA particularly targets children and youths, with the intention of instilling in them loyalty to the nation and respect for the armed forces, and creating a "patriotic youth force." Within two years of its foundation, the USDA had over 2.5 million members, the majority of whom were high school students and their teachers. The USDA has been used by the SLORC to show public support for their policies, as a counterforce to the massive public support which the NLD enjoys. When the NLD walked out of the National Convention in November 1995, the USDA held huge rallies, and at each, the crowds pledged their support for the National Convention. In June 1996, at a time when Daw Aung Suu Kyi's weekly public speeches were drawing crowds of up to 4,000 people outside her house, the USDA again held mass rallies across the country where the membership listened to speeches denouncing her and the NLD. Later in the year the rivalry between the USDA and the NLD took an ugly turn when on November 9, 1996 over 200 USDA members attacked a convoy of cars carrying Daw Aung San Suu Kyi and her deputies. Two days later, the chairman of the SLORC, Sr. Gen. Than Shwe, was reported in the government newspaper as telling senior USDA leaders, "It is the duty of the entire people including USDA members to resolutely crush destructive elements inside and outside the country as the common enemy who are disrupting all the development endeavors with the sole aim of gaining power."<sup>27</sup>

### **Unlawful and Arbitrary Interference with a Child's Home**

Article 16 of the CRC states that "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence..." There is no acknowledgment of this right in the Child Law, and it is a right which is frequently violated by the Burmese government. One of the most common violations is the forcible relocation of poor families from their homes in Burma's urban centers to "new towns." Generally, the new towns are little more than scrub land or paddy fields confiscated by the government, with no sanitation, water, electricity or other facilities. Since 1988 hundreds of thousands of urban poor have been moved in this way, often in order to "clean up" areas of specific interest to tourists or simply to encourage foreign investment by hiding poor shanty towns outside the city centers. The 1989 relocation of the population of Pagan, a popular tourist destination, is well documented, but as recently as May 1996 the entire population of Mrauk-Oo, the ancient capital of Arakan state which once rivaled Amsterdam as a trading center, was forced to abandon homes and livelihoods to make way for the "development" of the city for tourists.

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<sup>27</sup> "SLORC Chief Incites Mobs to Crush Opponents of Junta," *The Nation* (Bangkok), November 13, 1996.

Forced relocations are extremely disruptive to children, and where no provisions are made for their health and shelter in relocation sites, they can also lead to serious illness and death. At the relocation sites, there are no additional schools, and children are often obliged to assist their parents in trying to find work. The vast majority of families who are relocated suffer a dramatic drop in their living standards. In addition to having to find the money to buy the land and build new homes, they also have to pay to commute into the city to find work. NGOs working in the new towns say that there have been massive social problems as a result, with fathers leaving the home to find work and one-parent families becoming increasingly destitute. UNICEF and NGO figures show that in 1995, infant mortality rates and malnutrition levels among children remain extremely high.<sup>28</sup>

Forced relocations also occur in rural areas where ethnic rebels are active or which have been designated as "brown" areas by the government. See "Children in states of emergency," below.

## VII. FAMILY, ENVIRONMENTAL AND ALTERNATIVE CARE

### Children in Detention

Human Rights Watch/Asia is very concerned about the treatment of children in detention centers and jails. Since the SLORC took power, torture and inhuman treatment of prisoners, particularly political prisoners, has been routine. There is no international monitoring of conditions in Burma's jails, and in June 1995 the International Committee of the Red Cross announced that it was closing down its offices in Burma following the failure of negotiations to gain access to all Burma's places of detention.

In the government's report to the Committee on the Rights of the Child, it states that children will be tried by juvenile courts and, if convicted of any offense, they will be detained in juvenile detention centers. Human Rights Watch/Asia believes that there is only one, possibly two, detention centers for boys in the whole of Burma. One, outside Rangoon, houses 400 boys who have been convicted of serious criminal offenses, including murder, drug trafficking and violent theft. Access to this institution has been severely limited, and to Human Rights Watch/Asia's knowledge no foreign expert or individual has been given access in the past seven years. A consultant to UNICEF, Jo Boyden, wrote in a report in February 1992 that "this facility should be investigated at the earliest opportunity since conditions are reported to be particularly harsh there. One doctor who visited the center observed extremely high levels of sexual abuse."<sup>29</sup> To our knowledge, this recommendation has not been taken up, although UNICEF and some international NGOs have raised the issue with the Burmese government.

Given the current lack of juvenile detention centers in Burma, many child offenders are believed to be held in adult facilities, despite the provisions of the Child Law. In the past five years the numbers of prisons and prison labor camps in Burma has increased substantially, and conditions in the labor camps particularly are known to be appalling. In September 1995, Human Rights Watch/Asia witnessed a group of over one hundred women and young girls marching in line from their prison labor camp just outside Mandalay to the quarry where they worked. Although it was not possible to talk to the women, locals reported that some of the girls were as young as fifteen, and most had been sentenced for petty crimes, such as stealing. It is not known how many children are held in similar camps across the country, but Human Rights Watch/Asia urges an immediate investigation into conditions in prison labor camps. The Special Rapporteur on Burma, in his 1996 report noted that "108 out of a total population of 503 prison inmates died from starvation, sickness and hard work during one year in Boke Pyin prison labor camp."<sup>30</sup>

As well as children detained for their actions, young children may also be detained along with their mothers. Section 53 of the Child Law allows the child of a female prisoner to stay together with his/her mother in prison until the

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<sup>28</sup> Personal communications and UNICEF, *Women and Children in Myanmar*, (Rangoon: UNICEF), 1995.

<sup>29</sup> Jo Boyden, "Myanmar: Children in Especially Difficult Circumstances" (Rangoon: UNICEF, February 1992).

<sup>30</sup> Lallah, "Report on the Situation..." 1996, para.79

age of four years or six years if the mother so desires. A former inmate of the women's section of Insein Jail, the main prison in Rangoon, told Human Rights Watch/Asia in 1992 that at any one time between fifty and sixty children were housed with their mothers. Human Rights Watch/Asia urges the government to consider non-custodial sentence in case of nursing mothers and mothers with young children as an alternative form of sentencing. In jail, the conditions in which these children have to live are cause for concern. They receive no supplementary foods, other than that given to all adult prisoners (which is poor quality rice, with a small amount of fish paste and liquid vegetable curry). There are no schooling provisions for them, and, like all prisoners, they are not permitted to have books or toys. In addition, Human Rights Watch/Asia is concerned by the fact that some children stay with their mothers for many years. In one particular case which was reported widely in the media at the time, a Karen girl who had been born in jail was released in September 1988 when the government emptied all of Burma's jails to make room for political prisoners. Her mother had died some years before, and, at the time of her release, the girl was twenty-four years old.

### **Adoption**

Section 17 of the Child Law permits adoption but fails to ensure that the best interests of the child shall be the paramount consideration as required under the CRC. The provision that adoption "shall be in the interests of the child" is not sufficient. Orphans or children who have otherwise lost their parents or guardians are vulnerable to abuse and may become bonded as domestic servants or farm laborers. Burma's informal adoption practices, under which most adoptions take place, are based on Buddhist customary law and include no legal protection for these children. A consultant for UNICEF described the situation as one which "legitimizes the exploitation of children from poor families by wealthier families. Parents surrender their children in good faith, expecting them to be treated as members of the adoptive family. Instead they become unpaid domestic laborers and may be subjected to many other abuses besides."<sup>31</sup>

Specialized centers and agencies should be established to provide information on parentless children available for adoption or placement with families. Further, the legislation does not provide for measures to protect children after placement. In order to protect children placed in care, periodic review of the placement is required.

## **VIII. SPECIAL PROTECTION MEASURES**

Article 32 of the Child Law (1993) states that the following children are in need of protection and care:

- a) one who has no parents or guardian;
- b) one who earns his living by begging;
- c) one who is depraved, a character that is uncontrollable by his parents or guardian;
- d) one who is in the custody of a cruel or wicked parent or guardian;
- e) one who is of unsound mind;
- f) one who is afflicted with a contagious disease;
- g) one who uses a narcotic drug or a psychotropic substance;
- h) one who is determined as such from time to time by the Social Welfare Department.

This definition appears to be exhaustive, yet it does not include children in conflict with the law, refugee or displaced children, children who are physically and mentally abused. In addition, the Child Law is not consistent with the provisions of the convention. It fails to mention the need for special protection measures for children in exceptionally difficult circumstances, children deprived temporarily or permanently of their family environment, children in situations of emergency (CRC Articles 22, 38 and 39), children in conflict with the law (CRC Articles 40, 37 and 39), children in situations of exploitation, including physical and psychological recovery and social reintegration (CRC Articles 32, 33, 34, 35, 36 and 39), and children belonging to a minority or indigenous group (CRC Article 30).

Section 32(d) above does not adequately cover children who may be sexually abused and economically exploited within a family. The labeling of parents or guardians as "evil or wicked" does not go far enough to define the kinds of abuse which should be prohibited. Article 19 of the CRC provides that state parties "shall take all appropriate

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<sup>31</sup> Jo Boyden, "Myanmar: Children..."

legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child," and this definition should be incorporated directly into the Child Law.

### **Children in Emergency Situations**

Articles 22, 38 and 39 of the CRC which deal with children in situations of emergency cover such issues as refugee children, humanitarian law and provisions for the physical and psychological recovery of children who are the victims of neglect, abuse or armed conflicts. In Burma, abuse of the provisions of international humanitarian law is routine, despite the government's accession to the Geneva Conventions. However, the Child Law makes no mention of the need to especially protect children in situations of armed conflict, be that internal or external, nor are there any provisions for the physical and psychological recovery of children affected by armed conflicts.

Many of the ethnic minorities in Burma have lived in a state of low-intensity conflict since 1948, and in these areas violence has become a way of life. Civilians are routinely abused by all sides to the conflict but most often and most frequently by the Burmese army. The forms of abuse which affect children most directly are porter service, whereby civilians are forced to carry arms and supplies for the army to front-line positions or while the army is on patrol; the forcible recruitment of child soldiers; and the forcible relocation of entire villages in areas where ethnic rebels are known to operate.

#### ***Child Porters***

The Burmese army routinely uses civilians as unpaid porters to carry ammunition and food supplies to front-line positions or while on patrol in ethnic minority areas. Many children are extrajudicially or accidentally killed while working as porters, and all are subject to cruel, inhuman and degrading treatment. The taking of porters has become less common since fifteen ethnic groups have signed cease-fires, but it has by no means ended. Both the Kachin Independence Army (KIA) and the Karenni Nationalities Progressive Party (KNPP) have reported that the taking of porters continues in their areas, as the army steps up its military presence there. Indeed, this was cited as a major reason for the collapse of the KNPP's cease-fire agreement in June 1995. In areas where there are no cease-fires, especially the Karen state, the taking of porters continues unabated.

When civilians, often ethnic minority villagers, were taken as porters, it was often while they were in their fields, or on trips away from their homes. Their wives and mothers were never informed, and in many cases women interviewed by Human Rights Watch/Asia in refugee camps in Thailand and Bangladesh said they left Burma because they believed that their husbands or fathers had been killed while working as porters. Some had tried to get information about their relatives' whereabouts from the local military base, but only rarely were they given information. Porters who fail to return after being forcibly conscripted therefore become effectively "disappeared" victims.

Most frequently, men and boys are taken to work as porters, although women are also taken if their husbands run away as the army approaches the village. In one major offensive against the KNU from January to March 1993, scores of women and girls were taken to the front-line and kept there for the entire three months, where they were frequently raped by the soldiers.<sup>32</sup> Since then, however, we believe that there has been an attempt by military commanders to reduce the number of women abused in this way. In January 1995, for example, the porters interviewed by Human Rights Watch said that no women had been taken among 5,000 porters used at that time.

Boys as young as fourteen years old have been taken to work as porters, particularly during major military offensives. Routinely, though, young boys are forced to carry supplies for one day at a time, while the army is on patrol. Many boys have died as a result of the treatment they received while working as porters. In August 1991, Amnesty

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<sup>32</sup> See Amnesty International, "Myanmar: The Climate of Fear Continues" (London: Amnesty International, ASA 16/06/93, October 1993).

International reported the case of a sixteen-year-old boy from Hlaingbwe township who was taken to be a porter in November 1990. He was only with the army for four days, but died six days later from internal injuries caused by beatings from the soldiers. In the same report, two other fifteen-year-olds were also reported as having been taken as porters.<sup>33</sup> In January 1995, Human Rights Watch/Asia interviewed fifty men and boys who had been taken to work as porters during the offensive against the KNU headquarters at Manerplaw, near the Thai border. One of them was fifteen years old. He had been taken with his father in a cinema hall in Mudon, Mon State. Soldiers had beaten the boy when he could not carry his load, and his father said that he was lucky to be alive.

As well as working as porters, civilians also have to guard militarily strategic roads and railways. Usually, women and girls are chosen for this work, and those with small children have no option but to take them along. For the children, this can be very abusive. "Guard duty" lasts from twenty-four hours to ten days, and the women sit under trees along the road or at the edge of railway embankments in an attempt to keep out of the hot sun or to shelter from the monsoon rains. The women have to take whatever food and cooking utensils they can carry and are not given additional food by the army. In some cases the children fall ill, but there is no medical treatment for them and the women cannot leave their positions for fear of being shot. They are frequently checked by soldiers in vehicles throughout the day and night to ensure that they have not fallen asleep. Those who fall asleep or who leave their posts even briefly are beaten and verbally abused.

The use of civilians as porters for the army violates Common Article 3 of the Geneva Conventions, to which Burma acceded in 1992. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall be in all circumstances treated humanely..To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:
  - a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - b) taking of hostages;
  - c) outrages upon personal dignity, in particular humiliating and degrading treatment...

The use of children as porters by the Burmese military also violates Article 38 of the Convention on the Rights of the Child, by which

States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

(4) In accordance with their obligations 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 armed conflict.

### ***Child Soldiers***

The Convention on the Rights of the Child states in Article 38 (2) that "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" and (3) "States Parties shall refrain from recruiting any person who had not attained the age of fifteen years into their armed forces." There is no similar prohibition in the Child Law, but Burma's armed forces regulations prohibit the recruitment of boys under the age of sixteen.

Nevertheless, all sides to the Burmese conflict employ children to fight their wars. The Shan Mong Tai Army and the United Wa State Army are believed to have the largest numbers of child soldiers, with each family being

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<sup>33</sup> See Amnesty International, "Myanmar: Continued killings and ill-treatment of minority peoples" (London: Amnesty International, ASA 16/05/90, July 1991).

required to give a son to the cause. The Karen National Union, Karenni Nationalities People's Progressive Army and the New Mon State Party also recruit children as young as twelve.

In the case of the Burmese government, there are no statistical or other data about the recruitment of children. However, since 1988 the size of the armed forces has doubled, from 180,000 to around 400,000, and anecdotal evidence, supported by the testimony of refugees and some soldiers themselves, suggests that in part this increase has been facilitated by the recruitment of boys aged thirteen to fifteen years old. Often this recruitment is forced, with whole villages or sections of towns being ordered to "give" a number of boys to the army or face heavy fines. In other cases the coercion is less explicit but just as compelling. In ethnic minority areas, for example, the families of soldiers are exempt from arbitrary taxation or forced relocations. Refugees interviewed by Human Rights Watch/Asia in Thailand report that there are often fourteen- and fifteen-year-old soldiers in the brigades which take them to work as porters. In every case, the former porters note that the young soldiers were especially brutal in their treatment of civilian porters.

Testimony from villagers who have escaped to the Thai border reveals that in many areas of the Karen State villages are required to "donate" one boy from each ward to army service. One former soldier interviewed by Human Rights Watch/Asia in September 1995 said that he was fifteen years old when he was recruited into the army. The army had ordered the council chairman to find ten "volunteers" from his quarter of the town. At the military training school in Meiktila in 1989 there were 500 other recruits, none of them older than himself. He described the brutal and brutalizing treatment he and all the recruits experienced in this training camp, which included beatings, sleep deprivation and starvation. He also said that Christian recruits were not permitted to worship or pray, and he did not know of any Muslims in the army.

In September 1995, Human Rights Watch/Asia interviewed several soldiers in Burma. In Loikaw, Karenni State, we talked to three soldiers who all said they were sixteen years old. They all came from the same village and had joined the army together three years before when they were just thirteen. They had seen front-line action after just one year of training—when they were still only fourteen years old. They said that two others who had joined with them had been killed in the fighting against the Mong Tai Army in June 1994. In the same town, we met a ten-year-old boy in a green uniform who claimed to be a soldier. He said that he had run away from home at age seven and had joined the army. He said he received 350 Kyats per month (less than \$3.50), out of which he had to pay for his clothes and uniforms, but food and board were free. He had never seen front-line action but was looking forward to doing so within twelve months. The following morning, not quite believing his story, we went to the army parade ground. There he was seen at the gates of the compound, standing in uniform with his "brothers." In March 1996, we also spoke to a group of young soldiers in Sittwe, Arakan State who were waiting at a jetty. The twenty boys were all aged fifteen or less, and half of them had already taken part in active service against Muslim rebels in northern Arakan.

As the army continues to expand, and it is reported that the SLORC's target is for 500,000 soldiers, the forced recruitment of children is set to continue.<sup>34</sup> The recruitment of children under the age of fifteen violates Article 38 of the Convention on the Rights of the Child, and the recruitment of children under the age of sixteen also violates Burma's national laws.

### ***Forced Relocations***

Forced relocations in ethnic minority areas is a military strategy which has been employed by the Burmese army for decades, part of a "four cuts" policy designed to cut off food, funds, information and recruits from the ethnic rebels. During late 1995 and throughout 1996 this policy has escalated in Burma's Shan, Karenni and Karen States to affect an estimated 200,000 people.

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<sup>34</sup> See Andrew Selth, *Transforming the Tatmadaw: The Burmese Armed Forces since 1988* (Canberra: Canberra Papers on Strategy and Defense, No. 113, 1996).

In October 1996, Human Rights Watch/Asia interviewed scores of refugees in Thailand from the Shan and Karenni states who had escaped from relocation sites. The bulk of the relocations took place between March and May 1996, although after the end of the rainy season in September, the relocations had begun again. In almost every case, the refugees reported that soldiers had entered their village and told them they had between three and six days to evacuate their homes and move to designated relocation sites. One Karenni woman interviewed by Human Rights Watch/Asia said she had lived in the Shadaw relocation site for nearly two months before fleeing at night. She described conditions in Shadaw as appalling. No provision had been made for the newly displaced, and they had to find what shelter they could in schools and churches and underneath large houses in the town. Some had constructed temporary shelters, but they were given no financial assistance. The soldiers gave them a rice ration once a week, but it was usually only enough to last one day. Fresh water was scarce, especially after the rains started in June, and there was no sanitation provided, and they had to drink, wash and defecate in the same river. She and her two youngest children were taken by a sudden fever one month after they arrived. They paid to be treated at the one government clinic in the town, but both her children, aged three and six, died. Another woman, who was also moved to the Shadaw relocation site, said that her eighteen-month-old son died from a fever there, just ten days after the family arrived. In another case, a Shan woman told Human Rights Watch/Asia how she had fled from the Shan state while seven months pregnant after her husband had been killed by the Burmese army which suspected him of assisting the Shan rebels. She gave birth prematurely the day she arrived in Thailand.

### **Children in Conflict with the Law**

With regard to administration of juvenile justice, the Child Law emphasizes institutionalization, appropriate punishment and retributive sanctions, as opposed to rehabilitation and reintegration that would enable the child to assume a more constructive role in the society. For example, Section 34 provides for institutionalization of a child whose character needs to be reformed until he attains eighteen years.

International laws as embodied in the Convention on the Rights of the Child, U.N. Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985, and U.N. Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990 have moved away from this approach in handling juvenile offenders to lay emphasis on rehabilitation, reintegration, prevention and the recognition of human rights of children in conflict with the law.

The Beijing Rules are concerned primarily with development of a new juvenile justice system that focuses on alternatives to institutionalization. The basic principles of Beijing Rules are the principle of proportionality and the limited use of deprivation of liberty. According to Rule 17.1(b), restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.

Similarly, the CRC, in Article 37 (b) provides that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Further, the Riyadh Guidelines emphasize the development of social policies and practices that avoid criminalizing and penalizing behaviors. It urges governments to reform education programs, reorient community resources towards supporting children and families in order to provide care and protection, and ensure the physical and mental well-being of youth.

The Convention on the Rights of the Child recognizes the right of every child in conflict with the law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and also in a manner which takes into account the needs of persons of his or her age. In the legal climate existing in Burma today, it is unlikely that anyone, whether adult or child, will be treated in this manner.

### **Children in Situations of Exploitation**

Section 24 of the Child Law gives every child the right to engage in work in accordance with law and of his own volition. However, it does not provide adequate protection for children who work. Existing Burmese laws allow

for different minimum ages in different industries: the 1951 Factories Act and the 1951 Shops and Establishments Act prohibits the employment of any person under the age of thirteen; the 1951 Oilfield Labour and Welfare Act prohibits the employment of persons under the age of fifteen. These laws also regulate the number of hours per day children may work and the rest periods they are entitled to, and again these regulations differ from industry to industry. Neither these laws nor the Child Law include provisions for regular monitoring of children at work, and the report of the government to the Committee on the Rights of the Child excludes even the possibility that children work in potentially hazardous industries: "In the Union of Myanmar, children engage in work only in the economic enterprises of their families; as a consequence, the problem of child workers is quite rare." Equally, the possibility that parents may exploit their own children clearly is not considered, nor is the more frequent exploitation of children adopted into other families.

Moreover, the lack of political will to ensure that children are not exploited at work is clear in Chapter XVII of the Child Law, dealing with offenses and penalties. Here there is no punishment for persons engaging children who are not of age. Section 65(a) only provides punishment for persons employing 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." Even then, the sentence is very minimal and does not extend beyond six months or a fine of 1,000 Kyats (\$10).

### ***Forced Labor***

In practice, the government itself is the worst violator of its own laws, by directly and indirectly forcing thousands of children to work as porters or as day laborers for no pay.<sup>35</sup> Since 1992, the military has forced at least two million people across the country to work without pay on the construction of roads, railways and bridges. In recent years, the use of forced labor has increased, as the government tries to improve its infrastructure in order to attract foreign investment and tourism. Hundreds, if not thousands, have died from beatings, exhaustion and a lack of medical care. Those forced to do such work include women, children and the aged. The use of forced labor in Burma has led to an investigation by the International Labor Organization under Article 37, and the European Commission announced on January 16, 1996 that it was also conducting an investigation into the practice. Children are affected by forced labor both directly, when they have to work alongside their parents, and indirectly when the work takes their parents away from them for long periods, leaving them vulnerable to abuse.

A twenty-eight-year-old man interviewed by Human Rights Watch/Asia in a refugee camp in Thailand in May 1994 described conditions for forced laborers at the Ye-Tavoy railway, one the most notorious construction site in Burma, and one which work continued in January 1996:

It was very difficult for families like mine which have only one man. When I was at the work site, the rest of my family found it difficult to work the farm and grow food. When a man returns, women are expected to replace him at the work site...I saw some elderly people working there and some children aged about twelve years. I also saw some pregnant women working there...One girl from Moe Gyi village who was four and half months pregnant died from malnutrition and diarrhea in mid-March 1994. She did not get any medical help. People were beaten by soldiers for trying to escape or for not working hard enough. Some people attempted to flee from the work site but were caught. They were beaten and tortured in front of everyone.<sup>36</sup>

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<sup>35</sup> The government and its local representatives may not always actually demand that children work, but the practice of ordering one or more members of each family to work for periods of up to two weeks at a time on any one project forces many families to send their children at times when the adults are needed to attend to the harvest or do other work to earn a living. The use of any form of threat constitutes force, and thus violates the Child Law which specifically states that any child may work *of his own volition*.

<sup>36</sup> See Human Rights Watch/Asia, "The Mon: Persecuted in Burma and Forced Back from Thailand," *A Human Rights Watch Report*, vol. 6, no. 14 (c) (December 1994).

In September 1995, a report in a British newspaper confirmed that twelve-year-old children were still working on this same railway project. The article included an interview with a Karen man who had worked on the railway who said "labourers encouraged children at the site to rest, but the soldiers beat them and ordered them to work. Some children were as young as twelve."<sup>37</sup> In January 1995 a woman from Karen state interviewed by Human Rights Watch/Asia said, "Sometimes we didn't go because we were tired, and they [the soldiers] came and dragged us from the our house. My children were screaming and crying, but I just had to leave them there."<sup>38</sup> This is a common problem, it seems, as increasing numbers of people are taken to work for the military. In many cases, women with babies who are still suckling have to take their babies with them, tied to their backs as they do heavy work such as breaking rocks or digging trenches.

Forced labor also takes place in Burma's towns and cities. In March 1996, Human Rights Watch/Asia witnessed school children and their teachers in Mrauk-Oo, Arakan state, being forced to clear the streets, literally picking off any small rocks on stones on earth roads, placing and painting white stones along the road sides and other menial tasks in preparation for a visit by Lt. Gen. Khin Nyunt. We witnessed one young boy, aged about twelve years old, who was kicked in the face by a soldier because he had temporarily stopped working. The day happened to be a day for national exams, which meant that because all schools in Mrauk-Oo were temporarily closed, no children were able to take their final year exams.

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<sup>37</sup> Damon Perry, "No Hope for Reform on Burma's Slave Railway" *The Independent on Sunday* (London), September 10, 1995.

<sup>38</sup> See Human Rights Watch/Asia, "Burma: Entrenchment or Reform?"

The use of unpaid civilians, including children, on labor projects is a violation of the International Labor Organization's 1930 Convention. Insofar as children are used on these projects, the government also violates Article 32 of the Convention on the Rights of the Child in which states are called upon to "recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." In December 1996, the European Commission recommended after completing its investigation into the practice of forced labor in Burma, that the European Union suspend the preferential trade tariffs which Burma receives as a developing country "until such time as forced labour practices are abolished."<sup>39</sup>

### ***Sexual Abuse and Exploitation***

The Child Law does not sufficiently protect children from sexual abuse and exploitation. While it is aimed at punishing the abuser, rather than the child, it does not prohibit child prostitution and using children in pornographic films and gives only a light sentence of two years imprisonment and/or a fine of 10,000 Kyats (about \$100) to persons "neglecting knowingly that a girl [leaving boys totally unprotected] under his guardianship, who has not attained the age of sixteen, is earning a living by prostitution," or "using the child in pornographic cinema, video, television or photography" (Section 66). Given the seriousness and the nature of the offense under consideration, more stringent measures should be taken.

The Child Law is also inadequate with regard to the trafficking of children into sexual or other slavery in foreign countries. In fact, there is no mention of any penalty for trafficking children, despite the fact that there are at least 50,000 Burmese girls and women working in Thailand as prostitutes at any one time. With the fear of HIV infection, brothels have increased the turnover of girls, and increasingly younger girls are sought by clients, who believe they are less likely to be infected. The reality is that for young girls, especially for virgins, the risk of HIV infection during sexual activity is greater than for older women, and many girls become infected immediately. As a result, sending or forcing girls and women into prostitution is to condemn many of them to death.

In 1994 Human Rights Watch published a report *A Modern Form of Slavery*, which documented the way in which girls and women are trafficked to Thailand to work in brothels where they live as virtual slaves, in often appalling conditions, with no means of escape. The thirty women and girls whom Human Rights Watch interviewed in detail for this report were aged between twelve and twenty-two, with the average age being around seventeen. They all came from poor families, most of them from farming communities, and only four had ever been to school and could read or write their own language. All the girls had left Burma to earn money for themselves or their families in Thailand, but only four of them knew beforehand that they would be involved in prostitution: all except one, who was forcibly kidnapped into Thailand, were told that they would get jobs in factories or as domestic workers.

Twenty-six of the thirty women and girls were taken from Burma into Thailand at Mae Sai, a town bordering Burma's Shan state. In 1992 border trade between the two countries through Mae Sai was legalized, and there are Burmese and Thai checkpoints on either side of a short wooden bridge over the Sai River which separates the two countries. In most cases, the women and girls were accompanied by a parent, brother, aunt or teacher, and they met a Thai agent in Mae Sai. The agent gave the companion money equivalent to between \$40 and \$800. From there the girls were taken to brothels in different parts of Thailand, most of them in Bangkok. Only once they were in the brothels did the girls realize that they were going to have to work as prostitutes and that they were effectively in debt bondage to the brothel owner, having to work until they paid off not only the price their parents or companions had been given, but also the agents' cut and interest.

The abuses which trafficked girls endure are extreme. They may have as many as fifty clients a day. In most cases the girls are prevented from leaving the brothels, and some are chained to their beds to prevent escape. Finally, when they do manage to escape, the girls are often too ashamed to return home. By that time, many are found to be

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<sup>39</sup> Statement by the European Commission, December 18, 1996.

HIV positive. Those that are “rescued” in police raids are detained by the Thai authorities on immigration charges and are held for months in detention centers where they face further abuse. From there they are deported to Burma, where again they face arrest under immigration laws for having left the country illegally.

There are three different articles in the Convention on the Rights of the Child which aim to protect children from this exploitation. Article 34 binds the state parties to the convention to “protect the child from all forms of sexual exploitation and sexual abuse”; in Article 35 “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose in any form” and, insofar as the girls are held against their will in brothels, Article 37 also applies. Burma has taken some steps to work in coordination with Thai authorities to prevent the trafficking of women and children, and has also signed, although not yet ratified, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. But much more needs to be done by the government to ensure that future generations of young girls and boys are not sold into sexual slavery, beginning with the prosecution of traffickers and an education program for the most vulnerable children and their parents.

## IX. ACKNOWLEDGMENTS

This report was researched and written by Zunetta Liddell, research associate for Human Rights Watch/Asia. Joy Ezeilo provided valuable legal research and information. Sidney Jones and Cynthia Brown edited the report and Paul Lall provided production assistance.

Information in this report was gathered over a period of five years, and many people inside Burma and outside the country provided assistance and information. The author wishes to thank them all.

### *Human Rights Watch/Asia*

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