

ILHR International League for Human Rights

**COMMENTS ON THE INITIAL REPORT
OF BURMA (MYANMAR) TO
THE UNITED NATIONS COMMITTEE
ON THE RIGHTS OF THE CHILD**

**Submitted to the Members of the
United Nations Committee on the Rights of the Child**

by

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Executive Summary

Myanmar's initial report demonstrates a serious lack of understanding for the principles animating the Convention on the Rights of the Child (CRC). Through its chronic omission of virtually all relevant information, it describes a country in which children's rights are afforded special protection under national law. With its primary emphasis on reciting enacted legislation, and with little relevant commentary or factual documentation to fill the gaps, the report avoids any substantive discussion of what measures Myanmar is taking to protect children's rights and enforce existing laws.

SLORC attempts to mask its noncompliance with the Committee's reporting guidelines¹ by using the subtitle "Implementation" in each section of its report. However, although the term "implementation" is continually waved like a talismanic wand at the reader, the sections usually refer to statutory provisions without providing any material on actual implementation measures the government is taking or, at least, planning to pursue. Implementation of the Convention does not end simply with mechanical incorporation of the CRC provisions into national law. Legislation is meaningless unless it is accompanied by concrete administrative codes and guidelines for government agencies to follow and apply. Legislation must be bolstered by specific policy decisions and by political will to implement the principles of the Convention.²

Article 44(2) of the CRC requires States parties to include in their reports ". . . sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned." The Myanmar report fails to satisfy this basic requirement. As a result, it will be all but impossible for the Committee to conduct discussions "to analyze progress achieved and factors and difficulties encountered in the implementation of the Convention," as is the responsibility of the Committee under its guidelines.³

The Committee should require that Myanmar submit another report within six months, because the current report is not in compliance with the reporting guidelines established by the Committee and fails to provide the information necessary for the Committee to conduct its discussions. For this purpose, the Committee should: (1) emphasize, and elaborate on, the reporting guidelines previously established in the CRC's Overview on Reporting Procedures, and (2) require that Myanmar be more forthcoming in its reporting, especially in its discussion of implementation measures, and demand that the SLORC not avoid difficult issues about protecting the rights of the Burmese child.

¹ See, CRC, General Guidelines Regarding the Forms and Content of Initial Reports To Be Submitted By States Parties Under Article 44, Para. 1(a) of the Convention, CRC/C/5, 30 October 1991, (hereinafter "CRC General Guidelines"); CRC, Overview on Reporting Procedures, CRC/C/33, 24 October 1994, para. 3 (hereinafter "CRC Overview"). For fuller discussion, see Appendix of this report, at 25-26.

² Concededly, the Myanmar report at some points includes cryptic or disjointed accounts of alleged implementation measures. However, these leave a misleading impression of real conditions in the country in light of the seriously deteriorating situation of children's rights in Myanmar. The government's projections that the human rights of the child in Burma are flourishing simply are not credible.

³ CRC General Guidelines, *supra* note 1, para. 15. The Myanmar report implies that implementation of the Convention was complete in 1993, with the promulgation of the Child Law. If that were the case, then the periodic report procedures and the activities of the Committee would be superfluous.

I. Introduction

The International League for Human Rights wishes to present its analysis of the initial report that the government of Myanmar has submitted to the Committee on the Rights of the Child⁴ (hereinafter “Committee”), pursuant to its obligation under the Convention on the Rights of the Child (hereinafter “CRC” or “Convention”).⁵

The press and the international community have documented severe and systematic human rights violations in Myanmar.⁶ Civil war and political unrest, caused by the seizure of power by the State Law and Order Restoration Council (SLORC), have adversely affected the lives of children and their families. In the harsh and unstable conditions plaguing nations such as Myanmar, children require special protection to achieve full exercise and enjoyment of their rights. Children are not an organized constituency and lack the ability to influence the distribution of resources or shape public policy that directly affects their lives; moreover they are vulnerable to mistreatment through government abuse and domestic violence. Accordingly, States parties, including Myanmar, carry a heavy obligation, in the words of the Convention, to “respect and ensure” the rights of the child, and must take “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized” in the CRC.⁷ To be effective, such measures must include good faith efforts by governments to enforce their constitutional commands and administrative codes if compliance with the CRC is to be anything more than lip service.

⁴ Myanmar Initial Report, CRC/C/8/Add.9, (hereinafter “Myanmar Report”). The League commends Myanmar for the timely submission of its report.

⁵ Myanmar became a party to the Convention on August 15, 1991, initially carving out two reservations to the CRC which were subsequently withdrawn on October 1993. On July 14, 1993, SLORC promulgated the Child Law to make its domestic legislation compatible with international legal norms. In 1994, ostensibly to promote implementation of the newly enacted statute, SLORC established the National Committee on the Rights of the Child. The Committee’s chairman is General Khin Nyunt, one of the regime’s most notorious human rights violators who, as chief of intelligence and internal security, has been responsible for ordering the arrests, torture and extra-judicial killings of political opponents.

⁶ For a sampling of the pertinent literature on this topic, see e.g., Janelle M. Diller, The National Convention in Burma (Myanmar): An Impediment to the Restoration of Democracy, for the *International Center for Human Rights and Democratic Development, Montreal, Quebec*, and the *International League for Human Rights*, NY 2 April 1996; *The Nation*, Watching Rights. The State Law and Order Restoration Council’s control of Myanmar, or Burma, by Aryeh Neier, Nov. 28, 1994. p.641(1); Edith T. Mirante, Burmese Looking Glass: A Human Rights Activist on the Forbidden Frontier, New York, NY Grove Press, 1993; Alan Clements (*with a foreword by the Dalai Lama*), Burma: the Next Killing Fields? Berkeley, California, Odonian Press, 1992; Mya Maung, Totalitarianism in Burma: Prospects for Economic Development, New York, NY: Paragon House, 1992; *Amnesty International*, Myanmar Renewed Repression, AI Index: ASA 16/30/96 Distr. SC/CO10, July, 1996. In this context, it should also be mentioned that SLORC never recognized the results of the 1990 elections and continues to rule by decree.

⁷ See, Article 5 of the CRC.

The League's analysis seeks to determine if in fact the government of Myanmar is making a good-faith effort to implement the provisions of the CRC. The study makes three important contributions to the literature about rights in Burma. First, it examines the SLORC's claims of protecting the child by testing them against information gathered from independent or alternative reports. Second, relying upon the broad analytic framework of Article 2 (the equal protection clause), it challenges Myanmar claim -- especially in the areas of education and religious freedom -- that SLORC neither engages in nor tolerates discrimination against the boy or girl child belonging to ethnic or religious minority groups.⁸ The report also confronts the government's failure to include a gender-specific analysis or respond to the directives on the "girl child" and the issue of a child's "evolving capacity,"⁹ as recommended in the Beijing Platform for Action.¹⁰ Drawing on various sources of information, it exposes government abuses in the context of child soldiers, exploitative types of child labor, and the commercial sale of children. Third, although the analysis addresses specific situations in Burma, it recommends legal standards that the Committee might use in judging the sufficiency of States parties' reports in general.

II. Myanmar Misconceives the Core Purpose of the CRC

Before, however, presenting the formal discussion on human rights abuses of children in Myanmar, it is necessary to address an issue that profoundly mars the SLORC's understanding and implementation of the CRC, namely, its assumption that children can be viewed as a form of property. It is startling to read in Myanmar's report that children are "thought to be the most important *property* of the parents, often referred to as the precious jewels."¹¹ This view clearly contravenes both the philosophical spirit and the

⁸ This report refers to the ethnic majority people in Burma as "Burman", the diverse ethnic minority peoples as "ethnic nationalities" or "ethnic or religious minority groups" and the population as a whole, including the ethnic nationalities, as "Burmese." This report often refers to "Myanmar" as Burma since it was the SLORC that changed the name of the country to "Myanmar" without a popular referendum or democratic process. Living under conditions of military dictatorship has served to exacerbate the already precarious human rights situation facing many members of Burma's ethnic minority communities

⁹ We use the term "evolving capacity" because it is the one favored by the CRC as in, for instance, Article 14(2), which imposes upon states the duty to "respect the rights of parents and . . . legal guardians to provide direction to the child in the exercise of his or her rights in a manner consistent with the *evolving capacity* of the child. (Emphasis added). It is also a characterization preferable to such terms as "physical or mental immaturity" which carry the negative connotation of deficient abilities, while the words "evolving capacity," recognizes that the child's ability to exercise his or her rights will develop incrementally as he or she increases in age and maturity.).

¹⁰ Fourth World Conference on Women, A/CONF.177/20, p. 112-21, (hereinafter "Fourth World Conference on Women").

¹¹ Myanmar Report, *supra* note 4, para. 16, at 8, (emphasis added). Admittedly, this passage in Myanmar's report does not make reference to an official government policy or legal code, but rather endorses an entrenched cultural assumption that enjoys general currency. However Myanmar quotes this popular prescription with unreserved approval and holds it up as an exemplary custom for all Burmese parents to emulate.

legal underpinnings of the Convention, which spring directly from the founding human rights documents of the United Nations. Indeed, Myanmar's statement that children are property reveals a misconception of the CRC so profound that it raises serious doubts as to whether the government has grasped even the fundamental purpose of that treaty. However, to understand just how antithetical such a reading of the CRC is to the spirit and purpose of that instrument requires a brief rehearsal of the treaty's historical significance.

The CRC codifies into law the proposition that children's rights are human rights, not privileges subservient to adult discretion or largess. It thereby raises the status of the girl and boy child to the level of all other human beings under international law by providing them with equal respect, dignity, and protection from private or government misconduct. The Convention prefigures the principle, proclaimed in Vienna at the 1993 International Conference on Human Rights, that all human rights are interdependent and indivisible.¹² It forcefully rejects the view that some rights are more equal than others or, more specifically, that political and civil rights occupy a privileged position within some rigidly hierarchical human rights scheme. This point is critical to a proper understanding and implementation of the CRC, since numerous provisions cover violations that arise from social or cultural discrimination and economic injustice. In this way the treaty strives to champion and invigorate the social welfare rights of the child and reinforces the vital link between the right to sustainable development and the enjoyment of first generation rights. At the same time the CRC is the first treaty to consciously merge traditional human rights law with aspects of the humanitarian law of war,¹³ a goal long sought by many human rights scholars of the international community.¹⁴

Since its entry into force in 1990, the Convention has greatly enhanced public awareness of the rights of the child while highlighting the child's special need for protection. More important, its advent has begun to effect a veritable Copernican revolution in the field of child advocacy, shifting the paradigm of state intervention on

¹² World Conference on Human Rights, Vienna June 1993, A/CONF.157/24 Report.

¹³ See especially, Article 38, regulating States parties recruitment and treatment of child soldiers in situations of armed conflict, and Article 39, requiring that States take all appropriate measures to promote "the physical and psychological recovery and social reintegration of the child victim into . . . [society]."

¹⁴ The substantial overlap between provisions of humanitarian law of war and human rights law has been increasingly emphasized. See e.g., Yoram Dinstein, Human Rights in Armed Conflict: International Humanitarian Law, in *Human Rights and Armed Conflict*, 1983 (noting that during periods of national emergency, which permits states temporarily to suspend or repress certain human rights to a degree proportional to the alleged danger, other freedoms -- such as the right to due process and religious liberty, and the prohibition against torture, slavery and arbitrary deprivation of life are deemed so fundamental as to forbid derogation under any circumstances).

behalf of children from a dependency welfare model based on privilege and humanitarian assistance to one predicated on legal entitlement.

The exceptional speed of the Convention's ratification by governments¹⁵ signals an emerging consensus that the world community will no longer sanction the widespread abuse and mistreatment of children. That community is increasingly prepared to proscribe a range of long-tolerated social behaviors -- from the recruitment of child soldiers and the commercial sale of children to exploitative types of child labor and domestic violence. Like the violent conflicts that raged in the last centuries over the abolition of slavery or our contemporary human rights revolutions in the areas of race, gender and economic justice,¹⁶ the struggle for the rights of the child is gradually transforming not only our laws and institutional structures but, perhaps inevitably, some of our most entrenched values and assumptions.¹⁷

The preamble and provisions of the CRC establish that the child is an autonomous being with legally enforceable rights, not chattel to be manipulated arbitrarily in the hands of parents, guardians, or the State.¹⁸ Under no circumstances are children to be the object of adult exploitation or possession, to be bought and sold with impunity as commodities in the domestic or global marketplace.¹⁹ In extending the promise of freedom and dignity

¹⁵ To date, the Convention has been ratified by 187 nations in the brief span of just six years, an unprecedented achievement for an international instrument.

¹⁶ In the present historical context the goal set by the international community is the abolition of all contemporary forms of slavery.

¹⁷ Although recognizing the child's reliance on special care and assistance due to its 'evolving capacity, the Convention is premised on the recognition that the child is a human being endowed with inherent dignity and worth, and entitled to the same inalienable rights as enjoyed by all members of the human family. It is perhaps the CRC's greatest achievement to have emphatically repudiated the now morally bankrupt concept of the child as property, thereby affirming his or her status as a full-fledged human being, worthy of the full range of protections conferred by international human rights instruments.

¹⁸ See especially, Articles 12-19 of the CRC. These Articles codify the rights of children to, *inter alia*, form and express their own views; freedom of expression; freedom of thought, conscience, and religion; and freedom of association. To say that the CRC promotes a rights-oriented approach to ensure the protection of the child and his or her manifold interests is not only to banish forever the myth that reduces a child to a crass asset whose worth is to be measured by his or her exchange value in the global marketplace. Such a rights-based perspective also rejects the view that a child's interests are sufficiently protected when he or she is merely the object of adult paternalism and humanitarian relief. Of course this humanitarian approach to "children" not only conjures up the insidious nineteenth century specter of "women" as objects of paternalistic concern, but also serves conveniently to cloak the nature and identity of the actual perpetrators of human rights abuses throughout history: usually men promoting and defending entrenched patriarchal values.

¹⁹ Regrettably, Myanmar's theory of children as property conjures up the pernicious vision of the child as enfeebled and dependent actor, enjoying only derivative rights that depend on adult magnanimity and unfettered discretion. It is a dark vision that, historically, has not only profited from the institutionalized mistreatment of children, but that today still actively promotes the worst forms of exploitative child labor imaginable -- exploitation from factories to brothels that, in its ferocity and greed, rivals or exceeds the horrors of the nineteenth century Dickensian sweatshop. See e.g., *The New York Times*, [Asian Childhoods Sacrificed to Prosperity's Lust](#), by Nicholas D. Kristof, April 14, 1996, p.1,8 (detailing the extraordinary proliferation of contemporary forms of

to young people, the CRC strives to create the actual conditions in which they can develop their full potential as human beings in preparation for a fulfilling adult life. To realize this promise, Myanmar must renounce the discredited view of the child as chattel which is offensive to the core purpose and meaning of the Convention.

III. Myanmar Ignores the Purpose of the CRC's Anti-Discrimination Clause

Our analysis suggests that SLORC has failed to respect the Convention's anti-protection clause, Article 2. That Article describes the concept of equal protection that animates every substantive provision of the Convention.²⁰ It requires governments to pursue an impartial non-discriminatory approach when interpreting and enforcing the substantive provisions of the Convention. The clause also demands that children enjoy rights without discrimination, regardless of their own personal status or that of their parents or legal guardians, forbidding governments from discriminating according to categories such as race, sex, color, religion, and so forth. The words used in Article 2, "to respect and ensure" a child's right to protection from discriminatory treatment, do not simply require government to refrain from arbitrary interference in the affairs of people under its jurisdiction and control. Rather, they impose the affirmative state obligation to take positive measures to protect groups or individuals -- in this case the girl or boy child -- from government-sponsored or private abuse²¹.

slavery and the traffic of girl children in South and South-East Asia); *Bazaar, Children of a Lesser God*, April, 1996, by Mark Shapiro, which describes punitive measures directed against sick children, in South East Asian factories, who fail to satisfy the productivity quotas of their employers, which include forcing sick children to work without rest periods, temporary incarceration in factories, hanging children upside down until they became sicker, severe corporal punishment consisting of repeated beatings, food deprivation, dire threats of punishment in case of escape, inability to go to school. *Id.* pp. 203-218; *see also, Time, Suffer the Little Children*, June 17, vol. 147 no.25, 1996, by Nancy Gibbs (corroborating the atrocious working conditions of impoverished third world children and the collusion of western multinational companies in their ruthless exploitation in the race to maximize profits and beat out competitors).

²⁰ See, Philip Alston, *The Legal Framework of the Convention on the Rights of the Child*, in *Bulletin of Human Rights* 91/12, *The Rights of the Child*, United Nations, New York, 1992 (for a more comprehensive analysis of the CRC's anti-discrimination clause and his insistence that Article 2 should be given the broadest possible scope in its application). Alston is Professor of Law and Director at the Center for International and Public Law of the Australian National University, and Rapporteur of the Committee on Economic, Social and Cultural Affairs.

²¹ Alston, *supra* note 20, at 4-6. The General Comments of the Human Rights Committee and the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) both of which endorse this broad interpretative approach to equal protection. Following Alston's suggestion of reading CRC provisions in conjunction with other relevant international human rights treaty and customary law, the General Comments of the Human Rights Committee and of the CEDAW can be invoked for guidance on the issue of interpreting the breadth and meaning of the CRC's equal protection clause. For instance, the CEDAW has stated in General Recommendation 19: "[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and

The SLORC's coverage of Article 2 consists of a one-page response arranged in two sections that cover none of the important issues. The first part, entitled "legal context," addresses the issue of whether Myanmar has succeeded in making its domestic legislation compatible with international norms protective of the rights of the child. It recites a series of laws, in particular Section 14 of "The Child Law," that states: "[e]very child shall, irrespective of race, religion, status, culture, birth or sex be equal before the law and be given equal opportunities."²² However, almost immediately thereafter, it adds significantly, that "other existing laws also give equal opportunity to *women and children*."²³ This assertion that Myanmar confers additional anti-discrimination rights upon "women and children" raises disturbing questions for at least three reasons.

First, by lumping "women and children" together into a single category, it suggests that the two groups are somehow similarly situated in life and therefore require identical treatment under the law. Besides denigrating the unique status and contextual experience of individuals in both groups by (a) infantilizing "women" and (b)

punish acts of violence, and for providing cooperation." CEDAW General Recommendation 19 (Eleventh session, 1992): Violence against women, HRI/GEN/1/Rev.1, para. 9, at 8. On the issue of affirmative action Article 4 of the Women's Convention itself recognizes that "[a]doption by States Parties of temporary measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined by the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equal opportunity and treatment have been achieved." The Human Rights Committee has also held that, ". . . [p]reventing discrimination . . . requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws. Hence, more information has generally been required with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken . . ." General Comment 3, HRI/GEN/1/Rev.1, paras. 4-5. In General Comment 28, the Committee has also held, "the principle of equality sometimes requires states parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant [on Civil and Political Rights]." HRI/GEN/1/Rev.1, para. 1, at 26.

²² Myanmar Report, *supra* note 4, para. 47(c) at 14. The section of the government's report, dedicated to "Implementation" strategies of Article 2 is distinguished for its brevity and of interest mostly for what it avoids saying. In fairness, sub-section (a) makes brief mention to the child's due process rights within the juvenile criminal justice system, noting that a child's age and character and circumstances are taken into account when being criminally prosecuted. Sub-section (d) refers to SLORC's establishing a number of Township educational and health care facilities to provide services for, one supposes, children living in disadvantaged communities. Myanmar Report, para. at 14. Although these accomplishments should be acknowledged and commended by the Committee, they fall woefully short of any adequate accounting of the government's obligations under Article 2 or of the steps it should be taking to address the severe discrimination many children in Myanmar face on a daily basis in the context of gender, ethnicity, health care or education. Sub-section (e), as we have seen, announces that "[a]ll children of Myanmar, irrespective of sex and religion have an equal right to education." *Id.* at 14. Predictably Myanmar makes no effort to distinguish between the treatment or conditions of the girl and boy child in this context, so there is no way of knowing from the report whether girl children actually receive educational instruction equal to that of boys. Nor does the report inform us whether the standard of education reserved for the boy or girl child meets the baseline protective requirements set forth in Articles 28 and 29 of the Convention. These two Articles provide the legal architecture within which the basic educational rights of all children are precisely prescribed.

²³ Myanmar Report, *supra* note 4, at 14.

representing “children” as helpless dependents deprived of autonomous rights, this formulation ignores the social revolution that has occurred in the last decades with respect to women’s human rights. That transformation has afforded women the right to formulate social policies in conformity with their own historical needs and interests which may conflict directly with entrenched institutional concerns. To achieve equality, women require the tools both to dismantle the artificial barriers of discrimination that exclude them from power and to protect themselves against male institutional exploitation and violence.²⁴ Children, on the other hand, precisely because of their intrinsic vulnerability to adult institutional abuse need special protective measures. No amount of access or equal opportunity, nor the dismantling of exclusionary barriers can by themselves compensate for children’s substantial handicaps,²⁵ making government protective measures a necessary precondition for every child’s enjoyment of equality.

Second, the linking of “women and children” reflects the unspoken assumption that “men” -- or men’s enjoyment of rights -- provide the only appropriate standard against which every other group must measure the realization of rights. It is as if any woman, girl child or boy child, for that matter, simply to enjoy their rights must do so on the exclusive terms set by entrenched male privilege and vested interests.

Third, the SLORC’s approach to equal protection obfuscates the necessary distinction between the needs of the boy and the girl child. The girl child confronts a potent set of historical circumstances singular in their harshness and brutality,²⁶ including, among other things, son preference and prenatal sex selection through fetal abortion, female infanticide, female genital mutilation, dowry murder, spousal battering, child marriage,

²⁴ Moreover, with the coming into force of the CRC, a parallel revolution is now occurring in the area of children’s rights, a revolution to which Myanmar appears equally blind.

²⁵ Barring certain narrow exceptions, Article 1 of the Convention establishes the specific benchmark of 18 years, as the cut off point for protection offered children by the CRC. It states, “. . . a child means every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier.” Children, however, suffer from a whole array of burdensome albeit temporary legal and social handicaps. As minors they are deprived of full citizenship rights, enjoying merely truncated judicial status. For instance, they are routinely denied the right to contract, to engage in many types of remunerative work, to establish their own residence, to make independent decisions regarding their own welfare and education, to initiate legal action, or to exercise their right to free expression or due process in many institutional settings. Most important, children cannot exercise the franchise and lack the necessary access and resources to exert political pressure on the body politic.

²⁶ This is not to underestimate the extraordinary violence and mistreatment that the boy child is regularly subjected to through many types of punitive and atrocious child labor practices, domestic violence, or the forced recruitment and exploitation of child soldiers (although the girl child is increasingly the target of rape and is even being conscripted for combat or other combat-related duties that are extremely hazardous such as mine sweeping and portering etc.. In the Chiapas Mexican insurgency, for instance, 40% of the guerrilla combatants are women). Few can remain unmoved by the awful spectacle of teenage boys from Liberia to Sudan, Guatemala and Burma being used as cannon fodder for purposes of political expediency.

debt bondage, rape, forced prostitution, and the sex slave trade. She is also the target of massive discrimination in the areas of health care, nutrition and education.²⁷ Although Myanmar's report claims to provide equal protection on the basis of "sex" -- even boasting in its implementation section that children enjoy the equal right to education irrespective of "sex"²⁸ -- it reveals nothing about the array of potential abuses confronting the girl child in Burma. Nowhere does it address any of these issues crucial to a proper understanding of the girl child's predicament, such as reproductive rights, sex education, AIDS counseling, access to education, domestic violence, exploitative and unremunerated domestic labor, or family counseling to prevent the sale of daughters into the sex slave trade. And although mention is made in several alternative reports regarding the traffic in girl children and of other gender-specific abuses,²⁹ these problems remain generally neglected and invisible in the minds of most policy-makers. All that the SLORC provides on this issue is a list of administrative codes and guideline prohibiting trafficking in girls and women with no mention of what enforcement steps the government is taking to suppress the trade.³⁰

IV. Myanmar Fails To Respect or Ensure the Rights of the Child Belonging to an Ethnic or Religious Minority Group

While the factual record may be often fragmentary, and often emanates from sources antagonistic to the SLORC regime, it is consistent with the view that Myanmar engages in gross abuses against the minority child.³¹ This observation is especially true in regard to SLORC policies that directly impinge upon the right of the minority child to exercise his or her freedom of conscience, religion or belief.

²⁷ Discrimination against the girl child is particularly intense in developing (and even some industrially advanced) countries where the argument of the scarcity of resources is regularly used to cut back on educational and health care services that disproportionately affect her quality of life. The lingering presence of traditional stereotypes and cultural practices inimical to the girl child's enjoyment or realization of equality merely serve to exacerbate her already disadvantaged condition. See, *The Girl Child: Investment in the Future*, Unicef, NY 1991.

²⁸ Myanmar Report, *supra* note 4, para. 47(c), at 14.

²⁹ For an excellent comprehensive study of the problem see especially, *Human Rights Watch, A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*, 1993, (hereinafter "Human Rights Watch").

³⁰ Myanmar Report, *supra* note 4, at 45-46.

³¹ Because of the military dictatorship and acute state of government repression within Burma, it is very difficult for outside reporters to gain access to many areas of the country. The ability to gather first hand information or conduct on-site interviews is further complicated by the ongoing hostilities between SLORC and many of Burma's ethnic nationalities. These facts account for the relative paucity of eye-witness reports or empirical data being collected by academics, social scientist, journalists, human rights advocates or other professional in the field. However, as will be shown, sufficient evidence exists to corroborate the existence of massive human rights violations directed against children in Burma.

The people of Myanmar belong to many different religious and ethnic groups,³² most of which, at one time or another, have suffered from terrible oppression and brutality by the Burmese central authorities.³³ The history of official discrimination against minorities, especially against the non-Buddhist ones, places a special burden on the SLORC in dealing with compulsory education and matters related to religion or belief affecting the minority child and his or her parents.³⁴ Article 14 of the Convention (invoking state duty to protect the freedom of conscience, religion or belief of the child) and Article 30 of the Convention (requiring state protection for the rights of the child from minority and indigenous groups) demand that Myanmar treat such children with equal regard and respect for their religion, beliefs and culture. Article 2 requires that the government interpret and apply the CRC's non-discrimination standard broadly and with complete fairness and impartially.³⁵

³² See e.g., Dr. Jocelyn Boyden, *Myanmar Children in Especially Difficult Circumstances*, Yangon, February 1992, p. 24-8. (Hereinafter "Boyden"). The study emphasizes, "[e]thnicity is an extremely important and complex issue in Myanmar and the diversity of ethnic groups is remarkable Over a hundred different languages and ethnic subgroupings are still evident today. Although the predominant distinction in terms of national politics is between the Burman majority living in the lowlands and the many minorities in the surrounding highlands, the relationship between the different groups is also crucial and will most likely be a major factor in Myanmar's future political scenario. Among the minorities, the most important groups are the Indo-Burman Arakanese (who number around 4.5 million), the Tibeto-Burman Kashin (2 million), the Karen (3-4 million), the Austro-Asiatic Mon (2-3 million) and the Thai-Lao Shan (4 million)." The report adds that "[i]n many minority-dominated areas a clear hierarchy of ethnic groupings exists, often with one group exacting feudal control over others. Ethnic identity is clearly demarcated, even in villages where more than one ethnic group coexists and each group maintains its own language, manner of dress, religious beliefs and customs. . . . Ethnicity and armed conflict are intrinsically linked in Myanmar and virtually all the ethnic minorities have at some time or another been in conflict with the central government, questioning its legitimacy and its right to rule over minority held territories." *Id.*

³³ Boyden, *supra* note 32, at 25; Report of the Special Rapporteur on the situation of human rights in Myanmar, 5 February 1996, E/CN.4/1996/65, para 5; see also, *Worldview International Foundation, Promoting Democracy in Burma: Mission Report. International Delegation of Parliamentarians Visit to Thailand 17-20 January 1996*, p. 8-9. (Hereinafter "Mission Report"); *The Economist*, MYANMAR. STATE LAW AND ORDER RESTORATION COUNCIL. The Real Power: Myanmar, April 4, 1992, p.36(1) (reporting how the current military junta is being investigated by the United Nations for its persecution of minorities and how the once prosperous nation is being despoiled and looted of its natural resources by the SLORC); *The New Republic*, *Asia's Bosnia: Ethnic Cleansing -- in Burma*, by Susan Blaustein, April 12, 93, p.18(3) (offers a brief history of SLORC atrocities against minority tribes and Muslim communities and the regime's exploitation of ethnic tensions to consolidate political control).

³⁴ Myanmar's strict compliance with its legal duty to guarantee a child belonging to any minority community a discrimination-free environment in matters of faith becomes all the more urgent in that the various ethnic nationalities constitute up to 27.1 percent of the national population -- more than one fourth of the country's 42.3 million people. See, Boyden, *supra* note 32, at 25.; Myanmar Report, *supra* note 4, at 3.

³⁵ Faithful implementation of the nondiscrimination principle should necessarily affect a government's treatment of all the substantive provisions of the CRC since that clause acts as a filter through which all the other articles should be read and applied. This principle would, of course, also include the government's implementation of Article 30. Myanmar's conduct in this area will also trigger other relevant articles, including Article 8 (requiring States to respect a child's identity), Article 9 (requiring that States ensure that children are not separated from their parents against their will), and Articles 28 and 29 (covering the child's panoply of right to primary education).

In light of Myanmar's generalized, across-the-board repression against ethnic and religious minority communities, a few preliminary remarks may be in order. Clearly government policies that rigidly promote Buddhism as the only acceptable code of social conduct discriminate against all members of ethnic nationalities be they Burmese adults or children. The effect of these policies, however, varies considerably according to whether the individual targeted is a minority adult or child.³⁶

Although every Burmese child, as we shall see, is vulnerable to state-instigated abuse in the form of forced military recruitment or exploitative types of child labor, the child belonging to a minority community is confronted by a unique set of historical circumstances, especially if he or she does not share the Burman majority language, culture or religion.³⁷ Because of heightened exposure to armed conflict, the minority child usually lives under conditions of greater poverty and danger, threatened by imminent violence or abuse from government counter-insurgency campaigns against his or her community. Such children disproportionately suffer from mass displacement, stigmatization, and refugee status. The minority girl child is especially vulnerable to trafficking in children, because parents or guardians, confronted by conditions of abysmal poverty, may feel more pressured to sell their children into prostitution to survive. These are critical distinctions, and the SLORC report makes no attempt to disaggregate the factors such as gender, ethnicity, religion or language (just to name a few) in order to first properly identify the problem and then design effective remedies and programs to address the situation, while targeting the specific needs of each child.

SLORC claims, "every child irrespective of . . . religion . . . shall be equal before the law and be given equal opportunity" or "all children of Myanmar, irrespective of sex or religion, have an equal right to education."³⁸ Myanmar's report, however, offers scant

³⁶ For example, only the minority child is the direct recipient of state-sponsored compulsory education and it will bear the brunt of repressive state policies when schools are closed by arbitrary state action. In the first context, such a child may be subjected to messages that denigrate his or her ethnic or religious heritage, and compel him or her to embrace a faith or belief system alien to her culture or upbringing, while in the latter he or she is completely deprived of educational opportunities. In both cases, Myanmar's militant Buddhist policies deprive the child belonging to a minority group of his or her right to form her own views, opinions, and beliefs, as guaranteed by Articles 12 through 14 of the CRC.

³⁷ As already noted, the SLORC's militant embrace of conservative Buddhist cultural traditions inevitably creates a hostile learning environment for minority children who belong to Christian, Muslim or other non-conforming and /or culturally diverse ethnic communities.

³⁸ Myanmar Report, *supra* note 4, para. 47(a), at 14. Although these are statutory enactments, the fact that SLORC provides no information on valid implementation measures being taken to realize these laws strongly suggests that Myanmar believes that these laws already enjoy adequate enforcement, making all explanations or additional measures superfluous.

evidence to support these assertions; nor is there any indication as to the extent of government enforcement of this education law or any other law affecting the rights of minority children, since the authorities are silent as to what measures SLORC is taking to ensure equal protection.

One way to assess SLORC's claims of compliance with equal protection is to examine Myanmar's policies and pronouncements, as published in the report, that directly contradict this picture. For instance, in paragraphs 15 and 16 of the report Myanmar refers to the Lord Buddha and his teachings, stressing their importance to correct child rearing practices.³⁹ Paragraph 119 of the report declares that "[t]he majority of the (Myanmar) people are Buddhist," and that, ". . . Buddhist teachers have a strong influence on the people's way of life." It adds significantly, "as regards parental duties and responsibilities, the teachings of Buddha are embraced as the rule of conduct or moral code."⁴⁰ Paragraph 120 describes in more detail the Buddhist philosophy of child rearing.⁴¹ Although these claims appear relatively innocuous on their face, they acquire a more ominous character when perceived through the lens of the SLORC's actual treatment of Burma's ethnic nationalities and, more specifically, of the minority child.

Examples of religious discrimination and repression abound. The government Directorate of Religious Affairs closely monitors the affairs and finances of every religious groups. Christians are denied the right to speak out against human rights abuses by their own government.⁴² These policies cannot but have an adverse effect on any Christian child's ability to participate fully in the religious and political culture of his or her community. There is also evidence of coerced indoctrination of Christian children in Buddhist teachings.⁴³ In one documented case, children were taken by SLORC authorities from

³⁹ Myanmar Report, *supra* note 4, at 8. Paragraph 117 alleges that the SLORC has erected adequate legal safeguards to vouchsafe minorities rights through various benign legislative schemes that favor minority cultural and educational concerns. These legal assurances turn out to be more lip service than effective safeguards against minority discrimination, and their actual translation into policy measures are nowhere in evidence

⁴⁰ Myanmar Report, *supra* note 4, at 47. The SLORC report assures us that minority rights are amply represented by existing national law; or in the SLORC's inimitable euphemistic style, ". . . the progress and advancement of border areas and national races" are guaranteed through such legislative schemes as the "Development of Border Areas and National Races Law." These laws, they claim, are specifically designed to "cherish and preserve the culture, literature and customs of national races." As will be shown, however, the alleged achievement and/or implementation of these benign statutory goals are directly contradicted by the SLORC's actual conduct in the field and the factual record provided by reliable alternative reports.

⁴¹ *Id.*

⁴² Matthews, at 13-14. In the case of Burmese Christian communities, foreign donations of funds are supervised and restricted to the artificially low exchange rate. Gifts, even of medicine, are tightly controlled by SLORC administrative agencies. Every public church bulletin and newsletter is censored.

⁴³ The Report was provided by the National Coalition Government of the Union of Burma, and includes text of the May 1994 letter sent to the local township in *Ta Ta Lan* Township, ordering families to send their children for

the *Tan Ta Lan* Township in Chin state, with government promises that they would receive free education and be well-cared for, and permitted to worship and practice their own religion without official interference. These children were later found, by representatives from Chin state, at a Buddhist monastery in Rangoon, the boys with their heads shaved. Authorities refused to permit the children to return home with the Chin state representatives, despite the desperate pleas of the children that they be permitted to do so.⁴⁴

Muslims have had their mosques randomly expropriated, their cemeteries bulldozed, their children forcibly indoctrinated and coerced.⁴⁵ Muslim girls have been forced to attend vocational training school at their own expense. They have also been required to work in SLORC military camps, where some girls were compelled to marry government soldiers of the *Tatmadaw*, soldiers who usually belong to the Buddhist majority faith.⁴⁶ SLORC's persecution of the *Rohingya* Muslim community has precipitated a new mass exodus of its members from Burma into neighboring Bangladesh, reducing thousands to refugee status⁴⁷. The impact of this violent collective uprooting has been especially harsh for minority Muslim children who, as refugees, have not only experienced grave physical and psychic deprivations, but have seen vital educational opportunities senselessly squandered or destroyed. Recently, although the military regime has arranged a general cease-fire and assured *Rohingya* Muslim refugees in Bangladesh that they may return safely to their former homes in Myanmar, many still refuse repatriation fearing government retribution and reprisals⁴⁸. Through its wholesale persecution and

education in government run schools where Buddhism indoctrination is compulsory.*Id.*

⁴⁴ *Id.*

⁴⁵ Matthews, *supra* note 42, at 18.

⁴⁶ **Human Rights Yearbook: Burma 94**, at 117 (hereinafter *Yearbook*). Published by the National Coalition Government of the Union of Burma. The imposition of such state-sanctioned, arranged marriages compels Muslim girls to renounce their particular culture and faith. It also reports that Muslim girls have been forced to attend vocational training school at their own expense.

⁴⁷ Welcome Back, We Didn't Mean It: (Persecution of Muslims in Myanmar), Jan. 16, 1993, p35(1) (hereinafter, *The Economist*).

⁴⁸ See, *The Economist*. SLORC persecution of the *Rohingya* Muslim community in Arakan province has been most recently documented in *Newsletter*, Burma UN Office, May 1996. That report states that the government's campaign of repression against the *Rohingya* community continues despite the recent repatriation agreement between SLORC and the government of Bangladesh, that permitted the resettlement of many thousands of *Rohingya* refugees to their former homes and villages under the supervision of the United Nation High Commission for Refugees (UNHCR). It further recounts how this recent wave of SLORC persecution has precipitated a new mass exodus of *Rohingya* Muslims to Bangladesh, again resulting in the violent uprooting of entire communities, with ten thousand refugees fleeing to Bangladesh for safe haven every month. It also stresses that one of the reasons for the current exodus was that UNHCR's monitoring of such transfer and resettlement efforts in Arakan province proved inadequate to ensure the safety and welfare of returning refugees. Numerous complaints by recent *Rohingya* returnees assert that UNHCR monitors working in Burma consistently failed to protect them from a deliberate government campaign of terror and intimidation that includes, rape, forced labor, extra-judicial killings, the

displacement of *Rohingya* Muslims and its creation of the conditions that reduced their children to refugee status, the SLORC is in direct violation of Articles 2 and 14 of the CRC.

A recent study completed under UNICEF auspices⁴⁹ makes clear that SLORC authorities actually emphasize ethnic distinctions, making key citizenship rights “conditional upon such arbitrary factors as ancestry or religion, and grades people into three separate, unequal classes of citizen according to their ethnic origin.”⁵⁰ It even goes so far as to assert that Myanmar’s “Citizenship Law is founded upon an ideology of apartheid.”⁵¹

confiscation of food, live-stock and farm products, mass eviction from century-old communities to state-designated resettlement camps, drastic restrictions on the freedom of movement, and severe curbs on manifestations of religion, educational opportunities and other socio-cultural activities. Despite this spiraling chain of abuses and heightened concern by the international community for the treatment of *Rohingyas*, UNHCR persist in characterizing them as merely “economic refugees.”)

⁴⁹ Boyden, *supra* note 32, at. 24–8. It describes the policy of the SLORC regime in Myanmar that emphasizes the government’s essentially Burman character and its symbiotic relationship with the Buddhist hierarchy. Although the current military regime traditionally has associated itself with Buddhism to bolster its own political legitimacy, the SLORC has, on occasion, also persecuted Buddhist monks, particularly in the period immediately following the popular uprisings of 1988 -1990 in which radical monks participated in the pro-democracy movement. During that period of popular insurrection, the military government forcibly disrobed, jailed, and killed many Buddhist monks, also dissolving Buddhist sects that openly protested the military dictatorship. Presently, only nine official Buddhist sects remain, all under the tight administrative supervision and control of the SLORC. Yearbook, *supra* note 46, at 116. To date, SLORC has essentially co-opted the upper levels of the Buddhist hierarchy, doling out political favors to the *sangha* that agree to cooperate. Only those few favored sects receive official recognition and government funding. Other major sects like the *Yahan Pyo*, the young monks organization, have been forcibly disbanded and outlawed. Many of their members, however, have fled to neighboring countries and founded the All Burma Young Monks Union within their exiled communities.

⁵⁰ Boyden, at 25. *See also*, Burma Citizenship Law, (*Pyithu Hluttaw* Law No 4 of 1982), *Working People’s Daily*, Special Supplement, 16 Oct. 1982. Chapter II(3)(4), regarding Citizenship rules, ostensibly assures most ethnic nationalities residing in Burma automatic citizenship rights. It states: “[n]ationals such as the Kachin, Kayah, Karen, Chin, Butman, Mon, Rahkine, Shan and ethnic groups as have settled in any of the territories including within the States as their permanent home form a *period prior to 1185, B.E., 1823 A.D.* are Burmese citizens.” (Emphasis added). Clause 4 adds, significantly, “The . . . State may decide whether any ethnic group is national or not.” This guarantee of citizenship contains two conspicuous loopholes for many members of minority groups. First, the 1185, B.C. to 1829 A.D. time-frame severely conditions citizenship rights for those ethnic groups that cannot prove a direct uninterrupted line of family residence in Burma since 1829. Burmese descendants of ethnic Chinese or Indian ancestry -- and other non-Burman ethnic immigrants not included in the official list -- who have inhabited Burma for generations but, who, nevertheless, have difficulty proving that their forbearers established residence there prior to the 1823 cut off date, are automatically denied citizenship rights. Children belonging to these affected groups, who were born in Burma and are in every way Burmese, are being deprived of their right to acquire and/or preserve national citizenship guaranteed them under Articles 7 and 8 of the Children’s Convention. As a result of their being denied the right to “nationality” they are also being discriminated against by SLORC in the areas of housing, health care and other government benefits because these various government entitlements are directly contingent upon acquiring citizenship. Second, clause 2 of the Law gives the government unbounded discretion to determine which groups should benefit from or be denied citizenship rights. No procedural due process safeguards are present to insulate the government from arbitrary and capricious interpretation and implementation of the law.

⁵¹ Boyden, *supra* note 32, at 25. Recognizing that ethnicity and religious affiliation are often inextricably linked in the Burmese context of armed conflict between SLORC and minority groups, Myanmar’s application of its Citizenship Law assumes exceptional importance. If the allegations concerning Myanmar’s Citizenship Law being founded upon an ideology of apartheid has any valence then SLORC’s resort to this particularly abhorrent practice constitutes an international crime in both treaty and customary law. *See, International Convention on the*

The report also alleges that many Muslim *Rohingyas* have seen their citizenship rights arbitrarily revoked through having their identity cards confiscated by SLORC authorities.⁵²

More generally, it has been alleged that minority children are forbidden to receive education in their own language, while schools run by ethnic minorities are routinely shut down by the SLORC, as are universities and higher institutions of learning.⁵³ There are also reliable, corroborating reports that the SLORC has resorted to kidnapping ethnic minority children and subjected them to forced reeducation in Buddhist monasteries.⁵⁴ As usual, Myanmar has not responded to any of these charges. Additional allegations of SLORC persecution and subjugation of minority communities necessarily affecting children, include the shooting and arrests of minority refugees from the SLORC military campaign against insurgent groups that reject SLORC rule,⁵⁵ the

Suppression and Punishment of the Crime of "Apartheid." U.N.G.A. Res. 3068 (XXVIII) 28 U.N. GAOR, Supp. (No.30) 75, U.N. Doc. A/9030 (1974), *reprinted in* 13 I.L.M. 50 (1974). Although Burma has not ratified either the Convention on the Elimination of All Forms of Racial Discrimination (CERD) or the Apartheid Convention, consensus in the international community is crystallizing around the notion that apartheid, based on race, religion or ethnicity, is offensive to international customary law. *See e.g., The Foreign Relations Law of the United States*, Vol.1 & 2, American Law Institute, 1986, ch.1, sec. 702, Customary Law of Human Rights, Comment (j) makes clear that customary international law squarely prohibits systematic *religious discrimination* by government. (Emphasis added). It states, "The United Nations Charter (article 1, 13, 55) links religious discrimination with racial discrimination and treats them alike; to the extent that racial discrimination violates the Charter religious discrimination does also. Religious discrimination is also treated identically with racial discrimination in the principle covenants and in the constitution and laws of many states." *Id.* at 165).

⁵² In Myanmar, the removal of one's citizenship's card is no trivial matter. It triggers drastic consequences for any Burmese national by depriving them of their right to vote and, more significantly for children, of their ability to receive a whole range of critical government benefits that include housing subsidies and other basic health care services. If true these allegations would establish that Myanmar is in direct violation of Article 8(1) and (2) of the CRC covering the child's right to possess an identity. The Article's first provision requires that every state "undertake to respect the right of the child to preserve his or her identity, including nationality . . . as recognized by law without unlawful interference." In the case of the persecution of the Muslim *Rohingyas*, the confiscation by SLORC authorities of their citizenship cards cannot be construed as lawful under any plausible reading of the alleged acts. By the same token Article 8(2) lays out Myanmar's duty to rectify this example of "unlawful interference" by prescribing that, "[w]here a child is illegally deprived of some of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily reestablishing his or her identity." This obligates Myanmar under the Convention to restore citizenship cards to all Muslims belonging to the *Rohingya* minority group, because denying them, or their parents, such cards results in the minority child being effectively stripped of all government benefits for health care, education and housing and thereby "deprived of some portion of his or her identity."

⁵³ Sara Brunnkvist, When Children's Rights are Jeopardized so is the Future of the Nation: The Children's Rights Situation in Burma, Burma Issues, January 1996, *citing* the National Coalition Government of the Union of Burma. (Hereinafter "Brunnkvist").

⁵⁴ *See*, Karen Human Rights Group, SLORC Abuses in Chin State, Independent Report # 95-09, March 15, 1995.

⁵⁵ *See*, Karen Human Rights Group, SLORC Shootings and Arrests of Refugees, Independent Report, January 15, 1995.

forced relocation of ethnic villagers,⁵⁶ and preventing the free movement of ethnic villagers.⁵⁷

Thus despite government statements regarding the benign effects of Buddhist child rearing philosophy, the SLORC's report masks brutal policies that constitute grave violations of the CRC's nondiscrimination, religious freedom, and minority/ indigenous rights provisions. These allegations suggest that the SLORC's overwhelming cultural and political emphasis on Buddhism -- its reliance on a prescribed set of officially-sanctioned beliefs that serve as an engine of social policy -- encroaches upon the rights of the minority child to be free of discrimination. This is especially true in the absence of any explicit state policy to assure minority students the freedom to practice their own faith and beliefs without being stigmatized or disadvantaged.⁵⁸ The right of the child to enjoy equal treatment and respect without regard to parental religion, culture or belief is absolute under the CRC, and cannot be impinged upon by arbitrary or intrusive state or private action⁵⁹.

These reported accounts of SLORC practices and policies directed at the minority child suggest that Myanmar is using religion and education as an instrument of social control, and a convenient mask for political indoctrination of the minority child. Forced assimilation of minority or indigenous children by state actors belonging to the dominant culture has many disturbing historical precedents,⁶⁰ and is a favored tactic of many

⁵⁶ Committee for Publicity of People's Struggle in Monland, Forced Labor and Forced Relocation by SLORC in the Name of Foreign Investments, Newsletter, October 1994, p. 7.

⁵⁷ Committee for Publicity of People's Struggle in Monland, SLORC's Military Enforce Draconian Decree, Preventing Free Movement of Ethnic Villagers, Newsletter, January 1995, p. 7.

⁵⁸ At the very minimum, this would require the government establishing regulatory safeguards in the form of constitutional or statutory prescriptions prohibiting discrimination against minority religions and creating the administrative infrastructure to effectively enforce those laws. However, without the political will to implement such legal provisions discrimination will continue to flourish. *See Appendix 2, infra*, at 27, of this paper, which provides a more comprehensive discussion on the issue of whether SLORC policies in the area of religion and education constitute an improper privileging of one religion to the detriment of minority faiths.

⁵⁹ See, Article 2(1), requiring that "States Parties respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin. . . or other status"; and 2(2) commanding that governments " . . . take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or belief of the child's parents, legal guardians, or family members. Article 5 of the Convention further constrains state action in this area by requiring that "States parties . . . respect the responsibilities, rights and duties of parents, or where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise of the child of the rights recognized in the present."

⁶⁰ One prominent example relates back to the early part of this century when the United States Government, through the Bureau of Indian Affairs, pursued a policy of encouraging the forcible removal of Native American

current regimes that use religion (or religiously-cloaked policies) as a weapon to blunt political resistance of minority groups.⁶¹ Such policies of forced assimilation through religious indoctrination by SLORC not only contravene core provisions of the CRC, but assail the most fundamental principles of human decency and civilized behavior codified in the UN Charter and the international bill of rights.⁶²

Myanmar manifestly violates its international legal obligations regarding multiple rights of the boy and girl child under the CRC. These governmental practices, at the very least, transgress such key provisions as Article 2 (the anti-discrimination clause), Article 5 (respecting the State's duty to ensure parental rights to provide appropriate direction and guidance in the child's development), Article 6 (regarding the child's right to survival and development), Article 8 (regarding the child's right to preserve its identity),⁶³ Article 14 (the religious freedom clause), Article 13 (guaranteeing the child's

children from their reservation homes, essentially kidnapping them from their families and relocating them to Christian missionary schools where it was forbidden for them to speak in their native language or intermingle with their original culture. This policy of forced assimilation and cultural imperialism has prevailed in many countries where the dominant political groups, using religion as a coercive instrument of social control, strive to undermine any resistance of the indigenous minority community by indoctrinating their children in the majority faith. In this way the transmission of knowledge to the next generation is broken and the child links to its traditional culture and community of values fatally severed. See, K. Tsianina Lomawaima, They Call it Prairie Light: The Story of Chilocco Indian School, University of Nebraska Press, Lincoln Nebraska (1994); Devon A. Mihesuah, Diverting the Rosebuds: The Education of Women at the Cherokee Female Seminary 1851-1909, University of Illinois Press, Chicago Illinois (1993); Michael C. Coleman, American Indian Children At School, Jackson University Press of Mississippi, 1993; Estelle Fuchs & Robert J. Havighurst, To Live on this Earth: American Indian Education, Doubleday Garden City NY, Anchor Books, 1973, chap. XI *Boarding Schools*, p 222-245.

⁶¹ Myanmar's practices of religious intolerance towards its own minority children share disturbing parallels with those engaged in by the government of Sudan. See especially, *Human Rights Watch*, Children of Sudan: Slaves, Street Children and Child Soldiers, Sep. 1995. Like the SLORC in Myanmar, the National Islamic Front (NIF) in Sudan, a militant Islamist party, has been waging what it regards as a "holy war" against the non-Muslim population of the country, which consists mostly of African, non-Islamic peoples living in the southern third of the country and the Nuba mountains -- minorities who are represented by the rebel Sudan People's Liberation Army (SPLA). NIF government forces regularly kidnap non-Islamic children from their families and subject them to slavery or forced labor by relocating them into Islamic household as unpaid household servants. *Id.* at 2, 11- 16, 32-36. Equally egregious, NIF army troops forcibly recruit or take prisoner underage child soldiers from Christian or animist communities and subject them to military training that involves rigorous religious indoctrination to become Islamic "holy warriors." *Id.* at 40-69.

⁶² The International Bill of Human Rights consists of The International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), Dec. 16 1966, 21 U.N. GAOR Supp (No. 16) at 49; International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI) Dec. 16, 1966, 21 U.N. GOAR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966).

⁶³ Article 8(1) demands that States "undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law with unlawful interference." The SLORC's alleged practice of kidnapping and coercive indoctrinating of non-Buddhist children in Buddhist monasteries or forcing non-adherent girl soldiers forcibly recruited into the government army to marry Buddhist boys or men all illegally deprive the minority boy and girl child of their right to have their identity, nationality and family relations protected. Article 8(2) places an affirmative responsibility on governments to ensure that States Parties "provide appropriate assistance and protection" to any child "illegally deprived of some or all of the elements of his or her identity . . . with a view to speedily re-establishing his or her identity."

freedom of expression), Article 15 (ensuring the child's freedom of association), Articles 28 and 29 (covering the child's right to education) and, of course, Article 30 (the minority/indigenous child right clause giving special protection to such children),

V. Article 32: Child Labor

Article 32 proscribes the use of exploitative forms of child labor that subject children to hazardous working conditions, and seeks to regulate the age, hours and working conditions of child labor.⁶⁴ The SLORC report categorically denies that child labor presents a significant problem in Myanmar. Paragraph 111(b) declares that in Myanmar "children engage only in the economic enterprises of their families; as a consequence, the problem of child workers is quite rare."⁶⁵ This claim can be refuted on three grounds.

First, the SLORC report not only offers no factual basis to support this claim, but it also fails to acknowledge that a primary source of exploitative child labor occurs in the domestic context where parents or assigned guardians often compel children to work under degrading and brutal conditions of virtual slavery. Second, the report, totally ignoring the recommendations to governments contained in the Beijing Platform for Action,⁶⁶ again fails to provide a gender-specific analysis of exploitative types of child labor. No effort, for instance, is made to explore whether certain exploitative domestic labor practices might disproportionately affect the rights and welfare of the girl child, especially considering the government's boast that in Myanmar "*children are [considered] the most important property of the parents.*"⁶⁷

Third, although the report makes no reference to allegations of any type of child labor abuses in Myanmar, the existence of degrading and exploitative government practices is borne out by the February 1996 report on the human rights situation in Myanmar prepared by the Special Rapporteur for the Commission on Human Rights.⁶⁸ It states,

⁶⁴ Article 32 takes pains to specify measures States parties should undertake to ensure compliance. For example, sub-section 1 offers protective coverage against "economic exploitation and from performing any work that is like to be hazardous or to interfere with a child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, social development." Sub-section 2 requires States parties to "take legislative, administrative, social and educational measures to ensure implementation." Making clear reference to relevant ILO and other anti-slavery Conventions, sub-section 2 also recommends that governments, in order to achieve this goal, should rely on "relevant provisions of other international instruments sub-section 2(a)(b)(c) in turn mandate that States parties develop regulatory guidelines concerning the permissible age, hours and working conditions permitted for a child's employment and prescribes that appropriate penal sanctions be imposed on violators "to ensure effective enforcement of the present article."

⁶⁵ Myanmar Report, *supra* at 4, at 45.

⁶⁶ Fourth World Conference on Women, *supra* note 10, at 119.

⁶⁸ See *e.g.*, Report on the Situation of Human Rights In Myanmar, *prepared by* Mr. Yozo Yokota, Special

"[m]en, women, and *children* are allegedly still used as forced labor for the construction of railways, roads, and bridges."⁶⁹ The Special Rapporteur also notes that the 1908 Village Act and the Towns Act, which both authorize the use of forced labor under certain circumstances, are still in force in the country.⁷⁰

Other reports corroborate the government's forcible recruitment of children to construct public works projects under exceptionally grueling conditions.⁷¹ The International Labor Organization (ILO) was recently so alarmed by exploitative child labor practices in Myanmar,⁷² that it launched a complaint procedure under Article 26 of the ILO Constitution deploring "the serious situation prevailing in Myanmar." It accused the SLORC of using forced labor "systematically on an even larger scale, and in an increasing number of areas . . . [involving] large numbers of forced laborers . . . working on railway, road, construction and other infrastructure projects, many of which are related to the Government's efforts to promote tourism."⁷³

There is also evidence of SLORC conscripting child labor on a massive scale to build an oil pipeline through areas of Burma inhabited largely by national minorities in rebellion against the ruling military regime.⁷⁴ Relying on foreign capital and investment of Western multi-nationals, the pipeline is being built to service Thailand's growing energy and industrial needs.⁷⁵ Under the pretext of national security and public order, the

Rapporteur of the Commission on Human Rights, *in accordance with* Commission resolution 1995/72.UN Doc. No. E/CN.4/1996/65 (5 Feb. 1996) (hereinafter "Special Rapporteur Report").

⁶⁹ Special Rapporteur's Report, *supra* note 58, para. 142, at 8, (emphasis added).

⁷⁰ *Id.*

⁷¹ See, Amnesty International, Myanmar: No Place to Hide, June 1995; Burma Issues, Railways, Pipelines, and Human Rights, April 1995, p. 7.

⁷² Myanmar is a party to the ILO Forced Labor Convention, 1930 (No. 29).

⁷³ ILO/96/23 (Thursday 20 1996). As the ILO press release explains: "Under the terms of article 26 a special Commission of Inquiry can be established to investigate non-observance of international labour standards and allegations of human rights abuses in ILO member states. . . . The procedure under article 26 is invoked only in the case of persistent violations and disregard for the decisions of the ILO supervisory bodies."

⁷⁴ See, Pacific News Service, Burma's Gas Pipeline -- Litmus Test for Global Boycott Movement, by Edith Mirante, June 10-14, 1996 (reports that "dozen multi-national corporations have paid Burma's junta . . . millions of dollars each for the rights to search for petroleum in Burma . . . a few, obtaining off-shore concessions, struck large reserves of undersea natural gas. The Companies include Texaco (US), Nippon (Japan), Premier (UK), Unocal (US), Total (France). More important, these investment The article argues that such foreign investments by multi-nationals operate to prop up the SLORC regime, providing it with desperately needed capital to build infrastructure. See also, Mon Information Service Bangkok, French Total Co's and American Unocal Corp's Disastrous Gas Pipeline Project in Burma's Gulf of Martaban, reported in May, 1996 (highlighting that pipeline project is to be built across the ethnic Mon and Karen territories, essentially guerilla controled zones, thus requiring SLORC central authorities to unleash a brutal pacification campaign designed to subjugate the local minonity population and conscript vast numbers of them into huge public works project of building pipeline -- a campaign that will result in catastrophic destruction of entire minority communities).

⁷⁵ See, *Pacific News Service*, (relying on Human Rights Watch-Asia, Amnesty International and Greenpeace

SLORC is using the pipeline construction to forcibly relocate entire ethnic villages considered bases of support for minority insurgent groups. In this way impoverished minority communities, including children, are being forcibly conscripted and used as slave labor by the SLORC- supervised pipeline construction project. Myanmar passes over in silence evidence of the government's mass recruitment of child labor for purposes of building huge public works projects and infrastructure under military supervision and control.

VI. Article 38 : Child Soldiers

The SLORC report makes no reference to the Article 38 issue of child soldiers -- this in the face of numerous credible reports concerning the conscription of boys as young as 12-14 years of age into the Myanmar army. Article 38 of the CRC sets the minimum age for military recruitment at 15, forbidding the use of children under 15 in armed conflict scenarios.⁷⁶ *Images Asia*, a nongovernmental organization, has issued a detailed report on the situation of child soldiers in Myanmar.⁷⁷ The report, based on anecdotal and documentary evidence, claims that the participation of underage children in hostilities has become routine in Burma. It also highlights that child soldiers are often compelled to be both the victims and perpetrators of human rights atrocities.⁷⁸

With the country embroiled in civil war and dominated by a military dictatorship, the temptation by all belligerents to conscript underage children into militias increases exponentially.⁷⁹ Many of the armies in Myanmar, including those belonging to ethnic

reports, the article emphasizes that the SLORC military authorities "[f]or road-building and a railway extension that connects the pipeline route, as well construction of new bases, have made extensive use of ethnic minorities for slave labor.")

⁷⁶ Article 38 sets the baseline age for state use of child soldiers in the military at 15. However that age was always regarded as controversial, a temporary compromise at the time of the drafting of the CRC subject to later revision when international consensus could be mustered to change it. An optional protocol is currently being drafted by an UN working group under the auspices of the Commission on Human Rights, which seeks to set the permissible age for both recruitment and combat of child soldiers at 18 years, the age recognized and accepted by the vast majority of national jurisdictions.

⁷⁷ See, *Images Asia*, [A Report About Child Soldiers in Burma](#), (Hereinafter "*Images Asia*") This report was prepared for the U.N. Graca Machel Study on the Impact of Armed Conflict on Children and reflects the results of research conducted on the ground in Myanmar. It notes that SLORC military 'routinely abducts people in large numbers from all areas of Burma for forced labor, whether on public works projects like road-building, or as 'porter' for the military.' It goes on to explain that the phenomenon of using children as porters in the military is widespread and that the function of portering itself is extremely hazardous because it often involves using children as human mine-sweepers, grueling physical labor, and chronic abuse and maltreatment.*Id.*

⁷⁸ As *Images Asia* notes: "[w]idespread use of child soldiers has ensured that many thousands of children in Burma have suffered exceptional cruelty during the war; many child soldiers have been killed or wounded, or have witnessed terrible atrocities. Many children have taken part in these human rights abuses themselves." *Id.*, at 3.

⁷⁹ *Images Asia*; *supra* note 77, at 22. The report rightly emphasizes that the "use of children as child soldiers in Burma can only be understood within the context of the militarization of society as a whole." *Id.* at 4.

groups that reject SLORC rule, and the *Tatmadaw*, which is the army of the SLORC, employ child soldiers below the permissible age.⁸⁰ The *Images Asia* report includes eyewitness accounts of the forced conscription of children from their villages into the SLORC-controlled *Tatmadaw* army.⁸¹ The duties and awful living conditions of child soldiers in the *Tatmadaw* outlined there are similar, if not identical, to those of other rank-and-file soldiers. They include maintaining check-points, acting as bodyguards, fighting in the front-lines, planting and finding mines, executing suspected insurgents, capturing villagers for porter duty and other types of forced labor, performing sentry and guard duty, acting as spies and informants, and scouting and reconnaissance.⁸²

Mention is also made of SLORC recruitment of orphans from minority communities whose parents were killed in various government counter-insurgency campaigns. Designated as the *Ye-Nyunt* Youth, these minority child recruits receive military-style education and political indoctrination courses at special militia training camps with the purpose of transforming them into loyal government troops.⁸³ Equally disturbing are reports of child combatants being maltreated and abused by commanding officers during training and in the field,⁸⁴ suffering excruciating pain or dying from lack of adequate medical treatment,⁸⁵ and being drugged with amphetamines, tranquilizers or alcohol before being forced into battle and used in human-wave attacks or as mine sweepers.⁸⁶

The use of child soldiers by Myanmar is also intimately linked to the problem of exploitative child labor since, like dangerous factory work conditions, it involves the employment of children in extremely hazardous activities. Child soldiers over 15 years but less than 18, conscripted by the military, should still be protected against activities

⁸⁰ However, the treatment accorded children, including recruitment methods and conditions of service, varies drastically between, and within, these armed groups. The *Images Asia* report concludes that the treatment of child soldiers in the *Tatmadaw* requires separate analysis, because the severity of abuse there far surpasses that of other groups. See, *Images Asia*, at 3. We will also reserve our comments to the government-controlled armed forces, since SLORC exercises direct supervision and control over the *Tatmadaw*.

⁸¹ *Images Asia*, *supra* note 77, at 22.

⁸² *Images Asia*, *supra* note 77, at 28; see also, Karen Human Rights Group, Field Reports #95-13; 95-19; 95-20; *Dawn News Bulletin, Escaped Porters from the Manerplaw Battle Fields*, May 1995, p. 11 (includes specific reports of children aged 12 to 14 who escaped from work as forced laborers and porters for the SLORC military).

⁸³ *Images Asia*, *supra* note 77, at 6. This information is based largely on an UNICEF report, see, Smith /ASI: 1994:118.

⁸⁴ *Images Asia*, at 32-40. It reports of children being "frequently beaten by commanding officers, sometimes as punishment, but as often simply as random but regular occurrences." *Id.*, at 32. Child soldier defectors also relate that SLORC commanders never gave field instruction to troops in the conventions of war or human rights, required by the Geneva Conventions and Protocols. *Id.*

⁸⁵ *Images Asia*, *supra* note 77, at 41-44.

⁸⁶ *Id.*, at 44-45.

considered “hazardous” and proscribed under Article 32 of the CRC.⁸⁷ In addition, children under 15, recruited by the SLORC (and other armies), should be given protective coverage under both Articles 32 and 38 of the Convention since they are both under the statutorily permissible age of 15 and forced to engage in inherently hazardous combat-related activities.

VII. Article 39: Social Reintegration of Former Child Soldiers

There is also reliable evidence that SLORC fails to meet its treaty obligations in the area of government assistance to former child soldiers and children who were exploited for public works projects. *Images Asia* notes that SLORC authorities fail to assist former child soldiers, demobilized or discharged by the military, to find jobs, receive pensions, adequate health care, education or counseling.⁸⁸ Article 39 requires that States parties “take all appropriate measures to promote physical and psychological recovery and social reintegration of the child victim of any form of neglect, exploitation, or abuse, torture . . . or armed conflicts.” It commands further that “such recovery and reintegration . . . take place in an environment which fosters the health, self respect and dignity of the child.” This provision offers not only a broad set of protections to all child victims of domestic abuse, exploitative labor or armed conflict, but imposes on government the affirmative duty to take concrete steps to implement those remedial policies and programs.

In interviews conducted by the *Images Asia* study regarding the post-demobilization of child soldiers, it was found that only minimal medical and monetary compensation was awarded to former *Tatmadaw* child combatants who had suffered psychological trauma or incapacitating injuries.⁸⁹ The interviews revealed that long-term treatment for crippling disabilities like post traumatic stress syndrome or the availability of health care, jobs or pensions for demobilized military personnel was reserved exclusively to former high-ranking officers. To receive a pension requires 15-20 years service, obviously beyond the reach of most former child combatants who, if they survive, only average

⁸⁷ In other words, because the types of work activities that Myanmar compels 15 to 18 year old child soldiers to perform -- such as mine sweeping, portering dangerous materials, engaging in combat, etc. -- are so inherently hazardous and brutalizing, these SLORC practices and policies also violate Article 32 of the treaty. Thus child soldiers above the age of 15 but under 18 years still command protection against most types of combat-related activities under Article 32 of the CRC due to the intrinsically “hazardous” nature of the work.

⁸⁸ *Images Asia*, *supra* note 77, at 54.

⁸⁹ *Id.* The report estimates that a former child combatant for lost limbs or bodily parts would usually receive somewhere between \$1000 and \$2000. However no government rehabilitation for post traumatic stress syndrome or other combat-induced severe symptoms were available.

three to four years of active military duty. Demobilized child soldiers are essentially abandoned by the government and left to fare for themselves in a hostile political and economic environment. The overwhelming majority of them are poor recruits who depend for survival on such professions as *trishaw* drivers, professional porters, or subsistence farming.⁹⁰

VIII. Articles 34 and 35 : Sexual Abuse and Trafficking in Girls

Article 34 requires States parties "to protect the child from all forms of sexual exploitation and sexual abuse." Article 35 demands that States parties "take all appropriate national, bilateral, and multilateral measures to prevent the abduction, the sale of, or traffic in children for any purpose or in any form." Myanmar's report avoids any serious treatment of the issues of sexual exploitation and sexual abuse of the girl child. However, extensive evidence on the trafficking in girls from Myanmar into Thailand for the purposes of forced prostitution is sufficient to cast doubt on the SLORC's claims that such activities do not take place.

The SLORC report merely recites relevant provisions of its national legislation, which prohibit prostitution and kidnapping of girl children for the purposes of the sex trade.⁹¹ The report provides no factual account or empirical data regarding the trafficking in girl children; nor does it offer any information as to what concrete steps the government is taking to ameliorate this evil. SLORC government officials have been accused of actively conspiring in the trafficking of girl children to Thailand to be used as sexual slaves. This aspect of the slave trade was noted in a 1993 report⁹² issued by Asia Watch and the Women's Rights Project, divisions of Human Rights Watch, a respected international human rights organization. The report describes a trade in Myanmar (Burmese) girls, who are lured from their homes by brothel agents with promises of well-paid domestic work and brought to Thailand, where they are then sold into prostitution and compelled to work in ghastly slave-like conditions.⁹³ According to this report,

⁹⁰ *Id.*, at 54, 55.

⁹¹ Myanmar Report, *supra* note 4, para. 112-114, at 45.

⁹² *Human Rights Watch, A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*, 1993. (hereinafter "Human Rights Watch").

⁹³ *See, Human Rights Watch*; the report notes that Thai NGOs estimate that, by 1993, some twenty thousand Burmese women and girls have been trafficked and sold into female sexual slavery in Thailand alone and that ten thousand new recruits are brought in every year, and moved from brothel to brothel as the demand for fresh recruits dictates. The report provides a graphic description of how the trade operates: "The trafficking of Burmese women and girls into Thailand is appalling in its efficiency and ruthlessness. Driven by a desire to maximize profit and by fear of HIV/AIDS, agents acting on behalf of brothel owners infiltrate ever more remote areas of Burma seeking unsuspecting recruits. Virgin girls are particularly sought after because they bring a higher price and pose less of a threat of exposure to sexually transmitted disease. The agents promise women and girls jobs as waitresses or

Myanmar government officials often are involved in this lucrative slave trade, through the solicitation of bribes from brothel owners.⁹⁴ Reports of Burmese girls lured into prostitution in Thailand have been published elsewhere as well.⁹⁵ There is no evidence that SLORC authorities have taken steps to combat this corruption in their own ranks or even begun to acknowledged the problem.

IX. Conclusion

The Committee should question the delegates of Myanmar as to the steps that country is taking to modify its property-oriented approach to child rearing practices, education and welfare, and urge them to recognize the child as a subject of international law endowed, like all other people, with fundamental and inalienable human rights and dignity. The committee should urge Myanmar to recognize the different needs and social roles of women and children, the first requiring equal access, opportunity and empowerment while the latter need special protection against state or private exploitation and violence.

Myanmar should respect the directives contained in the Beijing Platform for Action regarding the girl child, and incorporate them into their various administrative codes and domestic policies affecting children. Concrete steps should be taken to implement and enforce gender-sensitive legislation and a system of government accountability established to measure progress in the area of equal protection regarding non-discrimination for the girl child in education, health care, domestic violence, job-training and opportunity.

The Committee should question the delegates of Myanmar as to the steps the government is taking to implement Article 2, and in particular, as noted above, the Committee should: 1) ask the Myanmar representatives to respond to the specific

dishwashers, with good pay and new clothes. Family members or friends typically accompany the women or girls to the Thai border, where they receive a payment ranging from 10,000 baht (\$400) to 20,000 baht (\$800) from someone associated with the brothel. This payment becomes the debt, sexually doubled with interest, that the women and girls must work to pay off, not by waitressing or dishwashing, but through sexual servitude. Once the . . . girls are confined in the Thai brothels, escape is virtually impossible. Any Burmese . . . girl who steps outside the brothel risks physical punishment, retribution against her parents or relatives for defaulting on her debt and/or arrest as an illegal immigrant -- by the same police who are often the brothel owner's best clients. The worst brothels in the southern Thai town of Ranong are surrounded by barbed wire and armed guards." *Id.* at 3.

⁹⁴ *Human Rights Watch, supra* note 92, at 9. The report notes that, "Just as the Thai police raid the same brothels they patronize and arrest women as illegal immigrants whom they have hired the night before, Burmese officials arrest deported women and girls for illegal departure whose recruitment to Thailand they may have facilitated by taking bribes from brothel agents." *Id.*

⁹⁵ Burma Issues, *The Story of Thwe*, January 1995, p. 6.

allegations of official discrimination, and 2) further question the delegates of Myanmar as to the steps the government is taking, or planning to take, to address the reports of discriminatory practices, promote tolerance of all peoples of Myanmar, and address the historical problem of ethnic strife and discrimination in Myanmar.

The Committee should challenge SLORC assertions that members of minority groups -- and, in particular, minority children -- are assured equal protection under the law in Myanmar. More specifically, it should question the delegates of Myanmar on the extent to which the government promotes religion-grounded principles as the only acceptable practices of child-rearing and education, and the effect that such promotion may have on the child belonging to minority communities in Burma.

The Committee should also ask Myanmar delegates to respond to the specific allegations of discriminatory government conduct towards the minority child, including kidnapping, forced relocation and recruitment, and coercive indoctrination in monasteries and government militias. It should further inquire as to what steps the government is taking, or planning to take, to address these reports of discriminatory practices, to promote tolerance of all Burmese people, and to address the historical problem of ethnic strife and discrimination in Myanmar and its adverse impact upon the minority child.

Concerning Article 32, the Committee should inform the Myanmar representatives that child labor in family enterprises, that is hazardous or exploitative in nature, and state-sponsored forced labor of children in public works or military projects, constitute pernicious forms of child labor condemned by the CRC and other pertinent international instruments. It should urge Myanmar to recognize that domestic forms of child labor can be exploitative insofar as they involve such proscribed practices as debt bondage and other contemporary forms of slavery. The Committee should also request that Myanmar explain its policies of recruiting underage child soldiers in violation of Article 38, and its actions of compelling them to engage in extremely hazardous work, including mine sweeping, portering, and other types of potentially or lethal combat-related activities. The Committee should further point out that Article 32 of the CRC prohibits the use of children between the ages of 15 and 18 in military-related work of a hazardous nature. Finally, the Committee should question the delegates of Myanmar as to the remedial steps the government is taking to address these reports of brutal and exploitative child labor, whether in the domestic or the public sphere.

Concerning Article 39, the Committee should direct Myanmar to take the necessary measures to guarantee the physical and psychological recovery of child soldiers and other abused or exploited children, and assure, through government-sponsored jobs, health care, education and counseling, their successful reintegration into civil society. In addition, under Articles 34 and 35 of the CRC, the government bears a legal obligation, to take national, bilateral, or multilateral steps to prevent the traffic in girl children, and to take concrete measures to improve their safety, welfare and ensure their rehabilitation into society. Finally, the Committee should ask the representatives of Myanmar to respond to the allegations of child trafficking in Myanmar and to charges that government officials are conspiring in this illicit trade. The Committee should further inquire as to the steps Myanmar is taking, or is planning to take, with or without the cooperation of Thailand, to stop the traffic and sale of Burmese girls into prostitution.

Appendix 1: Myanmar Fails to Comply with CRC Reporting Guidelines

The Committee has taken pains to encourage broad dissemination of the guidelines to all governments concerned and strongly recommended "all States parties to report to it in accordance with the guidelines and in a thorough and timely manner."⁹⁶ The procedural and substantive shortcomings of the Myanmar initial report are evident throughout the entire document, such that it would be inefficient use of the Committee's time to address here the flaws marring each section of the report. However even a cursory review of the government's failure to respect the Committee's pre-established reporting guidelines in two specific instances will be sufficient to reveal the extent of Myanmar's reporting lapses.

A typical example of SLORC's disregard of the Committee's guideline is its response to Article 2. That Article preserves the right of the child to be free of all private and governmental discrimination. Regarding Article 2's non-discrimination principle, the Committee has requested that States parties include in their initial reports "[r]elevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future"⁹⁷

As already shown, there is general consensus, garnered from reliable empirical accounts, that extensive government-sanctioned religious and ethnic discrimination rules in Myanmar.⁹⁸ However, the section of the Myanmar report addressing Article 2 merely recites a truncated section of the Myanmar Child Law as evidence that all children enjoy a discrimination-free social environment.⁹⁹ Then in describing implementation measures for Article 2, the report includes factual scenarios completely irrelevant to the issue of nondiscrimination. They are obviously misplaced in this section of the document. For example, it lists the amount of rice and clothing generally distributed by the Myanmar Department of Social Welfare.¹⁰⁰ This information has no bearing on the issue of discrimination and obscures the Article 2 issues purportedly under discussion.

In short, this section of the Myanmar report provides none of the information requested by the Committee. This is a significant omission especially in light of the extensive accounts of discrimination in Myanmar provided by credible and reliable alternative reports -- many of which have been submitted to this Committee -- that confirm the SLORC's official policy of emphasizing ethnic identity as a cynical means to consolidate its political power.¹⁰¹ The report essentially evades treatment of any of the issues falling under Article 2.

Similarly, regarding compliance with Article 32, the Committee requested that States parties "provide relevant information, including the principal legislative, judicial, and administrative or other measures in force; factors and difficulties encountered and

⁹⁶ *CRC Overview*, *supra* note 1, para. 3.

⁹⁷ *General Guidelines*, *supra* note 1, para. 13. (Emphasis added).

⁹⁸ *See*, Boyden, *supra* note 32; Brunnkvist, *supra* note 53; Matthews, *supra* note 42.

⁹⁹ Myanmar Report, *supra* note 4, Paras. 46, 47, at 14.

¹⁰⁰ Myanmar Report, *supra* note 4, para. 47(c). at 14.

¹⁰¹ Boyden, *supra* note 32; at 25.

progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future¹⁰² These guidelines also apply, *inter alia*, to Articles 34 and 35. The Myanmar report, in paragraphs 110-111, once again simply recites legislative provisions without revealing or commenting upon any of its implementation efforts or strategies. Although the report refers to Myanmar membership in the International Social Security Association, it offers no indication of the extent to which this legislation is actually being enforced or what concrete steps the government is taking to ameliorate the problems presented by the various forms of exploitative child labor, including bonded labor, hazardous working conditions, prostitution.

Appendix 2 : Myanmar Violates Article 14 of the CRC

The question arises as to whether the SLORC's embrace of Buddhism as the "rule of conduct or moral code"¹⁰³ amounts to improper state deference for, or privileging of, one belief system at the expense of others. Article 14 of the CRC establishes the broad outlines of States parties' obligation to "respect the right of the child to freedom of thought, conscience and religion"¹⁰⁴ and bears a close resemblance to the language and concerns expounded in Article 18 of the Political Covenant.¹⁰⁵ The Human Rights Committee (HRC) has addressed the precise issue of church/state relations in one of its leading General Comments.¹⁰⁶ Clause 9 of the HRC's General Comment 18 articulates a basic cautionary principle for determining permissible from offensive state-endorsement of religion:

The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise a majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 (regarding religious liberty) and 27 (protecting minority rights), nor is any discrimination against adherents of other religions or non-believers.¹⁰⁷

This broad principle makes clear that state preference for or identification with one particular religion is not generally incompatible with the fundamental tenets of religious liberty, but that it becomes increasingly offensive as it encroaches upon "the enjoyment of any of the rights" under the treaty or results in "any discrimination against adherents of other religions or non-

¹⁰² *CRC Overview*, *supra* note 1, para. 23, at 5.

¹⁰³ Myanmar Report, *supra* note 4, at 47.

¹⁰⁴ Clause 2 imposes on states the responsibility to "respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction of the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." (Emphasis added). Clause 3 addresses the issue of the permissible scope of government restraint of religious practice, insisting that "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others."

¹⁰⁵ This indicates that the CRC borrowed heavily in its drafting of those provisions. For instance, Article 14(2) of the CRC bears identical language to Article 18(4) of the ICCPR; the same symmetry holds true between Article 14(3) of the CRC and Article 18(3) of the ICCPR. We also follow Alston's recommendation that CRC provisions be analyzed contextually, in relation to other applicable human rights law, and rely, like him, on the jurisprudence of the Human Rights Committee (HRC) for guidance.

¹⁰⁶ See IHRR Vol. 1 No.2 (1994) General Comment 18 (Thirty-seventh session, 1989) (hereinafter General Comment 18)

¹⁰⁷ General Comment 18.

believers.”¹⁰⁸ Myanmar’s establishment of Buddhism as the official or traditional faith in the country and the fact that Buddhist adherents comprise the majority of the overall Burmese population does not insulate SLORC from the responsibility of ensuring that the rights of the minority child are not thereby in any way obviated or infringed.

In the area of education, for example, if we are to trust any of the accounts provided by alternative reports, a Burmese child, who belongs to an ethnic minority, cannot avoid being confronted by starkly conflicting messages; one from the government through its ideological control of the public school system, including educational media, curricula and textbooks; the other from minority parents or guardians seeking to preserve the child’s unique cultural heritage and national identity.

Through its ratification of the CRC, Myanmar has voluntarily assumed the international legal obligation under Article 2 to treat all children equally, regardless of their religion or ethnicity, or the religion or ethnicity of their parents, and to create an environment in which all Burmese children can enjoy lives free of discrimination. A child’s capacity to enjoy his or her own particular culture, language or beliefs is tempered only by the right of the child’s parents or guardians to offer principled guidance and instruction. The CRC categorically forbids any type of state encroachment in this area, since enforcement of educational policies that use coercive techniques designed to indoctrinate a child with government-sanctioned beliefs usurps the parents’ derivative right, under Article 5 of the CRC, to provide “appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”¹⁰⁹ Finally, to facilitate the realization of these goals Article 4 of the CRC (the implementation clause) requires States parties to take “all appropriate legislative, administrative and other measures for the implementation of the rights recognized” in the Convention.

¹⁰⁸ General Comment 18.

¹⁰⁹ See Karen Human Rights Group, SLORC Abuses in Chin State, Independent Report # 95-09, March 15, 1995, (which makes reference to cases of abduction and forced indoctrination by the government of non-Buddhist children in Buddhist monasteries).