

CHILD SOLDIERS

INTERNATIONAL

“Working to stop the use of child soldiers worldwide”

Thailand

**Report to the Committee on the Rights of the Child in advance of
Thailand’s initial report on the Optional Protocol to the Convention
on the Rights of the Child
on the involvement of children in armed conflict**

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Child Soldiers International
9 Marshalsea Road
London SE1 1EP
United Kingdom

Tel: +44 (0) 20 7367 4110
Fax: +44 (0) 20 7367 4129

info@child-soldiers.org
Interim Director: Martin Macpherson

Who are child soldiers?

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

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

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

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

www.child-soldiers.org

Note on terminology: In line with the provisions of Article 1 of the Convention on the Rights of the Child, the use of the word “child” in this document refers to any human being under the age of 18. The term “child soldier” is used to mean any child below 18 years of age associated with an armed force or armed group who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to boys and girls used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.

Who we are: Child Soldiers International (CSI) was formerly the **Coalition to Stop the use of Child Soldiers**, an international coalition of human rights and humanitarian organizations created in 1998 to campaign for a human rights treaty to prevent children being used in armed conflict. That treaty – the Optional Protocol to the (UN) Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) - entered into force in 2002. CSI now works for the effective implementation of OPAC, a global ban on any form of military recruitment of people below the age of 18 years, and a definitive end to the military use of children in any capacity.

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Introduction and principle recommendations

Child Soldiers International (CSI) submits this report for consideration by the Committee on the Rights of the Child (the Committee) in advance of its examination in January 2012 of Thailand's initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

This report was compiled through field and desk-based research conducted since 2008. CSI conducted research missions to southern Thailand in September 2009, and in April, July and November 2010. In addition, it conducted field research in Bangkok in March 2011 when it met with representatives of national and international NGOs, the National Human Rights Commission, the UN country team, journalists and other national stakeholders.

On the basis of the information gathered, this report summarizes CSI's concerns about Thailand's implementation of its obligations under OPAC, including in relation to:

- The absence of legislation explicitly prohibiting and criminalizing recruitment and/or use of children by state armed forces, paramilitaries, and village defence militias, as well as non-state armed groups.
- The continued recruitment and/or association of children with state armed groups, including paramilitaries and village defence militias, and the subsequent risk of their participation in hostilities.
- The recruitment and use of children in a variety of roles by non-state armed groups, and the subsequent risk of their participation in hostilities.
- The absence of adequate programs to support the release, recovery and reintegration of children recruited into, or otherwise associated with, state armed forces, paramilitaries, village defence militias or non-state armed groups.
- The administrative detention of children suspected of association with non-state armed groups, under the Martial Law and/or the Emergency Decree.
- The refoulement of child refugees, asylum-seekers and migrants, including former child soldiers, to Myanmar, where they may be at risk of recruitment and/or use in hostilities; and the inadequate identification of, and assistance to, former child soldiers from Myanmar present in Thailand.
- The restrictions on access by UN agencies to representatives of Myanmar non-state armed groups in Thailand, which inhibits the development of action plans to prevent child recruitment and use by them.

In light of these concerns, CSI makes the following recommendations for immediate action by the government of Thailand:

- **Prohibit and explicitly criminalize in law both the recruitment of children and their use in hostilities by state armed forces, paramilitaries, and village defence militias, as well as non-state armed groups.**
- **Amend the 2008 Ministerial Regulation on Officials of the Security Unit to Protect and Maintain Peace and Order in a Village to prohibit informal association of children with the *Chor Ror Bor* and implement similar legal prohibitions for all other village defence militias and paramilitary groups.**
- **Cooperate with UN agencies and civil society to develop and implement a coordinated strategy to protect children from recruitment and use by state linked armed groups and by non-state armed groups in southern Thailand.**

- **Amend the Internal Security Operation Command (ISOC) Regulation, the Martial Law, the Emergency Law and Section 21 of the Internal Security Act to prohibit the detention of children under these laws. Issue a military order to ensure all military personnel are aware of this prohibition.**
- **End forcible returns of child refugees, asylum-seekers and migrants, including former child soldiers, to Myanmar.**
- **Implement mechanisms for the systematic identification of former child soldiers in the Myanmar refugee and migrant population, and ensure adequate provisions for their physical and psychological recovery and social reintegration.**
- **Facilitate the work of the Working Group on Children Affected by Armed Conflict, including by facilitating UN access to representatives of Myanmar non-state armed groups in Thailand.**

Background and context

International treaties

Thailand is party to the Convention on the Rights of the Child (CRC) and acceded to the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) in February 2006. Thailand has signed, although not yet ratified, the Rome Statute of the International Criminal Court (ICC) and is state party to International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour. Thailand is not a party to the 1951 Refugee Convention, nor has it signed the 1967 Protocol.

Southern Thailand

The century old separatist movement in southern Thailand¹ developed into a violent insurgency in 2004, which continues today. This separatist movement is embedded in religious, ethnic, linguistic, cultural, and historical identities. Non-state armed groups have targeted government officials, school teachers, ethnic Thai Buddhist civilians and monks, and local Muslims suspected of collaborating with Thai government authorities. Estimates by human rights organizations indicate that since 2004 more than 4,000 people have been killed by both sides in the ongoing violence, which has remained constant for the past three years.²

The Thai government has responded to the insurgency with a massive mobilization of security forces to the southern border provinces and the imposition of Martial Law throughout Pattani, Yala, and Narathiwat in January 2004. Martial Law in the three provinces was temporarily repealed and replaced by the Emergency Decree on Government Administration in Emergency Situations (the Emergency Decree) in July 2005. The Emergency Decree gave extensive powers to police and civilian authorities, including additional powers to arrest and detain suspects without charge, and it provided security forces broad immunity from prosecution.³ Martial Law was reintroduced in 2006 and since then both the Martial Law and the Emergency Decree have been in force in Pattani, Yala and Narathiwat.⁴

¹ “Southern Thailand” is used to refer to Narathiwat, Pattani and Yala provinces and four districts in Songkhla (Chana, Na Thawi, Sabayoi, Thepha).

² See International Crisis Group, *Stalemate in southern Thailand*, Asia Report No. 113, 3 November 2010.

³ See Human Rights Watch, “*Targets of Both sides*”: *Violence against Students, Teachers and Schools in Thailand’s Southern Border Provinces*, 20 September 2010; International Commission of Jurists, *More Power, Less Accountability: Thailand’s New Emergency Decree*, August 2005; International Crisis Group, *Thailand’s Emergency Decree: No Solution*, 18 November 2005.

⁴ Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008.

In the context of ongoing armed violence, children have been victims of bombings, unlawful killings and other violent attacks by non-state armed groups. On occasion they have also been victims of lethal force and unlawful killings by the Thai security forces. Access to education has been severely disrupted by the targeting of government schools and teachers by non-state armed groups, and by widespread use of schools as bases for government military and paramilitary units.⁵ The ongoing violence has made southern Thailand a highly militarized environment, in which children come into daily contact with security forces. Firearms are commonplace in villages and appear to be widely regarded as symbols of status and power.

Although the scale and exact nature of the children's involvement in non-state armed groups remains unclear, there is evidence that children have been targeted for recruitment by non-state armed groups and used by them in a variety of roles, including direct participation in hostilities.⁶ Children suspected of association with non-state armed groups have been subject to administrative detention under the emergency laws in operation. In addition, research by CSI and the Thai non governmental organization (NGO) Justice for Peace Foundation (JPF) in 2010 demonstrated a pattern of unlawful recruitment and use of children by *Chor Ror Bor*, one of the village defence militias established in the south by the Ministry of Interior.⁷

To CSI's knowledge there has been no comprehensive government-led research on the impact of the situation in the south on the rights of children. While poor security conditions make it difficult to gather detailed information, reports by national and international organizations show there is sufficient data to indicate that child recruitment and use constitute serious problems, and other human rights abuses against children are also common.

Cross-border concerns

Thailand currently hosts more than 150,000 refugees and asylum seekers from Myanmar, with numbers increasing each year as people continue to flee armed conflict. These populations include children escaping from recruitment into the Myanmar state armed forces or non-state armed groups, who are at risk of refoulement due to inadequate protection by the Thai authorities. In addition, several Myanmar non-state armed groups, which have reportedly recruited and used child soldiers, have a presence in Thailand.

Scope of application of OPAC in Thailand

CSI notes with concern that the situation in southern Thailand does not feature explicitly in the state party report on its implementation of OPAC (although reference to it is included in the state party report under the Convention on the Rights of the Child, paragraphs 78 and 79). Nor does the state party OPAC report contain specific information in relation to the situation of children who have crossed the border from Myanmar, some of whom may be former child soldiers. This lack of information may be symptomatic of a more general failure to recognize the range of specific obligations that OPAC imposes on Thailand, to prevent and address the recruitment and use of children by armed forces and groups.

⁵ See Human Rights Watch, "*Targets of Both Sides*": Violence against Students, Teachers, and Schools in Thailand's Southern Border Provinces, 20 September 2010.

⁶ See International Crisis Group, *Recruiting militants in southern Thailand*, June 2009; Lowy Institute for International Policy, *Confronting ghosts: Thailand's shapeless southern insurgency*, 2010.

⁷ Coalition to Stop the Use of Child Soldiers and Justice for Peace Foundation, *Priority to protect: Preventing children's association with village defence militias in southern Thailand*, 3 March 2011.

The Committee on the Rights of the Child has consistently held that OPAC is a human rights treaty,⁸ whose provisions apply both in conflict and non-conflict situations.⁹ OPAC provisions place an ongoing obligation on state parties to act effectively to prevent children's involvement in armed conflict. This requires a range of legislative and other measures, such as the enactment of criminal legislation, reform of domestic laws, establishment of effective monitoring processes, investigation and prosecution of violations, as well as understanding and tackling the root causes of child soldiering. Accordingly, state parties are required to take steps to prevent the recruitment of children by armed forces and groups at any time, whether or not an armed conflict exists. Moreover, under Article 4 of OPAC, the recruitment or use in hostilities of persons under the age of 18 by non-state armed groups is prohibited "under any circumstances".

Prevention

Articles 1 and 3

Recruitment and use by national armed forces: paramilitaries and village defence militias

In addition to the regular national armed forces (army, navy and air force), the government of Thailand has a range of other armed security forces under its direct control, employed for policing and counter-insurgency purposes.

The most significant expansion of these groups in recent years has been seen in southern Thailand, where they have formed a key element of the military strategy against non-state armed groups in the region since 2002.¹⁰ Four separate paramilitary or village defence militias¹¹ operate in southern

⁸ See, for example, *Concluding Observations: Morocco*, paragraph 3, UN Doc. CRC/C/15/Add.211 (July 10, 2003) (welcoming "positive developments in the area of human rights" including ratification of OPAC); *Concluding Observations: Panama*, paragraph 4, UN Doc. CRC/C/15/Add.233 (June 30, 2004) (welcoming ratification of a number of "human rights-related instruments" including OPAC); *Concluding Observations: Belize*, paragraph 5, UN Doc. CRC/C/15/Add.252 (Mar. 31, 2005) (welcoming ratification of a number of "international human rights instruments, such as the Optional Protocol"); *Concluding Observations: Ecuador*, paragraph 7, UN Doc. CRC/C/15/Add. 262 (Sept. 13, 2005) (welcoming ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Uganda*, paragraph 6, UN Doc. CRC/C/UGA/CO/2 (Nov. 23, 2005) (welcoming ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Lithuania*, paragraph 5, UN Doc. CRC/C/LTU/CO/2 (Mar. 17, 2006) (welcoming ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Benin*, paragraph 6, UN Doc. CRC/C/BEN/CO/2 (Oct. 20, 2006) (welcoming ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Senegal*, paragraph 4, UN Doc. CRC/C/SEN/CO/2 (Oct. 20, 2006) (noting ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Costa Rica*, paragraph 6, UN Doc. CRC/C/OPAC/CRI/CO/1 (May 1, 2007) (mentioning "human rights treaties to which Costa Rica is a party, including the Optional Protocol"); *Concluding Observations: Mali*, paragraph 4, UN Doc. CRC/C/MLI/CO/2 (May 3, 2007) (welcoming ratification of a number of "international human rights instruments" including OPAC); *Concluding Observations: Eritrea*, paragraph 4, UN Doc. CRC/C/ERI/CO/3 (June 23, 2008) (welcoming accession to "international human rights instruments" including OPAC); *Concluding Observations: Georgia*, paragraph 78, UN Doc. CRC/C/GEO/CO/3 (June 23, 2008) (noting, under subheading "[r]atification of international and regional human rights instruments," State has not yet ratified OPAC); *Concluding Observations: Djibouti*, paragraph 78, UN Doc. CRC/C/DJI/CO/2 (Oct. 7, 2008) (welcoming, under subheading "[r]atification of international and regional human rights instruments," State's signing of OPAC). See also *General Comment No. 2*, 8, 19(e), UN Doc. CRC/GC/2002/2 (Nov. 15, 2002) (referring to OPAC "and other relevant international human rights instruments"); *General Comment No. 5*, 17, UN Doc. CRC/GC/2003/5 (Nov. 27, 2003) (urging States to ratify OPAC and "other major international human rights instruments").

⁹ See for example: *Concluding Observations: Croatia*, paragraph 6, UN Doc. CRC/C/OPAC/HRV/CO/1; *Concluding Observations: Czech Republic*, paragraph 7, UN Doc. CRC/C/OPAC/CZE/CO/1; *Concluding Observations: Chile*, paragraph 14, UN Doc. CRC/C/OPAC/CHL/CO/1.

¹⁰ Human rights organizations and analysts have documented human rights violations by paramilitaries and civilian defence militia in southern Thailand and some have raised general concerns about the reliance on such groups which are less well trained and lack the professionalism of the Royal Thai Army and Royal Thai Police. According to the International Crisis Group, concerns about arming villagers without sufficient training have been raised by a former Minister of Defence in 2005. See International Crisis Group, *Southern Thailand: The Problem with Paramilitaries*, Asia Report No.140, 23 October

Thailand¹²: the military-established *Thahan Pran* (Rangers); the provincial-level, Ministry of Interior-established *Or Sor* (Volunteer Defence Corps); the village-level *Chor Ror Bor* (Village Defence Volunteers), also under the control of the Ministry of Interior; and the *Or Ror Bor* (Village Protection Volunteers) established under the Royal Aide-de-Camp department in 2005 to protect Buddhist villages.¹³ These paramilitaries and militias draw on local populations to augment formal military and police capacity.

The *Chor Ror Bor* is run by the Ministry of Interior. The status and tasks of *Chor Ror Bor*, including criteria for recruitment, training and officials responsible for the units, are set out in the “Ministerial Regulation on the protection and maintenance of peace and order in villages” (2008 Regulation, amended in 2011).¹⁴ Specifically, the Department of Provincial Administration is responsible for organizing the training of local villagers to ensure sufficient numbers of recruits for *Chor Ror Bor*. Village headmen identify recruits and are responsible for the running of the *Chor Ror Bor* unit in their village, although the formal appointment of *Chor Ror Bor* members is the responsibility of the District Chief Officer of the Ministry of Interior. The 2008 Regulation sets out criteria for the selection of participants for pre-recruitment, or initial training, and therefore by extension for recruitment into *Chor Ror Bor*. These criteria include Thai nationality, physical fitness and residency in the village in which the unit is based.¹⁵

Chor Ror Bor units in southern Thailand perform counter-insurgency tasks in addition to the more general law-enforcement duties of *Chor Ror Bor* elsewhere. Their duties include: village patrols; manning checkpoints at entry points to villages; guarding sites vulnerable to attack, in particular schools and mosques; and in some cases providing security to teachers. They may also be required to assist the local police or the military to identify suspects, including suspected members of armed groups, and on occasion are required to participate in military operations in the surrounding area, joint patrols with the military and cordon and search operations.¹⁶

The *Chor Ror Bor*'s role in counter-insurgency is expressly acknowledged in the 2008 Regulation which states that, because southern border provinces have been affected by ongoing violence and insurgencies, the district and provincial authorities had to set up *Chor Ror Bor*.

Evidence collected by CSI and JPF during research conducted in 2010 demonstrated a pattern of unlawful recruitment and use of children in a range of functions by *Chor Ror Bor* in southern Thailand.¹⁷ In 13 of the 19 villages visited, evidence was found of some form of association of children with the village *Chor Ror Bor* unit. The levels of children's association with the *Chor Ror*

2007. For other commentary on paramilitaries and civilian defence forces see: Human Rights Watch *Government-Backed Militias Enflame Violence*, April 2007; Ball, Desmond and David Scott Mathieson; *Militia Redux. Or Sor and the Revival of Paramilitarism in Thailand*, 2007; and Non-Violence International (NVI), *Rule by the Gun: Armed Civilians and Firearms Proliferation in Southern Thailand*, May 2009.

¹¹ There is no universally accepted definition of the term “militias”. In this submission, the term village defence militias refer to groups of volunteers locally organized by state authorities to perform security and defence functions, such as *Chor Ror Bor* and *Or Ror Bor*. The term is used to distinguish them from the Thai national army and paramilitary forces, such as the Rangers and the *Or Sor*.

¹² Information collected by CSI suggests that village defence militias operate, not just in the south near Malaysia but also in the west near Myanmar, north near Laos, and east near Cambodia (Confidential interviews, Thailand, March 2011).

¹³ For a detailed account of paramilitary and village defence militias, including *Chor Ror Bor*, operating in southern Thailand see: International Crisis Group, *Southern Thailand: The Problem with Paramilitaries*, Asia Report No.140, 23 October 2007.

¹⁴ *Ministerial Regulation on Officials of the Security Unit to Protect and Maintain Peace and Order in a Village B.E. 2551 (2008)*.

¹⁵ 2008 Regulation, Chapter 1, Article 6.

¹⁶ Coalition to Stop the Use of Child Soldiers and Justice for Peace Foundation, *Priority to protect: Preventing children's association with village defence militias in southern Thailand*, 3 March 2011.

¹⁷ Coalition to Stop the Use of Child Soldiers and Justice for Peace Foundation, *Priority to protect: Preventing children's association with village defence militias in southern Thailand*, 3 March 2011.

Bor varied, ranging from formal membership through to informal association and use. According to the research, children (invariably boys) informally associated with *Chor Ror Bor* appeared to carry out the same or similar duties as formal members. In some cases the only practical differences appeared to be that they had not participated in the formal training program (although they may have received unofficial training) and were not issued with *Chor Ror Bor* ID cards. In some cases the children were armed. In other cases, contact by children with *Chor Ror Bor* units was less regular, occurring on an ad hoc basis, for example, when a boy was asked to stand in for the shift of an adult member (usually a relative) because the adult was otherwise engaged. In such cases, the boy had not generally received either formal or informal training but was required to undertake the full range of tasks required on the shift they were covering.

The ages of children involved ranged from approximately 17 to as low as nine years old, with the lower age groups tending to be among those who were informally associated with, rather than being formal members, of the units.

The deliberate recruitment and use of under-18s by *Chor Ror Bor* is not formal government policy. However, lack of clarity, and awareness among key officials, of the applicable rules, incomplete implementation of existing policy and procedures, and lack of effective oversight and accountability, has created a situation where children could be vulnerable to formal and informal association with village defence militias such as *Chor Ror Bor*. An absence of effective dissemination of relevant rules and directives among those responsible for *Chor Ror Bor* training and recruitment means that procedures which could safeguard against underage recruitment may not be fully implemented.

In response to these concerns, in April 2011 the Thai government introduced an amendment to the 2008 Regulation specifying that participants in the village defence volunteers training should be above the age of 18.¹⁸ This followed the Directive “Prohibition for youth under 18 years to apply for membership of *Chor Ror Bor*” (November 2009) and Directive “Prevention of children under 18 years from becoming *Chor Ror Bor*” (August 2010) which prohibit the formal recruitment of children under the age of 18 years into *Chor Ror Bor*. It is not known what measures have been taken to ensure that the amendment and earlier directives have now been implemented in practice. Additionally, CSI is concerned that none of these Regulations and Directives explicitly prohibit the *informal* association of children with *Chor Ror Bor*. Nor do these regulations establish a mechanism to monitor compliance with recruitment requirements, or to monitor the informal association of children within the *Chor Ror Bor*. A process to verify the ages of *Chor Ror Bor* members was completed in 2010 and the government has indicated that such verification will occur on a regular basis. These measures, however, do not deal with the larger issue of informal association of children with *Chor Ror Bor*.

Children’s association with *Chor Ror Bor*, whether formal or informal, exposes them to serious risks, including the risk of attack by non-state armed groups¹⁹ or participation in military operations against such groups. At least 170 members of *Chor Ror Bor* were reported to have been killed between January 2004 and March 2009.²⁰ In one case known to CSI, two boys, believed to be under 18 years old serving with a *Chor Ror Bor* unit, were killed in November 2007 while on duty during an attack by armed men on Talingsung village in Sungaipadee District, Narathiwat Province.

¹⁸ *Ministerial Regulation on Officials of the Security Unit to Protect and Maintain Peace and Order in a Village (No. 2) B.E. 2554 (2011)*, Article 6. Prior to this Regulation, the government had already issued directives to regional governors specifying the minimum age for admission to *Chor Ror Bor* in 2009 and 2010 (Directive of 12 November 2009 on “Prohibition for youth under 18 years to apply for membership of *Chor Ror Bor*”; Directive of 4 August 2010 on “Prevention of children under 18 years from becoming *Chor Ror Bor*”).

¹⁹ It is reported that Muslim *Chor Ror Bor* often find themselves in a particularly difficult position, regarded as *munafik* (traitors) by separatist militants, and hence targets, yet often also regarded with suspicion by the government they are serving.

²⁰ Deep South Watch, April 2009, www.deepsouthwatch.org

CSI considers that comprehensive research into the extent of children's involvement in state armed forces (and non-state armed groups, see below) is urgently needed in order to address the problem effectively. However, to date the Thai authorities have failed to systematically monitor reports of recruitment and use of children in southern Thailand.

Questions

- What laws and regulations establish and govern the paramilitary group *Thahan Pran*; the provincial-level *Or Sor*; and the *Or Ror Bor*?
- Do these laws/regulations contain an explicit prohibition of recruitment and use of children under 18 years?

Recommendations

- Explicitly criminalize the recruitment of children (individuals below the age of 18 years) and their use in hostilities by any state armed force, including paramilitary groups and village defence militias (including but not limited to the *Chor Ror Bor*).
- Amend the 2008 Ministerial Regulation on Officials of the Security Unit to Protect and Maintain Peace and Order in a Village to prohibit informal association of children with the *Chor Ror Bor* and implement similar legal prohibitions for all other village defence militias and paramilitary groups.
- Explicitly prohibit members of all paramilitary groups and village defence militias from providing training - including instructions on the use of weapons - to individuals who are not formal members.
- Ensure that the minimum age for membership to paramilitary groups and village defence militias is strictly enforced and that all units are regularly inspected in order to detect any underage members.
- Ensure that paramilitary and militia officials who allow children to associate with, or be recruited into, paramilitaries and village defence militias are subject to appropriate sanctions, including suspension from duty, removal from office and criminal prosecution.
- Ensure that any child found to be, either formally or informally, associated with any state armed force is immediately assisted to leave with guaranteed access to appropriate recovery and reintegration support.

Article 2

Conscription and military training

Article 71 of the 2007 Constitution states that "Every person has a duty to defend the country". The 1954 Military Service Act provides the legal basis for conscription into the Thai armed forces, requiring that every Thai man who has attained the age of 18 register on the "inactive military personnel list". At the age of 21, selected inactive military personnel will be required to serve in the armed forces. Inactive military personnel may also apply to serve voluntarily in the armed forces upon reaching the age of 18.²¹

According to Thailand's declaration upon ratification of OPAC, "high school and university students regardless of gender may voluntarily apply to receive military training from the Army Reserve Command, with the consent of parents or legal guardians, without any exception. Students who

²¹ Thailand's initial report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, CRC/C/OPSC/THA/1.

complete three years' training are exempt from military service (as active military personnel) when they reach the age of 21”.

Questions

- What is the minimum age limit for students participating in military training?
- Do students train in the use of firearms and other weapons?
- Are students undertaking military training classified as members of the armed forces?
- Are students trained on military sites?
- Can students under the age of 18 who are undertaking, or have undertaken, military training be deployed into active service, for example, in times of national emergency?
- How many students volunteer for military training and are consequently exempt from future military service?

Recommendations

- Ensure that children undertaking military training maintain their civilian status and are not legally classified as members of the armed forces.
- Prohibit children from being trained in the use of firearms or other weapons.

Article 4

Recruitment and use by non-state armed groups

Several organizations continue to document and report that children are recruited and used by non-state armed groups in southern Thailand.²² The UN Secretary-General's April 2010 Annual Report on Children and Armed Conflict notes that: “information based on interviews by child protection partners with Government officials, family members of affected children, members of civil society, village headmen and religious representatives indicates that there are concerns relating to the involvement of children in activities of armed groups in the southern border provinces of Thailand in 2009. Credible reports indicate that children begin carrying out tasks for armed groups from approximately 13 years of age, which may include acting as lookouts, spraying graffiti messages and destroying State property.”²³

Information from other credible sources indicates that a range of non-state armed groups²⁴ in southern Thailand continued to recruit under-18s and use them in a variety of roles in 2010. The scale and exact nature of the children's involvement in non-state armed groups remains unclear and it remains

²² See for instance; Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008; Human Rights Watch, *No one is safe*, August 2007; “*Targets of both sides*”: *Violence against students, teachers, and schools in Thailand's southern border provinces*, September 2010; International Crisis Group, *Recruiting militants in southern Thailand*, June 2009; Lowy Institute of International Policy, *Confronting ghosts Thailand's Shapeless Southern Insurgency*, 2010.

²³ Report of the Secretary-General to the Security Council, children and armed conflict, April 2010 UN Doc. A/64/742–S/2010/181, 13 April 2010.

²⁴ Human Rights Watch, “*Targets of both sides*”: *Violence against students, teachers, and schools in Thailand's southern border provinces*, September 2010, page 5 notes: “The current separatist militants consist of many different groups. The BRN-Coordinate (*Barisan Revolusi Nasional-Koordinas*, or National Revolution Front-Coordinate), has often been identified as a key organization. However, other elements and decentralized groups within the insurgency are more loosely connected to this network, and are themselves in various states of cohesion and organization. Village-based separatist militants in this loose network of BRN-Coordinate call themselves *Pejuang Kemerdekaan Pattani* (Pattani Freedom Fighters), and are also often referred to in short by ethnic Malay Muslims as *pejuang*, or fighters. Well-trained separatist militants from the *Pejuang Kemerdekaan Pattani* form commando guerilla units known as *Runda Kumpulan Kecil* (Small Patrol Group or RKK).”

difficult to estimate the extent of involvement of under-18s in these groups both because of the highly secretive nature of these organizations, and because family members often have no knowledge of the involvement of their children in these organizations. The fact that the issue has not received particular attention by duty bearers, including the government, also contributes to the lack of data.

Available information suggests that recruiters for non-state armed groups have historically taken advantage of some schools in the Islamic education system to indoctrinate and recruit under-18s, but since 2009 these activities appear increasingly to take place outside of schools.²⁵ CSI's information confirms earlier findings that indoctrination of children begins from the age of nine years old and possibly younger in some cases.

There is limited information on how children are used by armed groups. However, the role and type of activities children perform seem to begin with propaganda activities and then progress to vandalism and destruction of state property, before selected youths may take part in militant attacks on the security forces or other targets. There is some evidence that children from the age of 16 may join in armed units and participate directly in armed attacks. However, in most cases, children under 18 appear to be deployed in secondary roles, for example, assisting the escape of armed units following attacks by scattering spikes on roads or felling trees. Children are thought to be used extensively as spies – whether to spy on government forces or internally within the Muslim communities.²⁶

Precise and current patterns of recruitment and use of children by non-state armed groups in southern Thailand is difficult to access in the absence of domestic and international monitoring. Despite consistent, credible reports of recruitment and use of children by non-state armed groups, the government has not put in place any systematic monitoring of the issue. As a result, the government has not been able (or willing) to develop comprehensive strategies to protect and prevent the recruitment and use of children. In meetings with CSI, some local government officials acknowledged that recruitment and use of children by non-state armed groups is an issue, but this had not resulted in the adoption of systematic preventative measures to address it.²⁷

Recommendations

- Explicitly criminalize the recruitment of children by non-state armed groups. Investigate all allegations of child recruitment and criminally prosecute those responsible.
- Take all necessary measures to prevent the recruitment of children by non-state armed groups in southern Thailand, including by undertaking a comprehensive assessment of the extent and causes of children's involvement in such groups, and facilitating access to UNICEF and other child rights and child protection organizations to monitor the situation and develop assistance programs where necessary.
- Take all necessary measures for the effective recovery and reintegration of any child found to have been recruited into, or associated with, a non-state armed group, including suitable support to continue their education or to find employment.

²⁵ Field research conducted by CSI to Pattani and Songkhla in southern Thailand, September-October 2009.

²⁶ See Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008.

²⁷ CSI's meetings with government officials in southern Thailand, July and November 2010.

Prohibition and related matters

Articles 1, 2 and 4

Criminalization and prosecutions

Although the Military Service Act of 1954 and Defence Ministerial Regulation of 2000 indirectly prohibit the recruitment of under-18s into the Thai armed forces (by establishing the age requirements for active and inactive military personnel, described above) national law, including the 1956 Criminal Code, does not explicitly criminalize the recruitment and/or use of persons under 18 years by state armed forces (regular national forces as well as paramilitaries or village defence militias) or non-state armed groups.

The Child Protection Act defines a child as anyone under the age of 18²⁸ and prohibits any person (regardless of the child's consent) to, *inter alia*, "use, employ or ask a child to work or act in such a way that might be physically or mentally harmful to the child, affect the child's growth or hinder the child's development" (article 26.6). Anyone who violates this provision "shall be liable to a term of imprisonment not exceeding three months, or a fine not exceeding 30,000 Baht, or both" (article 78 of the Child Protection Act). Similarly, the Labour Protection Act (1998) sets at 15 years the minimum age for employment and specifies the types and places of work for which children under 18 years may not be employed (in articles 49 and 50 and in Regulation no. 6), including working with certain dangerous substances or operating dangerous machinery.²⁹ However, neither of these acts explicitly criminalize the military recruitment and/or use of children.

CSI welcomes the directives and ministerial regulations issued by the government (see above) to set at 18 years the minimum age for formal membership of the *Chor Ror Bor*. However, such measures do not extend to criminalizing recruitment or use of individuals below 18 years of age, nor do they explicitly prohibit the informal association of children with the *Chor Ror Bor*.

CSI is not aware of any steps taken by the government of Thailand to conduct effective investigations into reports of recruitment or association of children under the age of 18 years with the *Chor Ror Bor* or with any other paramilitaries, civil defence militias or armed groups. CSI has no evidence to show that individuals suspected of recruiting and using children under the age of 18 years have been prosecuted.

Universal jurisdiction

Thai law does not establish universal jurisdiction for the crime of unlawful recruitment of children and their use in hostilities, contrary to the consistent recommendations of the Committee on the Rights of the Child. The 1956 Criminal Code only applies to offences committed within Thailand (see article 4 of the Criminal Code), with the exception of a limited number of offences listed in article 7 where prosecution can take place even if the offence is committed outside Thailand. These offences relate to crimes against the security of the state, counterfeiting, robbery committed on the high seas, and crimes of sexual slavery and sexual violence, as defined in the Thai criminal code.

²⁸ The Act does not apply to under-18s who are married and therefore deemed to have reached the age of majority. According to the Thai Civil and Commercial Code, boys and girls must be at least 17 years old if they are to be married and such marriage requires parental consent, although marriage of lower age may be allowed by the courts. See Sections 1435 and 1436 of the Code, and initial report of Thailand to CRC, CRC/C/11/Add.13, paragraph 106.

²⁹ Thailand is a party to the ILO Convention No. 138 concerning Minimum Age for Admission to Employment and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Recommendations

- Clarify in both law and policy that both the recruitment of children and their use in hostilities is prohibited, not only by the regular national armed forces (army, navy, air force), but also by paramilitaries, village defence militias and any other armed groups that form a part of the state's security forces.
- Explicitly criminalize both the recruitment of children and their use in hostilities by armed forces, paramilitaries, village defence militias and any other armed groups.
- Ensure effective investigations into reports of recruitment of children and their use in hostilities, and the prosecution of individuals suspected of such acts under relevant legislation.
- Establish universal jurisdiction for the crimes of recruitment of children and their use in hostilities.

Protection, recovery and reintegration

Article 6.3

Administrative detention of children under emergency laws

Children suspected of links with non-state armed groups have been detained under the Martial Law and/or Emergency Decree in southern Thailand. It appears that children are detained for purposes of intelligence gathering³⁰ and possibly as a method of demobilizing children from such groups.³¹

In meetings with the Thai authorities CSI has been informed that children are detained under the Emergency Decree because they have “wrong thoughts”, not because they have already committed a crime, and that the aim of the authorities is to change their point of view, not to arrest them. It was further stated that “[u]nder regular law we can detain children only for 24 hours and have to invite the psychologist, state attorney, the parents and a social worker to join and this makes our work more difficult. When we bring the children here we don't ask them instantly [about the insurgency] but we need time to make a close relationship with them and make them trust us. This enables us to get information and to know the structure of the insurgency”.³²

Under the Martial Law, the military may arrest without a warrant and detain for up to seven days for interrogation or other military purposes any person suspected of “being an enemy or of being in opposition to the contents of the Act or to the orders issued by military personnel” (article 15 bis, Martial Law Order 1914). Under the Emergency Decree an individual may be arrested and detained as a preventative measure or to “engender cooperation” with the authorities for up to 30 days.

Concerns have been raised by the UN Human Rights Committee and human rights organizations that the grounds for detention under the Martial Law and the Emergency Decree are too broad and ill-defined, and that these laws do not provide the necessary safeguards to detainees.³³

³⁰ Confidential interview with representative of international NGO, London, 18 February 2011.

³¹ Unofficial translation of correspondence and accompanying documents to the Chairperson of the National Human Rights Commission from the Secretariat of the Prime Minister, 18 April 2008, cited in Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008.

³² CSI meeting with Police officials in southern Thailand, 29 July 2010.

³³ The UN Human Rights Committee in its Concluding Observations on Thailand clearly stated that “detention without external safeguards beyond 48 hours should be prohibited” and called on Thailand to “guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and the place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal

According to information provided by the Southern Border Provinces Police Bureau, between 79 and 115 children had been detained under the Emergency Decree since 2005 at Yala Police Academy Detention Centre (Pitak Santi Centre), although the agency claimed that none had been detained since 2009.³⁴ No specific information was provided with regards to other emergency law detention centres, such as the Ingkayut Borihan Military Camp or the special task force detention facilities throughout the southern border provinces. However, information collected by two Thai NGOs, the Cross Cultural Foundation (CrCF) and Muslim Attorney Centre (MAC), indicates that 16 children were arrested and detained by authorities under the Martial Law and Emergency Decree in Pattani, Narathiwat and Yala provinces in 2009 and 2010.³⁵

Information gathered by CrCF and MAC between 2004 and 2010 indicates that on being detained, children have been finger-printed, interrogated, photographed, made to sign documents, and had their DNA samples taken. CrCF and MAC received information on 30 cases of children being detained under the Martial Law and the Emergency Decree during this period (including the 16 cited above). In the majority of these cases, children stated they had been ill-treated and kept in isolation or with adult detainees. Access to family members was limited and in none of the 30 cases were the children allowed access to lawyers, social welfare or other relevant child protection officials.

In an apparent shift from an earlier position³⁶, senior government officials from the Ministry of Justice, the regional civilian administration (Southern Border Provinces Administration Centre (SPBAC)) and the Regional Police Commissioner expressed in meetings with CSI in 2010 the view that children should not be detained under the emergency legislation.³⁷ A representative of the military in southern Thailand (Internal Security Operations Command (ISOC)³⁸ Region 4) was also aware of the need to ensure that children are accorded special care according to the juvenile justice

charge must be brought promptly before a judge.” (Concluding Observations of the United Nations Human Rights Committee on Thailand CCPR/CO/84/THA, 28 July 2005, paragraphs 13 and 15). For a legal analysis of the relevant legislation, see International Commission of Jurists, *More Power, less accountability: Thailand’s new Emergency Decree*, August 2005; International Commission of Jurists, *Legal memorandum: the implementation of Thailand’s emergency decree*, July 2007. See also International Commission of Jurists, *Thailand’s Internal Security Act: risking the rule of law?*, February 2010.

³⁴ CSI meeting with Police Commissioner, Yala, November 2010, cited in *Priority to Protect: Preventing children’s association with village defence militias in southern Thailand*, 3 March 2011.

³⁵ Information on detentions provided by Cross Cultural Foundation and Muslim Attorney Centre, May 2011. The organizations received 30 cases of detentions of under-18s under the Martial Law and Emergency Decree between 2004-2010 out of which 16 were detained in 2009 and 2010.

³⁶ In a response to concerns relating to children detained under the Emergency Decree raised by the National Human Rights Commission (NHRC) in September 2007, the Thai authorities argued that as children detainees held under the Emergency Decree and the Martial Law are not suspects in a criminal investigation they do not require the usual safeguards provided by the juvenile justice system. Detention for questioning under the Emergency Decree “... cannot be construed as an investigation or interrogation under the Criminal Procedure Code. It is simply an inquiry of suspects related to the unrest or those who have violated the Martial Law. And the suspects cannot be confused with alleged offenders who are indicted by criminal charges and have the rights to have lawyers present during the interrogation” and that “...one of the purposes of the inquiry is to correct the rather corrupt attitude of the persons and so that competent officers can gain more support from local population and get more cooperation.” (Unofficial translation of the Southern Border Provinces Administrative Centre (SBPAC) reply to concerns raised by National Human Rights Commission, 18 April 2008, quoted in Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008.) It is thus argued that the usual safeguards that should be put in place to ensure administrative detention does not become arbitrary detention are not necessary.

³⁷ CSI meetings with Ministry of Justice, SBPAC and Police Commissioner in Yala, November 2010.

³⁸ ISOC is headed by the Prime Minister with the chief of the Army as the Deputy. In practice, all security policies relevant to southern Thailand go through ISOC Region 4, which is headed by the Fourth Army Chief. The Internal Security Act makes ISOC the main agency responsible for maintaining internal security, and provides ISOC with powers of intelligence gathering and law enforcement. See for instance; International Commission of Jurists, *Thailand’s Internal Security Act: Risking the Rule of Law?*, February 2010.

procedure applied nationally.³⁹ However, administrative detention of children under these emergency laws is not explicitly prohibited.

Administrative detention is generally considered in violation of the right to liberty.⁴⁰ With regards to children, any detention must be “only as a measure of last resort and for the shortest possible time” (Article 37 (b) of the Convention on the Rights of the Child). When detained, children must be afforded special safeguards, including immediate access to families, lawyers, social welfare or other relevant child protection officials. These standards are applicable to all types of detention, whether criminal or otherwise, including detention under emergency laws.⁴¹

In addition to routine safeguards for detained children, OPAC requires that children who are detained on suspicion of involvement with armed groups are provided with “all appropriate assistance for their physical and psychological recovery and their social reintegration” (article 6.3). The Thai authorities have argued that children’s administrative detention is, among other reasons, for rehabilitation purposes.⁴² However, it is difficult to envisage a situation where detention of children for rehabilitative and reintegration purposes is, indeed, the only “last resort” measure the state can take to ensure the best interest of the child, as required under the Convention on the Rights of the Child. A range of other measures alternative to detention must be available to these children, including those provided under Child Protection Act 2003, to ensure their effective rehabilitation and reintegration.

Thailand has a functioning juvenile justice system which includes a range of safeguards to protect and ensure the best interests of children in conflict with the law, contained in the Act of Establishment of Juvenile and Family Courts and Procedure for Juvenile and Family Cases (1991, amended in 2005). These procedures should be applied whenever a child is suspected of having committed a recognizable criminal offence.

Re-education Programs

The military runs a variety of vocational training/rehabilitation programs for men of all ages in the four southern provinces of Pattani, Narathiwat, Songkhla and Yala. Although under-18s are not believed to be specifically targeted for participation, they are reported to be among those who have been required to attend, and parental consent for their participation is not always sought.⁴³ CSI is concerned that compulsory participation in such programs, where participants are not allowed to leave at will, may amount to a form of arbitrary detention.

The legal basis for these vocational training programs varies. For instance, the ‘Peace School’ in Songkhla is administered by the military (under Section 21 of the Internal Security Act, adopted in

³⁹ CSI meeting with ISOC Region 4 in November 2010.

⁴⁰ A range of independent human rights bodies and courts have consistently stressed that administrative detention on security grounds should not be permitted, except in very exceptional circumstances and even then such detention must be accompanied by effective legal and practical safeguards to protect the rights of detainees.

⁴¹ Under the UN Rules for the Protection of Juveniles Deprived of their Liberty, deprivation of liberty is defined as “... any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by the order of any judicial, administrative or other public authority.” Detention under the Martial Law and the Emergency Decree clearly fits within this definition and should therefore be subject to safeguards contained in the Rules and other international standards. The UN Rules explicitly state that “the Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial” (Rule 15).

⁴² Unofficial translation of the Southern Border Provinces Administrative Centre (SBPAC) reply to concerns raised by National Human Rights Commission, 18 April 2008, cited in Coalition to Stop the Use of Child Soldiers, *Briefing note on child recruitment and use in southern Thailand*, December 2008; CSI interviews with police officials, July, 2010.

⁴³ CSI interviews, Pattani, September 2009.

2007)⁴⁴, yet there appears to be no statutory basis for other rehabilitation and vocational training courses run by the military, such as *Jalanan Baru*.⁴⁵ Courses at the ‘Peace School’ and other vocational training programs vary in length from one day to three weeks, and focus on a variety of skills training such as farming, fishing and trade. Participants are selected by the village headman on the request of government authorities. Contrary to government claims that participation in the courses is voluntary, most individuals interviewed by CSI felt that they would be suspected of supporting the non-state armed groups if they did not participate in the program.⁴⁶ Individuals who participated in the course also felt concerned about their security upon returning to their village after the course. The fact that each course participant is photographed, finger printed and made to provide saliva samples for DNA, has given rise to concerns that the motivation for the training is, at least in part, to profile Muslim men.⁴⁷

Children suspected (but not tried or convicted) of having committed a crime may be sent to training, run by the Internal Security Operations Command (ISOC) under Section 21 of the Internal Security Act. While such training must be ordered by a judge and with the individual’s consent, it still amounts to a limitation of the right to liberty and concerns have been raised about the compliance of Section 21 with international human rights standards.⁴⁸

With regards to children suspected of association with armed groups, CSI does not believe that these vocational training programs, run by the military that children are compelled to attend, constitute appropriate support for reintegration, as required under article 6.3 of OPAC. Among the principles that must underpin any reintegration program for former child soldiers are: that it should be voluntary; it should not further stigmatize the children; it should be based on the child’s best interests; it should build on the resilience of children, enhance their self worth and promote their capacity to protect their own integrity and construct a positive life; and it should be linked to other programs, policies and initiatives that benefit both children who have been associated with fighting forces, and children affected by conflict generally.⁴⁹

Questions

- How many children have been detained under the Martial Law and the Emergency Decree since 2004?
- Where were they detained?
- On what charges were they detained?
- For how long were they detained?
- Were they given access to their family, lawyer and ICRC representatives?

⁴⁴ According to the Internal Security Act (ISA), in situations affecting “internal security” declared by the cabinet, the Internal Security Operations Command (ISOC) is granted broad and vaguely defined powers to “prevent, suppress, eradicate, and overcome or mitigate occurrences that affect internal security” (section 16). The circumstances when these powers may be granted are not strictly defined but amount to situations affecting internal security which are not so serious as to require the declaration of a state of emergency under the Emergency Decree (section 15.) Maintenance of internal security is itself very broadly defined in ISA as “operations to prevent, control, resolve, and restore any situation which is or may be a threat arising from persons or groups of persons creating disorder, destruction, or loss of life, limb, or property of the people or the state, in order to restore normalcy for the sake of the peace and order of the people, or the security of the nation” (Section 3). Section 21 creates a procedure whereby a person “alleged to have committed an offence which impacts against internal security” may, following an order of a Court, be detained in “training” camps for up to six months. This Act currently applies in four districts of Songkla province and Mae Lan district in Pattani.

⁴⁵ *Jalanan Baru*, literally translated to ‘New Way’, is aimed at young people to spread drug awareness and address issues of drug dependency.

⁴⁶ CSI interviews in Pattani and Narathiwat, April 2010.

⁴⁷ CSI interviews in Pattani and Songkhla, September 2009.

⁴⁸ See International Commission of Jurists, *Thailand’s Internal Security Act: risking the rule of law?*, February 2010.

⁴⁹ See the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007.

Recommendations

- Amend the Internal Security Operation Command (ISOC) Regulation, the Martial Law, the Emergency Law and Section 21 of the Internal Security Act to prohibit the detention of children under these laws. Issue a military order to ensure all military personnel are aware of this prohibition.
- Ensure that children are not criminalized for the fact of having being recruited or used by armed groups and are not subjected to any form of arbitrary detention, including in the context of “vocational training” or other similar programs.

Lack of support for refugee and asylum-seeking children

Thailand is not party to the 1951 Refugee Convention, nor the 1967 Protocol. Thailand does not have legislation specifically relating to refugees or asylum seekers, and all such policy is based on a series of Cabinet resolutions.⁵⁰

According to UNHCR, Thailand currently hosts “some 100,000 refugees⁵¹ from Myanmar who have been registered, and an estimated 53,000 who have not, in nine camps along the Thai-Myanmar border”.⁵² The refugee camps in Thailand are administered by the government, with assistance from NGOs, while UNHCR’s role “focuses on protection activities and programs”. The Thai authorities control entrance to the camps through a screening and registration mechanism (known as Provincial Admissions Boards), but CSI understands that there has been no systematic registration of new arrivals since January 2006.⁵³ A pilot project established in four camps in 2009 resulted in the “pre-screening” of 11,000 unregistered refugees, but since 2009 no further registration procedures have been implemented.⁵⁴

The absence of ongoing registration procedures has resulted in a steady increase in the number of unregistered refugees in Thailand as people continue to flee armed conflict and political violence in Myanmar. Unregistered refugees have no right to remain in Thailand and are classified as “illegal migrants” who are “at risk of arrest, detention and deportation”.⁵⁵ The increase in unregistered refugees in recent years has been accompanied by incidents of forced returns, leading UNHCR to express concern at “a marked erosion of the protection space for all groups of concern over the past two years”.⁵⁶

The November 2010 elections in Myanmar and corresponding outbreak of clashes between the Myanmar military and the fifth brigade of the ethnic Karen rebel group, the Democratic Karen Buddhist Army (DKBA), led to a further influx of an estimated 20,000 to 25,000 refugees from

⁵⁰ UNHCR Washington Fact Sheet, Questions and Answers on Resettlement from Thailand, www.unrefugees.org; See also UN High Commissioner for Refugees, *Analysis of Gaps in Refugee Protection Capacity - Thailand*, November 2006.

⁵¹ The term “refugee” is used in this section in line with the definition at www.unhcr.org to include “Persons recognized as refugees under the 1951 UN Convention/1967 Protocol, the 1969 OAU Convention, in accordance with the UNHCR Statute, persons granted a complementary form of protection and those granted temporary protection. It also includes persons in a refugee-like situation whose status has not yet been verified”.

⁵² 2011 UNHCR country operations profile – Thailand, www.unhcr.org.

⁵³ CSI interview with international NGO, Mae Sot, Thailand, 9 March 2011; see also Refugees International, *Thailand No safe refuge*, 24 March 2011.

⁵⁴ 2011 UNHCR country operations profile – Thailand, www.unhcr.org. According to the Thailand Burma Border Consortium (a national NGO) the pre-screening process was conducted by the Thai Ministry of Interior, with UNHCR acting as observers, and the results of the initiative are still under review. See: Thailand Burma Border Consortium, *Program Report*, July-December 2010, www.unhcr.org.

⁵⁵ 2011 UNHCR country operations profile – Thailand, www.unhcr.org.

⁵⁶ 2011 UNHCR country operations profile – Thailand, www.unhcr.org.

Myanmar into northern Thailand in late 2010 and early 2011.⁵⁷ While Thai authorities allowed most of those fleeing the fighting to cross the border, the majority of them were subsequently told to return to Myanmar within a matter of days, or, in some cases, hours.⁵⁸ Amnesty International reported that “Thai authorities forcibly returned 166 Burmese refugees on 25 December, at least 360 on 8 December, roughly 650 on 17 November, and approximately 2,500 on 10 November” from Waw Lay village in Phop Phra district.⁵⁹ In a press statement released on 28 December 2010, UNHCR expressed concern at “the hasty manner in which some returns took place, where some persons returned home only to have to flee again when fighting resumed”.⁶⁰ It is estimated that of the original influx only 7,000 individuals continue to live in unofficial sites⁶¹ along the Thai-Myanmar border.⁶² The rest have returned to Myanmar, some voluntarily but many others, including children, forced to do so by the Thai government.⁶³

Increasing restrictions and pressure on humanitarian agencies by the Thai authorities since November 2010 have made access by humanitarian agencies to asylum-seekers and refugees, including children, extremely challenging.⁶⁴ Conditions in the unofficial refugee sites are poor, with only basic food and water provision and inadequate medical services available. CSI has received information that since early 2010, Thai Army Rangers and Border Patrol Police (BPP) have prevented rations from being distributed in the refugee camps and have also repeatedly harassed refugees, threatening to forcibly return them to Myanmar if they do not do so “voluntarily”.⁶⁵

In this context of inadequate protection and services, and forced returns to Myanmar, CSI has serious concerns regarding the protection of asylum-seeking and refugee children, including former child soldiers, who live in official and unofficial camps in Thailand. The Thai government has failed to put in place any mechanisms to identify former child soldiers among refugees/asylum seekers and to provide them with adequate assistance for recovery and reintegration.

In the absence of adequate identification and protection measures, CSI is concerned that child soldiers who have escaped from the Myanmar armed forces could be among the populations forcibly returned to Myanmar, where they face the risk of serious human rights violations, including re-recruitment and/or detention on charges of desertion. CSI is concerned that this is contrary to the Committee’s General Comment No.6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, which states under paragraph 58 that “States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities”.

Information gathered by CSI, including interviews with former political prisoners from Myanmar, shows that children who attempted to escape from the Myanmar military have been arrested by the police, tried by military courts and sentenced to one to two years’ imprisonment in adult prisons, possibly longer, for the crime of “desertion”.⁶⁶

⁵⁷ See for instance: Jesuit Refugee Service, *Thailand: JRS responds to the influx of people fleeing violence in Burma*, 12 November 2010; *Thailand: Influx of people fleeing violence in Burma continues*, 16 December 2010; Letter by the Forum of Burma’s Community Based Organizations to Dr Niran Pitakwatchara, Commissioner of the National Human Rights Commission of Thailand, 15 January 2011 (on file with CSI).

⁵⁸ Op.cit. Jesuit Refugee Service; Letter by the Forum of Burma’s Community Based Organizations.

⁵⁹ Amnesty International Annual Report 2011, Thailand, www.amnesty.org.

⁶⁰ *UNHCR urges Thailand against forced returns to Myanmar*, Press Release, 28 December 2010, <http://www.unhcr.org/>.

⁶¹ Thai authorities housed these new arrivals in make-shift facilities and did not send them to the 9 official camps.

⁶² Backpack Healthworker Team, Situation Update: Conflict and Displacement in Burma’s Border Areas, 30 June 2011.

⁶³ *UNHCR urges Thailand against forced returns to Myanmar*, www.unhcr.org.

⁶⁴ IRIN news agency, “Thailand-Myanmar: Thousands still displaced along border”, 25 January 2011, www.irinnews.org.

⁶⁵ CSI interviews with representatives of national and international NGOs, Mae Sot, 10 March 2011.

⁶⁶ CSI interviews with representatives from Assistance Association for Political Prisoners (Burma) and a Thai NGO, Mae Sot, 10 March 2011.

In addition to the risk of forcible return and subsequent detention for desertion, children fleeing Myanmar are at risk of recruitment or re-recruitment by non-state armed groups operating inside the Thai border. CSI has been confidentially informed by an international NGO of 14 cases of children being recruited by non-state armed groups from Myanmar in refugee camps in Thailand between mid-2008 and mid-2011.⁶⁷

Questions

- What measures are in place to register refugees, including children, arriving in Thailand from Myanmar, and to ensure their legal status and prevent refoulement?
- What measures are in place to identify former child soldiers amongst refugee, asylum-seeking and migrant children arriving in Thailand from Myanmar?
- How many former child soldiers from Myanmar are believed to be present in Thailand?
- What programs are in place to address their specific needs and ensure their adequate physical and psychological recovery and reintegration?

Recommendations

- Accede to the 1951 Refugee Convention and its Protocol.
- End forcible returns of child refugees, asylum-seekers and migrants, including former child soldiers, to Myanmar. Ensure that the best interests of the child and the principle of non-refoulement are the primary considerations when making decisions on the repatriation of children.
- Implement mechanisms for the systematic identification of former child soldiers in the Myanmar refugee and migrant population, and ensure adequate provisions for their physical and psychological recovery and social reintegration.
- Ensure adequate protection for refugee children against recruitment or re-recruitment by non-state armed groups.

International assistance and cooperation

Article 7

Permitting UN access to non-state armed groups from Myanmar

Non-state armed groups from Myanmar, some still fighting against the Myanmar military and some in alliance with them, continue to recruit and use child soldiers. These include the DKBA, Kachin Independence Army (KIA), Karen National Liberation Army (KNLA), Karen National Union-Karen National Liberation Army Peace Council (KNU-KNLAPC), Karenni Army (KA), Shan State Army-South (SSA-S) and the United Wa State Army (UWSA).⁶⁸ These groups operate mainly in Myanmar but some senior members of the KNLA, KNU and the Karenni National Progressive Party (KNPP)⁶⁹ are based in Thailand⁷⁰, and the headquarters of the Shan State Army (SSA) are believed to be located in Thailand's Mae Hong Son Province⁷¹.

⁶⁷ Confidential interviews, London, 20 August 2011.

⁶⁸ Report of the UN Secretary-General to the Security Council on children and armed conflict, 23 April 2011.

⁶⁹ KNPP is the political wing of the Karenni Army (KA).

⁷⁰ CSI interviews, Thailand, 10 March 2011.

⁷¹ See for instance: The Irrawady, Hseng, Sai Zom, *The Shan sniper*, 31 May 2011, www.irrawaddy.org.

In accordance with UN Security Council Resolution 1612 (2005), a UN-led Task Force on Monitoring and Reporting (MRM) was established in Myanmar in June 2007 to gather information on six⁷² grave violations against children resulting from the armed conflict (including the recruitment and use of children in hostilities). The MRM task force in Myanmar consists of UN agencies (the lead agency being UNICEF) and international NGOs.

In support of the MRM in Myanmar, a Working Group on Children Affected by Armed Conflict⁷³ (the Working Group) was established in Thailand in 2008 to assist in gathering information on the situation in Myanmar, by monitoring and verifying human rights violations against children who had fled to Thailand from Myanmar. Information gathered by the Working Group is shared with the MRM Task Force in Myanmar.

In 2007, two Myanmar non-state armed groups named in the annexes of the annual UN Secretary-General's Report on children and armed conflict as being responsible for the recruitment and use of children, the KNU/KNLA and KNPP, signed unilateral deeds of commitment to end the recruitment and use of any persons under the age of 18. The Thailand-based offices of KNU/KNLA and KNPP communicated their intention to sign the deeds to UNICEF in Bangkok, and sought its cooperation in supporting and monitoring the implementation of the commitments. However, CSI understands that further communication by UNICEF with representatives of these, and other, Myanmar non-state armed groups based in Thailand has been forbidden by the Thai government. Although CSI recognizes that primary responsibility to facilitate access to these and other named non-state armed groups, for the purpose of agreeing and implementing action plans to end the recruitment and use of children, rests with the government of Myanmar, it is concerned that the access restrictions imposed by the Thai government are contrary to Security Council Resolution 1882 (2009). This resolution encourages states to facilitate the development and implementation of action plans by parties named in the UN Secretary-General's annexes.⁷⁴

Although negotiations between UNICEF and the Thai government have been ongoing to remove this restriction for the past four years, to CSI's knowledge, contact between UNICEF and the Myanmar non-state armed groups has not yet resumed. Restrictions on UNICEF's access to these armed groups has seriously impeded efforts to develop action plans to prevent child recruitment and use in Myanmar.

Recommendations

- Facilitate the work of the Working Group on Children Affected by Armed Conflict, including by facilitating UN access to representatives of Myanmar non-state armed groups in Thailand.

⁷² UN Security Council Resolution 1612 (2005) established a Monitoring and Reporting Mechanism (MRM) to systematically monitor, document and report on the following six grave violations against children in the situation of armed conflict: killing or maiming; recruitment or use of children as soldiers; attacks against schools or hospitals; denial of humanitarian access for children; abduction of children; rape and other grave sexual abuse of children. During the annual Security Council Open Debate on Children and Armed Conflict in July 2011, the Security Council unanimously adopted a resolution to expand the criteria for listing parties to conflict in the Secretary-General's annual report by including parties who attack schools and hospitals.

⁷³ The Working Group in Thailand, like its Myanmar counterpart, comprises of UN agencies and NGOs. See for instance; No More Denial: Children Affected by Armed Conflict in Myanmar (Burma), Watchlist on children and armed conflict, May 2009, www.watchlist.org.

⁷⁴ Security Council Resolution 1882 (2009), paragraph 6.

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