

President Waives Restrictions on Relations with Burma's Military under Child Soldier Prevention Act of 2008

October 12, 2016 (IN10595)

Related Authors

- [Michael F. Martin](#)
 - [Liana W. Rosen](#)
-

Michael F. Martin, Specialist in Asian Affairs (mfmartin@crs.loc.gov, 7-2199)

Liana W. Rosen, Specialist in International Crime and Narcotics (lrosen@crs.loc.gov, 7-6177)

On September 28, 2016, President Obama issued [Presidential Determination](#) 2016-14 waiving for the first time the military assistance restrictions that are mandated by the Child Soldier Prevention Act of 2008 (CSPA; 22 U.S.C. 2370c et seq.) with respect to Burma. Other restrictions on military assistance to Burma for FY2017 remain in effect. The accompanying memorandum of justification indicated that the waiver was in the national interest of the United States to support and strengthen Burma's democratic transition, and that the new Burmese government is "a willing partner that will work to stop the recruitment of children." Some observers speculate the waiver indicates the Obama Administration's interest in expanding military relations with Burma, an issue of contention among some Members and the Administration.

Child Soldiers in Burma's Military

According to a [2002 Human Rights Watch report](#), Burma at that time had more child soldiers than any other country in the world. Despite commitments to stop such practices, instances of child soldiering continue to be documented by the [United Nations \(U.N.\)](#), the [U.S. State Department's 2016 Trafficking in Persons \(TIP\) report](#), and other sources. Burma's military, or Tatmadaw, allegedly forces under-aged children—some as young as 11 years old—to serve in the military. The U.N. reported that at least four ethnic armed groups (EAGs) in Burma also recruit and use children.

The Child Soldiers Prevention Act of 2008

Consistent with international standards, the unlawful recruitment and use of children by armed forces as combatants or other forms of forced, fraudulent, or coercive labor is a form of trafficking in persons. CSPA, enacted in 2008, requires the Secretary of State to list foreign governments engaged in child soldiering in the annual TIP report. Since the first such list was published in 2010, the Secretary of State has consistently designated the Burmese government, particularly

the Tatmadaw, as an entity recruiting and using child soldiers.

CSPA also prohibits providing most forms of U.S. military assistance to designated countries, with four exceptions:

- if, after publication of the TIP report, a designated country takes actions to address child soldiering and the President certifies such developments in a notice to the appropriate congressional committees;
- for time-limited international military education, training, and nonlethal supplies if a country is taking reasonable steps to demobilize, rehabilitate, and reintegrate former child soldiers and if such assistance would directly support military professionalization;
- for programs that support military professionalization, security sector reform, heightened respect for human rights, peacekeeping preparation, or the demobilization and reintegration of child soldiers; or
- in the event the President determines that waiving CSPA restrictions is in the national interest of the United States.

Tatmadaw Responses

In 2007, Burma's military junta, the State Peace and Development Council, in partnership with the International Labour Organization, established the Committee for the Prevention of Military Recruitment of Under-aged Children. In June 2012, the Tatmadaw and the U.N. signed an [action plan](#) to end the recruitment and use of child soldiers by the Tatmadaw, as well as a number of the EAGs active in Burma's low-grade civil war. The action plan is being coordinated by the U.N. Children's Fund.

Since the signing of the action plan in 2012, the Tatmadaw has identified and released more than 800 child soldiers. The latest release occurred on September 12, 2016, when [68 child soldiers were discharged](#) from military service.

The U.N. received reports of [217 cases of alleged child soldier recruitment](#) in Burma in 2015, of which 95 were verified. The State Department claims there have been no confirmed cases of child recruitment in 2016, but the U.N. and human rights groups continue to receive reports of children in the Tatmadaw ranks and some EAGs. According to Child Soldiers International, a human rights organization, the [Tatmadaw's under-aged recruitment is driven](#) by the nation's ongoing low-grade civil war, high levels of troop attrition, poverty, and poor education (especially in rural areas).

Issues for Congress

The CSPA waiver removes one of the barriers to providing Burma with International Military Education and Training (IMET), Foreign Military Financing (FMF), and access to arms sales. However, other barriers remain in effect, including a 1993 suspension issued by the State Department of "all licenses and other approvals to export or otherwise transfer defense articles or defense services to Burma, ... pursuant to sections 2, 38, and 42 of the Arms Export Control Act." In addition, section 7043(b)(2) of the FY2016 Consolidated Appropriations Act ([P.L. 114-113](#)) prohibits IMET and FMF assistance in Burma. The act further provides that the State Department may "continue consultations with the armed forces of Burma only on human rights and disaster response in a manner consistent with the prior fiscal year." These restrictions remain in effect under the provisions of FY2017 continuing appropriations ([P.L. 114-223](#)).

Some Members of Congress and the Obama Administration have differed over U.S. policy toward Burma. At issue are differences in opinion over what U.S. policy towards Burma should be, as well as the adequacy of the administration's efforts to inform Members about President Obama's reinstatement of Burma's Generalized System of Preferences eligibility and the intention to terminate the national emergency with respect to Burma announced during Aung San Suu Kyi's visit to Washington, DC, in September 2016. The presidential waiver of the CSPA restrictions was not among the changes in U.S. policy announced during that visit, and as such, congressional response is difficult to predict.

Congress has options in its response to the waiver, including taking no specific action. The House committee-reported and Senate committee-reported versions of the Department of State, Foreign Operations, and Related Programs Appropriations Act ([H.R. 5912](#) and [S. 3117](#)) would continue IMET and FMF assistance restrictions to Burma for FY2017. In addition, Congress could pass legislation stipulating U.S. policy toward Burma in general or with respect to military relations. The Burma Strategy Act of 2016 ([S. 3313](#)) and the Empower Burma Act of 2016 ([S. 3325](#)) are two bills that offer differing views on U.S. policy toward Burma.