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Child Soldiers Prevention Act of 2008: Security Assistance Restrictions

The recruitment and use of children in armed conflict is broadly viewed as a human rights problem, a form of trafficking in persons, among the worst forms of child labor, and a war crime. The United Nations (U.N.) has identified the recruitment and use of child soldiers as among six “grave violations” affecting children in war and has established numerous monitoring and reporting mechanisms and initiatives to combat this practice. The U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict affirmatively verified over 7,000 children as having been recruited and used as soldiers in 2018 alone; the total number of children serving as soldiers around the world is believed to be significantly higher.

U.S. efforts to eradicate this phenomenon internationally are guided largely by the Child Soldiers Prevention Act of 2008 (CSPA, Title IV of P.L. 110-457), which defines the term “child soldier” under U.S. law and restricts certain security assistance to countries that recruit or use child soldiers, among other provisions.

Defining “Child Soldier”

The recruitment or use of persons *under age 15* as soldiers is prohibited by both the U.N. Convention on the Rights of the Child (CRC) and the Additional Protocols to the Geneva Conventions, and is considered a war crime under the Rome Statute of the International Criminal Court. In addition, the Optional Protocol to the CRC on the involvement of children in armed conflict further prohibits persons *under age 18* from being *compulsorily* recruited into state or nonstate armed forces or directly engaging in hostilities (while permitting voluntary recruitment of persons at least 15 years old). The United States is a party to the Optional Protocol.

Congress, through the CSPA, has defined child soldiers in a manner consistent with the Optional Protocol. Under the CSPA, the term “child soldier” refers to persons under age 18 who

- take direct part in hostilities as a member of governmental armed forces, police, or other security forces; or
- are compulsorily recruited into governmental armed forces, police, or other security forces (or are under 15 years old and are voluntarily recruited), including in noncombat roles; or
- are recruited or used in hostilities by nonstate armed forces, including in noncombat roles.

2019 Amendments to the CSPA

The Child Soldier Prevention Act of 2018 (Subtitle B of P.L. 115-425), which became law in January 2019, strengthened some of the CSPA’s provisions. Significant changes included ensuring that countries whose police or other security forces recruit and use children are among those potentially subject to security assistance restrictions; requiring that the President certify that countries receiving “national interest” waivers for security assistance restrictions are taking steps to address the problem of child soldiers; and requiring that the State Department publicly report on justifications for waivers and exceptions to security assistance restrictions.

CSPA Reporting and Security Assistance Restrictions

CSPA aims to combat the recruitment or use of children as soldiers by publicly identifying countries that recruit or use child soldiers and restricting certain types of U.S. security assistance to these countries. In particular, the law requires that the Secretary of State publish annually a list of countries within which “governmental armed forces, police, or other security forces,” or “government-supported armed groups, including paramilitaries, militias, or civil defense forces,” recruited or used child soldiers during the previous year. Pursuant to CSPA, the State Department, since 2010, has published a list of countries within the annual State Department *Trafficking in Persons Report (TIP Report)*.

Types of Security Assistance Prohibited

The following types of security assistance are prohibited for countries designated pursuant to the CSPA (subject to exceptions and waivers, discussed below):

- licenses for direct commercial sales (DCS) of military equipment;
- foreign military financing (FMF) for the purchase of defense articles and services, as well as design and construction services;
- international military education and training (IMET);
- excess defense articles (EDA); and
- peacekeeping operations (PKO).

Department of Defense (DOD) “train and equip” authority for building the capacity of foreign defense forces, codified at 10 U.S.C. 333, may also be subject to prohibition for CSPA-listed countries. This authority is restricted where such security cooperation is “otherwise prohibited by any provision of law.” Presidential waiver determinations have also referenced the authority as being potentially restricted by the CSPA. Other forms of U.S. security assistance (not listed above) to CSPA-listed countries may continue to be

provided under the law, although constraints may be applied as a matter of policy.

Exceptions

The President may provide military education and training through certain institutions and/or nonlethal supplies to a CSPA-designated country upon certifying that the recipient government is taking steps to demobilize, reintegrate, and rehabilitate child soldiers and that such assistance will support military professionalization. Similarly, the prohibition on PKO assistance does not apply to programs that support military professionalism, security sector reform, respect for human rights, peacekeeping preparation, or the demobilization and reintegration of child soldiers.

Presidential Waivers

The President has authority under CSPA to waive all, or certain types, of security assistance restrictions to a given country if the President determines that doing so serves U.S. “national interest” and certifies to Congress that the relevant government is “taking effective and continuing steps to address the problem of child soldiers.” The President may similarly reinstate any assistance that would otherwise be prohibited by certifying that the country in question has implemented measures, including “an action plan and actual steps” to end government or government-supported recruitment or use of child soldiers and to prevent their future recruitment or use.

Most Recent Designations

The State Department designated 11 countries under CSPA in the 2019 *TIP Report*, which was published on June 20, 2019. As compared to the 2018 list, Afghanistan and Sudan were added, while Niger and Nigeria were removed. In December 2019, President Trump fully or partially waived restrictions for all but four countries (see **Table 1** below).

Table 1. 2019 Child Soldier Designations and Waivers (applicable to FY2020)

Country	Restriction Status
Afghanistan	Full Waiver
Burma	Restricted
Democratic Republic of the Congo	Partial Waiver
Iran	Restricted
Iraq	Full Waiver
Mali	Partial Waiver
Somalia	Partial Waiver
South Sudan	Partial Waiver
Sudan	Restricted
Syria	Restricted
Yemen	Partial Waiver

Source: U.S. State Department; *Federal Register*, 84 FR 59519.

Issues for Congress Country Determinations

Some observers have previously criticized the State Department’s child soldier country designations for excluding certain countries listed in U.N. reports or the U.S. Department of Labor’s reports on the worst forms of child labor. In some cases, these discrepancies may arise from differences in reporting timelines or from definitional

differences. The CSPA does not require the designation of countries in which child soldiers were recruited or used by armed groups that are not supported by the government and, until its January 2019 amendment, did not require the designation of countries in which child soldiers were recruited or used by police or other non-military governmental security forces.

The 2019 *TIP Report* noted reports that Saudi Arabia had provided salaries, training, and other support to “Sudanese combatants which included children aged 14-17 years old, who may have been used in direct hostilities in Yemen,” but the State Department determined that the information was not sufficient to warrant Saudi Arabia’s inclusion on the CSPA list. The State Department’s Office to Monitor and Combat Trafficking in Persons reportedly had argued internally for Saudi Arabia’s inclusion on the list. Previously, the 2017 *TIP Report* was criticized for not listing Afghanistan, Burma, and Iraq, which were reported elsewhere to have recruited and used child soldiers. This decision reportedly prompted internal protest via the State Department’s dissent channel. Burma and Iraq were subsequently listed in both 2018 and 2019, and Afghanistan was listed in 2019.

Use of Presidential Waivers

The executive branch has frequently waived security assistance restrictions for CSPA-listed countries (other than those for which no U.S. security assistance was planned), allowing for the provision of hundreds of millions of dollars in otherwise restricted assistance. Since FY2015, full and partial waivers for Somalia, for example, have allowed for over \$200 million in DOD “train and equip” and Department of State PKO assistance, and over \$500,000 in IMET. Some analysts and Members of Congress have criticized the frequent use of waivers, arguing that it undermines U.S. efforts to deter countries from using child soldiers. Successive Administrations have justified exceptions and waivers based on a stated need to support counterterrorism, advance military professionalization, or for other reasons defined as either in the national interest or furthering the goals of CSPA itself. As described above, going forward, presidential waivers must now also include a certification to Congress that the government in question is taking steps to address the problem.

Relationship to Leahy Provisions

The U.S. “Leahy Laws” (22 U.S.C. 2378d and 10 U.S.C. 362) prohibit security assistance to foreign security forces when there are credible indications that recipient units have committed a “gross violation of human rights,” but the Leahy Laws do not define this term. In “vetting” proposed recipients of assistance pursuant to the Leahy Laws, the U.S. government has primarily drawn on the statutorily defined term “gross violations of internationally recognized human rights,” the definition of which does not specifically include the recruitment and use of child soldiers.

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