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Child Soldiers Prevention Act: 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 United Nations verified that more than 8,000 children were used as soldiers in 2020, including in Somalia (1,716), Syria (813), Burma/Myanmar (790), Democratic Republic of the Congo (788), Central African Republic (584), and Mali (284), among other countries. Most children were recruited by non-state actors.

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” and restricts certain security assistance to countries that recruit or use child soldiers, among other provisions. The Child Soldier Prevention Act of 2018 (Title II, Subtitle B of P.L. 115-425), which became law in January 2019, strengthened some of the CSPA’s 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 armed forces, from directly engaging in hostilities, and from being recruited or used in hostilities “under any circumstances” by non-state armed groups. The United States is a party to the Optional Protocol.

Congress, through the CSPA, has defined child soldiers in a manner generally consistent with the Optional Protocol. Under the CSPA, “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 non-state armed forces, including in noncombat roles.

CSPA Reporting and Security Assistance Restrictions

The 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. 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 the 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 the governments of 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);
- international military education and training (IMET);
- excess defense articles (EDA); and
- peacekeeping operations (PKO).

Assistance or support under some Department of Defense (DOD) authorities, such as the “train and equip” authority for building the capacity of foreign defense forces (codified at 10 U.S.C. Section 333), may also be affected. Other forms of U.S. security assistance 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 for up to five years 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. The prohibition on PKO 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 the CSPA to waive all, or certain types, of security assistance restrictions to a given country if the President determines that doing so is in the 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 15 countries under the CSPA in the 2021 *TIP Report*, which was published on July 1, 2021, and covered the period of April 2020 through March 2021. As compared to the prior year’s CSPA list, 12 countries remained listed; Pakistan, Turkey, and Venezuela were added; and Cameroon and Sudan were removed. In October 2021, President Biden fully or partially waived restrictions on FY2022 assistance for all but six countries (see **Table 1**). As required by the CSPA, as amended, the President certified that each of the countries receiving waivers were taking “effective and continuing steps” to address the problem of child soldiers.

Table 1. CSPA List and Waivers (FY2022 Assistance)

Country	Restriction Status
Afghanistan	Restricted
Burma	Restricted
Democratic Republic of the Congo	Waiver (partial)
Iran	Restricted
Iraq	Waiver (full)
Libya	Waiver (partial)
Mali	Waiver (partial)
Nigeria	Waiver (full)
Pakistan	Waiver (full)
Somalia	Waiver (partial)
South Sudan	Waiver (partial)
Syria	Restricted
Turkey	Waiver (full)
Venezuela	Restricted
Yemen	Waiver (partial)

Source: U.S. State Department; *Federal Register*, 86 FR 57525.

Issues for Congress

Country Determinations

Some observers have previously criticized the State Department’s child soldier country designations for excluding certain countries that the United Nations, U.S. Department of Labor, and other entities described as having child soldiers in their reports. In some cases, these discrepancies may arise from differences in reporting timelines or from definitional differences. Notably, 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. Prior to its January 2019 amendment, the CSPA also did not require the designation of countries in which child soldiers were recruited or used by police or other nonmilitary governmental security forces.

Some observers contend that the executive branch has sometimes omitted certain countries from the CSPA list in order to avoid negative impacts to bilateral relations. Media reporting has occasionally indicated internal State Department disagreement concerning CSPA list

determinations. Some State Department offices reportedly unsuccessfully argued internally for Saudi Arabia’s inclusion on the 2019 *TIP Report*’s CSPA list, for example. That year’s 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.”

Use of Presidential Waivers

The executive branch has frequently waived security assistance restrictions for CSPA-listed countries, allowing for the provision of hundreds of millions of dollars in otherwise restricted assistance. Some Members of Congress and nongovernmental observers 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 goals such as counterterrorism or military professionalization.

Waiver Example: FY2021 Assistance to Somalia

Child soldier information (from 2020 *TIP Report*): Continued reports of Somali National Army, Somali National Police, and other security forces and armed groups “unlawfully recruiting and using both male and female child soldiers.”

Executive branch’s waiver justification (from 2021 *TIP Report*): U.S. strategy “focuses on achieving a unified, peaceful, and democratic Somalia, with a stable and representative government” that is capable of combating terrorism and piracy, among other capacities. A waiver for IMET and PKO assistance supports Somali military professionalization and the building of “effective and rights-respecting security forces.” In addition, a waiver for DOD “train and equip” assistance helps build capacity to conduct counterterrorism operations against al-Shabaab and “through cooperation, help reinforce U.S. values including those related to preventing and responding to the unlawful recruitment and use of child soldiers.”

The January 2019 CSPA amendment introduced new annual reporting requirements regarding assistance withheld or provided to CSPA-listed countries. Due to the timing of this required report (due by June 15 and to be included in the annual *TIP Report*), the State Department has reported on only partial amounts withheld or provided up to a given point in that fiscal year. In practice, many security assistance obligations may take place near the end of the fiscal year and thus would not be captured in this midyear tally. According to the 2021 *TIP Report*, as of April 5, 2021, waivers for child soldier countries listed in the prior year’s *TIP Report* had up to that point allowed for the obligation of nearly \$25 million in otherwise restricted FY2021 assistance to CSPA-listed countries, while \$850,000 in FY2021 IMET had been withheld from Mali.

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