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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 monitoring and reporting mechanisms and initiatives to combat this practice. The U.N. verified that more than 6,000 children were recruited and used as soldiers in 2021, including in Syria (1,296), Somalia (1,161), Democratic Republic of the Congo (565), Mali (352), Central African Republic (329), and Burma/Myanmar (280), among other countries. Most of the children were boys, and the majority were recruited and used 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 Restrictions

The CSPA aims to combat the recruitment or use of children as soldiers by publicly identifying countries that engage in this practice 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. §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 also reinstate any assistance that would otherwise be prohibited by certifying that the government 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 and Waivers

The State Department designated 12 CSPA countries in the 2022 *TIP Report*, which was published on July 19, 2022, and covered the period of April 2021 through March 2022. Compared with the prior year’s CSPA list, nine countries remained listed; Central African Republic and Russia were added; and Iraq, Libya, Nigeria, Pakistan, and Turkey were removed. In October 2022, President Biden partially waived restrictions on FY2023 assistance for five 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 (FY2023 Assistance)

Country	Restriction Status
Afghanistan	Restricted
Burma	Restricted
Central African Republic	Waiver (partial)
Democratic Republic of the Congo	Waiver (partial)
Iran	Restricted
Mali	Restricted
Russia	Waiver (partial)
Somalia	Waiver (partial)
South Sudan	Restricted
Syria	Restricted
Venezuela	Restricted
Yemen	Waiver (partial)

Source: U.S. State Department; *Federal Register*, 87 FR 61943.

Notes: The waiver for Russia is “solely for direct commercial sales in connection with the International Space Station.”

Issues for Congress

Country Determinations

Advocates have sometimes criticized the State Department’s child soldier country designations for excluding certain countries that U.N. or other reports describe as having child soldiers. In some cases, 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 at times 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. For example, some State Department offices reportedly unsuccessfully argued internally for Saudi Arabia’s inclusion on the 2019 *TIP Report*’s CSPA

list. 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; countries that do not receive waivers are rarely those for which relevant assistance is planned. Some 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: FY2022 Assistance to Somalia

Child soldier information (from 2021 *TIP Report*):

While al-Shabaab committed the vast majority of instances of recruitment and use of child soldiers, “there were reports of the Somali federal defense and police forces ... Puntland forces and police, Jubaland forces, Galmudug forces and police, federal and state gendarmes, and clan militias” also recruiting and using child soldiers aged 10 to 17.

Executive branch’s waiver justification (from 2022 *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.

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 2022 *TIP Report*, as of April 5, 2022, waivers for child soldier countries listed in the prior year’s *TIP Report* had up to that point allowed for the obligation of over \$38 million in otherwise restricted FY2022 assistance to Democratic Republic of the Congo, Iraq, Nigeria, Pakistan, Somalia, South Sudan, Turkey, and Yemen; no assistance was planned for the other CSPA-listed countries that year (Afghanistan, Burma, Iran, Libya, Mali, Syria, and Venezuela).

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