



Updated November 6, 2020

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 U.N. affirmatively verified over 7,000 children as having been recruited and used as soldiers in 2019 alone; more than 90% of these cases were attributed to recruitment 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” under U.S. law 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 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.

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. Section 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 and State Department reports have 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 14 countries under CSPA in the 2020 *TIP Report*, which was published on June 25, 2020, and covered the period of April 2019 through March 2020. As compared to the prior year’s CSPA list, 11 countries remained listed, while Cameroon, Libya, and Nigeria were added. In October 2020, President Trump fully or partially waived restrictions on FY2021 assistance for all but five countries (see **Table 1**). As required by the CSPA, as amended, the President certified to Congress that each of the countries receiving waivers were taking “effective and continuing steps” to address the problem of child soldiers.

Table 1. 2020 CSPA and Waivers (FY2021 assistance)

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

Source: U.S. State Department; *Federal Register*, 85 FR 69117.

Issues for Congress Country Determinations

Some observers have previously criticized the State Department’s child soldier country designations for excluding certain countries described as having child soldiers in other reports, such as U.N. reports or the 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. 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 non-military governmental security forces.

Media reporting has sometimes indicated internal State Department disagreement concerning CSPA list determinations. The State Department’s Office to Monitor and Combat Trafficking in Persons reportedly argued internally for Saudi Arabia’s inclusion on the 2019 *TIP Report* 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.” Similarly, observers criticized the 2017 *TIP Report* for not listing Afghanistan, Burma, and Iraq, which had been reported elsewhere to have recruited and used child soldiers; the decision not to list these countries reportedly prompted internal protest via the State Department’s dissent channel.

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. According to public reporting from the State Department that is now required due to a 2019 CSPA amendment, as of April 15, 2020, waivers for child soldier countries listed in the 2019 *TIP Report* had allowed for the obligation of more than \$17 million in otherwise restricted FY2020 IMET, PKO, and DOD “train and equip” assistance. No relevant FY2020 assistance was planned for CSPA-listed countries that had not received a waiver.

Waiver Example: FY2020 Assistance to Somalia

Child soldier information (from 2019 *TIP Report*): Reports of Somali National Army and allied militias (among others) “unlawfully recruiting and using child soldiers” between the ages of 8 and 17.

Executive branch’s waiver justification: U.S. strategy focuses on “a stable and representative government” in Somalia 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, which are indispensable to achieving greater military effectiveness.” In addition, a waiver for DoD “train and equip” assistance helps build capacity to conduct counterterrorism operations against al-Shabaab.

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 goals such as counterterrorism or military professionalization.

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IF10901

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