
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. According to the United Nations (U.N.) Office of the Special Representative of the Secretary-General for Children and Armed Conflict, tens of thousands of child soldiers are involved in local and regional conflicts, within some government forces as well as armed nonstate groups. The 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. 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). A number of bills in the 115th Congress, if passed, would amend CSPA’s provisions relating to security assistance restrictions (as discussed below).

Defining “Child Soldier”
The recruitment or use of persons under age 15 as soldiers is prohibited by both the Convention on the Rights of the Child (CRC) and the Additional Protocols to the Geneva Conventions; it is also 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 State is a party to the Optional Protocol.

Voluntary Recruitment in the United States
The U.N. Committee on the Rights of the Child has raised concerns over U.S. compliance with the voluntary recruitment standards of the Optional Protocol, noting for instance that the United States maintains a quota system for military recruiters and permits their access to high schools. The United States has argued that it maintains adequate safeguards to ensure that recruits under 18 years old are voluntary (17 is the minimum age of voluntary recruitment in U.S. armed forces).

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 18 years old who:

- take direct part in hostilities as a member of governmental armed forces;
- are compulsorily recruited into governmental armed forces (or are under 15 years old and 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 and use of children as soldiers through several key provisions. Central among these is a requirement that the Secretary of State publish annually a list of countries within which “governmental armed forces” or “government-supported armed groups” recruited and used child soldiers during the previous year. A separate provision restricts certain U.S. security assistance to these designated countries. 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 countries designated pursuant to 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) and other programs.

The Department of Defense’s “train and equip” authority for building the capacity of foreign defense forces, first authorized under the FY2006 National Defense Authorization Act (NDAA) and then broadened under the FY2017 NDAA (and codified at 10 U.S.C. 333), may also be subject to prohibition for CSPA-listed countries. DOD’s authority is restricted where such security cooperation is “otherwise prohibited by law.” Recent defense appropriations measures have also specifically included “train and equip” as among the restricted types of assistance under 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, training, and 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. (PKO is often used for counterterrorism aid in Africa.)

Presidential Waivers
The President has authority under CSPA to fully or partially waive security assistance restrictions pursuant to CSPA for reasons of U.S. “national interest.” More broadly, the President can reinstate any assistance that would otherwise be prohibited by certifying that the country in question has implemented measures to end the use of child soldiers in government and government-supported armed forces. The 2018 TIP Report designated 11 countries under CSPA. As compared to the 2017 list, Burma, Iran, Iraq, and Niger were added, while Sudan was removed. In September 2018, President Trump fully or partially waived restrictions for all but four countries (see Table 1 below).

Table 1. 2018 Child Soldier Designations and Waivers (applicable to FY2019)

<table>
<thead>
<tr>
<th>Country</th>
<th>Restriction Status</th>
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</thead>
<tbody>
<tr>
<td>Burma</td>
<td>Restricted</td>
</tr>
<tr>
<td>Democratic Republic of Congo (DRC)</td>
<td>Restricted</td>
</tr>
<tr>
<td>Iran</td>
<td>Restricted</td>
</tr>
<tr>
<td>Iraq</td>
<td>Full Waiver</td>
</tr>
<tr>
<td>Mali</td>
<td>Full Waiver</td>
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<tr>
<td>Niger</td>
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<tr>
<td>Nigeria</td>
<td>Full Waiver</td>
</tr>
<tr>
<td>Somalia</td>
<td>Partial Waiver</td>
</tr>
<tr>
<td>South Sudan</td>
<td>Partial Waiver</td>
</tr>
<tr>
<td>Syria</td>
<td>Restricted</td>
</tr>
<tr>
<td>Yemen</td>
<td>Partial Waiver</td>
</tr>
</tbody>
</table>

Source: Federal Register, 83 FR 53363.

Issues for Congress

Country Determinations
Some observers have 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. Notably, CSPA does not require the designation of countries in which child soldiers are recruited or used by police forces, or by nonstate groups not supported by the government. The 2017 TIP Report drew criticism for not listing Afghanistan, Burma, and Iraq, which were reported elsewhere to have recruited and used child soldiers. The State Department reportedly determined that CSPA does not require that every country that recruits or uses one or more child soldier be listed, and cited efforts by governments of these countries to end the use of child soldiers. This decision reportedly prompted internal protest via the department’s dissent channel. Notably, Burma and Iraq were included in the 2018 CSPA list.

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. For instance, since FY2015, full and partial waivers for Somalia have allowed for over $200 million in Department of Defense “train and equip” and Department of State PKO assistance, and over $500,000 in IMET. Similarly, DRC has been a CSPA-listed country every year since CSPA’s enactment, but prior to 2018 it received repeated full or partial waivers, allowing for the obligation of over $145 million in PKO and IMET (FY2007 - FY2017). Notably, DRC for the first time has not received either a full or a partial waiver for FY2019 assistance. Some Members of Congress have criticized the frequent use of waivers, arguing that it hampers U.S. efforts to deter countries from using child soldiers. Successive Administrations have justified exceptions and waivers on the basis of 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.

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.” The recruitment and use of child soldiers is not addressed by the Leahy Laws and is not among the categories of human rights abuses for which the U.S. government specifically vets foreign units for pursuant to these provisions. Evidence of the recruitment and use of child soldiers can, however, constitute derogatory information for which assistance may be suspended for policy reasons.

Issues for Congress
Legislation proposed in the 115th Congress, including H.R. 1191, H.R. 2200, S. 1862, and S. 1848, would amend CSPA to ensure that countries whose police forces recruit and use children are among those potentially subject to the law’s security assistance restrictions. These bills would also require that the State Department include information on the application of security assistance restrictions pursuant to CSPA, including justifications for waivers, within the annual TIP Report, a public document. The House bills would require that the Secretary of State certify to Congress that countries receiving “national interest” waivers are taking steps to address the problem of child soldiers. Additional issues for congressional consideration may include whether the country listing requirement under CSPA requires clarification, whether to alter the security assistance authorities restricted under CSPA, and/or whether Leahy Law prohibitions should explicitly address units that have recruited and used child soldiers.

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