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Introduction and principal recommendations

Child Soldiers International submits this report for consideration by the Committee on the Rights of the Child (the Committee) in view of its examination in June 2012 of the United States of America's second periodic report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

This report was compiled through desk-based research of available secondary sources, and through communications with United States' NGOs. On the basis of the information gathered, this report summarizes Child Soldiers International's concerns about the United States' implementation of some of its obligations under OPAC, including in relation to:

- The deployment of under-18s to "hazardous duty pay" or "imminent danger pay" areas.
- The possibility for deployment into hostilities of under-18s in the US armed forces.
- The low minimum voluntary recruitment age into the US armed forces.
- Reports of recruiter misconduct and the inconsistent application of the safeguards specified in article 3.3 of OPAC during the initial contact and recruitment of under-18s.
- The sharing of under-18s' personal information with the US military, without prior parental consent, or the knowledge of the individual.
- US military recruitment policy that actively targets under-18s.
- The use of weapons by under-18s in the Junior Reserve Officer Training Corps and the US cadet corps.
- The lack of legislation criminalizing recruitment and use of under-18s by armed forces or armed groups.
- The export of small arms and light weapons to countries where children are known to be recruited or used in hostilities.

In light of these concerns, Child Soldiers International makes the following recommendations for immediate action by the United States of America (USA):

- Withdraw the written understanding that it submitted on the provisions of article 1 of OPAC in the interest of improving the protection of children in situations of hostilities.
- Review and revise its law and policies on the deployment of under-18s to ensure that they are in conformity with article 1 of OPAC and that children are not exposed to the risk of taking direct and indirect part in hostilities.
- Review the current voluntary recruitment age into the armed forces with the view to raising it to 18 years, and pending such review, ensure that recruitment practices do not actively target persons under 18 years.
- Provide clear information on the right to opt out of service prior to basic training to all new recruits, and to the parents or guardians of any recruits under 18, and ensure that no penalties or other negative consequences are imposed on those who opt for voluntary early discharge.
- Review recruiter conduct to ensure that recruitment is truly voluntary and that recruits accurately understand the duties involved in service, and abolish the recruiter quota system.
- Ensure all parents are included from the outset and during the entire recruitment and enlistment process, are adequately informed about the recruitment process, and that informed, written parental consent is always obtained for recruits under the age of 18 years.

- Review the degree of military recruiters' access to schools and to students' information with the view to ensure that students' rights, including their right to privacy, are respected.
- Ensure that violations of the provisions of OPAC regarding the recruitment and involvement of children in hostilities are explicitly criminalized in US legislation.
- Revise the issuance of waiver's to countries that recruit and use child soldiers under the Child Soldiers Prevention Act 2008, and prohibit military assistance to governments which recruit children or use them to take part in hostilities.

Prevention

Article 1

Direct Participation

Upon its ratification of OPAC in December 2002, the United States entered written ‘understandings’, which, amongst other things, asserted its interpretation of article 1 of OPAC: ‘the term “feasible measures” means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations; the phrase “direct part in hostilities”- means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment...’¹ Child Soldiers International asserts that these ‘understandings’ amount to a reservation to article 1, the substance of which runs contrary to the object and purpose of OPAC, and should consequently be immediately withdrawn, as per the Committee’s 2008 recommendation.²

In their second periodic report the US stated that ‘while there have been 17-year-old service members deployed to “hazardous duty pay” or “imminent danger pay” areas, the reviews of data from 2003 to present did not uncover any service member under the age of 18 who had engaged directly in hostilities as the United States understands that term’.³ Whilst each service has policies in place aimed at complying with article 1,⁴ information from the second periodic report highlights that during the fiscal year 2008, six under-18s were in fact deployed⁵ - five to Kuwait and one to the USS Roosevelt, an aircraft carrier. According to the US interpretation, none took direct part in hostilities. Dismissing the concerns raised by

¹ Available here: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en

² Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/USA/CO/1, 25 June 2008, paragraphs 6 and 7.

³ United States of America’s second periodic report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/USA/2, 25 January 2010, paragraph 50.

⁴ See United States of America’s initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/USA/1, 10 May 2007, paragraph 17: ‘Army. The Army will not assign soldiers outside the United States, either on permanent or temporary duty orders, until they reach their eighteenth birth date. For those soldiers under eighteen who were already overseas at the time the implementation plan went into effect, commanders were to take all feasible measures to ensure these soldiers not take a direct part in hostilities until they reached 18 years of age. Navy. Sailors who have not reached their eighteenth birth date will not be assigned to ships and squadrons that are scheduled to deploy at a date earlier than their eighteenth birthday. Air Force. The Air Force will not assign airmen who have not reached their eighteenth birthdate to hostile fire/imminent danger areas. Marine Corps. The Marine Corps has directed commanders who have operational and administrative control of Marines who have not reached their eighteenth birth date to track and manage the assignment of those Marines such that all feasible measures are taken to ensure they do not take a direct part in hostilities. This responsibility may not be delegated below the battalion or squadron commander level.’

⁵ Second State periodic report, paragraph 51.

the Committee in 2008,⁶ the second periodic report affirms that US policies on deployment are consistent with article 1, and actually go further than the obligations laid down in OPAC.⁷

Nevertheless, the definitions of “hazardous duty pay” and “imminent danger pay”, suggest that under-18s deployed to these areas would be at grave risk of attack, if not direct participation in hostilities.

The US Code, Pay and Allowances of the Uniform Services determines that hazardous duty pay can be awarded to a serviceman who ‘(1) performs duty in a hostile fire area designated by the Secretary concerned, is exposed to a hostile fire event, explosion of a hostile explosive device, or any other hostile action, or is on duty during a month in an area in which a hostile event occurred which placed the member in grave danger of physical injury; (2) performs duty designated by the Secretary concerned as hazardous duty based upon the inherent dangers of that duty and risks of physical injury; or (3) performs duty in a foreign area designated by the Secretary concerned as an area in which the member is subject to imminent danger of physical injury due to threat conditions’.⁸ And an “imminent danger area” is defined as ‘one in which a member [soldier] is subject to the threat of physical harm or imminent danger because of civil insurrection, civil war, terrorism, or wartime conditions’.⁹

The deployment of under-18s to such environments may expose them to the significant risk of both indirect and direct participation in hostilities, and the possibility of enemy attack. The main rationale of international humanitarian law and human rights standards related to child soldiers is to protect children from the risks associated with armed conflict. These risks are not limited to the role of active fighting. Indeed, as noted in the first judgment of the International Criminal Court ‘the extent of the potential danger faced by a child soldier will often be unrelated to the precise nature of the role he or she is given. Those who participate actively in hostilities include a wide range of individuals, from those on the front line (who participate directly) through to the boys or girls who are involved in a myriad of roles that support the combatants.’¹⁰

The US’s interpretation of article 1 fails to take into consideration the concerns and recommendations expressed by the Committee in 2008,¹¹ and the Committee’s previous interpretations of article 1 when considering countries with similar policies.¹²

⁶ Summary of Record of the 1321st Meeting, Consideration of Initial report of the United States of America under the Optional Protocol on the involvement of children in armed conflict, UN Do. CRC/C/SR.1321, 22 May 2008 paragraph 3.

⁷ Second State periodic report, paragraphs 51, 176, 181.

⁸ United States Code Title 37, Chapter 5, Subchapter II, section 351.

⁹ See Marines Blog, (the Official Blog of the United States Marine Corps), Imminent Danger Pay: What you need to know, 3 February 2012, <http://marines.dodlive.mil/2012/02/03/imminent-danger-pay-what-you-need-to-know/>.

¹⁰ Trial Chamber judgment, The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, 14 March 2012, paragraph 628.

¹¹ For example see: Summary of Record of the 1321st Meeting, Consideration of Initial report of the United States of America under the Optional Protocol on the involvement of children in armed conflict, UN Do. CRC/C/SR.1321, 22 May 2008 paragraph 3; Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/USA/CO/1, 25 June 2008, paragraphs 7 and 14.

¹² See Committee on the Rights of the Child, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/OPAC/GBR/CO/1, 17 October 2008, paragraphs 10 and 11; Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, CRC/C/OPAC/USA/CO/1, 25 June 2008, paragraphs 13 and 14; Committee on the Rights of the Child, Concluding observations on the initial report of Viet Nam, UN Doc. CRC/C/OPAC/VNM/CO/1, 17 October 2006, paragraphs 12 and 13.

Recommendations

Child Soldiers International recommends that the USA is requested to provide detailed information from official sources on:

- Disaggregated data on the number of under-18s deployed to areas of “hazardous duty pay” or “imminent danger pay” after 2008.
- The roles played by under-18s when deployed to “hazardous duty pay” or “imminent danger pay” areas, including details of the specific destinations to which they are deployed.
- Whether under-18s were deployed in hostilities after 2008 and if yes, to provide disaggregated data.

Child Soldiers International recommends that the USA is requested to:

- Withdraw the written understanding that it submitted on the provisions of article 1 of OPAC in the interest of improving the protection of children in situations of hostilities.
- Review and revise its law and policies on the deployment of under-18s to ensure that they are in conformity with article 1 of OPAC and that children are not exposed to the risk of taking direct and indirect part in hostilities.

Article 3.1

Minimum age for voluntary recruitment

According to the United States Code the minimum age for voluntary recruitment into the armed forces is 17 years of age.¹³ All applicants under 18 are required to have the written consent of at least one parent or guardian,¹⁴ which in turn must be witnessed and verified by two separate sources.¹⁵ The exception to this is in the case of a married minor,¹⁶ who is considered to be emancipated by the Department of Defence and therefore may not require parental consent if enlisting whilst under 18 years of age.¹⁷ Additional identification documents required for enlistment include an original or certified copy of the recruit’s birth certificate, an original social security card and official education credentials.¹⁸

In their initial report the United States asserted that recruits who had not yet obtained their high school diploma (generally acquired at 18 years, upon graduation) were put on the Delayed Entry Program (DEP), which postponed their basic training for up to one year, until they graduated from high school.¹⁹ Recruits

¹³ United States Code, Title 10, Subtitle A, Part II, Chapter 31, section 505(a), enacted by act Aug. 10, 1956, updated January 2012 <http://www.law.cornell.edu/uscode/text/10>

¹⁴ According to the United States Military Entrance Processing Command Regulation 601-23, December 1, 2010, paragraph i(2), if the parents are divorced then the consent of the parent with custody, or if there is joint custody then the consent of either parent, must be obtained.

¹⁵ Second State periodic report, paragraph 37.

¹⁶ Women’s International League for Peace and Freedom (WILPF), *Improper and Abusive Recruitment of Children into the US Armed Forces*, 15 November 2007, footnote 9 page 4 highlights that some States permit marriage for children as young as 13, but more commonly the legal age for marriage stands at either 16 or 18 years of age.

¹⁷ United States Military Entrance Processing Command Regulation 601-23, December 1, 2010, paragraph i(6).

¹⁸ Second State periodic report, paragraph 37.

¹⁹ United States of America’s initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/USA/1, 10 May 2007, paragraph 21.

that sign a DEP contract are enlisted to the inactive reserves until a pre-agreed date, at which point they report for active duty,²⁰ and are then required to serve for eight years (either as part of the active service or reserves) unless discharged early, or their contract is extended.²¹

According to the second periodic report, 70,530 enlistees under the age of 18 were recruited to the armed forces between 2007 and 2010, accounting for 10 percent of recruitment to all sections of the armed forces.²² The Department of Defense, Personnel and Readiness states that there were 49,883 applications to join the services from 16 and 17-year-olds in fiscal year 2010, comprising 16.2 percent of all armed service applicants, the second highest percentile group after applications from 18-year-olds.²³ This age classification by the Department of Defence (which encompasses applications from 16-year-olds) suggests that 16-year-olds could submit their applications to enlist before they reach the minimum age for joining the armed forces (set at 17 years). The US second periodic report does not provide any clarification on this issue. In fiscal year 2010 the percentage of persons enlisted into the active component of the armed forces aged between 17 to 19 years stood at 6.8, amounting to double the percentage of 17 to 19-year-olds represented in the civilian workforce, which stood at only 3.3 percent.²⁴ However, since 2010 there has been no further information specifically detailing the number of under 18 accessions to the armed forces.

The United States' assertion that it has no plans to raise the minimum age of voluntary recruitment²⁵ fails to properly consider the Committee's 2008 recommendations²⁶ or to reflect the Committee's interpretation of article 3 when considering other countries with similar policies.²⁷ It furthermore disregards the international trend toward a straight-18 recruitment age, with more than 130 states having established 18 or above as the minimum age of entry into the armed forces.

²⁰ For example see http://www.usmc.net/marines_delayed_entry/ and <http://www.delayedentryprogram.com/>.

²¹ Second State periodic report, paragraph 38.

²² Second State periodic report, paragraph 13.

²³ Department of Defense, Personnel and Readiness, *Population Representation in the Military Services: Fiscal Year 2010 Summary Report*, Table A-1, which can be viewed here:

http://prhome.defense.gov/RFM/MPP/ACCESSION%20POLICY/PopRep2010/appendixa/a_01.html.

²⁴ Op. Cit. Department of Defense, Personnel and Readiness, Table B-15.

²⁵ Second State periodic report, paragraph 182.

²⁶ Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/US/CO/1, 25 June 2008, paragraph 16: 'The Committee encourages the State party to review and raise the minimum age for voluntary recruitment into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard.'

²⁷ See for example, Concluding observations on the initial report of Chile, UN Doc. CRC/C/OPAC/CHL/CO/1, 13 February 2008, paragraph 16; Concluding observations on the initial report of Germany, UN Doc. CRC/C/OPAC/DEU/CO/1, February 2008, paragraph 11; Concluding observations on the initial report of Ireland, UN Doc. CRC/C/OPAC/IRL/CO/1, February 2008, paragraph 11; Concluding observations on the initial report of the United-Republic of Tanzania, UN Doc. CRC/C/OPAC/TZA/CO/1, October 2008, paragraph 13; Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/OPAC/GBR/CO/1, 17 October 2008, paragraph 13; Concluding observations on the initial report of Poland UN Doc. CRC/C/OPAC/POL/CO/1, 22 October 2009, paragraph 11; Concluding observations on the initial report of Israel UN Doc. CRC/C/OPAC/ISR/CO/1, 4 March 2010, paragraph 21; Concluding observations on the initial report of Mexico UN Doc. CRC/C/OPAC/MEX/CO/1, 7 April 2011 paragraph 20.

Recommendations

Child Soldiers International recommends that the USA is requested to provide detailed information from official sources on:

- Whether applications are accepted from 16-year-olds wishing to join the armed forces, and if yes the number of applications received since 2008, disaggregated by sex, social and economic background, race and ethnic origin.
- The number of under-18s recruited into the US armed forces since 2010, including disaggregated data by sex, social and economic background, race and ethnic origin.
- The number of recruits that have gone through the Delayed Entry Program and commenced basic training still aged under 18 years since 2008.

Child Soldiers International recommends that the USA is encouraged to:

- Review the current voluntary recruitment age into the armed forces with the view to raising it to 18 years.
- Pending such review, ensure that recruitment practices do not actively target persons under 18 years.

Article 3.3

Child Soldiers International is concerned by a range of recruitment policies and practices that undermine the safeguards contained in article 3.3 of OPAC, in particular with regards to the voluntary nature of underage recruitment, the right to privacy of children and the requirement of prior consent of parents (or legal guardians).

Child Soldiers International is also concerned by the extensive access to schools and students' information by the US military, which suggests that the US government is pursuing the active recruitment of under-18s.

Early discharge

According to responses made by the US during the Committee's consideration of their initial report, a recruit can opt out at any point before commencing basic training,²⁸ this is also true for those on the delayed entry program (DEP), where early withdrawal from their service contract does not result in penalties.²⁹ However, such voluntary withdrawal results in a code being entered onto the individual's discharge papers marking them as 'not suitable or not capable for military service'.³⁰ The Committee

²⁸ UN Doc. CRC/C/SR.131 May 2008, paragraph 55; the permitted reasons for leaving the armed forces (or 'separation') are laid out in Department of Defense Directive: *Enlisted Administrative Separations*, Directive 1332.14: Enlistment Administrative Separations, 28 August 2008 (current as of 30 September 2011), available here: <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>

²⁹ UN Doc. CRC/C/SR.131 May 2008, paragraph 58; Department of Defense Directive: *Enlisted Administrative Separations*, Directive 1332.14, 28 August 2008 (current as of 30 September 2011), E3.5.e(1): 'A person who is in the Delayed Entry Program may be separated because of ineligibility for enlistment under standards prescribed by the Secretary concerned or upon his or her request when authorized by the Secretary concerned'.

³⁰ UN Doc. CRC/C/SR.131 May 2008, paragraph 59.

regarded this code as a punishment, and a form of penalty.³¹ The Department of Defence Instructions also specifically states that recruits under the age of 18 will be discharged if ‘an application for the Service member’s separation is submitted to the Secretary concerned by the parent or guardian within 90 days of the Service member’s enlistment’.³²

Recommendations

Child Soldiers International recommends that the USA is encouraged to:

- Provide clear information on the right to opt out of service prior to basic training to all new recruits, and to the parents or guardians of any recruits under 18, and ensure that no penalties or other negative consequences are imposed on those who opt for voluntary early discharge.

Recruiter misconduct

In 2010 the US Government Accountability Office (GAO) determined that the total number of substantiated claims of recruiter irregularities as a percentage of overall military accessions was 0.26 percent in fiscal year 2006 (616 cases out of 239,629 accessions); 0.22 percent in fiscal year 2007 (526 cases out of 242,602 accessions); and 0.18 in fiscal year 2008 (450 cases out of 248,797 accessions). Over these three years the substantiated number of recruiter irregularities represented less than one quarter of all reported cases of recruiter irregularity.³³ According to the GAO, the type of sanction brought against recruiters varied from their removal from position, to adverse administrative action, such as placing a reprimand in the recruiters file, the latter being the preferred type of action used by the Army.³⁴

Whilst the number of substantiated claims is relatively small, the GAO report emphasizes that the Office of the Secretary of Defence (the department responsible for overseeing recruiting programs) lacks the level of comprehensive information required to provide an accurate analysis of recruiter misconduct across the entire military.³⁵ A 2010 review of recruiter misconduct by the Rand Corporation stated that the low level of substantiated claims could be misleading due to the possibility that only allegations with a high chance of being substantiated were reported, potentially leading to a considerable undercount of actual irregularities.³⁶ Moreover, since 2008 there has been no new data on the number of substantiated recruiter irregularities, and the US second periodic report provides no further information. Therefore, it is impossible to definitively determine whether the US government has succeeded in effectively addressing the concerns expressed by the Committee on the application of the article 3.3 OPAC safeguards.³⁷

In fact, despite assertions by the United States that they take their responsibilities under article 3.3 seriously,³⁸ reports of grave recruiter misconduct continue.³⁹

³¹ UN Doc. CRC/C/SR.131 May 2008, paragraph 61.

³² Department of Defense Directive: *Enlisted Administrative Separations*, Directive 1332.14, 28 August 2008 (current as of 30 September 2011), E3.5.a(1)(b).3.

³³ US Government Accountability Office (GAO), *Military Recruitment: Clarified reporting requirements and increased transparency could strengthen oversight over recruiter irregularities*, 28 January 2010 page 5, available here: <http://www.gao.gov/new.items/d10254.pdf>.

³⁴ Op. Cit. US GAO, 28 January 2010 page 5.

³⁵ Op. Cit. US GAO, 28 January 2010 page 7.

³⁶ Beth J. Asch and Paul Heaton, *An Analysis of the Incidence of Recruiter Irregularities*, Rand Corporation, 2010, page 37, http://www.rand.org/pubs/technical_reports/2010/RAND_TR827.pdf.

³⁷ Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/US/CO/1, 25 June 2008, paragraph 18.

³⁸ Second State periodic report, paragraphs 40-46 and 185-193.

The quota system is likely to contribute to such misconduct, with recruiters under pressure to enlist a certain number of recruits each month, and to prevent withdrawal during the Delayed Entry Program (DEP).

Each frontline recruiter – those directly interacting with applicants – is assigned a monthly recruiting goal,⁴⁰ with a recruiter’s performance being primarily evaluated on the number of contracts they write, which corresponds to the number of individuals they enter into the DEP each month.⁴¹ A 2006 GAO report states that over two thirds of active duty recruiters who responded to an internal Department of Defence survey believed that meeting these quotas had a make-or-break effect on their career,⁴² whilst exceeding their goals resulted in rewards and incentives.⁴³ According to the Rand report ‘irregularities are more likely to occur at the very end of the month when recruiters are “on the hook” to meet their quotas’,⁴⁴ such pressure is likely exacerbated by the decrease in viable enlistees. Indeed, according to the GAO, despite an increase in the number of individuals expressing an interest in joining the military, only three in ten 17 to 24 year olds are actually eligible to enlist.⁴⁵

Furthermore, recruiters are under pressure to prevent DEP withdrawals of more than 10 percent each year,⁴⁶ and they are encouraged to use ‘aggressive’ follow up tactics with recruits,⁴⁷ and to make ‘every effort’ to resell to those individuals requesting separation,⁴⁸ whilst not resorting to threats of adverse consequence should the recruit leave the DEP.⁴⁹ In 2009 there were reports of an army recruiter threatening a 17-year-old wishing to opt out of his non-binding contract with arrest and jail.⁵⁰

³⁹ For example: CBS News, Sexual Abuse by Military Recruiters, 11 February 2009 reported that more than 100 young women (some under 18) who had expressed interest in joining the military were preyed upon sexually by their recruiters, available here http://www.cbsnews.com/2100-201_162-1913849.html?tag=contentMain;contentBody; KHOU.com, Army Recruiter Suspended After Allegations, 25 June 2010 reported that an army recruiter had been charged with touching female students in an offensive manner, <http://www.khou.com/news/local/Army-recruiter-suspended-after-allegations-97150819.html>; Press TV, High School Students Harassed by US military recruiters, 16 February 2011 <http://edition.presstv.ir/detail/165451.html>; See the reported incidents in 2009 in Military Recruiters: Criminal, Abusive or Suspect Activity, Eight-year Chronological Review of Public Reports as of 28 August 2009, Compiled by Learning Not Recruiting, available here: <http://www.dmzhawaii.org/wp-content/uploads/2008/12/Recruiter-Abuse-Full-Report.pdf>.

⁴⁰ US GAO, *Military Recruitment: Clarified reporting requirements and increased transparency could strengthen oversight over recruiter irregularities*, 28 January 2010, page 8.

⁴¹ US GAO, *Military Recruiting: DoD and services need better data to enhance visibility over recruiter irregularities*, August 2006, page 23.

⁴² Op. Cit. US GAO, August 2006, page 23.

⁴³ Op. Cit. US GAO, August 2006, page 25.

⁴⁴ Beth J. Asch and Paul Heaton, *An Analysis of the Incidence of Recruiter Irregularities*, Rand Corporation, 2010, page 32.

⁴⁵ US GAO, *Military Recruitment: Clarified reporting requirements and increased transparency could strengthen oversight over recruiter irregularities*, 28 January 2010, page 1.

⁴⁶ United States Army Recruiting Command, Regulation 601-95, *Personnel Procurement: Delayed Entry and Delayed Entry Training Program*, 17 July 2002, paragraph 3-1(b), page 6.

⁴⁷ Op. Cit. United States Army Recruiting Command, paragraph 2-4(a), page 5.

⁴⁸ Op. Cit. United States Army Recruiting Command, paragraph 3-1(b), page 6.

⁴⁹ Op. Cit. United States Army Recruiting Command, paragraph 3-1(b), page 6.

⁵⁰ CBS Evening News, Army Recruiter used scare tactics, 11 February 2009: http://www.cbsnews.com/stories/2008/07/28/eveningnews/main4301305.shtml?source=mostpop_story.

Correspondence with the GI Rights Hotline⁵¹ indicates a recent decrease in the level of aggressive and threatening behaviour towards recruits wishing to opt out of the DEP or seeking early discharge, but asserts that complaints of such conduct are still being received.⁵² These continued instances of intimidating recruiter behaviour can lead to recruits not being fully or correctly informed of their right to opt out of military service prior to basic training, resulting in some feeling coerced into completing military service against their wishes. Similar examples of threatening recruiter behaviour were raised by NGOs⁵³ in advance of the Committee's consideration of the initial report, yet despite these concerns and those expressed by the Committee,⁵⁴ the US authorities do not seem to have taken effective remedial action.

Recommendations

Child Soldiers International recommends that the USA is requested to provide detailed information from official sources on:

- The number of reported and substantiated cases of recruiter irregularity since 2008, disaggregated by service, with descriptions regarding the nature of the complaint, and the sanctions applied.

Child Soldiers International recommends that the USA is encouraged to:

- Improve and harmonize the means of recording incidents of recruiter irregularity within each service to ensure the accurate reporting of incidents of recruiter misconduct, and the effective investigation, swift imposition of sanctions, and, when necessary, prosecution of recruiter misconduct.
- Review recruitment policies and abolish the recruiter quota system.
- Review recruiter conduct to ensure that recruitment is truly voluntary and that recruits accurately understand the duties involved in service.
- Ensure all parents are included from the outset and during the entire recruitment and enlistment process, are adequately informed about the recruitment process, and that informed, written parental consent is always obtained for recruits under the age of 18 years.

Military access to schools and to students' information

A range of laws and programs allow the military to actively recruit under-18s. Notably, the No Child Left Behind Act, the Armed Services Vocational Aptitude Battery test and the Junior Reserve Officer Training Corps described in this section allow the military extensive access to schools and students' information which can be used for recruitment purposes.

Article 3 of OPAC reflects a generally accepted understanding that the recruitment of children below 18 years is undesirable. The fact that this provision falls short of a total prohibition to enlist under-18s into

⁵¹ Since 1994, the GI Rights Hotline has been providing free, confidential, and accurate information on US military regulations and practices to servicemembers, veterans, potential recruits, and their families. The Hotline is a consortium of more than twenty non-governmental, non-profit organizations located in more than fifteen states and in Germany: <http://girightshotline.org>.

⁵² Email correspondence with GI Rights Hotline, 23 March 2012.

⁵³ WILPF, 15 November 2007; American Civil Liberties Union (ACLU), *Soldiers of Misfortune: Abusive US Military Recruitment & Failure to Protect Child Soldiers*, May 2008, pages 21-23.

⁵⁴ Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/US/CO/1, 25 June 2008, paragraph 17.

the armed forces does not give states total discretion in their recruitment policies towards under-18s. Article 3 lists a range of measures to ensure the voluntariness of such recruitment and requires states to give priority to the oldest.

Given the risks associated with children recruited into the armed forces, it seems that a government recruitment policy that actively pursues the recruitment of under-18s by encouraging the targeting of children for enlistment (as opposed to simply allowing them to do so) would go against the spirit of the OPAC, as well as raising concerns about the voluntary nature of such recruitment. Indeed, the Committee, on various occasions, expressed concern at the high number of children under 18 enrolled in the armed forces, and recommended states to increase efforts to recruit persons of 18 years and above.⁵⁵

Furthermore, Child Soldiers International is concerned that some of these laws and their application may result in a violation of children's right to privacy and the requirement of parental consent for recruitment of under-18s.

No Child Left Behind Act

Section 9528 of the No Child Left Behind (NCLB) act states that those schools that receive financial assistance from the federal government through the NCLB⁵⁶ are required to provide military recruiters access to secondary school students' names, addresses and telephone listings, without the requirement of obtaining parental consent prior to the release of this information.⁵⁷ The section does enable students and parents to 'opt out' of this requirement by actively requesting that their school withhold such information, and advises that schools should notify parents of this option.

The US's second periodic report highlights the provisions in place to assist schools in informing parents and pupils of the right to opt out.⁵⁸ However, it does not address the fact that, despite these measures, many schools are still failing to do so, and no enforcement measures exist to ensure the effectiveness of the supplying of opt out information. As a result parents and students remain uninformed, and their personal information continues to be shared with military recruiters.⁵⁹ Similar concerns over children's privacy and parental consent were raised in 2008 by the Committee,⁶⁰ yet it appears that such concerns have not been addressed. As a result many parents, students and NGOs have criticized the act, arguing that it violates children's privacy, makes them open to unwanted, and often aggressive, contact by military recruiters, and bypasses the need for parental consent. Consequently some states, individual schools, and parent teacher associations have attempted to restrict military access to schools and student information, with mixed degrees of success.⁶¹

⁵⁵ See Committee on the Rights of the Child, Concluding observations on the initial report of Bangladesh, UN Doc. CRC/C/OPAC/BGD/CO/1, 2006; Committee on the Rights of the Child, Concluding observations on the initial report of Liberia, UN Doc. CRC/C/15/ADD.236, 1 July 2004, paragraph 59; Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/15/Add.188, 9 October 2002, paragraph 54.

⁵⁶ According to ACLU this amounts to nearly all public high schools, May 2008, page 23.

⁵⁷ No Child Left Behind Act, 115 Stat. 1425, Public law 107-110, 8 January 2002, Section 9528(a)(1).

⁵⁸ Second State periodic report, paragraphs 185 – 193.

⁵⁹ Email Communication with ACLU, 20 April 2012.

⁶⁰ For example see UN Doc. CRC/C/SR.1321, 2008, paragraph 4; Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/US/CO/1, 25 June 2008, paragraph 18.

⁶¹ For example in 2007 the Washington state parent teacher association voted to limit military access to high school students, Hagopian A. and Barker K., *Should we end military recruiting in high schools as a matter of child*

Section 9528 also requires that these state funded schools provide military recruiters with the same access to secondary school students as is generally provided to prospective employers or post secondary educational institutions.⁶² If schools do not comply with these provisions they, and on occasion all the other schools in their state, are threatened with the withdrawal of crucial funding.⁶³

Communication with the American Civil Liberties Union (ACLU),⁶⁴ the National Network Opposing the Militarization of Youth (NNOMY),⁶⁵ and Project on Youth and Non-Military Opportunities (YANO)⁶⁶ indicates continued concern regarding the high level of military presence on school grounds. Such military presence has, on occasion, reportedly violated the terms imposed by school boards attempting to restrict the level of recruiting in school.⁶⁷

Military policy emphasises the need to 'effectively penetrate the school market'⁶⁸ by approaching potential future recruits at a young age, prior to them becoming high school seniors (generally 17 years of age): 'You will find that establishing trust and credibility with students - even seventh- and eighth-graders - can positively impact high school and postsecondary school recruiting efforts... You must be seen, be trusted, and above all be available for students at every level of education'.⁶⁹ There have been some reports⁷⁰ of recruiters interrupting school instruction, attending school events, chaperoning students to homecoming activities, and befriending students and influencers (such as teachers, counselors, parents and friends) with an aim to increased presence and visibility of military recruitment in schools, described in the military recruitment pamphlet as 'school ownership',⁷¹ leading to greater numbers of military enlistment.

protection and health?, American Journal of Public Health, 18 November 2010; in 2010 the San Diego school district voted to regulate and restrict military recruiters presence on campus and access to students, The Associated Press, *San Diego Schools restrict military recruiters*, 1 December 2010 <http://www.cbs8.com/Global/story.asp?S=13596911>; California's Humboldt County voted to prohibit military recruiter's contact with under-18s in Eureka and Arcata in 2004, but the measure was subsequently struck down by a federal judge, 23 June 2009 <http://www.envirosagainstarwar.org/know/read.php?itemid=8437>; also see ACLU, May 2008, page 24.

⁶² No Child Left Behind Act, 115 Stat. 1425, Public law 107-110, 8 January 2002, Section 9528(a)(3).

⁶³ ACLU, May 2008, page 24.

⁶⁴ Email Communication 20 April 2012

⁶⁵ National Network Opposing the Militarization of Youth is a national networking body that brings together national, regional and local organizations to oppose the growing intrusion of the military in young people's lives, see <http://nnomy.org/>.

⁶⁶ Project YANO is a grassroots NGO specifically focused on providing young people with an alternative point of view about military enlistment, <http://www.projectyano.org>.

⁶⁷ Email correspondence with Project YANO 7 March 2012, highlighting recruiter's infringement of restrictions imposed by the San Diego Unified School District, March 2012.

⁶⁸ United States Army Recruiting Command Pamphlet 350-13, 1 September 2004, paragraph 1-4(c) http://www.usarec.army.mil/im/formpub/REC_PUBS/p350_13.pdf.

⁶⁹ United States Army Recruiting Command Manual 3-01, Recruiter Handbook, 22 November 2011, paragraph 5-18, http://www.usarec.army.mil/im/formpub/rec_pubs/man3_01.pdf.

⁷⁰ For example see ACLU, May 2008, pages 9-11; Press TV, High School Students Harassed by US military recruiters, 16 February 2011 <http://edition.presstv.ir/detail/165451.html>.

⁷¹ United States Army Recruiting Command Pamphlet 350-13, 1 September 2004, paragraph 1-4(c) http://www.usarec.army.mil/im/formpub/REC_PUBS/p350_13.pdf.

Such military presence in schools, active targeting of under-18s and compilation of student data is of concern due to the potential infringement of article 3.3 OPAC safeguards, particularly in light of the above mentioned military recruiter misconduct.

Armed Services Vocational Aptitude Battery test

The Armed Services Vocational Aptitude Battery (ASVAB) is a skills and guidance test developed, funded and graded by the US military. It is a necessary requirement when entering the military, but it is also used in 14,000 high schools in the United States.⁷² It is open to high school juniors and seniors, with the vast majority of participants being under 18, and with some as young as 15.⁷³ The test is a means of assessing a student's strengths and weaknesses with a view to informing their future career paths, including the appropriateness of a career in the military,⁷⁴ which in turn advises recruiters which students they should approach.⁷⁵

The military also uses the ASVAB to obtain students' personal contact information, including their name, address, phone number and social security details.⁷⁶ Crucially, unlike the No Child Left Behind (NCLB) act parents do not have the ability to opt out and prevent their child's personal information from being released to third parties.⁷⁷ Therefore, student information that has been withheld by opting out of NCLB can be released to the military via the ASVAB. Whilst schools have the ability to prevent data from being passed on to the military, information from the National Coalition to Protect Student Privacy⁷⁸ indicates that few school administrators are aware of this.⁷⁹ Various sources have indicated that children are often unaware of the voluntary nature of the test or its links to the military,⁸⁰ and there have been instances of students being actively informed that the test was mandatory.⁸¹ Child Soldiers International contends that

⁷² <http://www.military.com/ASVAB>

⁷³ US campaign to stop the use of child soldiers, *United States of America: Compliance with the Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Submission to the Committee on the Rights of the Child from the US campaign to stop the use of child soldiers*, November 2007, page 5.

⁷⁴ According to the Altoona Mirror, in 2008-2009 the ASVAB was taken by 650,000 high school students nationwide, with 92 percent of those results sent automatically to military recruiters, Altoona Mirror, *Military aptitude tests 'everything'*, 23 May 2010

<http://www.altoonamirror.com/page/content.detail/id/530135.html?nav=742>

⁷⁵ For example: 'The results provide information not available from any other source...The list also identifies the best potential prospects to contact and provides the most current contact information for each student...Unless the school has imposed restrictions, call each student on the list and offer to interpret their test scores. This is an excellent way to get one-on-one with the market.' US Army Recruiting Command Manual 3-01, Recruiter Handbook, 22 November 2011, paragraphs 6-21 and 6-22,

http://www.usarec.army.mil/im/formpub/rec_pubs/man3_01.pdf

⁷⁶ <http://www.studentprivacy.org/news.htm> Scroll down to: Md. law limits military recruitment of high school students, Michael Birnbaum, Thursday, April 15, 2010.

⁷⁷ See for example: <http://www.studentprivacy.org/overview2.htm>

⁷⁸ The National Coalition to Protect Student Privacy works to prohibit the automatic release of student information to military recruiting services gathered through the administration of the Armed Services Vocational Aptitude Battery (ASVAB) Career Exploration Program in high schools across the country, <http://www.studentprivacy.org/>.

⁷⁹ <http://www.studentprivacy.org/overview2.htm>

⁸⁰ US campaign to stop the use of child soldiers, November 2007, page 5; ACLU, May 2008 page 16.

⁸¹ The Associated Press, Maryland first to bar schools releasing tests to military, 13 May 2010, 'a counselor at her son's Florida charter high school told seniors that a military aptitude test was a requirement for graduation', available here <http://www.commondreams.org/headline/2010/05/13-8>; according to the National Coalition to Protect Student privacy, various freedom of information requests have revealed that more than a thousand high schools

the ASVAB infringes children's privacy, and is an enabler for military recruiters to actively target under-18s.⁸²

Junior Reserve Officer Training Corps

The Junior Reserve Officer Training Corps (JROTC) is an elective program, providing a course of military instruction of not less than three academic years,⁸³ open to pupils over the age of 14 years that is maintained, and partly funded by the respective secretary of each military department – army, navy, marines or air force.⁸⁴ JROTC programs can be established in any private or public school that requests a unit and is able to provide 100 or 10 percent (whichever is less) of enrolled grade 8 students or above.⁸⁵ According to the United States Code the purpose of the JROTC is to 'instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment'.⁸⁶ Whilst JROTC cadets are not considered to be members of the armed forces⁸⁷ they are taught by retired military personnel, receive military uniforms, participate in military drill, handle firearms, and partake in marksmanship training and pellet shooting activities.⁸⁸ It is unclear whether any age restrictions are imposed on these activities.

The JROTC, as a whole, is currently present in approximately 3,429 US high schools.⁸⁹ The army JROTC is active in every state in the nation and in American schools overseas, with army JROTC enrollment currently standing at 281,000 with 4,000 professional instructors in the classrooms.⁹⁰ The US second periodic report insists that the JROTC is no longer considered as a recruitment tool and the program's content has now been predominantly stripped of its military element.⁹¹ Yet, information from Project YANO indicates that JROTC activities remain specifically focused on stimulating interest in military enlistment in children.⁹² In 2008 it was reported that members of the JROTC were heavily recruited, with 45 percent of participants typically enlisting into the armed forces.⁹³ Information from NNOMY

require students to take the test even though military regulations prohibit DOD personnel from suggesting to school officials that the test be made mandatory, see <http://www.studentprivacy.org/overview2.htm>

⁸² In 2010 the state of Maryland passed legislation to bar public high schools in Maryland from automatically sending student ASVAB test scores to military recruiters, it came into effect in July 2010. Hawaii has a similar policy for its schools, and in 2008 State legislators in California passed a similar measure, but it was vetoed by Governor Schwarzenegger. Los Angeles school system now has a similar policy in place to protect student privacy, The Associated Press, Maryland first to bar schools releasing tests to military, 13 May 2010, available here <http://www.commondreams.org/headline/2010/05/13-8>.

⁸³ United States Code Title 10, Subtitle A, Part III, Chapter 102, section 2031(a)(3).

⁸⁴ United States Code Title 10, Subtitle A, Part III, Chapter 102, section 2031(a).

⁸⁵ United States Code Title 10, Subtitle A, Part III, Chapter 102, section 2031(a).

⁸⁶ United States Code Title 10, Subtitle A, Part III, Chapter 102, section 2031(a)(2).

⁸⁷ Second State periodic report, paragraph 197.

⁸⁸ Email communication with Project YANO, 7 March 2012; ACLU, May 2008 page 13; US campaign to stop the use of child soldiers, November 2007, page 5; United States Code Title 10, Subtitle A, Part III, Chapter 102, section 2031(a)(2)(b) No unit may be established or maintained at an institution unless... (2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned.

⁸⁹ Email communication with the National Network Opposing the Militarization of Youth, 14 April 2012.

⁹⁰ https://www.usarmyjrotc.com/jrotc/dt/2_History/history.html accessed 30 March 2012.

⁹¹ Second State periodic report, paragraph 196.

⁹² Email communication with Project YANO, 7 March 2012; email communication with The National Network Opposing the Militarization of Youth, 23 March 2012.

⁹³ ACLU, May 2008 page 13.

corroborates this, stating that Department of Defence statistics and testimony in Congress indicate that 40-50 percent of JROTC students join the military, with most going directly into enlisted ranks.⁹⁴ The second periodic report did not provide more recent information on the number of JROTC participants who subsequently enlisted in the military.

Recommendations

Child Soldiers International recommends that the USA is encouraged to:

- Review the degree of military recruiters' access to schools and to students' information with the view to ensuring that students' rights, including their right to privacy, are respected.
- Review and amend the No Child Left Behind Act and the Armed Services Vocational Aptitude Battery test so that consent is sought from the parents or guardians of those under-18 prior to the sharing of personal information or test results with military recruiters.
- Ensure that all children and their parents are aware of the voluntary nature of the Armed Services Vocational Aptitude Battery test and the JROTC.

Child Soldiers International recommends that the USA is requested to provide detailed information from official sources on:

- The number of under-18s currently enrolled in JROTC.
- The number that join the armed forces from the JROTC, disaggregated by age, sex, social and economic background, race and ethnic origin.
- Whether under-18s in the JROTC are, or may be, trained to use weapons.
- What measures are in place to ensure that the JROTC is a voluntary program from which a minor may withdraw at any time, without penalty.
- Whether there is an independent complaints mechanism available to pupils, parents and schools.

Article 3.5

Cadets

There are four United States cadets programs: the Young Marines which is open to children from the age of eight until they complete high school;⁹⁵ the army cadets for those between 11 and 18 years of age;⁹⁶ the naval cadets for minors between 11 and 17 years;⁹⁷ and the civil air patrol cadets for 12 to 19-year-olds.⁹⁸ The Naval Sea Cadets, Air Force's Civil Air Patrol and the Young Marines each receive funding and resources from their respective services, allowing the cadet corps to receive uniforms, training on military installations and most importantly granting cadets wishing to join the military the incentive of an advanced pay grade upon enlistment.⁹⁹

⁹⁴ For example see

http://www.nnomy.org/index.php?option=com_flexicontent&view=items&cid=297&id=324&Itemid=292&lang=en

⁹⁵ <http://www.youngmarines.com/aboutUs.html>

⁹⁶ <http://goarmycadets.com/qualifications.php>

⁹⁷ www.seacadets.org

⁹⁸ http://www.gocivilairpatrol.com/cap_home/teens/ although an individual can stay until they are 21 years of age as long as they have not entered active duty and are enrolled in a school, http://www.gocivilairpatrol.com/how_to_join/teens_faq/index.cfm.

⁹⁹ See <http://fs8.formsite.com/USAC/form1/index.html>

It is unclear to Child Soldiers International whether the US Army Cadets Corps is currently under the auspices of the United States military,¹⁰⁰ but it is described as an ‘enlisted career exploration’,¹⁰¹ program, that encompasses activities such as military drill, arms training, faux guard duty, martial arts and field exercises, with no clear detail provided regarding age restrictions.

Recommendations

Child Soldiers International recommends that the USA is requested to provide detailed information from official sources on:

- The relationship between the cadets and the US Department of Defence.
- The number of cadets joining the United States military, disaggregated by service, age, sex, social and economic background, race and ethnic origin.
- The safeguards in place to guarantee the safety of cadets during exercises, and if they are present on military bases.
- Whether cadets under 18 years are, or may be, trained to use weapons.

Prohibition

Article 6.1

Criminalization

In 2008 the United States enacted the Child Soldiers Accountability Act¹⁰² which amended the United States Criminal Code with the following provision: ‘a)...Whoever knowingly: 1) recruits, enlists, or conscripts a person to serve while such a person is under 15 years of age in an armed force or group; or 2) uses a person under 15 years of age to participate actively in hostilities; knowing such a person is under 15 years of age...b) shall be fined under this title or imprisoned not more than 20 years, or both and, if death of any person results, shall be fined under this title and imprisoned for any term of years or life’.¹⁰³

This domestic legislation specifically criminalizes the recruitment of persons under 15 years and their use in hostilities by armed forces or armed groups. However, it does not fully implement the obligations under article 4.2 and article 6.1 of OPAC. In particular, the Child Soldiers Accountability Act does not criminalize the compulsory recruitment into the armed forces, or the intentional use, of recruits above 15 years but below 18 years to take direct part in hostilities. Further, it does not criminalize recruitment and use of children older than 15 years by armed groups.

Child Soldiers International also regrets that this legislation is not in line with the United States’ own minimum age of voluntary recruitment (set at 17 years, as noted above) and, more broadly, it fails to reflect the raising of the voluntary recruitment age from 15, as in the Convention, to at least 16 years in OPAC.

¹⁰⁰ The Army Cadet Pamphlet 600-4, Basic Training Handbook, 30 June 2008, page 3 states that legislation was pending to establish the US army cadet corps as the official, community based cadet corps of the US Army, but it is unclear what the status of that legislation is.

¹⁰¹ The Army Cadet Pamphlet 600-4, Basic Training Handbook, 30 June 2008, page vi.

¹⁰² Child Soldiers Accountability Act, Public Law No. 110-340, enacted 3 October 2008.

¹⁰³ United States Code, Title 18, chapter 118, section 2442

As such the Child Soldiers Accountability Act does not fully implement the obligations of the US under OPAC, nor the specific recommendation made by the Committee to ensure that violations of OPAC, regarding recruitment and involvement in hostilities, are explicitly criminalized.¹⁰⁴

Child Soldiers International recommends that the USA is requested to:

- Ensure that violations of the provisions of OPAC regarding the recruitment and involvement of children in hostilities are explicitly criminalized in US legislation.

International assistance and cooperation

Article 7

Arms trade and military assistance

According to the small arms trade database provided by the Norwegian Initiative on Small Arms Transfers¹⁰⁵ the United States exported small arms and light weapons worth approximately USD 673,528,201 in 2010 (the most recent year for which data was available). The destination of these small arms exports included countries such as Afghanistan, Colombia, the Democratic Republic of Congo (DRC), India, Israel, Iraq, Thailand, the Philippines, and Pakistan. Grave violations of children's rights, including unlawful recruitment and use in hostilities, have reportedly been committed by parties active in all of these countries in 2010.¹⁰⁶ The total amount of small arms and light weapons exported to these nine countries in 2010 amounted to USD 211,758,095.¹⁰⁷

As part of an attempt to satisfy their obligations under article 7 of OPAC, and to reduce the impact that the transfer of arms has on the recruitment and use of children, the United States enacted the Child Soldiers Prevention Act (CSPA) 2008, which came into effect in June 2009. The CSPA prohibits specific types of military assistance and licenses¹⁰⁸ for the sale of military equipment to governments identified by the Secretary of State as having 'governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defence forces, that recruit and use child soldiers'.¹⁰⁹

The definition of a child soldier under the CSPA includes under-18s who take direct part in hostilities or are compulsorily recruited into governmental armed forces, and under-18s who are recruited or used by non-state armed forces. However, the definition only covers the voluntary recruitment into armed forces

¹⁰⁴ Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, UN Doc. CRC/C/OPAC/US/CO/1, 25 June 2008, paragraph 22.

¹⁰⁵ <http://www.prio.no/nisat> and http://balder.prio.no:8080/PublicQuery_SQL.aspx.

¹⁰⁶ See *inter alia*, Children and armed conflict: Report of the Secretary-General, UN Doc. A/65/820-S/2011/250, 23 August 2011.

¹⁰⁷ <http://www.prio.no/nisat>.

¹⁰⁸ The CSPA restricts the provision of International Military Education and Training, Foreign Military Financing, Excess Defense Articles, Foreign Military Sales (government to government sales), and Direct Commercial Sales (private company sales to state recipients).

¹⁰⁹ United States Code, Title 22, chapter 32, subchapter II section 2442.

of a “person under 15 years of age” which is younger than the minimum age for voluntary recruitment established by OPAC.¹¹⁰

Furthermore, the provisions of the act allow Presidential waivers of any prohibition of military assistance or equipment sales where such waivers are in the national interest of the United States.¹¹¹ In fact waivers have been granted to states identified as being in contravention of the CSPA’s criteria in the first two annual determinations since the law was adopted (2010 and 2011). The assessments for both years, based on the annual State Department Trafficking in Persons report, identified Chad, the DRC, Myanmar, Somalia, Sudan and Yemen for their unlawful recruitment and use of children in their armed forces. Of the six, Myanmar does not receive US military assistance and the US government contends that the assistance received by Somalia is not covered by the CSPA, because US assistance provided to the Transitional National Government of Somalia is considered peacekeeping assistance outside the scope of the CSPA. The four remaining countries that the prohibition of transfers of military assistance covered under the CSPA have been fully or partially waived for the two years the bill has been in effect.

While the reasons given vary slightly from 2010 to 2011,¹¹² the US Administration undermined the potential effect of the CSPA on governments which are unlawfully recruiting and using children (with the limited exception of the conditions on the military aid to the DRC).¹¹³

Recommendations

Child Soldiers International recommends that the USA is requested to:

- Revise the issuance of waiver’s to countries that recruit and use child soldiers under the Child Soldiers Prevention Act 2008, and prohibit military assistance to governments which recruit children or use them to take part in hostilities.

¹¹⁰ The definition contained in the CSPA under Sec.402 is as follows: ‘Consistent with the provisions of the Optional Protocol to the Convention of the Rights of the Child, the term “child soldier”(A) means: (i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces; (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces; (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state; and (B) includes any person described in clauses (ii), (iii), or (iv) of subparagraph (A) who is serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or sex slave.’

¹¹¹ Second State periodic report, paragraph 91.

¹¹² See Presidential Memorandum -- Child Soldiers Prevention Act of 2008, 25 October 2010, available at: <http://www.whitehouse.gov/the-press-office/2010/10/25/presidential-memorandum-child-soldiers-prevention-act> and Presidential Memorandum -- Child Soldiers Prevention Act of 2008, 4 October 2011, available at: <http://www.whitehouse.gov/the-press-office/2011/10/04/presidential-memorandum-child-soldiers-prevention-act-2008>.

¹¹³ See Human Rights Watch press release, US: Don’t finance child soldiers, available at <http://www.hrw.org/news/2011/10/04/us-don-t-finance-child-soldiers>