

Geneva, 11 June 2012

United States of America - Second Report of the Implementation
of the Optional Protocol to the Convention on the Rights of the Child
on the Involvement of Children in Armed Conflict.

TRIAL follow-up brief

In its alternative report on the USA submitted in February 2012, TRIAL pointed out at page 13 that "in early February 2012 the Child Soldiers Accountability Act was first relied on by a US federal immigration judge to issue an order to remove a former Liberian military leader and human rights violator who was found to have recruited and used child soldiers while fighting in the Liberian civil war in the 1990s".

At the date of submission of the said report, no further information was available on the case. Since then, a clearer picture of the facts and legal proceedings leading to the deportation of Mr. George S. Boley has emerged.

In the present brief, TRIAL wishes to bring to the attention of the Committee the factual and legal issues surrounding the first application of the 2008 Child Soldiers Accountability Act (CSAA) in order to raise a few controversial points that TRIAL recommends the Committee to put forward in its upcoming discussion with the US government.

Mr. Boley is a Liberian citizen who went for the first time to the United States in the 1980's to attend 'The College' university at Brockport, New York. Over the years, he travelled back and forth between Liberia and the USA, and he stayed in the United States of America as a lawful permanent resident.¹ In 2006, after applying for government medical benefits, he came under investigation by US federal authorities.²

After a six years-long investigation carried out by federal agents with the Buffalo office of US Immigration and Customs Enforcement (ICE), on 6 February 2012 an immigration judge ruled that Mr. Boley "abandoned his lawful permanent resident status" and could be deported to Liberia under

1 N. Brinkerhoff, D. Wallechinsky, "In a First, U.S. Judge Orders Deportation of Warlord for Using Child Soldiers", 8 February 2012, at http://www.allgov.com/US_and_the_World/ViewNews/In_a_First_US_Judge_Orders_Deportation_of_Warlord_for_Using_Child_Soldiers_120208.

2 T.J. Pignataro, "War crimes suspect deported to Liberia. Boley as rebel leader recruited child soldiers", 30 March 2012, at <http://www.buffalonews.com/city/police-courts/courts/article788348.ece>.

both the 2008 CSAA for having recruited and used child soldiers and the charge of committing extrajudicial killings.³

On 30 March 2012 Mr. Boley was deported to Monrovia, Liberia⁴, where he now lives free and not subject to any judicial proceedings.

The outcome of the deportation procedure was hailed by ICE representatives and US authorities as a "major step in addressing the serious human rights abuses"⁵ and to ensure that the US "will not be a safe haven for human rights violators and war criminals."⁶

The fact that the CSAA was for the first time applied in order to deny safe haven in the USA to a person responsible of recruitment and use of child soldiers is indeed commendable, but it does not go so far as to equal accountability for past crimes and justice for the victims.

After an extensive investigation, and despite the presence of substantial incriminating evidence, Mr. Boley was neither prosecuted in the USA nor extradited to a country willing to adjudicate over his alleged crimes but deported back to Liberia where he remains free from arrest and prosecution and will most certainly not face any proceedings for his alleged actions.

In order to seriously fight impunity, dealing with these cases solely through immigration procedures is far from ideal. Preventing a suspected international criminal from entering the country or deporting him is not sufficient in itself to punish past atrocities and to prevent future crimes.

In principle it is certainly correct to repatriate human rights violators to their country of origin (or other countries), provided that they are handed over to competent authorities that are willing and able to effectively and fairly prosecute them. There have been multiple case of individuals suspected of

3 T.J. Pignataro, "War crimes suspect deported to Liberia. Boley as rebel leader recruited child soldiers", 30 March 2012, at <http://www.buffalonews.com/city/police-courts/courts/article788348.ece>.

4 "Liberian human rights violator removed from US First-ever removal under the Child Soldiers Accountability Act", ICE News release, 30 March 2012, at <http://www.ice.gov/news/releases/1203/120330buffalo.htm>.

5 "Liberian human rights violator removed from US First-ever removal under the Child Soldiers Accountability Act", ICE News release, 30 March 2012, at <http://www.ice.gov/news/releases/1203/120330buffalo.htm>.

6 "Durbin Statement on first ever deportation of human rights violators based on his use of child soldiers", 7 February 2012, at <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=618cf9e8-4e70-4c27-b854-b8d2f883b6e6>.

serious international crimes - for instance torture, enforced disappearances, extrajudicial killings - and present on US territory who have been repatriated to this effect.⁷

What is more problematic is the deportation of a suspected international criminal to the country where he had committed his crimes in circumstances whereby he will enjoy total impunity.

These worries are not extraneous to US legislation and practice.

As far as US legislation is concerned, the 2009 Human Rights Enforcement Act sets out the legal principles to be taken into account:

*“In determining the appropriate legal action to take against individuals who are suspected of committing serious human rights offenses under Federal law, the section shall take into consideration the availability of criminal prosecution under the laws of the United States for such offenses or in a foreign jurisdiction that is prepared to undertake a prosecution for the conduct that forms the basis for such offenses”.*⁸

The Act specifically underlines that

*“serious human rights offences include violations of Federal criminal laws relating to genocide, torture, war crimes and use and **recruitment of child soldiers**” (emphasis added).*⁹

In cases where US courts lack jurisdiction to prosecute the suspected individual for substantial human rights violations, and prosecution against him is highly unlikely in other *fora*, practice shows

7 See, for instance, the case of Mr. Juan Miguel Mendez, "US extradites Argentine for 'dirty war' crimes trial", AFP, 17 December 2010, at <http://www.google.com/hostednews/afp/article/ALeqM5iNQPxnZXeF-AzEs9IW21szPpliNg?docId=CNG.56ebdf0712e722f2c904a46ee1aa03d3.211>; see also the case of Mr. Pedro Pimentel Rios, Caso Dos Erres continues with the extradition, arrest, and indictment of Pedro Pimentel Rios, 11 November 2011, at <http://www.asfcanada.ca/fr/blogue/billet/caso-dos-erres-continues-with-the-extradition-arrest-and-indictment-of-pedro-pimentel-rios/82>.

8 Human Rights Enforcement Act, adopted on 22 December 2009, Section 509, lett. B), d).

9 Human Rights Enforcement Act, adopted on 22 December 2009, Section 509, lett. B), e).

that US authorities have prosecuted and sentenced the individual for federal immigration law offences¹⁰, such as fraud¹¹, perjury¹² or similar offences¹³.

Therefore TRIAL respectfully submits to the Committee that it would be advisable, in the context of the upcoming consideration of the US report, to raise the issue of the role played by the different legal provisions embodied in US legislation in the decision to deport Mr. Boley and how these provisions will play out in the future application of the CSAA.

It is TRIAL conviction that, in circumstances where suspected perpetrators cannot be held accountable because of lack of jurisdiction, and the country of origin is not able or willing to open an investigation or prosecution on the matter, the deporting State shall at least follow-up with the country of destination on the situation of the individual and pass on the evidence on his alleged involvement in the crimes in order to foster accountability and to fill the gaps of impunity.

10 See, for instance, the case of Mr. Gilberto Jordan, "US jails Guatemalan ex-soldier for hiding massacre role", 16 September 2010, at <http://www.bbc.co.uk/news/world-latin-america-11338246>.

11 USC, Title 18, Section 1546, "Fraud and Misuse of Visa, Permits and Other Documents".

12 USC, Title 18, Section 1621, "Perjury Generally".

13 USC, Title 18, Section 1001, "Statements or Entries Generally".