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 Human Rights Watch and Human Rights First
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Summary

Since its initial report and review in 2008, the United States has taken important steps to prevent the deployment of 17-year-old soldiers to areas of hostilities and has improved its oversight of, and response to, incidents of recruiter irregularities and misconduct. It has enacted new legislation intended to prevent the recruitment and use of child soldiers, including the Child Soldiers Accountability Act of 2008 and the Child Soldiers Prevention Act of 2008. In 2012, the Child Soldiers Accountability Act was used for the first time when a former military commander from Liberia was ordered deported by an immigration judge. In 2011, under the Child Soldiers Prevention Act, the US acted to withhold US$2.7 million in foreign military financing from the government of the Democratic Republic of Congo until the Congolese armed forces took steps to end its recruitment and use of child soldiers. The United States continued to provide support internationally for rehabilitation and reintegration programs for former child soldiers.

Despite positive steps, concerns regarding US implementation of its obligations under the Optional Protocol include:

Recruiter misconduct: Although substantiated cases of recruitment misconduct make up a very small percentage of total recruitment cases, reports still indicate that recruiters may falsify

documents, fail to obtain parental consent for underage recruits, and engage in sexual misconduct with girls under age 18. Independent reports also suggest that actual rates of recruiter irregularities may be substantially underreported.

Prosecution of former child soldiers before military commissions: The US detained and prosecuted as adults two former child soldiers, Omar Khadr and Mohammed Jawad, before the military commissions at Guantanamo Bay. Both were apprehended in Afghanistan and transferred to Guantanamo as children, but were denied treatment due them as alleged child offenders. They were also criminally charged for conduct that had not previously been considered a violation of the laws of war. As of April 2012, Khadr remained in maximum security detention at Guantanamo awaiting a transfer to Canada under terms of a plea bargain agreement.

Detention of children in Afghanistan: As of late March 2012, approximately 250 children under the age of 18 were detained at the US main detention facility at Bagram, Afghanistan. Children aged 16 and 17 were co-mingled with adults and not afforded any special education or rehabilitation programs, nor any review procedures that took into account their juvenile status.

Treatment of former child soldiers seeking asylum or refugee status: There has been very limited progress since the initial report and review in 2008 in ensuring that the protections of asylum and refugee status are available in the US to former child soldiers who should qualify for refugee protection under the 1951 Refugee Convention and its 1967 Protocol. Significant delays in considering even those cases that are ultimately approved also delay access for former child soldiers to forms of assistance for recovery and reintegration that are dependent on the possession of lasting immigration status.

Continued provision of military assistance to governments using child soldiers: Despite the enactment of the Child Soldiers Prevention Act of 2008, which prohibits certain US military assistance to governments that recruit or use child soldiers, or support militias or paramilitaries that use child soldiers, the Obama administration has issued waivers to allow several governments to continue receiving such aid despite their continued use of child soldiers. As of 2012, the law had been in effect for over two years, but in practice, only one military assistance program in only one country ($2.7 million in foreign military financing for the Congo) had actually been withheld by the administration.

I. General Measures of Implementation

Reservations and understandings

The policies adopted by the four branches of the US armed services currently prohibit deployment of 17-year-old soldiers to operational commands or, in the case of the Air Force, to "hostile fire or imminent danger zones." In 2007, the Marine Corps issued a new policy prohibiting operational deployment for Marines under the age of 18. Previously, commanders were instructed to "weigh the mission requirements against the practicability of diverting 17-year-old Marines from combat."

The understanding lodged by the US at the time of ratification regarding the direct participation of soldiers under age 18 in hostilities implies a much more restrictive interpretation of article 1 than actual US practice.

Suggested recommendation:

- The US should review and remove its understandings to the protocol, in particular, understanding 2(C).

II. Prevention

Participation in armed conflict

In its state party report, the US asserts that a small number of 17-year-olds were deployed under the age of 18 during the reporting period, but not to combat zones and none took a direct part in hostilities.

Although nearly 60 17-year-old US soldiers were deployed to Iraq and Afghanistan in 2003 and 2004, we believe that the US armed services have taken actions to prevent a recurrence of such deployments. We have no information indicating that underage US soldiers have taken part in hostilities during the recent reporting period.

Voluntary recruitment

Recruiter irregularities

In its concluding observations in 2008, the Committee recommended that the content of recruitment campaigns be closely monitored and that any reported irregularity or misconduct by recruiters should be investigated and, when required, sanctioned.[1] In its state party report, the US states that there were just over 500 substantiated claims against recruiters in 2008 – a rate of less than 2/10ths of one percent of accessions. It states that since 2006, the Department of Defense has prepared annual Recruiter Irregularity Reports.

A 2010 report by the US Government Accountability Office reported that all of the armed services had developed guidance and procedures to address recruiter irregularities and made "substantial progress" since 2006 in increasing their oversight of recruiter practices. It noted that substantiated cases of recruitment irregularities had decreased between 2006 and 2008. However, the Department of Defense has not issued a recruiter irregularity report since 2010, and the GAO report indicated several areas of concern. For example, in the Army (where there were 253 substantiated cases of irregularities in 2008), the second most common irregularity was "quality control measures," including the failure to obtain parental signatures on an underage applicant's application form.[2] For the Air Force Reserve, such irregularities were the most common type reported. The report also cited individual instances of sexual and other misconduct involving underage recruits, including a Marines Corps recruiter engaged in a sexual relationship with a 16-year old applicant,[3] another Marine Corps recruiter impregnating a 17-year-old student in a high school where he was responsible for recruiting,[4] and a recruiter purchasing alcohol for an underage recruit.[5]

The GAO study concluded that despite progress, the military's system of tracking and sharing recruiter irregularities was inadequate and better oversight over recruiter irregularities was needed. In addition, although the number of substantiated cases of recruiter irregularities are a very small portion of total contracts, the Rand Corporation, an independent agency that

[1] Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding Observations: United States of America, CRC/C/OPAC/USA/CO/1, 25 June 2008.
[2] US Government Accountability Office (GAO), *Military Recruiting: Clarified Reporting Requirements and Increased Transparency Could Strengthen Oversight over Recruiter Irregularities*, Report to the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, January 2010.
[3] GAO, *Military Recruiting*, p. 50.
[4] Ibid, p. 18.
[5] Ibid, p. 50.

conducted a study for the Secretary of Defense, noted that it is "quite possible that only allegations that have a relatively high chance of being substantiated are reported" and that "tabulations substantially undercount actual irregularities."[6]

Suggested Recommendations:

- The US should continue to improve monitoring and oversight of recruiter irregularities and misconduct, with particular attention to the recruitment of children under age 18 and securing parental consent for underage recruits.

III. Prohibition and related matters

Legislation

As noted in the US state party report, in 2008 the United States enacted the Child Soldiers Accountability Act, which created both criminal and immigration sanctions for persons recruiting children under the age of 15 or using them as soldiers. This law applies to individuals regardless of whether the recruitment or use occurred in the United States.

Subsequent to the US submission of its report, the Act was used for the first time in February 2012, when a New York State immigration judge ordered the deportation of George Saigbe Boley, the former leader of the Liberian Peace Council (LPC), a Liberian armed group. Boley was found to have recruited and used child soldiers while fighting in the Liberian civil war in the 1990s.

IV. Protection, recovery and reintegration

Protection for asylum-seeking and refugee children

With respect to protection and assistance in recovering and reintegration for persons now within US jurisdiction who were previously recruited or used in situations of armed conflict in other countries, the US state party report notes the potential availability of asylum under US law, as well as the possibility of admission to the US through the refugee resettlement process, if the applicant can meet all the eligibility requirements of US law, and if the applicant is not

[6] Beth J. Asch and Paul Heaton, *An Analysis of the Incidence of Recruiter Irregularities*, Rand Corporation, 2010, p. 38, http://www.rand.org/pubs/technical_reports/2010/RAND_TR827.pdf (accessed April 2, 2012).

deemed to be subject to any bars to protection. These are significant caveats, consideration of which continues to give rise to major delays even in the cases of former child soldiers whose applications for protection are ultimately granted.

As noted in the US report, and previously in 2008 in written replies to the Committee, the US does not consider former child soldiers to be eligible for refugee protection as a class. US case law interpreting the requirement that asylum and refugee applicants show a "nexus" between their persecution and one of the protected grounds in the refugee definition continues to pose an obstacle for a number of former child soldiers, as does an unresolved legal debate over what constitutes a "particular social group" for purposes of the refugee definition.

It should be noted that Special Immigrant Juvenile Status (SIJS) may also provide a path to permanent immigration status in the US for former child soldiers present in the US who apply for and are granted such status while they are under the age of 21 and unmarried. Some former child soldiers have applied for this status as well as asylum. Unlike in the asylum process, the best interests of the child *are* directly relevant in adjudication of SIJS applications, as these must be based on a prior determination by a family court of competent jurisdiction that it is not in the best interests of the child to be returned to his or her native country.[7]

Both applicants for refugee protection and applicants for SIJS status, however, will be barred from such status if they are deemed to be inadmissible to the US on "terrorism"-related grounds. As the US notes in its report, the US considers nearly all non-state armed forces to be "terrorist organizations" for purposes of its immigration law, with the result that any child who provided "material support" to, received "military-type training" from, or fought with, such a group, is treated as ineligible for asylum and nearly all other forms of status or protection in the US, unless granted a discretionary exemption by the US Department of Homeland Security. The Department of Homeland Security, regrettably, does not consider a person's status as a child, or the fact that he or she was acting under duress, as defenses to the application of these inadmissibility grounds.

Discretionary exemptions have allowed the favorable resolution of some of these cases. As noted in the 2008 US written replies, discretionary exemptions have been available since 2007 for persons who provided "material support" to non-state armed groups under duress. In a welcome development, the Secretary of Homeland Security in January 2011 declared a parallel exercise of discretionary exemption authority for persons who had been involuntarily subjected

[7] 8 U.S.C. sec. 1101(J).

to "military-type training" by such groups.[8] No discretionary exemption has been implemented to date, however, for persons who were forced to engage in combat. Nor is the US currently considering any discretionary exemptions specific to former child soldiers or others who were children at the time of the acts or circumstances based on which they are deemed to be inadmissible. The result is that any former child soldier who actually fought with any non-state armed force is currently considered by the Department of Homeland Security to be barred from asylum, refugee resettlement, and most other forms of protection in the US, unless the group in question was one of the limited number of armed groups and movements that been the subject of discretionary exemptions specific to those groups.

With respect to the persecutor bar, which as noted in the US report has often been an obstacle to refugee protection for children who were recruited or used in hostilities by both state and non-state armed groups, the US Supreme Court in 2009 instructed the Board of Immigration Appeals (part of the US Department of Justice) to consider the legal relevance of duress to the application of that bar.[9] In the wake of this decision, the US Departments of Justice and Homeland Security have been engaged in a joint rule-making process on the subject. Three years after the Supreme Court's decision, however, a proposed rule has yet to be issued.

In practice, the process for consideration of discretionary exemptions and continued uncertainties as to the interpretation of legal provisions applicable to many of these claims mean that applications by former child soldiers that have ultimately been approved have generally been subject to significant delays, ranging from months to over two years, and other cases pending before the immigration courts and the federal courts of appeals can take a great deal longer.

Captured child soldiers

Detention of former child soldiers at Guantanamo and use of military commissions to try former child soldiers

In paragraph 30b of its concluding observations of 2008, the Committee recommended that children, even if suspected of having committed war crimes, should be detained in adequate conditions in accordance with their age and vulnerability. The Committee also recommended that the detention of children at the Guantanamo Bay detention facility be prevented.

[8] 76 Fed. Reg. 1441-14419 (Mar. 16, 2011).
[9] *Negusie v. Holder*, 555 U.S. 511 (2009).

Currently, there are no children under the age of 18 detained at Guantanamo. However, as of April 2012, Omar Khadr, a Canadian citizen first arrested in Afghanistan at age 15, was still detained at Guantanamo. Another detainee first arrested as a juvenile, Mohammed Jawad, was also detained at Guantanamo until August 2009. Contrary to the concession by the US that "as juveniles, such detainees may require special physical and psychological care,"[10] the US government has never extended juvenile protections under international law to juvenile detainees at Guantanamo, with the exception of three children aged 15 and younger detained in 2002-2003. Other juvenile detainees have been detained with adults, and denied all access to education, rehabilitation programs, and due process. Under the George W. Bush administration, juvenile detainees were also subject to torture, cruel, inhuman and degrading treatment, and outrages upon personal dignity, in violation of US obligations under the Convention against Torture, the International Covenant on Civil and Political Rights, and Common Article 3 of the Geneva Conventions.

The US initially reported to the Committee in May 2008 that 8 children had been detained at Guantanamo. Subsequently, it acknowledged that 12 children had been detained at the facility.[11] However, detainee assessment briefs and other classified documents released by Wikileaks in April 2011 revealed that at least 15 children have been detained at Guantanamo since 2002. Thirteen have been released and one allegedly committed suicide at Guantanamo at age 21.[12] As noted, Omar Khadr is the only one still remaining at Guantanamo.

In paragraph 30g of its concluding observations, the Committee recommends that criminal proceedings against children within the military justice system should be avoided. The US government pursued criminal charges against two alleged child offenders at Guantanamo before military commissions. The military commissions, first established in 2001, have been widely discredited, and have not met basic fair trial standards. They have permitted the admission in some circumstances of evidence obtained by coercion, and under uncertain rules that place defendants at a considerable disadvantage. Since their creation, the military commissions have concluded only seven cases, five by plea bargain.

[10] Second periodic report of the United States on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, October 31, 2011, CRC/C/OPAC/USA/2, para 211.
[11] Mike Melia, "U.S. Acknowledges it held 12 Juveniles at Guantanamo," Associated Press, November 16, 2008, http://humanrights.ucdavis.edu/in_the_news/us-acknowledges-it-held-12-juveniles-at-guantanamo (accessed April 5, 2012.
[12] Center for the Study of Human Rights in the Americas (University of California, Davis), "Guantanamo's Children: The Wikileaked Testimonies" (no date), http://humanrights.ucdavis.edu/reports/guantanamos-children-the-wikileaked-testimonies/guantanamos-children-the-wikileaked-testimonies.

Omar Khadr

Khadr, now 25, was just 15 when he was captured and seriously wounded in a firefight in Afghanistan in 2002. He has now spent over one-third of his life at Guantanamo. He pled guilty on October 25, 2010 to murder and attempted murder in violation of the laws of war, conspiracy to commit terrorism, providing material support for terrorism, and spying, and was sentenced to a maximum of eight years of imprisonment (to be served in addition to the eight years he had already been detained). He accepted the sentence with the understanding that after November 2011, he would be transferred to Canada to serve the remainder of his sentence. However, as of April 2012, the transfer had not yet taken place because of bureaucratic delays (especially within the Canadian government), and he remained incarcerated in a post-conviction wing of the maximum-security prison at Guantanamo with three convicted al Qaeda members. The wing provides no rehabilitation programs or opportunities.

The US accused Khadr of throwing a grenade that killed US Army Sergeant First Class Christopher Speer and wounded two others. In spite of Khadr's age at the time of his capture, the US refused to apply universally recognized standards of juvenile justice in his case, or even to acknowledge Khadr's status as a juvenile. Khadr was detained with adults, reportedly subjected to abusive interrogations, and not provided with any educational opportunities. In addition, he was detained for more than two years before he was provided with access to an attorney, and for more than three years before he was charged. He was initially charged in the first round of military commissions, which were ultimately struck down by the Supreme Court. Another two years passed before he was re-charged before the current military commissions. His military commission trial began in August 2010.

Despite Khadr's plea in October 2010, the rules governing military commissions required that a sentencing hearing take place, without the jury being informed of the plea deal. During Khadr's sentencing hearing, when Khadr should have had an opportunity to present mitigating facts, the judge barred the defense from presenting significant evidence of Khadr's ill-treatment while in custody. Additionally, because this case was a plea bargain, Khadr had to waive his right to appeal so that he had no opportunity to challenge the due process and fair trial problems related to his case. Unaware that their sentence would only be imposed if it were less than the 8 years agreed to under the deal, the military jury returned a sentence of 40 years.

The US prosecution of Khadr is especially troubling, not only because US authorities ignored his juvenile status and disregarded their obligations under international law to provide for his rehabilitation, but also because the conduct with which he was charged (targeting a legitimate military objective by an unprivileged belligerent) had not previously been considered a violation of the laws of war. Charging an adult for his alleged crime would be a drastic departure from common understanding of the laws of war, but the prosecution of a former child soldier for such wartime offenses is even more disturbing.

Mohammed Jawad

Mohammed Jawad, an Afghan, was taken into US custody when he was approximately 16 or 17 (he does not know his birthday and his relatives have given conflicting accounts) and detained at Guantanamo from 2003 until August 2009. He was charged with attempted murder in violation of the laws of war and intentionally causing serious bodily injury. The US government alleged that while in Afghanistan in 2002 he threw a grenade at a military vehicle, wounding two US soldiers and their interpreter. Both the prosecution and defense in his case assert that Jawad was likely drugged at the time of the alleged offense.

As in the case of Omar Khadr, the US ignored Jawad's juvenile status at the time of his alleged offense. Whereas several children detained at Guantanamo in 2002-2003 were given special housing and education programs, and were eventually released to rehabilitation programs in Afghanistan, Jawad was housed with adults, not provided any rehabilitation assistance, and was held for over six years prior to being charged, contrary to international standards on the treatment of children in detention.

Jawad told a panel of US military officers that he falsely confessed after being beaten and tortured by Afghan police when first taken into custody in 2002. In 2008, a military judge at Guantanamo ruled that none of the statements Jawad provided to Afghan authorities would be admitted into evidence at the military commissions because Jawad had been tortured. Jawad attempted suicide in his cell in December 2003 and evidence produced during 2008 hearings revealed that in May 2004 he was subject to a sleep deprivation program at Guantanamo known as the “frequent flyer” program, where he was forced to move to a new cell at least every 2 hours and 55 minutes. These transfers happened 112 times over a two-week period.

In September 2008, the lead prosecutor in the case against Jawad, Lt. Col. Darrel Vandeveld, resigned, stating that the US government failed to honor its obligations in treatment of child soldiers, and that he had "ethical qualms" about the government's failure to turn over

potentially exculpatory evidence. He testified at the appellate court, stating that he believed Jawad was innocent, posed no threat to the United States or its allies, and that he should be rehabilitated and sent home to Afghanistan. Despite Vandeveld's concerns, the US did not drop the charges against Jawad.

In July 2009, a federal judge ruled that Jawad's confessions were coerced and thus inadmissible. She gave the Department of Justice a deadline of two weeks to produce another justification for holding Jawad as an enemy combatant. On July 24 the Department of Justice acknowledged it lacked the evidence necessary to justify holding Jawad. The judge then ordered Jawad's release, and he was repatriated to Afghanistan in August 2009.

Detention of children in Afghanistan

The US states in its report that it has "gone to great lengths" to reduce the number of juveniles held in detention and that as of December 31, 2009, the US held fewer than five detainees under the age of 18 in Iraq and Afghanistan. However, when Human Rights Watch visited the main US-operated detention facility in Afghanistan, the Detention Facility in Parwan (DFIP), based at Bagram in March 2012, facility representatives told Human Rights Watch staff that they held 250 children under the age of 18. They stated that only those under the age of 16 were considered "children" and separated from the adult population. Detainees aged 16 or 17 were typically held with adult detainees in rooms with 34 people per room. When Human Rights Watch asked why these children were not segregated from the adult population, DFIP representatives said that they believed it was better for the children to be with adults and "have some good role models."[13] Detainees who exhibit good behavior are allowed to participate in rehabilitation programs, including gardening, masonry, and metalwork; however, no special programs are available for 16 and 17 year olds. DFIP staff members told Human Rights Watch that members of the US military were working on their own time to try to set up a school for the children, out of their own recognition that the education being provided was inadequate.

At the time of Human Rights Watch's visit, DFIP representatives stated that they held 11 15-year-olds, who were provided with limited education of approximately two hours of classes per day, three times per week. Although DFIP representatives said that no child under the age of 15 was detained at DFIP, a lawyer representing several Pakistani detainees informed Human Rights Watch that one of her clients was picked up and taken to DFIP at age 14.

[13] Human Rights Watch interview with DFIP staff, March 25, 2012, Bagram, Afghanistan.

UNICEF does not have access to children detained by the US at DFIP. Detained children receive a review through a Detainee Review Board after 60 days and every six months thereafter. However, as Human Rights First documented in its May 2011 report, *Detained and Denied in Afghanistan*, these review boards do not satisfy international due process requirements.[14] Detainees do not have access to counsel and do not see all the evidence used against them. The review process for children is the same for adults; they do not receive any special assistance or more frequent reviews.

Human Rights Watch has been informed that a number of third country nationals, including some picked up as children, have been cleared for release yet remain at DFIP awaiting agreement between the US and their country of origin regarding their release. This is an issue of particular concern, and there should be concerted efforts to quickly resolve these cases in a manner that leads to a safe release for these detainees.

Suggested questions for the United States:

- What is the current number of children under the age of 18 detained by US forces in Afghanistan?
- Of those detained, what is the average length of detention? What is the longest period of detention?
- What steps is the US taking to comply with the principle that children should only be detained as a last resort and for the shortest possible length of time?
- What are US plans to improve education and rehabilitation services for children in custody?

Suggested recommendations:

- Implement the Committee's recommendation that criminal proceedings of former child soldiers by military commissions or within the military justice system be avoided.
- Ensure that any former child soldiers taken into US custody be detained only for the shortest possible period of time, receive access to education and rehabilitation programs, and as quickly as possible be reunited with their families or transferred to appropriate agencies providing rehabilitation and reintegration services. Ensure that

[14] Human Rights First, *Detained and Denied in Afghanistan: How to Make US Detention Comply with the Law*, (New York and Washington DC: Human Rights First, May 2011); online at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Detained-Denied-in-Afghanistan.pdf (accessed April 20, 2012).

educational and rehabilitation programs are accessible to all children under the age of 18 and remove arbitrary distinctions in treatment between children under the age of 16 and children aged 16 and 17.
- Keep all children segregated from adults.
- Ensure that any former child soldiers accused of criminal offenses receive due process and are treated in accordance with international juvenile justice standards.
- As the US transitions its detention authority to Afghanistan, it should ensure that the Afghan government comply with all of the requirements regarding child soldiers specified above.

V. International assistance and cooperation

Arms export and military assistance

As noted in the US report, in December 2008 the US Congress adopted the Child Soldiers' Protection Act (CSPA) as part of the Trafficking Victims Protection Reauthorization Act. The CSPA was signed into law in 2008 by then-President George W. Bush. The CSPA restricts the provision of International Military Education and Training (IMET), Foreign Military Financing (FMF), Excess Defense Articles, Foreign Military Sales (government to government sales), and Direct Commercial Sales (private company sales to state recipients) to governments using child soldiers directly in their own armed forces or that support paramilitaries or militias that do so. The law does not provide for a complete ban on military assistance, as countries may receive some military assistance to "professionalize their militaries" as long as they demonstrate that they are also taking specific steps to stop using or supporting troops that use child soldiers. It also gives the president the authorization to waive the prohibitions of the law, if the president believes that military assistance to a particular country is in the national interests of the United States. In addition, the law does not impact the provision of military assistance under the Defense Department purview – certain counterterrorism programs, for example – or for peacekeeping operations that are accounted for under other State Department or Defense Department accounts. The law is applied annually and only impacts money for the upcoming fiscal year.

Every year, the State Department identifies the countries that are ineligible to receive US military assistance because of their use of child soldiers under the terms of the CSPA in its Trafficking in Persons (TIP) report. In the 2010 assessment, the first time that the law came into effect, the TIP report reported that Burma (Myanmar), Chad, the Democratic Republic of Congo (DRC), Somalia, Sudan, and Yemen were using child soldiers in violation of the standards set by

the law. Burma received no US military assistance due to other sanctions and US assistance provided to the Transitional Federal Government of Somalia was categorized as peacekeeping assistance, and thus fell outside the scope of the CSPA. The other four countries named in the 2010 TIP report were receiving military assistance prohibited under the CSPA.

On October 25, 2010, President Barack Obama issued waivers to allow Chad, DRC, Sudan, and Yemen to continue receiving US military assistance, despite their use of child soldiers. President Obama asserted national security interests—particularly the ability to fight terrorism and al Qaeda—as the primary justification for granting the waivers. Although saying that these countries were being "put on notice" to stop the practice of using child soldiers, the administration did not impose any specific benchmarks or criteria to be able to assess if actual progress was being made in the efforts to stop the use or recruitment of child soldiers.

The waivers appeared contrary to the intent of the law. The administration should clearly identify specific steps the named countries need to take during the year to prevent the use and recruitment of child soldiers as well as ensure their release, demobilization, and reintegration.

When the 2011 TIP report was released in June 2011, the US identified the same six countries as continuing to use and recruit child soldiers. On October 4, 2011, President Obama announced that he was again waiving all sanctions on Yemen, reinstating assistance to Chad, and prohibiting foreign military financing for the DRC. (The DRC was already prohibited from receiving FMF under separate criteria of the Trafficking Victims Protection Reauthorization Act). The US also outlined specific benchmarks that the DRC would need to meet to have their assistance reinstated under the CSPA. Because the TIP report was released 12 days before the formal recognition of South Sudan, South Sudan was not included in the president's determination concerning sanctions or waivers – only Sudan was. And, as occurred in 2010, Somalia received assistance only through accounts unaffected by the CSPA.

To date, the law has been in effect for over two years, but in practice, only one military assistance program in only one country ($2.7 million in foreign military financing for the DRC) has actually been withheld by the administration. The US Congress has made some attempts to close the loopholes in the CSPA, which has allowed continued US military assistance to countries named in the TIP report. Members of both the House of Representatives and the Senate have introduced bills that add peacekeeping operations assistance to the list of prohibited assistance in the CSPA. As of April 2012, no action has been taken on this proposed legislation.

Suggested recommendation:

- Fully implement the terms of the Child Soldiers Prevention Act by withholding relevant military assistance from governments that continue to recruit or use child soldiers.