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President Barack Obama  
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I write on behalf of The Association of the Bar of the City of New York (the Association) to urge you to reverse your decision to continue providing military assistance to governments that recruit and use child soldiers<sup>1</sup> in contravention of the purposes of the Child Soldiers Prevention Act of 2008 (the CSPA).<sup>2</sup> Alternatively, we urge you to condition continued military assistance to countries determined by the United States Department of State to use child soldiers on such countries that not only signing action plans, but also implementing them with measurable steps. Such steps must be verifiable by the Special Representative of the United Nations Secretary General for Children and Armed Conflict to the satisfaction of the United States, to eradicate the recruitment and use of child soldiers.

The Association is an independent non-governmental organization of more than 24,000 members in over 50 countries. It has a long history of dedication to human rights. The Association's Committee on African Affairs monitors and responds to legal and policy developments in Africa, its Children and the Law Committee addresses legal issues that impact upon the quality of life for children and families, and its Military Affairs and Justice Committee addresses legal and policy issues affecting the United States armed services. Each of these committees has expressed concern about the provision of military assistance to countries that use child soldiers.

The recruitment and use of child soldiers is universally condemned. United States and international law and regional instruments reject the use children in armed conflict.<sup>3</sup> The CSPA penalizes the recruitment and use of child soldiers in governmental and government-supported armed forces. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (the Optional Protocol),<sup>4</sup> which the United States ratified,<sup>5</sup> prohibits the compulsory recruitment and direct use in hostilities of persons under the age of 18.

#### **CSPA Penalties and Waivers**

To meet the United States obligations under the Optional Protocol, Congress passed the CSPA, which was ratified and signed into law on December 23, 2008. Among the stated purposes of the CSPA are to

condemn the conscription, forced recruitment and use of children (as defined therein)<sup>6</sup> in armed forces, and to establish and uphold international standards designed to end human right abuses.

The CSPA prohibits the United States from providing certain categories of military assistance to governments identified as having or supporting armed forces - including militias or civil defense forces - that recruit and use child soldiers. The CSPA forbids the United States from providing such governments international military education and training, foreign military financing, excess defense articles, and licenses for direct commercial sales of military equipment, although the statute allows for “national interest” waivers.<sup>7</sup>

Governments subject to CSPA penalties are identified in the annual report issued by the Department of State pursuant to the Trafficking Victims Protection Act (TVPA)<sup>8</sup> which ranks each country in the world according to its government's efforts to combat human trafficking (the TIP Report).<sup>9</sup> In the 2014 TIP Report, the US Department of State listed nine states, namely the Central African Republic (CAR), the Democratic Republic of Congo (DRC), Myanmar (Burma), Rwanda, Somalia, South Sudan, Sudan, Syria and Yemen as not meeting the standards set forth in the CSPA. The only countries for which the restrictions imposed by the CSPA will fully apply are those whose governments do not have military relations with the US, namely Myanmar, Syria or Sudan.<sup>10</sup>

The Administration waived the application of penalties to Rwanda, Somalia and Yemen, determining that those countries will continue to receive military assistance from the United States. The application of the prohibition in section 404(a) of the CSPA was waived in part with respect to the CAR, the DRC, South Sudan and Yemen.<sup>11</sup>

It has been suggested that the Administration can induce countries to stop using child soldiers by withholding military aid, and not granting waivers.<sup>12</sup> Chad is an example of the use of the CSPA that persuaded the country to discontinue the use of child soldiers. When the administration used the law, Chad took steps to criminalize child recruitment, and this year Chad was removed from the list of violators.<sup>13</sup>

Following is a list of countries to which waivers were granted, the justification therefore, and, where relevant, arguments against the use of the waivers:

#### **Full waivers:**

##### **Somalia**

The administration granted Somalia a full waiver of the CSPA based because the Federal Government of Somalia expressed full commitment to eliminating the use of child soldiers among the ranks of the Somali National Security Forces (SNSF) SNSF and made incremental progress on the Child Soldier National Action Plan, including signing in February 2014 the standard operating procedures for children separated from armed groups. The SNSF also promulgated a Code of Conduct that, among other provisions, prohibited recruitment of anyone under 18-years-old into the military services.<sup>14</sup> Somalia has made “some significant progress on child soldiers, although not enough to get them off the list...., and...they’re in a struggle with terrorist groups, and we want to support that effort. So that was the rationale for the waiver.”<sup>15</sup>

Nonetheless, according to UN reports, the SNSF recruited or used children during the period of April to December 2013.<sup>16</sup> The U.N. documented 209 cases of child recruitment in 2013, involving the Somali National Army and allied militia. On the other hand, during the same period Somalia enrolled a much greater number of children (1,100) in reintegration programs, apparently resulting in a substantial net decrease in SNSF’s child soldiers.

The administration, in granting Somalia a full waiver, is allowing it to receive \$115 million. It has been suggested that “[a] smarter choice would be to withhold some of the assistance until Somalia puts systematic screening procedures in place and gives the UN unlimited access...to military installations to inspect for child soldiers.”<sup>17</sup> We acknowledge that the challenging security situation in Somalia argues against substantially cutting military aid needed to defeat insurgents who pose more serious risks to children than the SNSF. However, the large aid budget of \$115 million should allow a partial waiver with a modest hold-back conditioned on child soldier compliance on a specific schedule in order to realize both human rights and counter-insurgency benefits. Even a small hold-back would make the point.

## **Yemen**

The rationale for granting a full waiver to Yemen was that it is “an important partner in counterterrorism efforts...a country that has taken significant steps to reduce the use of child soldiers ... [although] they haven’t been fully effective yet, but their tendency is in the right direction.”<sup>18</sup> Yemen did sign an action plan with the UN and “if you completely stopped ... assistance at this time, you’d jeopardize the country that is trying to make some reforms,” said Deputy Assistant Secretary for Democracy, Human Rights and Labor, Ambassador Michael Kozak.<sup>19</sup>

However, Yemen is a long way from eliminating the problem. At least part of the money given by the U.S. could be withheld until Yemen takes stronger action.<sup>20</sup> In accordance with the full waiver, Yemen will receive \$25 million in foreign military financing, \$1.2 million in international military education and training (IMET) to continue improving the professionalism of the Yemeni military, and Yemen will be eligible for a to be determined amount of Department of Defense funds to support counterterrorism capacity building.<sup>21</sup> Although the UN believes that at least “10 children were recruited ... [and] continued to be used in support roles by the Yemeni Armed Forces in 2013”<sup>22</sup> – a relatively small number compared with the thousands involved in some other countries – “no progress has been achieved on ... access for monitoring and verification” of the use of child soldiers in Yemen.<sup>23</sup> Thus the actual number of child soldiers recruited by the Yemeni Armed Forces is uncertain and may be much greater than the small number reported.

Meanwhile the rise of the Houthi insurgency, including seizure of the capital, Sanaa, this fall may outdate all prior arrangements causing a complete reappraisal by the U.S. of its Yemeni aid program. Any reset of the program should take into consideration the need to reduce further the use of child soldiers and to assure reliable monitoring and verification on which future decisions can be made.

## **Rwanda**

Rwanda was on the list of designated countries under the CSPA because of its financial and logistical support of child soldiers for the Congolese-based rebel group, March 23 (M23), a classification that deprived Rwanda of any International Military Education and Training (IMET). But Congo’s M23 surrendered and disbanded in November 2013.<sup>24</sup> Therefore, the activity that gave rise to the suspension of *all* support for Rwanda no longer exists, and, therefore, a full waiver of the prohibition of the CSPA against *any military* support is warranted.

Under the full waiver, the U.S. would provide \$350,000 IMET for the professionalization of the military and training on civilian control of the military, human rights, and military justice. (The CSPA procedure is to place sanctions on the use of certain authorizations under the Foreign Assistance Act, such as IMET. When a country is designated, it is cut off from *any* kind of IMET. In order to provide some kind of IMET, the U.S. has to provide a waiver, which can be limited or expanded, depending on the steps a country takes to stop the use of child soldiers.)<sup>25</sup> With a waiver, Rwanda also would be eligible for a yet-

to-be determined amount of funding for Rwanda's participation in peacekeeping missions in the CAR, Somalia, South Sudan and particularly Darfur.

## **Partial Waivers**

### **The Central African Republic (the CAR)**

The administration justified the partial waiver for the CAR solely for the purpose of helping the transitional government put together the beginnings of a professional military force; however, the partial waiver is contingent upon the CAR making progress in establishing professional armed forces.<sup>26</sup> The CAR was placed on the CSPA list of designated, sanctioned countries in 2013 and 2014 for unlawful recruitment and use of child soldiers by the armed group Seleka, led by Michel Djotodia, who initially declared himself interim President, and who is now no longer in power.<sup>27</sup> Child soldiers were also used by the opposition group, Anti-Balaka.<sup>28</sup> UNICEF estimated that as many as 6,000 children fought in the CAR.<sup>29</sup>

However, after pressure from the international community forced the Seleka leader to resign, the Transitional Authority appointed Catherine Samba-Panza to serve as interim President until national elections are held in February, 2015.<sup>30</sup> President Obama said that, "The United States ... supports the Transitional Government ... [and] will remain a close partner of the CAR."<sup>31</sup> This support may have been the motivation for the partial waiver.

The U.N. Security Council authorized a UN peacekeeping mission in the CAR, the Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), which has a mandate to support government efforts to develop and implement a strategy for disarmament, demobilization, and reintegration (DDR) with specific attention to children.<sup>32</sup> In accordance with the partial waiver, the CAR will receive \$100,000 IMET, but no *meaningful* military support, and solely for professionalization of CAR's military, and that aid is subject to a policy determination by the U.S. as to whether they are adhering to the MINUSCA mandate.<sup>33</sup>

However, partial waivers can send the wrong message. As Jo Becker, the advocacy director of the Children's Rights Division at Human Rights Watch, stated, the waiver should have been "accompanied with strong public statements that the use of child soldiers is unacceptable and that *meaningful* military support will remain cut off until concrete steps are taken – regarding the unlawful use of children in armed conflict."<sup>34</sup>

### **Democratic Republic of the Congo**

The Administration determined to grant the Democratic Republic of the Congo a partial waiver<sup>35</sup> pursuant to Section 404(c) of the CSPA, which authorizes the President to waive the application of the CSPA penalties to governments otherwise prohibited from receiving military assistance upon a determination that continued provision of such assistance is in the national interest of the United States. According to the Presidential Determination, the waiver will allow for the provision of IMET, nonlethal Excess Defense Articles, the issuance of licenses for direct commercial sales of U.S. nonlethal defense articles, Peacekeeping Operations (PKO) assistance, and support provided by the National Defense Authorization Act to the extent such support would otherwise be restricted by the CSPA.

The 5<sup>th</sup> Report of the Secretary-General on the situation of children affected by armed conflict in the DRC presented by the Special Representative of the UN Secretary-General, Leila Zerrougi, concluded that "close to 4200 cases of recruitment and use of boys and girls by armed groups and the Government armed forces were documented by the United Nations."<sup>36</sup>

But when the U.S. withheld millions of dollars in military financing and the training of a Congolese military battalion because of its use of child soldiers, the Congolese government took only five days to sign an action plan with the U.N. to end the DRC's use of children soldiers.<sup>37</sup> Ms. Zerrougi noted the progress in the DRC. The Action Plan signed in 2012 by the Government of the DRC to end recruitment and use of children by the national army has led to the release of hundreds of children. Command orders were issued to protect children, and measures were put in place to end and prevent the recruitment of children, but those measures need to be strengthened throughout the country. Last March the DRC endorsed the campaign Children, Not Soldiers and committed to making the army child-free by 2016.<sup>38</sup>

The success of the use of the waiver of the CSPA led the DRC to act. And because of the steps taken by the government and the progress it has made in implementing the Action Plan, the partial waiver of the restrictions of the CSPA is warranted.

## **South Sudan**

South Sudan was granted a partial waiver of the prohibitions in section 404 (a) of the CSPA to allow for the provision of peacekeeping assistance in an amount to be determined. Although the administration spokesman admitted that, "South Sudan continues to have terrible problems on child soldiers,"<sup>39</sup> he said that the limited waiver was only for two purposes. The first was to provide the South Sudanese military with transport and other logistics to support the monitoring and verification mission under the ceasefire agreement that was reached that called for an end to the use of child soldiers, and the second, to support counter-Lord's Resistance Army (LRA) activities.

But, past ceasefire agreements between South Sudan's government and rebels have been violated soon after they were signed,<sup>40</sup> although the recent ceasefire agreement did set up a monitoring and verification team.<sup>41</sup> However, the UN Children's Fund (UNICEF) reported that more than 9,000 children were being used as soldiers in South Sudan.<sup>42</sup> And Ms. Zerrougi said that the use of child soldiers---teenage boys dressed in military uniforms and carrying assault rifles---is commonplace in South Sudan.<sup>43</sup> The government of South Sudan signed an action plan with the UN in 2012 to end the use of child soldiers and had cut down on the use of children in combat, but any gains were eroded when massive violence broke out in December 2013.

The fighting was initiated when troops loyal to the feuding leaders, President Salva Kir and the then-Vice-President Riek Machar began a protracted civil war after President Kir deposed the former Vice-President. What was initially a political dispute spread into ethnic fault lines with factions forming between the President's Dinka tribe and the of former Vice-President Machar's Nuer tribe.<sup>44</sup>

During the renewed fighting in mid-August Human Rights Watch (HRW) reported that South Sudan's army used child soldiers in violation of international law in Bentiu, capital of Unity State, and in the neighboring town of Rubkona.<sup>45</sup> Witnesses told HRW that they found dozens of children in military uniform, armed with assault rifles, deployed with government soldiers. HRW Africa director, Daniel Bekele, said, "South Sudan's army has returned to a terrible practice, once again throwing children into the battlefields."<sup>46</sup>

The two goals of the partial waiver for South Sudan are (i.e. to support ceasefire monitors and fight against the LRA) laudable and should be supported through a partial waiver conditioned on the measurable reduction in the use of child soldiers on a specified timetable.

## **Conclusion**

The use and abduction of child soldiers is an international crime and an appalling human rights violation. The CSPA was passed in order to stop this illegal practice, thus enabling the United States to meet its

obligations under the Optional Protocol. The Protocol requires States to take “all feasible measures” to ensure that members of their armed forces under the age of eighteen do not take a “direct part in hostilities.”<sup>47</sup> By granting unconditioned waivers, even partial ones, the administration undermines the goals of the CSPA. Going forward, the administration should grant waivers only if they are conditioned on their removal as to specified dollar amounts if tangible steps are not taken. Such steps include, not only signing action plans, but also implementing them with measurable actions on a specified timetable, verifiable by the Special Representative of the United Nations Secretary-General for Children and Armed Conflict to the satisfaction of the United States. Such conditioned waivers would provide incentives to advance the goals of the CSPA.

The elimination of the use of child soldiers by regimes supported by the U.S. is advantageous to counter-insurgency campaigns. The resulting calculus is not a zero sum weighting of human rights interest against security interests. The challenge is to advance human rights and security interests at the same time so that each reinforces the other.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Debra L. Raskin". The signature is fluid and cursive, with the first name "Debra" being the most prominent part.

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<sup>1</sup>Presidential Determination No. 2014-18 (September 30, 2014).

<sup>2</sup>Pub. L. No. 110-457, § 401 *et seq.*, 122 Stat. 5087-91 (2008) (hereinafter "CSPA").

<sup>3</sup>Library of Congress, Law Library of Congress, *Children's Rights: International Laws*, available at <http://Loc.gov/law/help/chid-rights/international-law.php>.

<sup>4</sup>A/Res/54/263, Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, available at <http://www.un-documents.net/a54r263.htm>.

<sup>5</sup>United Nations Treaty Collection, Chapter IV, Human Rights, 11b., United States ratified 23 December 2002, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11b&chapter=4&lang](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11b&chapter=4&lang).

<sup>6</sup>Under CSPA, and consistent with the Optional Protocol, the term, "child soldier," refers to: (a) any person under age 18 who takes a direct part in hostilities as a member of governmental armed forces; (b) any person under age 18 who has been compulsorily recruited into governmental armed forces; (c) any person under age 15 voluntarily recruited into governmental armed forces; (d) any person under age 18 recruited or used in hostilities by armed forces distinct from the armed forces of a state, including (e) any such person serving in a support role such as a cook, porter, messenger, medic, guard, or sex slave. CSPA, *supra* note 2, § 402(2).

<sup>7</sup> *Id.* § 404(a); 404 (c) (1)

<sup>8</sup>22 U.S.C. § 7102

<sup>9</sup>U.S.Dep't of State, *2014 Trafficking in Persons Report* (2014), available at [http://www.state.gov/\\_j/tip/rls/tiprpt/2014/](http://www.state.gov/_j/tip/rls/tiprpt/2014/) ("TIP Report"). The TIP Report defines child soldiering as a manifestation of human trafficking.

<sup>10</sup>Child Soldiers International, *US restricts military assistance to some states that recruit and use children*, Oct. 1, 2014, available at [http://www.child-soldiers.org/news\\_reader.php?id+783](http://www.child-soldiers.org/news_reader.php?id+783).

<sup>11</sup>*Supra* note 1.

<sup>12</sup>Jo Becker, *Obama can do more to get kids off the battlefield*, The Hill, October 13, 2014, available at <http://thehill.com/blogs/congress-blog/foreign-policy/219598-obama-can-do-more-to-get-kids-off-the-battlefield>.

<sup>13</sup>*Id.*

<sup>14</sup>United Nations, A/68/878-S/2014/339, Children and armed conflict, Report of the Secretary-General, 15 May 2014, p.26, available at <http://www.un.org/en/sc/documents/sgreports/2014.shtml>.



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<sup>15</sup>U.S. Department of State, Secretary of State's Child Soldier Prevention Act, Deputy Assistant Secretary of State For Democracy, Human Rights and Labor Ambassador Michael Kozak, October 2, 2014, available at <http://fpc.state.gov/232468.htm>.

<sup>16</sup>Office of the Special Representative of the Secretary General for Children and Armed Conflict, *Gains made protecting children in situations of armed conflict overshadowed by new global crises*, Special Representative tells Security Council, September 8, 2014, available at <https://childrenandarmedconflict.un.org/>.

<sup>17</sup>*Supra* note 12.

<sup>18</sup>*Supra* note 15, p.2.

<sup>19</sup>*Id.*

<sup>20</sup>*Supra* note 12.

<sup>21</sup>U.S. Department of State, Bureau of Democracy, Human Rights, and Labor (DRL) Office of Security and Human Rights, FY 2015 Planned Assistance to Waived CSPA Countries, September 30, 2014.

<sup>22</sup>*Supra* note 14, p. 33.

<sup>23</sup>*Id.* p. 44.

<sup>24</sup>Los Angeles Times, *Congo's defeated M23 rebels vow to disband and disarm*, November 5, 2013, available at <http://articles.latimes.com/2013/nov/05/world/la-fg-wn-congo-m23-rebels-vow-to-disband-20131105>.

<sup>25</sup>*Supra* note 15.

<sup>26</sup>*Supra* note 15, p.2.

<sup>27</sup>U.S. International Human Rights, CSPA, November 26, 2014, available at <http://www.humanrights.gov//the-facts-on-child-soldiers-and-the-cspa.html>.

<sup>28</sup>Better World Campaign, *Crisis in the Central African Republic*, April 2014, available at <http://www.betterworldcampaign.org/assets/bwc-analysis-central-african-republic-and-us-response.pdf>.

<sup>29</sup>*Id.*, p.2.

<sup>30</sup>*Supra* note 21.

<sup>31</sup>National Security Council, *Standing with the People and Transitional Government of the CAR*, September 19, 2014, available at <http://www.whitehouse.gov//blog/2014/09/19/standing-people-and-transitional-government-car>.

<sup>32</sup>*Supra* note 29, p. 5, and MINUSCA mandate g. available at <http://www.un.org/en/peacekeeping/missions/minusca/mandate.shtml>.

<sup>33</sup>*Supra* note 10.

<sup>34</sup>*Supra* note 12.

<sup>35</sup>*Supra* note 1.

<sup>36</sup><sup>5th</sup> Report on Children and Armed Conflict in the DR Congo Highlights Progress and Concerns for the Protection of Children, July 21, 2014, available at <https://childrenandarmedconflict.un.org/press-release/5th-report-on-caa-rdc/>.

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<sup>37</sup> *Supra* note 12.

<sup>38</sup> *Supra* note 29.

<sup>39</sup> *Supra* note 15.

<sup>40</sup> Voice of America News, *US Outraged as South Sudan Peace Deal Deadline Passes*, August 11, 2014, available at <http://www.voanews.com/content/us-says-failed-south-sudan-deal-an-outrage/2410402.html>

<sup>41</sup> Martha van der Wolf, Voice of America, *South Sudan Ceasefire Agreement Signed*, January 23, 2014, available at <http://www.voanews.com/content/south-sudan-ceasefire-agreement-signed/1836584.html>.

<sup>42</sup> Kenneth Odiwuor, IRIN News, August 8, 2014, available at <http://www.neur.open.eu/article/south-sudan%E2%80%99s-child-soldiers-step-backwards>.

<sup>43</sup> Jason Straziuso, *Children used as child soldiers in South Sudan*, AP, August 21, 2014, available at <http://bigstory.ap.org/article/children-used-child-soldiers-south-sudan>.

<sup>44</sup> Pascal Fletcher, Al Arabiya News, *Who is South Sudan's Riek Machar?*, November 23, 2013, available at <http://english.alarabyia.net/en/perspective/profiles/2012/12/23/Profile-Who-is-Spouth-Sudan-s-Riek-Machar-html>

<sup>45</sup> Daniel Bekele, Human Rights Watch, *South Sudan: Child Soldiers Thrust into Battle*, August 20, 2014, available at <http://www.hrw.org/news/2014/08/20/south-sudan-child-soldiers-thrust-battle>.

<sup>46</sup> *Id.*

<sup>47</sup> *Supra* note 4, Article I.