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CITY BAR

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President Barack Obama
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Obama:

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 provide unconditioned military assistance to governments that recruit and use child soldiers¹ in contravention of the purpose of the Child Soldiers Prevention Act of 2008 (the CSPA).² We urge you to condition military assistance in whole or in part to countries determined by the United States Department of State to use child soldiers on such countries not only signing action plans, but also on implementing them. Such implementation 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.

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 affect 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.³ 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),⁴ which the United States ratified,⁵ prohibits the compulsory recruitment and direct use in hostilities of persons under the age of 18.

CSPA Penalties and Waivers

Congress passed the CSPA, which was ratified and signed into law on December 23, 2008. The stated purposes of the CSPA are to condemn the conscription, forced recruitment and use of children (as defined therein)⁶ in armed forces, and to 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.⁷

Governments that are subject to CSPA penalties are identified in the annual report issued by the Department of State pursuant to the Trafficking Victims Protection Act (TVPA),⁸ which ranks each country in the world according to its government's efforts to combat human trafficking (the TIP Report). In the 2015 TIP Report,⁹ the U.S. Department of State listed eight states, namely the Democratic Republic of Congo (DRC), Myanmar (Burma), Somalia, South Sudan, Sudan, Syria, Yemen, and Nigeria (a new country for 2015) as not meeting the standards set forth in the CSPA. Two countries have been removed from the list from last year, namely the Central African Republic (CAR), and Rwanda. The only countries for which the restrictions imposed by the CSPA will fully apply are Myanmar, Syria and Sudan. The President has delegated to the Secretary of State the decision on whether a waiver should be issued in order to aid Yemen.¹⁰

The Administration waived the application of penalties to the Democratic Republic of Congo, Nigeria, and Somalia, 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 South Sudan.¹¹

It is suggested that the Administration can induce countries to stop using child soldiers by withholding military aid, and not granting unconditioned waivers.¹² 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 Chad was removed from the list of violators.¹³

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

Full waivers:

Somalia

The administration granted Somalia a full waiver of the CSPA again this year. Last year the Administration stated that the rationale for Somalia to receive a full waiver was that the country had made significant improvements in reducing the use of child soldiers, but it also is

struggling with terrorist groups and the Administration wanted to help Somalia in the efforts to combat terrorist groups.¹⁴

However, the numbers do not show any improvement in the reduction of the use of child soldiers in Somalia. In 2014, the recruitment and use of 197 children by the national army and allied militia and other armed elements (76 children) was documented.¹⁵ This is of great concern particularly since in 2013 the U.N. documented 209 cases of child recruitment.¹⁶ And this statistic was gathered during a time of reduced capacity and access to verify incidents; thus there can be many more child soldiers that are unknown. Of particular concern was the ongoing recruitment and use of children by clan militias and the militias' targeting of mosques and schools. We are not aware to what extent these militias are controlled by the Somali government.

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; however, a partial waiver with a modest hold-back conditioned on child soldier compliance on a specific schedule would show the seriousness of this issue and the need to comply with the CSPA.

Democratic Republic of the Congo

Last year the Administration granted the Democratic Republic of the Congo ("DRC") a partial waiver pursuant to Section 404(c) of the CSPA, and this year it has been granted a full waiver. The reasoning for the partial waiver last year was that the DRC was making progress to eliminate the use of child soldiers and the partial waiver allowed the United States to support the professionalization efforts within the military and assist in efforts against the Lord's Resistance Army.¹⁷

The DRC is an example showing how utilizing the CSPA has created real change. In 2012, the Administration announced it would withhold military financing and training until the DRC signed an action plan with the United Nations to end its use of child soldiers. Although the DRC had been dragging its feet for seven years on signing the plan, it agreed to its terms only five days after the U.S. announcement. The administration maintained partial sanctions in 2013 and 2014 to pressure Congo to implement the plan.¹⁸

Despite security challenges and instability caused by non-government militias, the Government continues to demonstrate its commitment to the implementation of the action plan signed with the United Nations in 2012 to end the recruitment and use of children. The plan includes funding and chairing joint coordination mechanisms and ensuring their decentralization to conflict-affected provinces. In July, President Joseph Kabila appointed Jeannine Mabunda Liyoko as his Personal Adviser on sexual violence and child recruitment. With United Nations support, the government also conducted awareness-raising activities. In late 2014, the Security Council Working Group on Children and Armed Conflict visited the DRC where they welcomed the progress made by the Government in implementing the action plan and encouraged the DRC to sustain its efforts, particularly aspects related to the fight against impunity and sexual violence.¹⁹

However, the use of child soldiers is still a problem in the DRC. Human Rights Watch released a report documenting the recruitment of child soldiers, particularly the recruitment through the use of schools.²⁰ They documented attacks on schools or the use of schools for military purposes by the Congolese army and various Congolese Hutu militia groups known as the Nyatura, Mai Mai Sheka and other Mai Mai groups.²¹

During the 2014 calendar year, the United Nations documented 241 new cases of recruitment (223 boys, 18 girls) in the DRC (although statistics from non-UN agencies involved in screening are not yet confirmed and may increase this number).²² Although the statistic of 241 child soldiers is still problematic, it is a huge improvement from the prior year, where 4,200 children were used in combat.²³

The use of the waiver of the CSPA led the DRC to act, which has created marked improvements in limiting the use of child soldiers. Because of the steps taken by the government and the progress it has made in implementing the Action Plan, the waiver of the restrictions of the CSPA is warranted, and we hope continued efforts will lead to zero child soldiers in future reports.

Nigeria

Nigeria is a new country on the Trafficking in Persons Report for 2015; and in its first year the Administration has issued a full waiver. The recruitment and use of children by civilian self-defense militia, often collectively referred to as the Civilian Joint Task Force (CJTF), in many cases by force, to man checkpoints, gather intelligence, and participate in armed patrols is prevalent.²⁴ The Nigerian state of Borno, through its state government, has provided financial and in-kind resources to support some of the Borno-based members of the CJTF.²⁵

In January 2015, the Special Representative of the Secretary-General for Children and Armed Conflict visited Nigeria to assess the situation of children affected by the conflict. Civilian and military authorities expressed readiness to cooperate with the monitoring and reporting mechanism through the establishment of a federal and state level committee on children in the three affected states. In addition, the Minister of Justice issued an advisory reiterating the prohibition of recruitment and use of children in the military;²⁶ however, the advisory failed to condemn the CJTF, while stressing the responsibility of Boko Haram for recruiting and using child soldiers.²⁷ Not acknowledging that government sanctioned vigilante groups are partly responsible for the use of child soldiers is of great concern and therefore we urge the Administration to reconsider and partially condition aid on child soldier compliance on a specific schedule.

Partial Waivers

South Sudan

Last year the Administration, determined to grant South Sudan a partial waiver of the prohibitions in section 404 (a) of the CSPA, although the administration spokesman admitted

that, “South Sudan continues to have terrible problems on child soldiers.” He said that the limited waiver was only for two purposes: first, 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 activities opposing the Lord’s Resistance Army (LRA).²⁸ Again this year, the Administration granted South Sudan a partial waiver “to allow for the provision of International Military Education and Training, and Peacekeeping Operations assistance, and support provided pursuant to section 1208 of the National Defense Authorization Act of Fiscal Year 2014.”²⁹

However, the problem is that child recruitment spiked sharply last year, with estimates that 12,000 children were fighting with both government and non-state armed groups.³⁰ Other reports found a total of 514 verified incidents affecting 16,307 children. The majority of the verified violations were associated with the Sudan People’s Liberation Army (SPLA) and the Sudan People’s Liberation Army in Opposition (SPLA-IO), and also with the South Sudan National Police Service, the South Sudan Wildlife Service, the South Sudan Liberation Army (SSLA), the South Sudan Democratic Movement/Army-Cobra Faction (SSDM/A-CF), the White Army and armed groups allied to Gabriel Tanginye.³¹ Children were at risk of recruitment in refugee and internally displaced persons camps, in the protection of civilian sites run by the United Nations peacekeeping missions, and in their own communities. Given the challenging security situation and safety concerns for children, it has not always been possible to verify information.³²

The two goals of the partial waiver for South Sudan are worthy; however, the aid should be conditioned on the measurable reduction in the use of child soldiers under the control of the government on a specified timetable. The partial waiver in place has not led to any improvement in the reduction of the use of child soldiers, yet South Sudan continues to receive millions of dollars in U.S. military assistance.

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, enabling the U.S. 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.”³³ By granting unconditioned waivers, even partial ones, the administration undermines the goals of the CSPA. The administration should grant waivers only if they are conditioned on their removal 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 U.S. Such conditioned waivers would provide incentives to advance the goals of the CSPA.

Reporting by the Special Representative should more clearly distinguish between violations committed by the respective governments and armed groups under government control, on the one hand, and hostile or third party armed groups not under government control, on the other. Obviously, the intent under CSPA is to give an incentive to aided governments

through “all feasible measures” to change the behavior of their armed forces and groups under state control. U.S actions enforcing CSPA should take into account that in the field control and “feasibility” may be highly ambiguous; however, such ambiguity should not permit aided governments to look the other way when associated groups abuse children and commit other war crimes.

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 weighing of human rights interests 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,



Debra L. Raskin

CC:

Hon. John S. Kerry
Secretary of State
U.S. Department of State

Ambassador Samantha Power
U.S. Permanent Representative to the U.N. 799

Hon. Tom Malinowski
Assistant Secretary of State for Democracy, Human Rights, and Labor

Ambassador Michael G. Kozak
Deputy Assistant Secretary of State for Democracy, Human Rights and Labor

Hon. Puneet Talwar
Assistant Secretary of State for Political-Military Affairs

Hon. Luis CdeBaca
Office to Monitor and Combat Trafficking in Persons

Senator Richard Durbin

Ms. Leila Zerrougi
Under Secretary-General,
Special Representative for Children and Armed Conflict

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- ¹ Presidential Determination No. 2015-13 (September 29, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/09/29/presidential-determination-and-memorandum-determination-respect-child>.
- ² Pub. L. No. 110-457, § 401 et seq., 122 Stat. 5087-91 (2008) (hereinafter “CSPA”)
- ³ Library of Congress, Law Library of Congress, *Children’s Rights: International Laws*, available at <http://www.loc.gov/law/help/child-rights/pdfs/Children's%20Rights-International%20Laws.pdf>
- ⁴ Optional Protocols to the Convention on the Rights of the Child in the Involvement of Children in Armed Conflict, available at <http://www.un-documents.net/a54r263.htm>
- ⁵ Ratified by A/Res/54/263 available at <http://www.un-documents.net/a54r263.htm>
- ⁶ 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)
- ⁷ CSPA § 404(a); 404(c)(1)
- ⁸ 22 U.S.C. § 7102 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; available at <http://www.state.gov/j/tip/laws/113178.htm>
- ⁹ U.S. Department of State, 2015 Trafficking in Persons Report (2015), available at <http://www.state.gov/documents/organization/245365.pdf>
- ¹⁰ Presidential Determination (September 29, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/09/29/memorandum-determination-respect-child-soldiers-prevention-act-2008-and>.
- ¹¹ See supra note 1.
- ¹² Child Soldiers International, *US restricts military assistance to some states that recruit and use children*, October 1, 2014, available at http://www.child-soldiers.org/news_reader.php?id+783.
- ¹³ *Id.*
- ¹⁴ Briefing on the Child Soldier Prevention Act (March 26, 2015), available at <http://www.humanrights.gov/dyn/briefing-on-the-child-soldier-prevention-act.html>
- ¹⁵ Report of the Secretary-General to the Security Council (A/69/926-S/2015/409) issued on 5 June 2015, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1510923.pdf>.
- ¹⁶ 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/>.
- ¹⁷ See supra note 14.
- ¹⁸ Jo Becker and Rachel Stohl, *U.S. Must Get Tough Over Child Soldiers*, Human Rights Watch (September 28, 2015), available at <https://www.hrw.org/news/2015/09/28/us-must-get-tough-over-child-soldiers>.
- ¹⁹ See supra note 15.
- ²⁰ Human Rights Watch, *Our School Became the Battlefield* (October 27, 2015), available at <https://www.hrw.org/node/282419>
- ²¹ *Id.*
- ²² See supra note 15.
- ²³ Fifth Report on Children and Armed Conflict in the D.R. 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-rcd/>.
- ²⁴ Watchlist on Children and Armed Conflict, *Nigeria Included in U.S. Department of State Child Soldiers Prevention Act*, available at <http://watchlist.org/nigeria-included-in-us-department-of-state-child-soldiers-protection-act-list/>.
- ²⁵ *Id.*
- ²⁶ See supra note 15.
- ²⁷ See supra note 24.
- ²⁸ See supra note 16.
- ²⁹ See supra note 1.
- ³⁰ See supra note 18.
- ³¹ See supra note 15.
- ³² *Id.*

³³ *See supra* note 4, Article I.