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United States Department of State
Washington, D.C. 20520

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June 21, 2017

ACTION MEMO FOR THE SECRETARY

FROM: DRL - [REDACTED]
AF - [REDACTED]
EAP - [REDACTED]
NEA - [REDACTED]
S/SRAP - [REDACTED]
J/TIP - [REDACTED]

SUBJECT: (SBU) Identification of Countries Pursuant to the Child Soldiers Prevention Act

Recommendations

(SBU) That you approve, for publication in the 2017 Trafficking in Persons (TIP) Report, the following countries that had governmental armed forces or government-supported armed groups who recruited or used child soldiers during the reporting period:

- (1) Afghanistan (Approve/Disapprove by 6/21/17)
- (2) Democratic Republic of the Congo (Approve/Disapprove by 6/21/17)
- (3) Iraq (Approve/Disapprove by 6/21/17)
- (4) Burma (Approve/Disapprove by 6/21/17)
- (5) Nigeria (Approve/Disapprove by 6/21/17)
- (6) Somalia (Approve/Disapprove by 6/21/17)
- (7) South Sudan and Mali (Approve/Disapprove by 6/21/17)
- (8) Sudan (Approve/Disapprove by 6/21/17)
- (9) Syria (Approve/Disapprove by 6/21/17)

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(10) Yemen (Approve/Disapprove by 6/21/17)

Background

(SBU) The Child Soldiers Prevention Act of 2008 (CSPA) requires that the Secretary of State include a list, for publication in the TIP Report, of countries that have governmental armed forces or government-supported armed groups that recruit or use child soldiers. The CSPA's definition of a child soldier is provided. The recruitment or use of one child soldier is all that is required to meet the threshold of the law.

(SBU) Governments of countries listed under the CSPA are restricted as of the beginning of the next fiscal year from receiving U.S. security assistance authorized under a range of authorities and may not be issued U.S. licenses for direct commercial sales of military equipment. However, these restrictions may be overcome by a Presidential national interest waiver, a partial waiver, applicable exception, or reinstatement of assistance pursuant to the terms of the CSPA. Thus, listing a country in the TIP report does not have any immediate effect and does not necessarily result in restrictions.

(SBU) If you approve the recommendation to list the countries identified in this package, the bureaus and offices with equities in the furnishing of assistance to these countries will prepare recommendations for you regarding the reinstatement of assistance, the exercise of waivers, or certification of exceptions, as permitted under the CSPA, for submission to the President in order that he may make a final decision prior to October 1, 2017. Assistance subject to CSPA restrictions includes: international military education and training, foreign military financing, excess defense articles, peacekeeping operations, and issuance of licenses for direct commercial sales of military equipment.

(SBU) The proposed listings for 2017 contain 11 countries. Of these, Burma, Democratic Republic of the Congo, Iraq, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen were listed in the 2016 TIP Report pursuant to the CSPA. This is the first year Afghanistan and Mali are recommended for a listing.

Attachments:

Tab 1 – Countries Identified to be Listed Pursuant to the Child Soldiers Prevention Act of 2008 (Title IV of Public Law 110-457)

Tab 2 – Background on the Child Soldiers Prevention Act

Approved: DRL - [REDACTED]
AF - [REDACTED]
EAP - [REDACTED]
NEA - [REDACTED]
S/SRAP - [REDACTED]
J/TIP - [REDACTED]

Drafted: DRL/SHR - [REDACTED]

Cleared: S/P: [REDACTED] (ok)
P: [REDACTED] (ok)
J: [REDACTED] (info by request)
D: [REDACTED] (ok)
DRL/FO: [REDACTED] (ok)
L/FO: [REDACTED] (ok)
DRL/AF: [REDACTED] (ok)
DRL/NEA: [REDACTED] (ok)
DRL/NEA: [REDACTED] (ok)
DRL/NEA: [REDACTED] (ok)
DRL/EAP: [REDACTED] (ok)
DRL/SCA: [REDACTED] (ok)
NEA/LEV: [REDACTED] (ok)
NEA/ARP: [REDACTED] (ok)
NEA/I: [REDACTED] (ok)
Embassy Baghdad (ok)
SCA/A: [REDACTED] (ok)
S/USSES: [REDACTED] (ok)
Embassy Abuja: [REDACTED] (ok)
AF/W: [REDACTED] (ok)
AF/W: [REDACTED] (ok)
AF/C: [REDACTED] (ok)
EAP/FO: [REDACTED] (ok)
EAP/MLS: [REDACTED] (ok)
J/TIP: [REDACTED] (ok)
L/LFA: [REDACTED] (ok)
L/HRR: [REDACTED] (ok)
USUN: [REDACTED] (ok)

Potential Countries to be Listed Pursuant to the Child Soldiers Prevention Act

(SBU) All relevant bureaus and offices agree that the following countries had governmental armed forces or government-supported armed groups that recruited or used child soldiers within the meaning of section 404(a) of the Child Soldiers Prevention Act (CSPA) of 2008 (Title IV, P.L. 110-457), during the reporting period of April 1, 2016-March 31, 2017, and support their inclusion on the CSPA list that will be published in the introduction of the 2017 TIP Report. When the word “children” is used without qualification below, it means persons under the age of 18.

1. Afghanistan
2. Mali
3. Democratic Republic of Congo
4. Iraq
5. Burma
6. Nigeria
7. Somalia
8. South Sudan
9. Sudan
10. Syria
11. Yemen

Afghanistan

(SBU) In 2011, the Afghan government signed an action plan with the UN to prevent the recruitment and use of children in its national security forces, and a road map to compliance was endorsed in August 2014. As a part of the action plan, the Afghan government established Child Protection Units across the country to stop the recruitment of children in the security forces. There is credible evidence that a militia known as the People’s Uprising Movement or the People’s Uprising Group (PUG), of Baghlan, a government-supported armed group, recruited and used a child as defined by the CSPA. The UN Country Task Force on Monitoring and Reporting verified the recruitment and use of a boy as a guard by the Baghlan provincial PUG. The Baghlan PUG received financial and in-kind support from the Afghan government. Because the Afghan government provided support to the Baghlan PUG, and the PUG recruited and used a person younger than 18 years of age, Afghanistan is proposed for inclusion on the 2017 CSPA list.

Mali

(SBU) The Government of Mali prohibits the use and recruitment of children into its armed forces. In 2013, the government and the UN signed a protocol agreement to protect children associated with armed conflict and established a procedure to transfer such children to an interim care center. During the reporting period, there is evidence that the Government of Mali provided in-kind support to Imaghad Tuareg and Allies Self-Defense Group (GATIA), a non-government militia. During the reporting period, reports established GATIA recruited and used three children in hostilities. Thus – because the Government of Mali provided support to GATIA, and

because GATIA recruited and used persons younger than 18 years of age – Mali is proposed for inclusion on the 2017 CSPA list.

Democratic Republic of the Congo (DRC)

(SBU) Despite the DRC government's progress towards eliminating the use and recruitment of children and purging them from the Armed Forces of the Democratic Republic of Congo (FARDC), there is evidence that FARDC units continued to provide material, logistical, intelligence, and personnel support to armed groups operating in the DRC that recruit children and use them in hostilities. UN Organization Stabilization Mission in the DRC (MONUSCO) personnel reported that FARDC commanders routinely provide funding, weapons, ammunition, and other resources, as well as advance warning of planned raids, to these armed groups. This includes FARDC collaboration with the Mai Mai Simba, Mai Mai Charles, Allied Democratic Forces, The Patriotic Union for the Defense of Innocents, Forces for the Democratic Liberation of Rwanda, and the Nduma Defense of Congo Renové. The UN Country Task Force on Monitoring and Reporting verified cases of recruitment and use of children in hostilities by all these armed groups. Thus – because the FARDC worked with and provided support to these armed groups, and because the armed groups recruited and used in hostilities persons younger than 18 years of age – the DRC is proposed for inclusion on the 2017 CSPA list.

Iraq

(SBU) The Popular Mobilization Forces (PMF) are part of the Government of Iraq's military forces, and are composed primarily of Shia units that generally support government security objectives but also – following the passage of the Popular Mobilization Committee (PMC) Law in December 2016 – Sunni and other tribal volunteers. Many PMF elements were formed in response to Grand Ayatollah Sistani's 2014 fatwa to defend Iraq against ISIS. There are also militias (many of which are partially supported by Iran) that describe themselves as part of the PMF, but which the Government of Iraq does not include within the PMF. A February 2016 order from the Iraqi prime minister declared the PMF to be formally affiliated with the Iraqi armed forces and, in December 2016, the Iraqi prime minister signed a law that formalized the status of the PMC, an umbrella organization for the PMF, as a component of the Iraqi armed forces. This law is intended to solidify and enhance the Government of Iraq's operational control over all PMF once the law is fully implemented. Both the UN and the NGO community reported that some Sunni tribal forces, one of which the UN reported was part of the PMF, recruited and used persons younger than the age of 18, including instances of children taking a direct part in hostilities. The UN reported five cases of recruitment and use of children by PMF units, including a 15-year-old boy who was sent to the frontline to fight for the Flags of Iraq Unit. The Government of Iraq is aware of these reports and has committed to taking measures to ensure no child soldiers are among the Sunni tribal forces or in the PMF ranks. Because this UN reporting attributes the recruitment and use of children to the PMF, although we cannot conclusively determine whether the reported recruitment and use of persons younger than 18 are attributable to groups that are actually part of the PMF, we assume this characterization is credible. Because the PMF is an armed force of the Government of Iraq, and persons younger than the age of 18 took direct part in hostilities as members of the PMF, Iraq is proposed for inclusion on the 2017 CSPA list.

Burma

(SBU) The Government of Burma continues to take steps towards implementing its UN-backed child soldier action plan. Over the course of the reporting cycle, Burma released 112 child soldiers. Despite this, two confirmed cases of child recruitment by the *Tatmadaw*, the military of Burma, were documented during the reporting period. Of the cases of recruitment confirmed by the UN Country Task Force on Monitoring and Reporting, one incident involved a 14-year-old boy, who was forcibly recruited by the *Tatmadaw* to work as a porter during a road construction project. While the Burmese military has made progress on their action plan commitments, in the last year and a half that progress has slowed due to lack of coordination in command and control in the military and a slowdown in age verification procedures by the Burmese military. Because Burma's armed forces recruited at least one person younger than 15 years of age, Burma is proposed for inclusion on the 2017 CSPA list.

Nigeria

(SBU) During the reporting period, although the Government of Nigeria has officially prohibited the recruitment and use of children in the armed forces, the Nigerian military reportedly used children as young as 12 years old in support roles, such as messengers, porters, and guards. The Nigerian military also conducted on-the-ground coordination with elements of the Civilian Joint Task Force (CJTF), a self-defense militia involved in fighting Boko Haram that is not part of the Nigerian government. An NGO noted that the term CJTF is now used to describe a number of self-defense vigilante groups operating in northeast Nigeria, some of which have tenuous ties to the Maiduguri-based CJTF. Credible observers, including NGOs and an intergovernmental organization, reported that the CJTF continued to recruit and use children in hostilities, possibly compulsorily, and used children as young as 12 years old mostly to staff check points, conduct patrols, spy, and apprehend suspected insurgents. Because governmental armed forces used persons younger than the age of 15 in support roles and a government-supported armed group – the CJTF – recruited and used persons younger than 18 years of age, including in hostilities, Nigeria is proposed for inclusion on the 2017 CSPA list.

Somalia

(SBU) Although such actions are not officially sanctioned by the Federal Government of Somalia, the Somali National Army continues to use and recruit children. The UN reported on the recruitment and use of 84 children by the Somali National Army, including recruitment of a 13-year-old, during the period of April through September 2016. Because the Somali governmental armed forces recruited at least one person younger than 15 years of age, Somalia is proposed for inclusion on the 2017 CSPA list.

South Sudan

(SBU) Following the outbreak of conflict in South Sudan in 2013, recruitment and use of children by government forces increased. During the reporting period, there were widespread reports government forces were recruiting children. According to the UN, several hundred children continued to be compulsorily recruited into the ranks of the Sudan People's Liberation

Army (SPLA), South Sudan's governmental armed force, and government-affiliated militias. The UN Country Task Force on Monitoring and Reporting (CTFMR) attributed incidents of recruitment and use of children affecting 281 boys to the SPLA, many of whom were used in armed hostilities. UNMISS Child Protection Unit-sponsored workshops in Bentiu identified a total of 22 children at SPLA barracks. Children, some potentially younger than 10 years old, were observed by the CTFMR in SPLA military or police uniforms manning checkpoints, guarding military facilities, and acting as bodyguards for county commissioners or military commanders. Also, in Unity State, the SPLA abducted for recruitment purposes at least 100 boys. They were given assault rifles and were forced by the SPLA to either join the armed forces or have their cattle confiscated. Many were transferred to Juba for military training. UNICEF estimated 17,000 child soldiers had been recruited in South Sudan since the conflict began in December 2013, and blamed government, opposition, and militia forces. Because the SPLA continued to recruit persons younger than 18 years of age and many such persons were forcibly recruited or took a direct part in hostilities as members of the SPLA, South Sudan is proposed for inclusion on the 2017 CSPA list.

Sudan

(SBU) According to several reports, particularly during the initial months of the CSPA reporting period, the Government of Sudan provided material and logistical support within Sudan to the South Sudanese opposition group known as the SPLA in Opposition (SPLM-IO), which was widely reported to recruit and use child soldiers. Reports of material and logistical support by the Government of Sudan to the SPLM-IO declined significantly during the course of the CSPA reporting period; however, because such support took place during the reporting period, Sudan is proposed for inclusion on the 2017 CSPA list.

Syria

(SBU) The Syrian government maintained its compulsory recruitment into and use of children by its armed forces, subjecting children to extreme violence and retaliation by opposition forces; it also did not protect and prevent children from recruitment and use by pro-regime militias. The UN documented 22 confirmed cases of recruitment and use by Syrian governmental armed forces and government-supported armed groups, many of whom were compulsory recruited. Reports and evidence suggest that the recruitment and use of children by both governmental armed forces and government-supported armed groups has been increasing – the number of verified cases does not reflect the full scope of recruitment and use of children by parties to conflict in Syria, but rather the cases the UN Country Task Force on Monitoring and Reporting has been able to verify within security and access constraints. Because the Syrian armed forces compulsorily recruited persons younger than 18 years of age and government-supported militias recruited children, Syria is proposed for inclusion on the 2017 CSPA list.

Yemen

(SBU) Although the government signed a Joint Action Plan with the UN to end the recruitment and use of child soldiers and took steps to implement it prior to the onset of the current conflict in September 2014, the implementation of the Action Plan stalled with the outbreak and

intensification of the conflict in late 2014, and the UN has continued to report on the recruitment and use of children by Yemen's armed forces. Although Yemeni law and government policy expressly forbid the practice, children took a direct part in hostilities and also served as guards and couriers as part of the governmental armed forces, tribal armed groups, and government-supported armed groups. Because children took a direct part in hostilities as members of Yemen's armed forces, Yemen is proposed for inclusion on the 2017 CSPA list.

(SBU) Background on the Child Soldiers Prevention Act

(SBU) The Child Soldiers Prevention Act of 2008 (CSPA), title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P. L. 110-457), was signed into law on December 23, 2008 and, pursuant to its terms, became effective June 21, 2009. It was also amended in February 2013. The CSPA prohibits assistance under the following authorities to governments that are identified on the CSPA list: International Military Education and Training (IMET), Foreign Military Financing (FMF), Excess Defense Articles (EDA), and Peacekeeping Operations (PKO). The prohibition does not apply with respect to PKO programs that support military professionalization, security sector reform, heightened respect for human rights, peacekeeping preparation, or the demobilization and reintegration of child soldiers. In addition, no licenses for direct commercial sales of military equipment may be issued. Finally, to the extent that DoD security assistance authorities incorporate restrictions applicable to State assistance authorities, such DoD authorities will be similarly restricted. Governments on the CSPA list have been identified as “having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces,” that recruit or use child soldiers.

(SBU) Evidentiary Standard

(SBU) The CSPA, like most other statutes imposing sanctions or restrictions on assistance, does not specify the evidentiary threshold that must be reached in order to support a determination that sanctionable activity has occurred. While the statute is drafted in a way that permits the Secretary some discretion in this regard, a high evidentiary standard is typically applied in sanctions determinations because there are serious foreign policy, economic, and national security consequences that could arise from an erroneous determination.

(SBU) In applying a high standard, the Department’s typical approach has been that action must be taken to impose sanctions where there is sufficient credible evidence that the decision maker is persuaded that each of the statutory elements for imposing the sanction has been established. Neither conclusive proof nor absolute certainty is required. Both direct evidence and circumstantial information should be considered in making a sanctions determination.

(U) Definition of Child Soldier

(U) The CSPA defined “child soldier” for the first time in U.S. law to mean, consistent with the provisions of the Optional Protocol of the Rights of the Child, any person that falls into one of four categories:

- (U) Any person younger than 18 years of age, who takes a direct part in hostilities as a member of governmental armed forces;
- (U) Any person younger than 18 years of age, who has been compulsorily recruited into governmental armed forces serving in any capacity, including a support role;
- (U) Any person younger than 15 years of age, who has been voluntarily recruited into governmental armed forces serving in any capacity, including a support role; or

- (U) Any person younger than 18 years of age, who has been recruited or used in hostilities by armed forces distinct from the armed forces of the state serving in any capacity, including a support role.

(U) To determine that a government has violated the standards of the CSPA, the Secretary must determine that the foreign country has governmental armed forces or government-supported armed groups that recruit or use child soldiers as defined above.

(SBU) Government Supported Armed Groups

(SBU) In some circumstances, there may be factual questions as to whether an armed group is "government-supported." Determining whether an armed group is government-supported is a highly fact-specific exercise, and which facts are most relevant will depend on the circumstances of each case. In making such a determination, there should be a relationship between the activities of the armed group and any government action or inaction that supports those activities. The relationship between the armed group and all levels of government authorities would be relevant. As a general matter, we would view it as the responsibility of the central government to control armed groups within their territory and eliminate the recruitment and use of child soldiers or government support for such groups. Evidence that the central government is actively funding such groups would present a particularly compelling case for imposition of the restriction. It may be possible, however, that the restriction could be triggered, where local government actors provide support to such groups that recruit or use child soldiers and other government authorities are capable of, but unwilling to, eliminate such support.

(SBU) Factors relevant to a determination of whether an armed group is "government-supported" may include, but are not limited to, whether the government provides the group tangible support, such as salaries, weapons, food, training, or other goods or services, and whether, in the absence of tangible support, the government acquiesces in the activities of the armed groups within its territory. A government's failure to act against an armed group within its territory, if caused by a lack of capacity to control or regulate it, would standing alone likely be insufficient for a finding of governmental support.

(SBU) Waiver Provision and Reinstatement

(SBU) The CSPA authorizes the President to waive any of the CSPA restrictions when he determines it is in the national interest of the United States to do so. The President may also reinstate assistance upon certification to the Congress that the government of a listed country has: (1) implemented measures that include an action plan and actual steps to stop government or government-supported use and recruitment of child soldiers; and (2) implemented policies and mechanisms to prevent future government or government-supported use of child soldiers and to ensure that no children are recruited, conscripted, or otherwise compelled to serve as child soldiers. Finally, the CSPA provides an exception for programs directly related to addressing child soldier issues or professionalization of the military, under certain conditions that must be certified by the President. That exception may not remain in effect for a country for more than five years; however, there is no limit on the President's ability to waive CSPA restrictions. Moreover, the CSPA requires an annual report to Congress relating to listed countries and any waivers granted.