Presidential Documents

Presidential Determination No. 2011–04 of October 25, 2010

Presidential Determination With Respect To Section 404(c) of the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, pursuant to section 404(c) of the Child Soldiers Prevention Act of 2008 (CSPA), title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110 457), I hereby determine that it is in the national interest of the United States to waive the application to Chad, the Democratic Republic of the Congo, Sudan, and Yemen of the prohibition in section 404(a) of the CSPA.

You are authorized and directed to submit this determination to the Congress, along with the accompanying memorandum of justification, and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 25, 2010

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MEMORANDUM OF JUSTIFICATION
REGARDING THE WAIVER OF RESTRICTIONS
PURSUANT TO THE CHILD SOLDIERS PREVENTION ACT OF 2008

Pursuant to section 404(c) of the Child Soldiers Prevention Act of 2008 (Title IV, Public Law 110-457) (the "CSPA"), the President has determined that it is in the national interest of the United States to waive the application to Chad, the Democratic Republic of the Congo, Sudan, and Yemen of the prohibition in section 404(a) of the CSPA. The justification for this determination with respect to each country is set forth in this memorandum.

Chad

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Chad of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: The United States Government is actively working with the Government of Chad and its national army to reduce and ultimately eliminate the army's recruitment of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. The United States Government will continue to emphasize the seriousness of this issue. CSPA restrictions would hinder the United States Government's effort to reinforce positive trends within the Chadian Government over the past year, such as a government-led, United Nations Children's Fund (UNICEF)-coordinated process that has made progress in demobilizing children within the ranks of the Chadian National Army.

The section 404(a) prohibition could also harm the cooperative relationship we currently hold with Chad in combating terrorism. Chad is a partner in the Trans-Sahara Counter Terrorism Partnership program and strongly supports counterterrorism objectives. Additionally, Chad plays a critical role in our humanitarian response to the crisis in Darfur, currently hosting 280,000 Sudanese refugees and cooperating with the United Nations Peacekeeping Operations in Chad and the Central African Republic. As part of this effort, Chad is tasked with providing

security to civilians and humanitarians in eastern Chad. The Government of Chad has worked with the U.S. Special Envoy to Sudan to encourage Sudanese rebel movements to commit to peace talks with the Government of Sudan.

Impact of Restriction: The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2011 International Military Education and Training (IMET) funds and Foreign Military Financing (FMF) funds. The harm to the long-term bilateral relationship would be disproportionately large relative to the amount of funding in question.

IMET programs are critical to influencing and training current and future Chadian military leaders. Fiscal 2011 IMET would include the following types of activities: Chadian attendance in junior officer professional military education, civil-military relations training, English language instructor training and materials, and noncommissioned officer professional military education. The FMF program for Chad includes funding programmed for C-130 spare parts, training, and technical manuals that are critical to support Chad's flying program. Chad currently flies a single, high flight time C-130 and has requested three KC-130Rs via section 516 of the Foreign Assistance Act of 1961 (excess defense articles) to provide Chad with the capability to support regional peacekeeping operations' airlift requirements.

Democratic Republic of the Congo

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to the Democratic Republic of the Congo of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: Imposing this prohibition on the Democratic Republic of the Congo by eliminating military education and training programs and defense reform-related programs would preclude the ability to deliver necessary defense reform services specifically cited for implementation in the U.S. Strategy for the Democratic Republic of the Congo, as well as jeopardize the United States' opportunity to positively influence the negative behavior patterns currently exhibited by the Armed Forces of the Democratic Republic of Congo (FARDC). IMET funding is helping professionalize the FARDC by providing training in English language, military justice, human rights, civil-military relations, rule of law, and defense resource management. The focus for FMF and IMET funding includes developing the capacity of the military as a non-political, professional force respectful of human rights, including a Rapid Reaction Force (RRF); supporting reform of the Congolese military in an effort to facilitate post-conflict transition, including capacity-building for regional stabilization operations; and building Democratic Republic of the Congo capacity for adequate military health care, including prevention, awareness, and treatment campaigns.

The United States Government is actively working with the Government of the Democratic Republic of the Congo and the FARDC to reduce and ultimately eliminate the incidence of the army's recruitment of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. Implementing the section 404(a) prohibition against the Democratic Republic of the Congo at this time would jeopardize the opportunity to influence the behavior we wish to change.

U.S. and Congolese representatives recently gathered at Kisangani to mark the establishment of a light infantry battalion intended to be a model unit for the future Congolese military. The train-and-equip mission, primarily funded out of

Peacekeeping Operations funds and part of a long-term, multilateral U.S.-Democratic Republic of the Congo partnership to promote security sector reform in the Democratic Republic of the Congo, will assist the Congolese Government in its ongoing efforts to transform the FARDC into a professional military force. The training is intended to increase the ability of the Congolese army to conduct effective internal security operations as part of the FARDC's rapid reaction plan, help preserve the territorial integrity of the Democratic Republic of the Congo, and develop an army that is accountable to the Congolese people. This initiative also represents one aspect of a long-term, multiagency, international approach to promote a sustainable peace through the creation of a model unit in the FARDC.

Impact of Restriction: The section 404(a) prohibition would impact the planned obligation of IMET and FMF funding currently requested for the Democratic Republic of the Congo. IMET programs are critical to the United States Government's ability to influence and train current and future military leaders in the Democratic Republic of the Congo. Fiscal Year 2011 IMET will include the following types of activities: Democratic Republic of the Congo attendance in junior officer professional military education, English language training and materials, and noncommissioned officer professional military education. FMF-funded programs for the Democratic Republic of the Congo include technical training, uniforms and personnel equipment, and wheeled vehicles, equipment, and training. This funding is critical to the Security Sector Reform and RRF efforts in the Democratic Republic of the Congo.

Sudan

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Sudan of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: The Government of Southern Sudan's army, the Sudan People's Liberation Army (SPLA), has committed to preventing recruitment of child soldiers and to demobilizing all children from its ranks. While there were no reports of active recruitment of children by the SPLA during the reporting period, approximately 1,200 children, both boys and girls between the ages of 12 and 17 years old, remained in the SPLA in December 2009. Some of these children serve as combatants, and others, including those under 15-years old, serve a variety of functions, including as guards, porters, and cooks. The SPLA has made progress in their demobilization, signing an action plan in November 2009 committing itself to end the use of child soldiers within a year's time and launching a Child Protection Unit to oversee its implementation. Curbing our ability to train the SPLA would significantly reduce our capacity to reinforce these positive trends and achieve our broader professionalization objectives. The United States Government is actively working with the Government of Southern Sudan and the SPLA to reduce and ultimately eliminate the incidence of the army's use of children. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance.

The end of the 21-year civil war in Sudan, as marked by the signing of the Comprehensive Peace Agreement (CPA) by the Government of Sudan and the Sudan People's Liberation Army in January 2005, signaled a new era for Sudan. The United States continues to work with the parties to implement the peace agreement and bring about democratic transformation in Sudan. While the signing of the Darfur Peace Agreement 3 years ago provided an opportunity to contribute toward the resolution of the crisis in Darfur, the conditions on the ground remain tenuous and the progress toward a bona fide peace process remains stalled. Under the CPA, we continue to implement a wide variety of programs to restore effective governance and allow economic growth in the South and other conflict areas. These include, but are not limited to, programs aimed at restoring a

functioning judicial system and other elements necessary for the return to the rule of law and security, a functioning legislature, elements of a market economy, mitigating conflict, and ensuring security, particularly by transforming the defense institutions and military forces of the Government of Southern Sudan to adequately provide security for itself and its people. To consolidate peace, it will be necessary to build security institutions in the defense and law enforcement sectors.

The President's waiver of the application of section 404(a) will allow these important efforts to continue as appropriate, thereby enhancing security within the country. IMET funding is a key tool used to assist with security sector reform, with the goals of conveying the values of democracy, fostering productive civil-military relations, and to transforming the Sudan Peoples' Liberation Army from a guerilla army to a more professional military force.

Impact of Restriction: Comprehensive foreign assistance restrictions and sanctions against Sudan are already in place, including those related to its designation as a state sponsor of terrorism. United States military assistance is focused upon the Government of Southern Sudan and relies upon waivers and other authorities from Congress to overcome restrictions otherwise applicable to Sudan.

CSPA restrictions would affect the planned obligation of Fiscal Year 2011 IMET funding currently requested for the Government of Southern Sudan/SPLA, which is critical to training current and future military leaders in Southern Sudan. Fiscal Year 2011 IMET will include the following types of activities: SPLA attendance in junior officer professional military education, civil-military relations training, English language training and materials, and noncommissioned officer professional military education. Prohibiting IMET funding for the Government of Southern Sudan/SPLA would preclude the ability to deliver critical training necessary to professionalize the SPLA, which is specifically cited for implementation in the United States Government's Sudan Strategy, which highlights those areas of national interest of the United States.

Yemen

The President has determined, pursuant to section 404(c) of the Child Soldier Prevention Act of 2008 (CSPA), that a full waiver of the application to Yemen of the prohibition in section 404(a) of the CSPA is in the national interest of the United States.

Justification: Despite a 1991 law which stipulates that recruits to the armed forces must be at least 18 years of age, and assertions by the government that the military is in compliance with these laws, credible reports exist that children as young as 15 have been recruited into official government armed forces, including Yemen's national army, and used in direct hostilities against the Houthi rebels since the sixth round of the intermittent war in Sa'ada began in August 2009. In addition, there are documented cases of children as young as 14 who were recruited by tribal militias mobilized by the government to fight the Houthi rebels. A local nongovernmental organization estimated that children under the age of 18 may make up more than half of some tribes' armed forces, both those fighting with the government and those allied with the Houthi rebels.

The United States Government is working with the Yememi Government and military to reduce and eliminate incidences of children being recruited into the official government armed forces, as well as government-allied tribal militias. In order to prevent U.S.-funded training of child soldiers, the age of individuals proposed for training is checked prior to providing individual training. The Department of State is working to enhance its oversight to prevent foreign security forces that recruit and use child soldiers from benefitting from any U.S. foreign assistance. Imposing the section 404(a) prohibition against Yemen at this time would harm the cooperative relationship we have begun to rebuild with Yemen at a pivotal point in the fight against terrorism and have a negative impact on U.S. national security.

Yemen is a key partner in counterterrorism (CT) operations against al-Qa'ida in the Arabian Peninsula and cooperation with the Yemeni Government is a vital piece of the U.S. national strategy to disrupt, dismantle, and defeat terrorist organizations by denying them sanctuary in the ungoverned spaces of Yemen's hinterland. Cutting off assistance would seriously jeopardize the Yemeni Government's capability to conduct special operations and counterterrorism missions, and create a dangerous level of instability in the country and the region.

Impact of Restriction: The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2011 IMET funding and FMF funding. In addition, Yemen would not be eligible for section 1206 funding to improve its counterterrorism capabilities. The harm to the long-term bilateral relationship would be devastating, and overall capacity Government of Yemen to maintain security and conduct CT operations would be significantly hampered.

IMET programs are critical to the United States Government's ability to influence and train current and future Yemeni military leaders. . Fiscal Year 2011 IMET would include the following types of activities: Yemeni attendance in junior officer professional military education, civil-military relations training, and English language instructor training and materials.

The FMF program for Yemen includes funding programmed for C-130 spare parts, training, and technical manuals that are critical to support Yemen's tactical lift capability, spares, support for UH-1 helicopters, and bolstering Yemen's light lift/utility capability. Without FMF, the ability of Yemeni government forces to transport CT forces quickly throughout the country would substantially diminish. FMF is also programmed toward weapons and equipment for the Yemeni Special Operations Forces charged with hunting down al-Qa'ida. Further, FMF supports maritime security and interdiction capability (fast patrol boats, floating piers) with which the Yemeni Navy and Coast Guard can patrol and protect their coastline and ports.

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