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Presidential Documents

Title 3—

The President

Presidential Determination No. 2012–01 of October 4, 2011

Certification and Determination With Respect to the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (CSPA) (title IV, Public Law 110–457), I hereby: certify that the Government of Chad has implemented measures that include an action plan and actual steps to come into compliance with the standards outlined in the CSPA, and has implemented policies and mechanisms to prohibit and 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.

I hereby determine that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen; and further determine that it is in the national interest of the United States to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo, to allow for continued provision of International Military Education and Training and non-lethal Excess Defense Articles, and issuance of licenses for direct commercial sales of military equipment; and I hereby waive such provisions accordingly.

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

THE WHITE HOUSE,
WASHINGTON, October 4, 2011.

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MEMORANDUM OF JUSTIFICATION REGARDING THE CERTIFICATION AND DETERMINATIONS PURSUANT TO THE CHILD SOLDIERS PREVENTION ACT OF 2008

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (Title IV, Public Law 110-457) (the "CSPA"), the President has certified that the Government of Chad has taken the necessary steps to allow for reinstatement of assistance pursuant to section 404(d), and determined that it is in the national interest of the United States to waive with respect to Yemen and to partially waive with respect to the Democratic Republic of the Congo, the application 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 Government of Chad has implemented measures that include an action plan and actual steps to come into compliance with the standards outlined in the CSPA, and has implemented policies and mechanisms to prohibit and prevent future government or government-supported use of child soldiers and that are designed to ensure that children are not recruited, conscripted, or otherwise compelled to serve as child soldiers.

The United Nations-led Country Task Force on Monitoring and Reporting Children and Armed Conflict in Chad has reported that it has not verified any cases of child soldier recruitment or use by the Government of Chad in 2011. On June 14, 2011, the Government of Chad signed a comprehensive child soldier action plan with the United Nations. The plan includes commitments relating to cooperation with the United Nations; demobilization and reintegration of child soldiers; prevention, awareness raising, and capacity building; legal procedures and discipline for offenders; and access to military sites for detection and investigation of the use of child soldiers. Chad's action on some portions of the action plan, including the drafting of a child protection code to include penalties against those who use child soldiers and the issuance of an internal military order prohibiting the use of child soldiers, are still underway. To help ensure effective implementation of the plan, the Government of Chad has started convening regular interagency meetings on this plan and is currently in the process of naming high-level officials to serve as the focal points. The Government of Chad has instituted various mechanisms and policies to prevent and

prohibit recruitment and use of child soldiers, such as training sessions for military officials on child rights and child protection and providing access to international representatives to military installations and other sites of interest so that they can conduct monitoring activities. Since 2010, Chad has turned over some 1,000 children to UNICEF and nongovernmental organizations 'for reintegration programs.

Democratic Republic of the Congo (DRC)

The President has determined that it is in the national interest of the United States to partially waive application of the restrictions in section 404(a) of the CSPA to the DRC. The partial waiver will not allow the provision of Foreign Military Financing (FMF), but will allow for continued provision of International Military Education and Training (IMET) assistance and nonlethal Excess Defense Articles (EDA) and issuance of licenses for direct commercial sales of military equipment.

The Government of the DRC has taken some steps to reduce child soldiers (e.g., awareness campaigns among the Congolese Army and partnering with international organizations on training materials). In addition, some Armed Forces of the Republic of Congo (FARDC) commanders are making an effort to remove child soldiers from the ranks and turn them over to the U.N. Organization Stabilization Mission in the DRC, UNICEF, or other humanitarian organizations. However, the challenges the Government of the DRC faces in its efforts to integrate former rebel and militia groups, including the National Congress for the Defense of the People, into the FARDC have been a major hindrance to reducing the number of child soldiers. The integration process continues to be plagued by the persistence of separate command structures within the FARDC that do not respond to FARDC directives, including a specific prohibition against the use of child soldiers. As a result, the progress that has been made in the DRC on child soldiers does not yet represent the kind of institutional change required to make real progress toward eliminating child soldiers.

It is in the national interest of the United States to continue certain funding that would otherwise be restricted by this provision. Funding for programs that would be affected by the CSPA sanctions include programs that support the professionalization of the FARDC. For example, providing funds for IMET allows the United States to invite FARDC soldiers to training programs wherein U.S. values and norms are firmly inculcated into participants and through which the United States

will be able to emphasize its agenda on human rights, the rule of law, and civilian control of the military while professionalizing the DRC military. In addition to IMET courses taken in the United States, IMET also provides mobile training courses and seminars through the Defense International Institute for Legal Studies, the Defense Resource Management Institute, and the Center for Civil-Military Relations on human rights, rule of law, and professional standards that will also be continued under a partial national interest waiver.

Continuing U.s. support and assistance to the FARDC in the form of nonlethal EDA and licenses for direct commercial sales of U.S. origin defense articles would have a similarly positive effect on broader U.s. objectives with respect to increasing stability and providing greater civilian protection in the DRC, particularly in eastern DRC, and assist the DRC's security sector reform efforts. Continuing U.S. support and assistance to the FARDC on defense reform and training the next generation would have a direct and positive effect on reducing the use of child soldiers.

Although FMF funds also play a role in assisting the DRC's security sector reform efforts and achieving U.s. objectives with regard to security in the DRC, a partial rather than a full national interest waiver has been issued in order to send a clear message to the DRC that ending the practice of using child soldiers is a high priority for the United States Government.

In accordance with the 2011 Trafficking in Persons Report, and pursuant to the Victims of Trafficking and Violence Protection Act of 2000, the United States Government has already determined that it would not be appropriate to provide Fiscal Year 2011 and Fiscal Year 2012 Foreign Military Financing (FMF) funds to the ground forces of the FARDC. Pursuant to the CSPA, provision of Fiscal Year 2012 FMF to the air and maritime elements of the FARDC will also be prohibited. Restricting this funding will underscore the priority that the United States Government places on sanctioning those that use and recruit child soldiers. Continuing with other forms of assistance will emphasize our desire to continue to support programs that aid security sector reform and instill respect for universal human rights, including the imperative to adequately protect children, throughout the FARDC.

Yemen

The President has determined that a full waiver of the prohibition in section 404(a) of the CSPA with respect to Yemen is in the national interest of the United States.

Yemen is a key partner in counterterrorism operations against al-Qa'ida in the Arabian Peninsula, an al-Qa'ida affiliate that has previously attempted to attack the United States, and has vowed to continue such attacks in the future. Cooperation with the Yemeni government is a vital piece of the U.S. national strategy to disrupt, dismantle, and defeat al-Qa'ida and its affiliates and adherents by denying them sanctuary in the ungoverned spaces of Yemen's hinterland. Removing the Administration's flexibility to provide security assistance would have the potential to jeopardize the Yemeni government's capability to conduct special operations and counterterrorism missions.

The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2012 IMET funding and FMF funding. In addition, Yemen would not be eligible for section 1206 funding to improve its counterterrorism capabilities. Were the Administration unable to provide these forms of assistance as warranted by conditions on the ground, the harm to the long-term bilateral relationship would be diminished and the overall capacity of the Government of Yemen to maintain security and conduct counterterrorism 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 2012 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, and support for UH-1 helicopters. Additionally, it will support critical training and unit and individual equipment for counterterrorism forces. Without FMF, the ability of Yemeni government forces to transport counterterrorism forces quickly throughout the country would substantially diminish. Further, FMF supports maritime security and interdiction capability (fast patrol boats, floating piers) which will expand the capacity of the Yemeni Navy and Coast Guard to patrol and protect their coastline and ports.

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