
ALTERNATIVE REPORT
TO THE
INITIAL REPORT OF THE
UNITED STATES OF AMERICA
TO THE
UN COMMITTEE ON THE RIGHTS OF THE CHILD
CONCERNING THE OPTIONAL PROTOCOL
TO THE
CONVENTION ON THE RIGHTS OF THE CHILD
ON THE
SALE OF CHILDREN,
CHILD PROSTITUTION
AND CHILD PORNOGRAPHY

ACKNOWLEDGEMENTS

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In addition, we owe a debt of gratitude to the following individuals for their invaluable help in research and editing: Sarah H. Albert, George Grandison, Stacey Greci, Sunitha Menon, Diana Padilla, David Replogle, Srividya Sheshadri, and Sharona Shuster.

Funded by the Mertz Gilmore Foundation.

This report is submitted to the UN Committee on the Rights of the Child by the organizations named in the accompanying cover sheet.

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3. Who Is There To Help Us? How the System Fails Sexually Exploited Girls in the United States.
4. Child Rights Survey: Are You Aware?

GLOSSARY OF TERMS AND ACRONYMS

ACF: Administration for Children and Families	NAPHISIS: National Association for Public Health Statistics and Information Systems
CEOS: Department of Justice Child Exploitation and Obscenity Section	NCJFCJ: National Council of Juvenile and Family Court Judges
CPS: Child Protective Services	NCMEC: National Center for Missing and Exploited Children
CRC: Convention on the Rights of the Child	NGO: Non-governmental organization
CSEC: Commercial Sexual Exploitation of Children	NIBRS: National Incident Based Reporting System
DHS: Department of Homeland Security	NISMART: National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children
DHHS: Department of Health and Human Services	NPA: National plan of action
DOJ: Department of Justice	OJJDP: Office of Juvenile Justice and Delinquency Prevention
DOL: Department of Labor	OJP: Office of Justice Programs
DUCS: Division of Unaccompanied Children's Services	OPSC: Optional Protocol on the Sale of Children
EBRS: Electronic Birth Registration Systems (EBRS)	ORR: Office of Refugee Relocation
FBI: Federal Bureau of Investigation	OVC: Department of Justice Office of Victims of Crime
GAO: Government Accountability Office	TIP: Trafficking in Persons
HIV: Human immunodeficiency virus	TVPA: Trafficking Victims Protection Act
ICE: Immigration and Customs Enforcement	UN: United Nations
IHS: Indian Health Service	USG: United States Government
IINI: Innocent Images National Initiative	
MoU: Memorandum of Understanding	
MTR: Mid-Term Review on the Commercial Sexual Exploitation of Children in America	

INTRODUCTION

As a follow up to the U.S. government's initial report to the United Nations Committee on the Rights of the Child on its implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), several U.S. based NGOs have collaborated in the creation of an Alternative Report, drawing upon their combined knowledge and experience, as well as available research on these issues. The purpose of this report is to offer a comprehensive and analytic look at the U.S. government's implementation of the Protocol and to provide civil society's perspective on issues it covers.

Bringing to bear our collective experience and knowledge, we found that the U.S. government has made a serious commitment to reduce the commercial sexual exploitation of children within its borders – both of children from abroad and those who are U.S. citizens. The United States has enacted substantial legislation pertaining to these concerns and has made good faith efforts to eliminate these forms of abuse in other countries.

We have also identified several areas where the United States falls short in its efforts to reduce child sexual victimization. These include:

- Poor or non-existent coordination among federal agencies and with state law enforcement agencies that allows children to fall between the cracks of services and protection;
- Little attention given to preventative measures;
- Over emphasis on law-enforcement at the expense of a victim centered approach;
- Inadequate collection and analysis of the necessary data in many areas, especially the number of victimized children – both U.S. citizens and children from abroad;
- Poor or misguided enforcement of laws, particularly with regards to domestic child victims of trafficking who are arrested rather than assisted; and
- Lack of training for law enforcement and health-care practitioners in identifying and effectively responding to victims.

Although the USG Report followed the Committee's 2002 guidelines, this Alternative Report is based on the more recent 2006 reporting guidelines, citing the government's report where applicable. For ease of reading, we have also included a chart of both guidelines in Appendix 1.

Some Guidelines are not mentioned in this Alternative Report because we believe the United States is performing adequately in those areas or we have insufficient information to provide substantial comment. Recommendations, appendices and attachments are included to provide a comprehensive picture for the Committee's review.

RECOMMENDATIONS

We offer the following recommendations for the government’s consideration as it seeks to strengthen the effectiveness of its response towards the elimination of the sale of children, child prostitution, and child pornography in the United States.

1. Ratification of the Convention on the Rights of the Child (CRC)

That the United States Government take prompt actions to finally ratify the Convention on the Rights of the Child as one of the main instruments for creating a protective environment for all children and as a demonstration of political will and commitment to children worldwide.

2. National Plan of Action (NPA) including collaboration

That the United States develop a National Plan of Action and overall strategy for the elimination of all offenses defined in the OPSC, based on a detailed assessment of the situation of children vulnerable to or victimized by these crimes. This will require greatly improved coordination and collaboration among federal agencies between federal and state governments and among states that aims to eliminate current inconsistencies and contradictions that are barriers to fulfilling the obligations of the United States to the OPSC. The NPA should include a monitoring and evaluation component and clearly define the roles and responsibilities attached to the various agencies. See Appendix 2 for list of agencies.

3. Data Collection and Monitoring

That the United States develop and implement a government-wide system for ongoing data collection and monitoring to achieve reliable estimates of the number of child victims to all offenses listed in the OPSC. This should include to the extent possible and increasing over time: a) full collaboration among federal agencies and with and within states; and b) disaggregation by race, age, sex, ethnicity, region, and nationality, and showing the evolving prevalence rates; liaison with hospitals, youth agencies, runaway and homeless shelters, detention centers and all institutions that could be in a position to identify child victims.

We encourage the United States to work more closely with NGOs on developing and implementing strategies to increase the number of identified child victims.

4. Training

That the United States strengthen training throughout the entire system of immigration and law enforcement officers, judges, attorneys, social workers, teachers, health care workers and many other categories of people who may come in contact with trafficked or sexually exploited children to help them better identify, understand, protect and provide services for child victims. This would help ensure, for example, that children trafficked from Mexico and other countries are not deported and that U.S. citizen children be recognized as victims of sexual exploitation and not treated as criminals or arrested or detained with delinquents under state anti-prostitution laws.

We urge the United States to provide further training for law enforcement officers, juvenile court staff, and service providers to help build skills and knowledge for assisting child victims and thus avoid their re-victimization.

5. Treatment of victims in the legal system

That the United States ensure that child victims of any of the offenses under the OPSC are never

criminalized, and that all possible measures be taken to avoid their stigmatization and marginalization.

Efforts should be undertaken to develop and implement more effective police and prosecution policies, and practices specifically devoted to preventing, identifying and responding to trafficking of both international and domestic victims.

The provision of the current MoU requiring a recommendation from law enforcement authorities as a precondition to providing assistance to internationally trafficked children should be withdrawn. If the information available to the Director of ORR indicates that there is reason to believe that the child has been a victim of a severe form of trafficking, a letter of eligibility should be issued promptly. This change will expedite the issuance of letters of eligibility for child victims and will avoid forcing children to undertake interviews with law enforcement before they are emotionally and psychologically ready.

6. Budget allocations and tracking

That the United States improve financial accounting methods for federally-allocated resources for prevention and prosecution of CSEC and for services to protect and rehabilitate children who are victims or at high risk of victimization. The United States should provide dedicated federal funding streams, similar to those now established for foreign victims of trafficking, for sexually exploited U.S. citizen children. Increased resources for effective and staff-secure placements and services for victims, especially physical shelter, currently offered by NGOs should be included.

7. Prevention

That the United States government work with state governments to analyze and remove barriers to adequate and accessible services for populations of children at high risk of exploitation. Education of foster care and group care providers concerning exploitation risks for children in their care should be improved.

That the United States government increase training and proactive prevention programs to stop the cycle of children's sexual victimization by ensuring that such abuse is reported, and by assisting communities to recognize these issues and work towards solutions that will end the sexual violence to create a community of hope and protection for their children.

That the United States create a national high profile awareness campaign aimed at countering the normalization of child sexual exploitation that pervades the media.

That the United States adopt a truly proactive prevention program focused on the demand side of child sexual exploitation. This would go beyond a focus on pedophiles to include pimps and the much broader group of men who are the 'customers' of sexually exploited youth.

8. Services

That the United States analyze barriers to and improve services for all child victims of trafficking and prostitution, both within the U.S. and internationally. Special focus must be put on shelters and housing. In cases of uncertainty as to a victim's age, if there is any reason to believe the person is a child or if there is significant uncertainty, the young person in question should be identified as a possible child victim and treated as such until there is a contrary determination.

The U.S. government must change the procedures for identifying international child trafficking victims. Once notified that there is credible evidence a child victim of trafficking has been identified, ORR should immediately authorize interim emergency support and assistance to the child victim. The provision of the MoU requiring a recommendation from law enforcement authorities as a precondition to providing assistance should be withdrawn

That the United States ensure that child victims of any of the offenses under the OPSC are never criminalized, and that all possible measures be taken to avoid their stigmatization and marginalization.

That the United States work with the government of Mexico to devise a workable program to protect and assist children who are stopped at the border to succeed in crossing the border and are potential victims of trafficking and exploitation

9. Civil Society

That the United States broaden partnerships and improve coordination with NGOs already working with children at risk and victims of trafficking and prostitution. NGOs have already shown themselves to be valuable sources of training, information, knowledge and access to children.

10. Legislation

That the United State finally ensure that state and federal laws are harmonized in order to afford protection to all children up to the age of 18, regardless of the age of consent. State and federal laws on child pornography must be strengthened within the framework of the U.S. Constitution, and greater efforts should be made to enforce existing child pornography laws. Also, as a matter of urgency, mechanisms must be put in place for better identifying and assisting child victims forced to create child pornographic images.

11. Children in Domestic Servitude

That the United States support, through the U.S. Department of Labor (DOL), the examination of the scope and types of involuntary domestic servitude of children within the U.S.

SECTION I: GENERAL GUIDELINES

The General Guidelines provided by the Committee give overall direction to the governments in the development of reports. Some of the information outlined under these Guidelines is integrated in the main body of the USG Report. Guidelines 4 through 8 in particular are addressed elsewhere.

Guideline 1: Process of preparing the report

The USG Report provides no description of the preparation of its report.

Guideline 2: UN Convention on the Rights of the Child and Guideline 3: Contributions to implementation of the Convention on the Rights of the Child

Since the United States has signed but not ratified the CRC it does not make reference to it in its Report except to note that it assumes “no obligation under the Convention on the Rights of the Child by becoming a party to the Protocol.”

SECTION II: DATA AND MONITORING

The USG Report made no mention of data on the incidence of any of the offenses described in Guidelines 9 to 12. A search of more than 12 USG websites in a month-long effort by the authors of the Alternative Report found some limited data. There also exists a body of published and unpublished anecdotal estimates of overall, small-scale local and micro data, as well as estimates of vulnerable populations from which the scale of sale of children, child prostitution and child pornography can be estimated. Collecting more extensive data, which includes definition and scope of the problems outlined in the OPSC, is an essential step to meaningful solutions. Its absence dramatically hinders the U.S. government’s ability to fully understand the problem or assess progress in reducing the prevalence of child exploitation.

Guideline 9: Data collection

Data on child victims identified and assisted, both U.S. citizens and non-U.S. citizens, do not appear to be available. It is difficult to estimate how many U.S. citizen children are victims of child prostitution, child pornography and trafficking due to a lack of official statistics. It is important to acknowledge the difficulty of obtaining such information due to the highly secretive and hidden nature of child sexual exploitation and current government procedures. Children themselves are unlikely to report the crimes against them, fearing retaliation from their perpetrators or because police will treat them as criminals rather than victims.

It is also difficult to estimate the number of non-U.S. citizens who are victims. Under current USG regulations, DHHS requires a “recommendation” from DOJ/DHS before allowing a child who is not a U.S. citizen to obtain assistance as a victim of trafficking. This in practice means a child victim must agree to participate in law enforcement interviews as a condition for receiving assistance.. This practice likely causes some child victims to remain silent or pursue other possible avenues of relief in order to avoid immediate interview with law enforcement.

Another problem is that institutions that could collect data rarely do so, or if they do, it remains in

file cabinets, rather than analyzed and used to measure the problem and develop prevention and protection programs. Aware of the sensitivity and need for confidentiality, youth agencies tend to not include the question in their intake questionnaire or interview. Additionally, even service agencies committed to this population acknowledge that they do not keep careful data. A street youth organization in Detroit, Michigan, for example, conducted an anonymous survey of girls in its crisis shelter about sexual exploitation, and nearly 100 percent responded that they had been involved in sex for money and that many had been arrested. “They were much more truthful if they didn’t have to put their names on it,” according to an outreach worker “But it doesn’t help in the numbers game.”¹

According to a 2005 Department of Justice report: *“The difficulty of developing accurate estimates reflects the challenges of quantifying the extent of victimization in a crime whose perpetrators go to great lengths to keep it hidden. Nonetheless, the U.S. government needs to undertake efforts to estimate more reliably the number of trafficking victims in the United States so that the Government can evaluate whether efforts to combat trafficking in persons are producing the results it seeks, to wit reducing the number of victims.”*²

This is especially important in regards to the sexual exploitation and trafficking of children, or all persons under the age of 18.

The USG has given at least ten research grants and sponsored a meeting of its grantees in September 2007, indicating its commitment to gather data about commercial sexual exploitation of children. Future government reports to the Committee should be prepared to report more fully on research methodologies and to present more data of the sale of children, child prostitution and child pornography.

Guideline 10: Incidence of children vulnerable to CSEC

A. A 2001 report published by the University of Pennsylvania School of Social Work estimates that approximately 293,000 American youth are currently at risk for becoming victims of commercial sexual exploitation.³ The study estimates that 16,500 foreign children who entered the United States between 1999 and 2000 became victims of sexual exploitation.⁴ Extrapolating from other relevant data, National Incidence Studies of Missing, Abducted, Runaway and Throwing Children (NISMAART) estimates that nationally 450,000 children will run away from home each year and 13,000 from juvenile facilities.⁵ For the year 1999, NISMAART estimated that 71 percent of the nearly 1,700,000 youth with a “runaway/ throwaway” episode are potentially endangered by hard drugs, sexual or physical abuse or presence in a place where criminal activity was taking place.⁶

B. The USG Report made no mention of and we could find no statistics regarding the prevalence of organ transfer of children for profit occurring in the United States.

C. One study conducted by the non-profit organization Free the Slaves and the University of California, Berkeley Human Rights Center documents forced labor (both adult and child) in the United States between 1998 and 2003. According to the study, U.S. media reported 131 cases of forced labor in the U.S. involving 19,254 men, women, and children from various ethnic and racial backgrounds.⁷ Of these 131 cases, 45 noted that children were involved. Approximately 1,200 children were exploited in these cases.⁸ The study also indicated that Chinese, Mexican, and Vietnamese

immigrant groups have the highest number of victims of forced labor (including men, women, and). In addition, states with a majority of forced labor operations included California, Florida, New York, and Texas.⁹ The main sectors of the economy where forced labor was identified include domestic service, agriculture, sweatshop/factory work, and restaurant and hotel work and in sexual exploitation.

D. Despite exhaustive research, we could not identify statistics on the number of children in the United States that are adopted through methods incompatible with Article 21 of the CRC or other applicable international standards. It is important to keep in mind that the USG has not ratified the CRC and does not, therefore, hold itself responsible for honoring the adoption-related protective obligations therein.

E. We did not find any data regarding other forms of the sale of children, including traditional practices that involve the transfer of a child.

F. In May 2004, the DOJ estimated that 14,500 to 17,500 men, women and children are trafficked annually into the United States,¹⁰ with the largest number from East Asia and the Pacific (5,000 to 7,000), followed by Latin America, Europe and Eurasia, at between 3,500 and 5,500 each.¹¹ These statistics are not disaggregated by age or sex. According to NGOs working in the field, if children who are U.S. citizens were to be included, this would likely be a gross underestimation of the real number.

Guideline 11: Prostituted children

Sources, including non-profit groups that work with sexually exploited people, suggest there may be between 500,000 to 600,000 prostituted children in the United States.¹² Considering the large number of adults who entered the life as children, many experts would support this number.

Referring to prostituted American girls, a San Francisco probation officer claimed that only the girls who end up in detention are recorded. Of the 300 recorded juvenile arrests in a given year, she indicated that 15 to 20 percent have prostitution charges, another 30 percent have prostitution in their history, and both figures are in stark contrast to the estimated 10,000 to 15,000 thousand young people living “on the street” in San Francisco alone.¹³

The National Runaway Switchboard has estimated that as many as 2.8 million children live on the streets in the United States, a third of whom are lured into prostitution within 48 hours of leaving home.¹⁴ A study in 12 of New York State’s 62 counties in 2007 estimated that on an annual basis, 2652 cases of commercial sexual exploitation of children can be identified.¹⁵

Guideline 12: Production, distribution and consumption of child pornography

The United States is one of the world’s largest producers, distributors and consumers of child pornography. According to the British-based Internet Watch Foundation, in 2005 36.4% of the reports relating to commercial child pornography sites were traced to the United States. The most significant cyber-crime against children confronting the FBI is online images of the sexual exploitation of children. In fact, currently more personnel resources are expended towards violations under the Innocent Images National Initiative (IINI), a component of the FBI’s Cyber Crimes Pro-

gram, than any other program within its Cyber Division.

In addition, the 2001 University of Pennsylvania report estimates that over 6 million U.S. children with internet access are also exposed to unwanted sexual materials each year. More than 1.7 million of these children explain that exposure to this creates harm and distress for them.¹⁶

Convictions and Prosecutions

Under the nationwide Innocence Lost Initiative, started by the FBI and CEOS in partnership with NCMEC, the USG Report cites the number of investigations, arrests, prosecutions and convictions as of September 2006. Updating these numbers from the DOJ website, as of January 2007 the Innocence Lost Initiative claims 268 investigations of cases exclusively involving child exploitation or child trafficking; 697 arrests; 145 indictments; and 133 convictions.¹⁷

According to the FBI,¹⁸ online child pornography/child sexual exploitation investigations under the FBI's IINI, accounted for 38% of all investigations under the FBI's entire Cyber Division in 2005. IINI cases grew exponentially between 1996 and 2005 with a 2026% increase in cases opened (113 to 2402); an 856% increase in information and indictments (99 to 946); and a 2325% increase in arrests, locates and summons (68 to 1649).¹⁹

According to a 2005 National Juvenile Online Victimization study, law enforcement agencies made approximately 1,713 arrests across the United States for Internet-related crimes involving the possession of child pornography in the 12 months beginning July 1, 2000. The vast majority of those arrested were men; about 1/3 of whom were living with children under the age of 18 at the time of their crime. Most of the child pornography possessors arrested had images of pre-pubescent children. Specifically, 83 % had images of children between the ages of 6 and 12, 39% had images of three- to five-year old children, and 19% had images of toddlers or infants younger than three. In addition, 62% of those arrested had pictures primarily of girls, 14% had pictures of mostly boys and the remaining 15% had pictures showing boys and girls equally.²⁰ During the same 12-month period, the Cyber-Tipline, a Congressionally-mandated service operated by NCMEC, received 21,910 reports, 87% of which were reports of child pornography.²¹

The Immigration and Customs Enforcement (ICE) division of the U.S. Department of Homeland Security (DHS) developed Operation Predator in 2003 to target child pornographers, child traffickers, and child sex tourists. In the last four years, ICE arrested more than 10,000 child predators in the United States, including U.S. citizens and non-citizens. Criminals arrested committed a broad variety of child sexual exploitation crimes. Over 85% of these arrests were of non-citizens, 5,500 of whom have already been deported.²²

The passage of the PROTECT Act of 2003 has resulted in more than 50 indictments and 29 convictions of Americans involved in child sex tourism.²³

Recommendations:

That the United States develop and implement a government-wide system for ongoing data collection and monitoring to achieve reliable estimates of the number of child victims to all offenses listed in the OPSC. This should include to the extent possible and increasing over time: a) full collaboration among federal agencies and with and within states; and b) disaggregation by race, age,

sex, ethnicity, region, and nationality, and showing the evolving prevalence rates; liaison with hospitals, youth agencies, runaway and homeless shelters, detention centers and all institutions that could be in a position to identify child victims.

We encourage the United States to work more closely with NGOs on developing and implementing strategies to increase the number of identified child victims.

That the United States support, through the Department of Labor (DOL), the examination of the scope and types of involuntary domestic servitude of children within the U.S.

SECTION III: GENERAL MEASURES OF IMPLEMENTATION

The following assessment draws on long-term civil society involvement in CSEC supplemented by web research and conversations with relevant agencies. We note that comments in this section do not address specific or formal implementation of the OPSC itself (about which the U.S. report contains little if any information), but rather of existing laws and policies and programs related to sex trafficking, prostitution, child pornography and sex tourism. As in other sections, most USG references apply to human trafficking in general and do not disaggregate by age.

The USG Report describes a significant number of governmental departments (Appendix 2) or agencies responsible for the implementation of the Protocol. Although the report itself does not refer to mechanisms of coordination, many are mentioned on various government websites. In practice, however, extensive civil society testimony and experience show that this coordination is all but entirely lacking, frequently allowing children to fall between the cracks.

Following passage of the Trafficking Victims Protection Act (TVPA) in 2000 and the Second World Conference Against CSEC in Yokohama in 2001, limited progress has been made by the USG, local law enforcement, and NGOs in developing partnerships to address child trafficking within the United States of both international victims and U.S. citizens.

Guideline 13: U.S. Implementation of the Protocol

C. A myriad of agencies and departments within the federal government are in place to investigate and prosecute crimes against children and to provide services to child victims. These include: the Department of Health and Human Services (DHHS); the Department of Justice (DOJ), including its Office for Victims of Crime (OVC) and its Commercial Exploitation and Obscenity Section (CEOS); the Department of Homeland Security (DHS), including its Office of Immigration and Customs Enforcement (ICE); the Department of State; and the Department of Labor. (Appendix 2 of this Alternative Report provides an overview of USG agencies working internationally on anti-trafficking initiatives addressing both adults and children.)

Coordination among federal agencies and between federal and state and local governments is minimal. We could find only three examples:

1. Forty-two DOJ-funded local task forces on human trafficking are an attempt to coordinate federal and state law enforcement and service providers for victims of human trafficking (#91 of USG Report).
2. As of July 26, 2007, the Innocence Lost program had been expanded to 29 high-risk cities with 23 dedicated task forces and working groups (#92 of USG Report).²⁴
3. In late 2006, the Office of Justice Programs of the Department of Justice funded a group of NGOs to develop a national, multi-site training and technical assistance program to combat sexual exploitation of children in five U.S. cities.

Notwithstanding these three examples, many NGOs also identify a lack of coordination between government agencies and NGOs as a major stumbling block to identifying and protecting children. During the U.S. Mid Term Review process on CSEC, which included 1) questionnaires filled out by NGOs; 2) reports provided by federal government agencies; and 3) a two-day conference on the subject at which the USG participated, there was virtually no mention of state and local coordination. On the contrary, several participants referred to the lack of coordination within federal government agencies and also with the States. Many requirements, such as those described below, impede coordination and result in a loss of children from identification and assistance in the system.

For example, the way agencies operate has denied children who are international victims of trafficking the rapid support and assistance they need to minimize the trauma they have suffered. Recognizing the vulnerable status of child victims, the TVPA excluded children from the requirements for immediate cooperation with law enforcement as a condition for receiving assistance. However, in implementing the law, DHHS, DOJ and DHS have a Memorandum of Understanding (MoU) which prevents DHHS from issuing a letter of eligibility to all child trafficking victim without a signed request from the federal law enforcement system. This requirement stands in the way of prompt delivery of services to these international child trafficking victims.

Other requirements and narrow mandates that impede coordination, and, therefore, reaching and assisting child victims, include stipulations indicating that State run Child Protective Services (CPS) can only become involved in situations where *a parent or guardian* is abusing children:

*“No one, not even licensed child welfare agencies, can legally provide services to trafficked children without the ORR eligibility letter or a state court order establishing guardianship. Service providers do not seek guardianship because law enforcement assures them that they will make the request to ORR imminently. This assurance often lasts days or sometimes weeks before a child actually receives an ORR eligibility letter, so in the interim, there is no legal guardian, no protective services and no representation. The states’ Children’s Protective Services have largely declined to fill this role to help trafficked children seeing their mandate as limited to intervening when parents are abusing or harming children.”*²⁵

The 2007 U.S. Government Accountability Office (GAO) report, “Human Trafficking: A Strategic Framework Could Help Enhance the Interagency Collaboration Needed to Effectively Combat Trafficking Crimes,” criticizes the coordination among federal agencies for being “reactive” and operating on a “case by case basis” and says that U.S. efforts to address trafficking “could benefit from an overall strategic framework to help enhance and sustain interagency collaboration.”²⁶

While the DOJ funded task forces represent an attempt to coordinate civil society and

government responses to human trafficking many NGOs report the existence of distrust between themselves and law enforcement agencies. And only about 1400 international victims of human trafficking have been identified and assisted since 2000 when the TVPA became law.

D. The USG Report does not mention public dissemination of the OPSC. Although it refers (# 81) to frequent training and funding to states needing training around CSEC, this is not meant to specifically implement the OPSC.

The USG has high quality training resources and facilities for law enforcement and examples of effective training. However, in a country with 19,000 police forces, ranging from the 40,000 strong New York Police Department to small town police forces of just a few officers, training is piecemeal and comprehensive nationwide training is absent.²⁷ In addition, most family and juvenile court judges, and the attorneys representing child welfare agencies and children, know nothing about CSEC or TVPA. A 2005 survey of member judges conducted by the National Council of Juvenile and Family Court Judges (NCJFCJ) discovered a clear need for more awareness and training on the issues of child trafficking and CSEC across the country. The results show that despite these trainings programs, only 136 trafficked children have been identified in the U.S.²⁸

NCMEC offers courses several times a year to train prosecutors, judges and law enforcement in investigating and preventing child sexual exploitation. In addition, as part of the Innocence Lost initiative, NCMEC has provided Protecting Victims of Child Prostitution training to more than 570 law enforcement officers, social workers and prosecutors. DOJ has also trained more than 1,000 people on victim identification.²⁹ The International Center for Missing and Exploited Children, in partnership with Microsoft and Interpol, conducts Computer Facilitated Crimes Against Children training seminars for law-enforcement personnel who investigate internet-related child exploitation cases. As of September 2007, a total of 2,413 law-enforcement officers from 106 countries have participated in 27 regional trainings.³⁰

Anti-trafficking materials aim to train people at state level (since this is where nearly all contact between child victims and law enforcement takes place) to distinguish between a victim and a criminal in order to avoid arresting a child victim for prostitution. In practice, however, according to reports from NGOs and service providers, this process fails, as arrests of children who have been prostituted or trafficked continues. See Guideline 27 below for more information.

E. The USG Report makes no reference to mechanisms and procedures used to collect and evaluate the data concerning the implementation of the Protocol. A major reason for this is the nearly total lack of data. (Section II of this Alternative Report).

F. Although the USG Report makes little mention of budget allocations, the United States is spending millions of dollars on training, services, and prevention of human trafficking, with a small portion of that allocated specifically for children. (See figures below.) But, the lack of data and the small number of child victims actually identified call into question where this money is going and how effective it is. We did find a few examples of how money is being allocated related to the implementation of issues addressed in the Protocol:

- The DOJ Bureau of Justice Assistance (BJA) grant program has created 42 local task forces with overall grants of \$17,324,182 ³¹ for both adult and child trafficking.

- DOJ/OVC has given \$12,759,676 in grants to civil society organizations for both adult and child trafficking.³²
- DOJ/OJP funded a five-city training and technical assistance project for the protection of domestically trafficked children.³³
- The DOJ Innocence Lost Initiative has granted funds for prosecution of pimps, and DHS for prosecution of sex tourists, but numbers are unavailable.³⁴
- The State Department allocated \$1,475,727 for the explicit benefit of trafficked children, amounting to only 5% of its total \$28,553,963 distributed.³⁵
- HHS gave \$114,000 to several NGOs,³⁶ and street outreach programs for runaway and homeless youth.³⁷

It is possible that states also have budgets to address child trafficking and sexual exploitation, but there is no information available and it appears that the USG does not know the amount either.

G. The Report provided no overall strategy for the elimination of the sale of children, child prostitution and child pornography and the protection of victims, and any national or regional plans that have been adopted in order to strengthen efforts to implement this Protocol.

The United States has no national plan of action to combat the commercial sexual exploitation of children, nor other comprehensive plans that address CSEC or child trafficking issues, even though the government was represented at the First World Congress against CSEC and signed the Plan of Action calling on governments to establish a national plan of action. DOJ sponsored a national meeting in 2002 designed to address and to discuss recommendations for combating CSEC in the U.S. However, there has been little follow up to these recommendations until recently.

H. The USG Report makes no mention of the significant contribution of civil society against CSEC, although it does refer to its overall support of NGOs and other groups. This is especially surprising as civil society organizations, including the private sector, have formed the bulwark of service provision as well as advocacy and activism on behalf of child victims of CSEC. This is especially true at the state level where it is most needed, and where DHHS provides grants to NGO service providers.

See attached Mid-Term Review Report and especially Appendix D of the Report for a description of the NGOs activities and the wide scope of services they perform. These range from providing educational materials, victim restoration programs, legal reform, and victim identification, awareness raising and exposure, treatment programs, training curricula and developing child protection policies and pledges to prevent sex tourism.

The USG Report makes no mention of the role played by, or even the existence of, statutory ombudspersons for children or other autonomous public institutions for the rights of children in implementing the OPSC.

Recommendations

That the United States develop a National Plan of Action and overall strategy for the elimination of all offenses defined in the OPSC, based on a detailed assessment of the situation of children vulnerable to or victimized by these crimes. This will require greatly improved coordination and collaboration among federal agencies between federal and state governments and among states to

eliminate current inconsistencies and contradictions that are barriers to fulfilling the obligations of the United States to the OPSC. The NPA should include a monitoring and evaluation component and clearly define the roles and responsibilities attached to the various agencies.

That the United States strengthen training throughout the entire system of immigration and law enforcement officers, judges, attorneys, social workers, teachers, health care workers and many other categories of people who may come in contact with trafficked or sexually exploited children to help them better identify, understand, protect and provide services for child victims. This would help ensure, for example, that children trafficked from Mexico and other countries are not deported and that U.S. citizen children be recognized as victims of sexual exploitation and not treated as criminals or arrested or detained with delinquents under state anti-prostitution laws.

That the United States provide further training for law enforcement officers, juvenile court staff, and service providers to help build skills and knowledge for assisting child victims and thus avoid their re-victimization.

Investigations involving children who are victims of trafficking should be conducted by persons with special training and experience in dealing with child victims, consistent with the provisions of Federal law for victims of child abuse and with the Attorney General's Guidelines for Assistance to Child Victims.

That the United States improve financial accounting methods for federally-allocated resources for prevention and prosecution of CSEC and for services to protect and rehabilitate children who are victims or at high risk of victimization. The United States should provide dedicated federal funding streams, similar to those now established for foreign victims of trafficking, for sexually exploited U.S. citizen children. Increased resources for effective and staff-secure placements and services for victims, especially physical shelter, currently offered by NGOs should be included.

SECTION IV: PREVENTION

The USG Report describes programs it supports aimed at preventing child abuse and neglect. To the extent that child maltreatment contributes to child sexual exploitation, these programs can be seen as preventive actions under the OPSC. However, there is very little attention to preventing child sexual exploitation specifically. And many of the services and facilities aimed at preventing exploitation, especially on the state and local level, i.e., group homes and foster care, are in need of vast improvement in the care they provide for children. Particularly poor children, runaways and indigenous (Native American) children are often invisible and ignored by available services or even mistreated within the institutions established to aid them.

Guideline 14: Government identification of vulnerable children

The USG report cites no methods used to identify children who are vulnerable to commercial sexual exploitation, and we know of no such efforts undertaken by the government. As noted above, there are government programs focused on the broader context of child safety or international trafficking in persons (not distinguishing between adults and children) rather than the specifics of child sexual exploitation or that which takes place within the United States. On both the federal and state

levels, prevention programs and services such as child protective services (CPS) for vulnerable U.S. children focus primarily on intra-familial abuse and neglect, leaving them often unable to address and too often unaware of the vulnerability to commercial sexual exploitation that may occur as a direct consequence of abuse or neglect of children within the family.

In the United States, one of the major factors making children vulnerable to sexual exploitation is unaddressed child abuse.³⁸ A 1994 National Institute of Justice report claims that sexually abused children are 28 times more likely to be arrested for prostitution at some point in their lives than peers who did not suffer abuse. Data collected at Huckleberry House, an adolescent facility in San Francisco, showed that 90 percent of girls in prostitution had histories of sexual molestation.³⁹ A study of 130 sexually exploited individuals (75 percent of them female) in San Francisco found that 57 percent reported a history of childhood sexual abuse with an average of three perpetrators. A Canadian study found 82 percent of females had backgrounds of sex abuse prior to entry into prostitution.⁴⁰

Those who work with prostituted children believe that the direct link to early sexual abuse must be much better understood by policy makers, legislators, law enforcement and the public. This points to the complex often contradictory behaviors set in motion by the early violation of soul and body that goes unaddressed and often results in behaviors that set the stage for exploitation – and of which most pimps are keenly aware. Unaddressed childhood sexual abuse also helps to explain the intense loyalty of girls to their pimps that is frustrating to many, especially law enforcement officers.

Many other factors contribute to children’s vulnerability to sexual exploitation. Research shows that a large percentage of girls in the United States with at least one parent involved in excessive drinking or illegal drug use are more vulnerable to exploitation. Throwaway and runaway children are especially at risk, as noted under Guideline 11 above. Counselors often see throwaway or runaway girls as delinquents and when their situation is reported, school officials shrug “we just keep picking her up and she keeps running away.” A comparative study shows “not attending school and not working” as a paramount high social risk factor for U.S. youth between 16 and 19 years old. All those interviewed for a report prepared for ECPAT-USA on this subject pointed to the importance of early intervention and prevention support for families and schools as well as girls.⁴¹

A proliferating sex industry provides an environment for sexual exploitation of children. The industry often targets young females. Also, peer pressure, a media bombardment of consumer values and glamorizing of sex and easy money are all powerful lures to children with no job skills, no guidance and no base of support. One girl interviewed for an ECPAT-USA report on sexually exploited girls explained:

“My mom took off with my sister, leaving me behind to live with my grandmother. I never felt like she wanted me. I always thought if I could find and convince my mom to let me live with her, everything would be ok. But when I got to Baltimore, she didn’t want me. Then I met M, when I was 14. He loved me so much and I was always afraid he would leave me too. That’s why he could ask me to do anything for him and I did. So when he asked me to go make us some money, I did.” 42

Indigenous (Native American) Populations

Native American children are not mentioned in the list of vulnerable groups named in the USG Report. There is little public discourse about the problem, but “all children who live on a reservation are vulnerable,” according to NGOs who live and work with Native American children on the Rosebud and Pineridge Reservations in South Dakota, Rapid City, and on Turtle Mountains Reservation in North Dakota.⁴³ The Indian Health Service (IHS) estimates that one in four Native American girls and one in seven boys are likely to experience sexual abuse. There is little reporting and information is hard to collect but the symptoms are there for those with first-hand experience.⁴⁴ What they see are well-known ‘red flags’ widespread throughout the community, of sexual abuse and early sexual activity among adolescents (including depression, starting fires, killing animals, wearing heavy make-up) as well as pervasive alcoholism, date rape and drug abuse. The close-knit Native American communities do not talk about or generally admit to knowing or experiencing commercial sexual exploitation when this problem is called to their attention.

Support services for many reservations are minimal. Problems on the reservations, as sovereign nations, are handled by the federal government through the IHS, which is part of DHHS. The IHS offers some programs dealing with alcohol abuse which is more in the open, but nothing related to childhood sexual abuse. This is in part due to the denial and unwillingness within the community to talk publicly about these matters, out of both shame and fear of reprisal from the abuser. Many reservations are in rural, sparsely populated areas, and this isolation can create an insurmountable barrier for a family that seeks services and treatment for a child who has been violated. In the Rosebud reservation, a family would have to travel almost 200 miles to Rapid City. This is a tremendous burden on poor families who do not have reliable transportation, money to pay for gasoline or must choose between missing a day of work or the child not attending school in order to take the child in for treatment.

Guideline 15: Raising public awareness of CSEC

A-B. Although the United States promotes public awareness in other countries, the USG Report did not address domestic victims. NCMEC currently has a public awareness campaign that emphasizes Internet safety. NCMEC has also created the National Coalition to Prevent Child Sexual Exploitation, which has recently written, though not yet implemented, a strategy with long-term goals to prevent child sexual exploitation.

ORR/HHS campaigns focus on trafficking awareness, but they do not specify children and mostly address trafficking of non-U.S. citizens. On the issue of prevention of child sex tourism, the U.S. government has been supportive of the ECPAT Code of Conduct and has granted funds to NGOs such as World Vision and ECPAT-USA to deal with sex tourism in Cambodia, Brazil and Mexico; but again, these efforts focus nearly entirely on international victims. Some DHHS training about trafficking for local governments exists, but it is marked by inconsistency and the silo approach. One DHHS department provides training for local governments and others about international trafficking victims; the other DHHS department, which deals with American runaway and homeless youth and funds more than 300 shelters, provides no training about trafficking and sexual exploitation.

C. The media from time to time reports on trafficking. But they rarely address children per se, and when they do, refer mostly to trafficked children in other countries. In the United States, the media show interest in raising awareness about pedophiles and Internet predators, but less interest regard-

regarding prostituted citizen children or children trafficked into the United States for the purposes of prostitution.

NGOs and some local governments have expended much effort in raising awareness about U.S. trafficking of children, including videos, “John” schools, and billboard campaigns aimed at men who patronize prostitutes. See the Mid Term Review Report’s Appendix D for a summary of NGO actions and activities.

Recommendations

That the United States government work with state governments to analyze and remove barriers to adequate and accessible services for populations of children at high risk of exploitation. Education of foster care and group care providers concerning exploitation risks for children in their care should be improved.

That the United States government increase training and proactive prevention programs to stop the cycle of children’s sexual victimization by ensuring that such abuse is reported, and assisting communities to recognize these issues and work towards solutions that will end the sexual violence and create a community of hope and protection for their children.

That the United States create a national high profile awareness campaign aimed at countering the normalization of child sexual exploitation that pervades the media.

That the United States adopt a truly proactive prevention program focused on the demand side of child sexual exploitation. This would go beyond a focus on pedophiles to include pimps and the much broader group of men who are the ‘customers’ of sexually exploited youth.

SECTION V: PROHIBITION AND RELATED MATTERS

Guideline 16: U.S. federal implementation of the Protocol

The USG Report provides information on maximum and minimum penalties that can be imposed for offences listed in the OPSC. While the US Report does not mention the statutes of limitations, in 2006 the U.S. Congress passed the Adam Walsh Child Protection and Safety Act which eliminated statutes of limitations for criminal offenses against children. With respect to the states, statutes vary, and there appears to be no existing compendium of such state laws.

Guidelines 17 and 18: Implementation of the Protocol

The United States has a strong framework of federal legislation related to child pornography, transporting of children between states for unlawful sexual purposes and child trafficking.

To meet the barriers imposed by the U.S Supreme Court in a 2002 decision related to the breadth of the federal law's definition of child pornography, the U.S. Congress revised the statute in 2003. The new federal definition of child pornography defines it as “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit

conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.” There is continuing need for the U.S. Congress to strengthen laws to provide broad protection for children while still meeting Constitutional requirements.

The federal TVPA, passed in 2000 defines anyone under the age of 18 years old involved in a commercial sex act as a victim of a “severe form of trafficking.” In effect this extends the protection of federal law to all children who are sexually exploited. State laws define and prohibit the prostitution of children, yet these laws inconsistently protect child victims. Legislation on trafficking in children is comprehensive but enforcement is inconsistent, and particularly for domestic child victims who are trafficked within the United States, as opposed to those who are trafficked into the United States from foreign countries.

Some states have laws protecting children from being prostituted, but they are not working in practice because local criminal justice systems have a choice: they can treat the child as the perpetrator of the crime of prostitution or they can treat him or her as a victim of exploitation. For example, according to a memo prepared for a hearing by the New York City Council’s Governmental Affairs and Human Services Division,

“To date, sexually exploited youth in New York have been handled more as criminals, subject to punishment and incarceration, than as victims in need of treatment and services. Indeed, an attorney with the Legal Aid Society recently stated that sexual exploitation of youth is “one of the few areas of the law, in children and family court, where we see if there’s not a 100% detention rate, very, very close to a 100% detention rate.”⁴⁵

According to Howard Davidson of the American Bar Association Center on Children and the Law, “Often sexually exploited boys and girls, who have not been identified as such, are brought into the juvenile courts and we need to educate judges and lawyers about this. We also need protocols, procedures and laws to help assure that we identify when juveniles have been sexually exploited and then treat these children not as criminals, but rather as we are obligated by the OPSC to do, as victims.”

Guideline 19: U.S. child adoption and abduction laws

The USG Report is silent concerning the prevention of illegal adoption. Although there are numerous federal and state laws that aim to prevent illegal adoption, the U.S. report does not document them. Except for what U.S. law considers private or “independent adoptions,” it is an offense for anyone except an adoption agency to make arrangements for the adoption of a child, place a child for adoption, or receive a child for that purpose.⁴⁶ For example in Washington State, selling or purchasing a child is a felony. In New York in March 2000, legislation was passed increasing the penalty for illegally “selling a child” from a misdemeanor to a felony.⁴⁷

Regarding the theft of young children, the U.S. report does not document the fact that parental abduction is a crime in all 50 states and the District of Columbia and, in most cases, constitutes a felony. NCMEC handles hundreds of prevention and abduction-in-progress matters each year. NCMEC also coordinates the provision of pro-bono legal assistance to victim families and provides technical support, including legal technical assistance to parents, lawyers, court officers, law

enforcement officials, and others on matters relating to international abduction.

The USG Report fails to provide information about U.S. laws and methods to prevent fraudulent birth registrations and protect birthparents' consent for adoption. Electronic Birth Registration Systems (EBRS) have great potential for controlling birth certificate fraud in the United States. Systems developed independently in states during the 1990's are currently being re-engineered according to a national model designed by the National Association for Public Health Statistics and Information Systems (NAPHSIS) in partnership with the National Center for Health Statistics and the Social Security Administration.⁴⁸

Within the United States, to assure that birth parents are informed and provide freely given consent for adoption, adoption agencies and courts use a Parental Consent to Adoption form.⁴⁹ In all states, the birth mother and father hold the primary right of consent to the adoption of their child. When the identity of the biological father is not known, a formal adoption can be finalized without his consent. Either or both parents may have their rights terminated for reasons such as abandonment, failure to support the child, or abuse and neglect. State law determines when biological parents are sufficiently "unfit" to justify terminating their parental rights and responsibilities, including consent to an adoption. If a parent is deemed "unfit," a court can finalize an adoption even though the birth parent does not consent. Approximately 46 states and the District of Columbia specify in statute when a birth parent may consent to adoption.⁵⁰

The United States has a plethora of federal and state laws regulating the use of adoption intermediaries, none of which are mentioned in the USG Report. All states permit state-licensed private agencies to place children with adoptive parents. In addition, all but a few states allow intermediaries who are not licensed child placement agencies to assist birth parents in finding and selecting adoptive parents for their children.⁵¹ To ensure that no one profits from the placement of the child, approximately 34 states and the District of Columbia have laws that prohibit or regulate the use of intermediaries and facilitators.⁵²

Another gap in the USG Report is information about adoption-related fees. Adoption agencies are permitted to charge fees to counsel birth parents, identify and ensure the suitability of prospective adoptive families, obtain the child's medical and social history, and assist with adoption placement. Some states permit adoptive parents to pay reasonable living, medical, and legal expenses of the birth mother in independent adoptions. In most states intermediaries cannot receive a fee for finding children for adoption, although adoptive families can be charged reasonable fees for services that are approved by a court. No state, however, permits the exchange of money for children for the purposes of adoption.⁵³

Guideline 20: The Hague Convention

The United States has not yet ratified the Hague Convention on Inter-country Adoption.⁵⁴ The treaty was signed in 1994 and the U.S. Senate gave its advice and consent in 2000.⁵⁵ However, implementing legislation has not been passed and the President's signature, required for U.S. ratification, is still outstanding.

It is not clear when the treaty will enter into force. According to the State Department website:

The date the Hague Adoption Convention will enter into force with respect to the United States has not yet been officially established. The DOS will announce the exact date that the Hague Adoption Convention will enter into force with respect to the United States approximately three months in advance⁵⁶

No further information about treaty implementation could be found.

The U.S. is a member of the Hague Conference on Private International Law. The Hague Adoption Convention is one of the group's seven most widely ratified conventions.⁵⁷

Guideline 21: Laws against advertising the sale of children

Concerning the prevention of unauthorized persons or agencies from advertising adoption services, the USG Report does not mention that many states prohibit or regulate the use of advertising for private adoptive placement. Approximately 26 states have laws that limit or regulate the use of advertising in adoptive placement.⁵⁸

Recommendations

That the United States ensure that child victims of any of the offenses under the OPSC are never criminalized, and that all possible measures be taken to avoid their stigmatization and marginalization.

Efforts should be undertaken to develop and implement more effective police and prosecution policies, and practices specifically devoted to preventing, identifying and responding to trafficking of both international and domestic victims.

State and federal laws should be harmonized in order to afford protection to all children up to the age of 18, regardless of the age of consent. The Department of Justice should write and disseminate model legislation to this end.

State and federal laws on child pornography should be strengthened within the framework of the U.S. Constitution, and greater efforts should be made to enforce existing child pornography laws. Also, as a matter of urgency, mechanisms must be put in place for better identifying and assisting child victims forced to create child pornographic images.

SECTION VI: PROTECTION OF THE RIGHTS OF VICTIMS

Sections 68-82 of the USG Report address, and go well beyond, most of the issues requested in the Guidelines for this section. Overall, the USG has passed sound laws and established reasonable policies that serve the best interests of the child in relationship to prostitution, trafficking and other crimes, and in some cases the laws have exceeded those required under the OPSC. However there are inconsistencies and contradictions among federal regulations, between federal and state laws, as well as a wide gap between laws, policies and practice, including poor services for both international and domestic child victims. These inconsistencies and certain practices leave children with inadequate services and protection.

Guideline 27: Protection of the Rights of Victims

In the United States, children are often arrested for being sexually exploited. Current information culled from 76 agencies in 13 states in the newly-established National Incident Based Reporting System (NIBRS) indicates a total of 241 known juvenile arrests between 1997 and 2000 (out of 13,814 total prostitution arrests). But those who work with sexually exploited children believe this official number to be much smaller than the actual number arrested because children are sometimes detained under some charge other than prostitution. According to a study of sexually exploited girls in Atlanta, Georgia,

*“Their entry into the juvenile justice system is not necessarily for prostitution-related charges. As a result, they may slip through the cracks unnoticed because they appear for status offenses and probation violations. In addition, many girls provide false names and lie about their age. Pimps often provide girls with false identification. As a result, they are arrested as adults and released back to their exploiters without ever being identified as minors. Sometimes they are arrested as adult prostitutes and processed in the criminal justice system as adults.”*⁵⁹

This problem was identified and highlighted at the U.S. Mid Term Review. As in so many other areas, there has not been a national study of this practice.

State prostitution laws are inconsistent with federal law on trafficking, and law enforcement officers at the state level are frequently unaware that sexually exploited children should be treated as victims of sexual exploitation rather than law-breaking prostitutes.

A member of the Texas Department of Family and Protective Services, Child Protective Services Division, who works in the area of exploited children, reported that CPS is only active in a case when a parent or legal guardian is involved. So, for example, if a 12 year old is picked up by police for prostitution and there is no parent or legal guardian directly facilitating her prostitution, it becomes a criminal justice issue. Intra-familial abuse is a short step to prostitution, and 98% of girls in prostitution have experienced abuse at home.⁶⁰

*“[In the] United States, child welfare services are typically delivered through states ...but we have seen, time after time, when we’ve gone into states, that they say, well, yes, we are the child protective services system but our mandate is to protect children who are being abused by their parents. These are not children who are being abused by their parents. We can’t step in.”*⁶¹

Guideline 28: Process of identification of child victims

It may be difficult for law enforcement officers to determine the age of a victim who might be under 18. In the immediacy of a raid or ‘neighborhood sweep,’ victims, for a variety of reasons, resist revealing their true circumstances.⁶² Some police officers will see that a girl is obviously under age 18 and will remove her from the group for her protection. But even then, it is often difficult to locate families; victims of prostitution may have false identifications, look older, and cannot legally be held long enough to pursue an investigation. In many cases, they protect or fear their pimps and do not want to be ‘rescued.’⁶³

Guideline 29: U.S. treatment of child victims

Despite laws and policies that are supposed to work to the contrary, the criminal justice system often penalizes child victims of prostitution and domestic trafficking as criminals. Prosecutions of sex crimes against children are generally handled by the state governments, not the federal government. But states often have contradictory laws on the books. On the one hand, there are laws that allow prosecution of juveniles for prostitution related crimes. On the other hand the age of consent or child abuse laws are on the books to protect children from sexual abuse and exploitation. These contradictory laws enable police officers to arrest and hold prostituted and trafficked children, as it is far easier to arrest the child as a prostitute – which in fact criminalizes her – than go through the lengthy and cumbersome process of investigation and trial of the adult perpetrator.⁶⁴

Law enforcement officers often defend this practice. One argument frequently expressed is that arrest is a way to keep children in custody until their families can be found or until they can be provided with services. Otherwise, with their pimps waiting outside the police station, shelter, or courthouse, they will run away and go right back into the system.⁶⁵ But many NGOs and service providers protest this approach as further stigmatizing victimized children, and argue that other means must be found.

A rare example of what is needed is an innovative model: San Francisco’s juvenile probation department provides varied services to girls in detention, ranging from crisis counseling and therapy to victim advocacy and health education. It is supported by a stream of city agencies, and the program partners with community organizations selected due to their good track records.⁶⁶ There are examples in some other cities as well.

Guideline 30: Child victims’ treatment under U.S. regulations

The USG Report extensively describes the many laws, policies, and practices that ensure privacy, safety, services, guardianship, training and protection to victims of child exploitation during criminal procedures. Interviews with children, police, and probation officers, however, reveal large gaps between these assertions and experience. For example, as the sponsor of new legislation in the New York State legislature, State Assemblyman William Scarborough points out:

“In this city [New York], a U.S. citizen [who is sexually exploited]... is seen by the law as a prostitute. The federal law technically applies, but local law-enforcement follows state law. And according to state law, she is a victim, yes—of statutory rape, since the legal age of consent in New York is 17. But since the rapist paid money for the privilege, she’s also a criminal, subject to arrest, prosecution, and incarceration, no matter how young she is. And the prostitutes are getting younger... The contradiction between the state and federal legislation has created a crisis in policy and law enforcement.”⁶⁷

In Atlanta, according to Atlanta Journal reporter Jane Hansen who conducted an in-depth multi-part series about child sexual exploitation in Georgia, “It was not just that pimps were going free, it was that children as young as 10, whose only crime was being sexually exploited by adults, were behind bars. Rather than being treated as victims, these children were being treated as offenders.”⁶⁸

That is, overall, not enough is done to sensitively break through the child victim’s resistance to testify, to provide safe havens, to support and provide information to children.

Guideline 31: Training of service providers

NCMEC offers on- and off-site training and technical assistance to law enforcement, criminal and juvenile justice professionals, and healthcare professionals nationwide and in Canada. Training involves issues relating to child sexual exploitation and missing-child case detection, identification of victims, investigation, prevention, and forensic imaging. But training is badly needed for the entire judicial system (see Sections III and V), including attorneys, and to aid law enforcement agencies in viewing children as victims not criminals. Training is also needed to help child protective services and youth services agencies make better efforts to identify victims of trafficking and prostitution in their case intakes.⁶⁹ The Office of Justice Programs project in five cities, referenced in Section III, has funded new trainings on commercial sexual exploitation of children. Training began in September 2007.

Guideline 34: Social services available to victims of CSEC

NCMEC assists exploited children in returning to their families or to the proper local jurisdiction to care for them. In addition, for domestic child victims of the sex trade, services may be offered through the state CPS systems, the juvenile justice systems, the runaway/homeless youth system and related services available to all children of the locality where they are either picked up or where their families live. But there are a variety of challenges involved in accessing these services, including a lack of adequate understanding of trafficking on the part of overburdened state and local service delivery systems. Additionally, if a child has participated in the crime of prostitution, they are frequently dealt with as a juvenile delinquent first, and state juvenile systems vary in their ability to offer appropriate services while a child is “doing her time.”

Group homes and foster care in particular often do not provide the rehabilitation and education described in the USG Report. (#78, 81, 93, 98 of USG Report) Placed in group living settings with other juveniles arrested for drugs, assault, theft or other categories of delinquent behavior or for status offenders (and often arrested themselves for such), sexually exploited girls keep their prostitution hidden to avoid stigma, even abuse, from the other girls or staff. Mental health services are largely geared to juvenile inmates in what they describe as “severe crisis,” such as suicide attempts, while the trauma and pain of girls who “numb out,” such as many prostituted girls, are ignored as non-crises.⁷⁰ Girls who are sexually exploited need special services geared specifically to address their trauma to prevent their running back to their pimp and the street, which they often say are safer than a group home or juvenile facility.

International victims of human trafficking are eligible for the Unaccompanied Refugee Minor Program (URM) funded by the federal government through the ORR/DRA. Children identified and determined eligible for trafficking benefits are placed in foster care, group homes or independent

living arrangements, appropriate to the youth's developmental needs. Services available through these programs include:

- indirect financial support for housing, food, clothing, and other necessities medical care;
- intensive case management by a social worker;
- independent living skills training (e.g., consumer/budgeting skills, housing, food preparation, social and legal systems, transportation, education, community resources, health and sexuality);
- education/English as a Second Language (ESL) tutoring/mentoring;
- job skills training and career/college counseling;
- mental health services;
- ongoing family tracing, where possible;
- cultural activities/recreation;
- special educational services, where needed;
- legal assistance.

Child victims who enter the URM program prior to age 18 can remain in foster care/independent living until they complete high school or reach 20-21 years of age (depending upon particular state emancipation guidelines).

Guideline 36: Barriers to services for nationals v. non-nationals

Although their problems may differ, children who are victims of trafficking are accessing services at a very low rate, whatever their country of origin. The low rate of access to trafficking services for international child victims is consistent with the low rate of official victim identification. When an international victim is officially recognized as such and concurs with the terms of the TVPA for certification or eligibility, s/he receives services rather expeditiously and effectively. In five years, however, this includes only about 1,400 people, a figure that includes both children and adults.⁷¹ According to DHHS, among these 1,400, only 136 are children.⁷²

A major barrier to support for international child victims is the vicious circle created by lack of coordination and complex contradictory requirements of different government agencies. By law, (TVPA and others) children are not required to cooperate with law enforcement, but a policy established by an MoU between DHHS/ DHS and DOJ states that DHHS will not issue a letter of eligibility until it is recommended by DOJ or DHS (e.g. law enforcement). Thus, even one interview in which a child is unable to talk about what happened could lead to an adverse DOJ or DHS recommendation leading HHS to determine the child is not an eligible trafficking victim.⁷³

Secondly, licensed child welfare agencies require a letter from ORR or a state court order establishing guardianship before they can provide services. Licensed child welfare agencies do not seek guardianship due to the bureaucracy and long wait, leaving the child without protection, services or representation. Finally, CPS has largely declined to fill this role, seeing its mandate as limited to intervening only when parents are abusing children.

This leaves children in limbo or worse. While waiting, they are placed in removal proceedings and the juvenile detention system, known as the Division of Unaccompanied Children's Services (DUCS), where case managers are not properly trained to help children recount their experiences.

ORR acknowledges there is not enough time to establish trust, leaving children without services, placed in a removal system, and often then returned without aid to their country of origin.

Trafficked children who enter the country from Mexico are not eligible for asylum. Asylum is a form of relief comparable to refugee status in which a person must prove “persecution” and trafficking will not typically qualify. Trafficked victims from Mexico will typically not qualify as victims of governmental persecution. Moreover, in the many cases involving children detained crossing into the United States, it is difficult to identify and find evidence to show that the child was destined to be trafficked if he or she had not been detained. In addition, the application for a T Visa, (specifically authorized for trafficking victims) is a cumbersome process which requires a trained legal or social service professional to work with the victim. Lawyers and NGOs, who represent and serve trafficking victims, have expressed frustration with the application process, which can take months or years to complete, in some circumstances leaving the victim without support while they await their fate.⁷⁴

Guideline 37: Information about victim compensation

The USG Report (#89) addresses how victims could seek compensation for damages from those legally responsible, but it contains no data on whether victims have been successful in doing so. The American Bar Association Center on Children and the Law is developing training materials to help attorneys better understand and access civil remedies (e.g., government benefits, general restitution, and compensation from offenders) for child victims of trafficking and sexual exploitation. These materials will be published, and initial trainings held, in 2008.

Recommendations:

That the United States analyze barriers to and improve services for all child victims of trafficking and prostitution, both within the U.S. and internationally. Special focus must be put on shelters and housing.

In cases of uncertainty as to a victim’s age, if there is any reason to believe the person is a child or if there is significant uncertainty, the young person in question should be identified as a possible child victim and treated as such until there is a contrary determination.

The U.S. government must change the procedures for identifying international child trafficking victims. The provision of the current MoU requiring a recommendation from law enforcement authorities as a precondition to providing assistance to internationally trafficked children should be withdrawn. If the information available to the Director of ORR indicates that there is reason to believe that the child has been a victim of a severe form of trafficking, a letter of eligibility should be issued promptly and interim emergency support and assistance to the child victim should be immediately authorized. This change will expedite the issuance of letters of eligibility for child victims and will avoid forcing children undertake interviews with law enforcement before they are emotionally and psychologically ready.

That the United States ensure that child victims of any of the offenses under the OPSC are never criminalized, and that all possible measures be taken to avoid their stigmatization and marginalization.

SECTION VII: INTERNATIONAL COOPERATION AND ASSISTANCE

The United States has taken positive steps towards combating human trafficking internationally. In 2006, it allocated around 74 million dollars to 154 international anti-trafficking in persons projects in 70 countries. The portion of funds used for children verses adult victims, however, is unclear. Though most of the money went to prevention, awareness, and protection-services, prosecution and law-enforcement, as well as research have been covered in the different U.S. programs.

Guideline 38: United States-Mexico repatriation policies

A.-C. The United States maintains a bilateral agreement with Mexico concerning repatriation. According to the agreement, Mexican youth stopped at the border are brought to the attention of Mexican consular authorities and immediately are sent back with a “voluntary return” order which allows for a “penalty-free retry at crossing the border later”. This is an issue that merits more attention, since no statistics are available on how many children are returned to Mexico without receiving care or the pertinent authorities analyzing the family situation of those children, increasing their vulnerability to CSEC. Thus, these children are at high risk for trafficking. They are left unaccompanied on the Mexican side of the border with no care and no resources.⁷⁵

Guidelines 39-41: U.S. cooperation with the international community

The USG does a good job of implementing protocol commitments outside of the U.S. through support of projects, information, sharing training awareness raising and law enforcement. Through its federal agencies, the United States widely supports international cooperation to prevent, prosecute, and punish crimes related to the Protocol, assist with social reintegration of victims, and to address the root causes that contribute to children’s vulnerability to commercial sexual exploitation.

Recommendation

That the United States work with the government of Mexico to devise a workable program to protect and assist children who are stopped at the border and succeed in crossing the border are potential victims of trafficking and exploitation.

SECTION VIII: PROHIBITION AND RELATED MATTERS

Guideline 42: U.S. position on the U.N. Convention on the Rights of the Child (CRC)

The U.S. has signed but not ratified the U.N. Convention on the Rights of the Child. While the current administration has expressed no interest in advancing the CRC forward for ratification, there is currently an active NGO and grassroots national campaign seeking to lay the groundwork for future ratification of the CRC. The U.S. has ratified ILO Convention No. 182 on the Worst Forms of Child Labor, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Stockholm Declaration and Agenda for Action.

Recommendation

That the United States ratify the CRC as one of the main instruments for creating a protective environment for all children.

APPENDIX ONE

CHART COMPARING 2006 AND 2002 GUIDELINES

2006 Revised Guidelines regarding initial reports to be submitted by States Parties on the OPSC	Corresponding Articles of the 2002 Guidelines
INTRODUCTION New Guidelines are divided in 8 sections	
GENERAL GUIDELINES	
1. Description of the preparation of the report	Article 4
2. Description of how CRC principles are reflected in OPSC implementation	Article 4
3. Contributions to implementation of the CRC (N/A to US)	Article 4
4. Legal Status of the OPSC	Article 3(a)
5. Information on intention to withdraw reservation	Article 3(b)
6. (a) Information incl. data on progress made in eliminating OPSC offences (b) Difficulties affecting implementation (c) Information from autonomous regions/territories	Article 5(a) Article 5(b)
7. Describe implementation in all territories and persons over which the State exercises jurisdiction	
8. Copies of all laws, judicial decisions, reports, etc.	Article 5(c)
DATA	No separate section in 2002 Guidelines
9. Data should be disaggregated. Reports should include info on mechanisms and procedures used to collect data.	
10. Summarized data on the sale of children (a) sale/transfer of children for sexual exploitation (b) transfer of organs (c) forced labor (d) illegal adoptions through intermediaries (e) any other form of sale of children (f) child victims of trafficking (g) data showing increase/decrease	Article 5: For <u>all areas raised in the guidelines</u> , the Committee invites states to provide it with: (d) Detailed Disaggregated Data
11. Summarized data on child prostitution (a) number of persons under 18 in prostitution (b) increase/decrease (c) links between child prostitution/CST	Art. 5

<p>12. Summarize information on child pornography: production, import, distribution and consumption and increase/decrease</p> <ul style="list-style-type: none"> (a) photos and other printed materials (b) videos, motion pictures, electronic materials (c) internet sites containing/depicting/offering/advertising child pornography (d) live performances 	<p>Art. 5</p>
<p>The report should contain data on the number of prosecutions and convictions for such offences, disaggregated by nature of the offence (Sale of children, child prostitution, child pornography)</p>	
<p>III. GENERAL MEASURES OF IMPLEMENTATION</p>	
<p>13. Information on:</p> <ul style="list-style-type: none"> (a) laws/decrees/regulations to give effect to the OPSC (b) jurisprudence (c) Governmental Dpt/bodies responsible for OPSC implementation (d) Dissemination and appropriate training (e) Mechanisms and procedures for data collection and evaluation (f) Budget (g) Overall strategy for the elimination of sale of children, child prostitution, child pornography/Nat'l and Reg'l Plans (h) contributions of civil society (i) role of ombudsperson 	<p>Article 6 -- Article 3(c) Article 3(d), 3(e) Article 3(f) Article 5(c) -- -- --</p>
<p>IV. PREVENTION</p>	
<p>V. PREVENTION</p>	
<p>14. Methods used to identify children who are especially vulnerable/ Programs and policies and other measures</p>	<p>Article 13(a)</p>
<p>15. Campaigns, public awareness</p> <ul style="list-style-type: none"> (a) to make children aware of dangers (b) Programs for specific groups (c) Role of NGOs, media, private sector etc. (d) Steps to measure/evaluate effectiveness 	<p>Article 13(b)</p>

V. PROHIBITION AND RELATED MATTERS	
16. Information on all laws in force (a) Material elements of offences (b) Penalties (c) Defenses/Aggravating Circumstances (d) Statue of limitations (e) Other relevant offences (f) Sentences for attempts and complicity	Article 6 (a) (b) (b) (c) (d) (f)
17. Any provision of existing law that the state considers an obstacle to OPSC implementation	--
18. Criminal liability of legal persons	Art. 6(e)
19. Adoption Agreements (a) measures to prevent illegal adoptions (b) Measures against illegal intermediaries (c) Regulation/licensing of agencies/ individuals (d) Prevention of theft of young children/ fraudulent birth registration (f) Regulation of fees of agencies/services/ individuals	Art. 7 (States to provide information on bilateral and multilateral agreements and explain how they ensures that all persons involved in the adoption of the child act in conformity with these international agreements)
20. Whether state considers becoming a party to 1993 Hague Convention	--
21 (a) Laws against production/dissemination of material advertising OPSC offences (b) Sanctions (c) Data on number of prosecutions/ convictions (d) Effectiveness of laws re: prevention	Article 13(c): measures adopted, including of a legislative, judicial and administrative nature, to effectively prohibit the production and dissemination of material advertising the offences described in the Optional Protocol, as well as the mechanisms established to monitor the situation.
22. Legal provisions establishing jurisdiction over OPSC offences	Art. 8, 9
23. Extraterritorial jurisdiction	Article 8(b)
24. Extradition (a) Requires treaty? (b) Conditional upon treaty? (c) Extradition treaties entered into since becoming party to OPSC (d) Refusal for extradition requests? (e) Number of extradition requests (f) Has the state requested extradition since OPSC entry into force? (g) New law/regulation/regulations on extradition?	Article 10

25. Legal basis for cooperation with other states regarding investigations and criminal and extradition proceedings	Art. 10
26. Law, policy and practice regarding: (a) seizure and confiscation of materials (b) Seizure and confiscation of proceeds (c) Closure of premises	Art. 11
VI. PROTECTION OF THE RIGHTS OF VICTIMS	Article 12
27. Info on implementation of Art. 8 OPSC	Article 12
28. Investigations where victim appears under 18 but actual age cannot be determined	Art. 12(b)
29. Rules/ Guidelines/Instructions to ensure the best interest of the child prevails in criminal justice system	Art. 12(a)
30. Rules/ Guidelines/Instructions to identify the best interests of child victims during investigations and proceedings	Art. 12(c) is more specific: To adapt the procedures so they are child sensitive, with special regard to the dignity and worth of the child and her/his cultural background, including the procedures used for investigation, interrogation, trial and cross-examination of child victims and witnesses; the right of a parent or guardian to be present; the right to be represented by a legal adviser or to apply for free legal aid. In that respect, please indicate what the legal consequences are for a child who has committed an offence under the law applicable to her/him as a direct result of the practices prohibited under the Optional Protocol;
31. Training for those who work with victims	Art. 3(e)
32. Fear of interference/reprisals	Art. 12(h)
33. Impact of protective measures on accused persons right to fair trial	Art. 12 (preamble)
34. Assistance in social reintegration	Art. 12(f), 12(j)
35. Measures to help children recover identity	Art. 12(g) To protect, as appropriate, the privacy and identity of child victims;
36. Differences in treatment of nationals/foreigners	--
37. Remedies/procedures for compensation	Art. 12(i)

VII. INTERNATIONAL ASSISTANCE AND COOPERATION	
38. (a) Arrangements for detection/ investigation/prosecution/punishment (b) Implementation (c) Results obtained	Art. 16 Art. 17
39. Steps to promote international cooperation/ coordination between authorities and reg'l, int'l organizations and between au- thorities and nat'l and int'l NGOs	Art. 17
40. Support to international cooperation to assist victim recovery, reintegration, repa- triation	Art. 15
41. Contribution to international coopera- tion to address root causes	Art. 14
VII. OTHER LEGAL PROVISIONS	
42. (a) Other provisions more conducive to the realization of the rights of the child (b) Other binding international law provi- sions (c) Status of ratification of relevant interna- tional/national instruments	Art. 19

APPENDIX TWO: U.S. GOVERNMENT AGENCIES WORKING INTERNATIONALLY ON ANTI-TRAFFICKING INITIATIVES FOR BOTH ADULTS AND CHILDREN.

- 1. Agency for International Development (USAID)** - Funds international anti-trafficking in persons programs that prevent trafficking, protect and assist victims, and support prosecutions through training for officials in judicial systems.
- 2. Department of Defense (DOD)** - Developed and fielded a general Trafficking In Persons (TIP) awareness training module and is conducting awareness training for all personnel. It has adopted a zero-tolerance policy on prostitution and human trafficking. In 2006, the DOD Inspector General completed and released publicly a department-wide evaluation of DOD efforts to prevent trafficking in persons. In February 2007, DOD published an internal Regulatory Instruction that clarifies the role and responsibilities of the Military Services and the Combatant Commanders in combating TIP.
- 3. Department of Education (DoEd)** - Working to raise awareness and increase victim identification among schools via a network of school officials and after school programs.
- 4. Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS)** - These two U.S. bureaus are the key agencies that address the main issues exposed in article 10. HHS is responsible for certifying foreign victims of human trafficking once they are identified. By issuing a certification letter, victims have access to the same services as refugees (shelter assistance, food assistance, income and employment assistance and health care assistance, etc.). HHS funding focuses on TIP victim assistance and increasing awareness and identification of foreign and internally trafficked victims in the United States. In collaboration with the Bureau of Immigration and Customs Enforcement, HHS investigates cases of trafficking and identifies victims both domestically and abroad.
- 5. Department of Justice (DOJ)** - The DOJ **Civil Rights Division's Criminal Section** has the primary responsibility for the forced labor, sex trafficking, involuntary servitude and peonage status. It works closely with the FBI, DHS/ICE, other federal and local law enforcement agencies, **U.S. Attorneys Office**, and the **Criminal Division's Child Exploitation and Obscenity Section (CEOS)** to investigate and prosecute cases of trafficking in persons and worker exploitation. CEOS, in conjunction with federal and local law enforcement agencies, focuses on cases involving child sex trafficking, such as children exploited in prostitution in the U.S. and child sex tourism. The **Office of Victims Crime** provides assistance to TIP victims prior to certification. The **National Institute of Justice** and the **Bureau of Justice Statistics** conducts TIP research.
- 6. Department of State (DOS)** – DOS chairs the information-sharing, interagency working group and Cabinet-level task force responsible for coordinating anti-trafficking policies and programs. The Office to Monitor and Combat Trafficking in Persons (G/TIP) funds international anti-trafficking programs. G/TIP also produces the Annual Trafficking in Persons Report which spotlights modern-day slavery around the world, encourages the work of the civil sector, and is the U.S. government's principal diplomatic tool used to engage foreign governments.
- 7. Human Smuggling and Trafficking Center (HSTC)** - HSTC has a plurality of functions due to its “interagency fusion” nature. It disseminates information and prepares strategic assessments. It brings together law enforcement, intelligence, and diplomatic communities to work together to take action against the commercial sexual exploitation of people. In conjunction with the Department of Labor the Center offers programs such as job search, job placement assistance, and job counseling services, as well as, educational, training services, and referrals to supportive services such as transportation, childcare, and housing.

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