



# Convention on the Rights of the Child

Distr.: General  
12 December 2012

English only

---

## Committee on the Rights of the Child

### Optional Protocol on the sale of children, child prostitution and child pornography

List of issues concerning additional and updated information related to  
the consideration of the second periodic report of the United States of  
America (CRC/C/OPSC/USA/2)

Addendum

Written replies of the United States of America\*

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

1. It is with great pleasure that the Government of the United States of America presents this information in response to the questions from the Committee on the Rights of the Child. The United States is delighted to participate in this process and has, in the spirit of cooperation, provided as much information as possible in response to all questions posed by the Committee, taking into consideration the page limit, even where the questions or information provided in response to them do not bear directly on obligations arising under the Optional Protocol. The United States further expresses its appreciation for the opportunity to appear in person before the Committee in January, 2013.

**Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/OPSC/USA/Q/2)**

2. The United States recognizes the importance of an effective national data collection system on the sale of children, child prostitution and pornography in detecting and combating offenders and is currently examining how to develop such a tool. Establishment of such a system has been an ongoing challenge because both law enforcement and victim service responsibilities in the United States are shared by federal, state and local authorities who currently utilize many different data systems. In the U.S. National Strategy for Child Exploitation Prevention and Interdiction (National Strategy), discussed further in response to the issues raised in paragraph 3 of the list of issues, the Department of Justice (DOJ) concluded that U.S. law enforcement should have advanced tools to detect offenders and included development of a national database because it would allow greater case coordination and sharing of information available to federal, state, local, and international law enforcement (National Strategy, pp. 141-142).

3. The U.S. Government has undertaken several recent initiatives to obtain a better assessment of human trafficking data. Among other efforts, the Human Smuggling and Trafficking Center (HSTC), an interagency body featuring representatives from the law enforcement, diplomatic, and intelligence communities, is presently conducting an interagency, domestic human trafficking assessment using shared human trafficking data from federal agencies. The assessment, which will be released to federal law enforcement, policymakers, and other federal employees involved in the fight against human trafficking, will identify trends, patterns, and emerging issues relative to human trafficking in the United States.

4. Concerning evidence-based research, as stated in paragraph 28 of the second periodic report of the United States and U.S. response to recommendations contained in the Committee's concluding observations of 25 June 2008 (second periodic report), DOJ is working to provide to the U.S. Congress a more complete picture of the scope of sex trafficking and commercial sex acts in the United States. In October 2011, DOJ filed a biennial update to the original report required by the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA) discussed in paragraph 28. The 2011 update provided data regarding (1) the number and demographic characteristics of persons engaged in acts of severe forms of trafficking in persons; (2) the number of investigations, arrests, prosecutions and incarcerations of persons engaged in acts of severe forms of trafficking in persons by states and their political subdivisions; (3) the number and demographic characteristics of persons engaged in sex trafficking and commercial sex acts, including purchasers of commercial sex acts; (4) the dollar value of the commercial sex economy, including the estimated average annual personal income derived from acts of sex trafficking; (5) the number of investigations, arrests, prosecutions and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by states and their political subdivisions; and (6) the differences in the enforcement of laws relating to unlawful commercial sex acts across the United States. DOJ is now working on preparation of the third biennial report, which is due to be submitted to the U.S. Congress in the fall of 2013.

5. In addition, the National Strategy, discussed further in response to the issues raised in paragraph 3 of the list of issues, includes a review of research funded by DOJ in the child exploitation field (appendix E) and an extensive synthesis of major studies surrounding internet crimes against children using funding from the National Institute of Justice (appendix F).

**Reply to the issues raised in paragraph 2 of the list of issues**

6. Raising public awareness of the offenses covered in the Optional Protocol and the need to prevent and combat the commission of such offenses is a high priority of the United States. Such efforts are discussed in the second periodic report in paragraphs 124-155, including a memorandum on the U.S. human rights treaty reporting process sent to state governors and other officials with links to the text of the Optional Protocol, the U.S. report and the Committee's concluding observations; all such information is maintained on the Department of State (DOS) website at [www.state.gov/j/drl/hr/treaties/index.htm](http://www.state.gov/j/drl/hr/treaties/index.htm). Updates to that information follow.

7. The Department of Health and Human Services (HHS) provides technical assistance and outreach to the public and to providers to promote awareness, prevention and protection of child victims with respect to all of the crimes covered by the Optional Protocol. For example, HHS provided child-focused training in Fiscal Year (FY) 2010 on special considerations in identifying and serving child trafficking victims at the "Human Trafficking and Exploitation of Children in the U.S." conference sponsored by Loyola University in Chicago, Illinois. The conference was attended by refugees, immigration attorneys, health and social service providers, law enforcement, child welfare representatives, state Refugee and Health Coordinators, and cultural organizations. Through the National Human Trafficking Resource Center (NHTRC) and its *Rescue and Restore* Regional Program grantees, the HHS Office of Refugee Resettlement (ORR) expanded training opportunities throughout the country during FYs 2010 and 2011, conducting hundreds of trainings and presentations.

8. In 2010 Secretary of Homeland Security Janet Napolitano launched the Blue Campaign – a first-of-its-kind initiative to coordinate and enhance anti-human trafficking efforts of the Department of Homeland Security (DHS) for both adults and children. The Blue Campaign is active in the areas of training, public awareness, producing informational videos and materials, victim assistance, prioritizing investigations of human trafficking cases to bring perpetrators to justice, private sector partnerships and international collaboration.

9. In its efforts to increase public awareness of human trafficking of both adults and children, the Blue Campaign created training for many audiences including the public, law enforcement, airline personnel, the U.S. Government acquisition workforce, DHS personnel, and domestic and foreign partners. Among other things, it also created public awareness campaigns including a video played on the CNN Airport Network in airports across the country, a U.S. Immigration and Customs Enforcement (ICE) campaign to help the public identify victims, called Hidden in Plain Sight (HIPS), and a U.S. Customs and Border Protection (CBP) campaign to inform migrants of the dangers of human trafficking. In order to further collaboration with the private sector, the Blue Campaign developed a toolkit on trafficking and distributed it to tens of thousands of employers, including those in the lodging, transportation, entertainment, agricultural, manufacturing, and construction industries. See [www.dhs.gov/human-trafficking-blue-campaign-toolkit](http://www.dhs.gov/human-trafficking-blue-campaign-toolkit).

10. In FYs 2010 through 2012, as part of the Blue Campaign, ICE Homeland Security Investigations (HSI) continued the HIPS public outreach campaign by placing human trafficking awareness advertisements in foreign language newspapers in 25 U.S. cities that have DHS offices under an HSI Special Agent in Charge. The advertisements appeared in

Chinese, Korean, Spanish, and Thai, as well as several English language papers whose target audiences are the Indian, Haitian, Filipino and Asian Pacific Islander communities.

11. DOJ engages in extensive training, both domestically and abroad, for prosecutors, law enforcement, victim advocates, and nongovernmental organizations on issues addressed in the Optional Protocol (see second periodic report, paragraphs 76-80). These efforts have continued since the submission of that report. For example, DOJ Criminal Division personnel with the Child Exploitation and Obscenity Section (CEOS) provide training and guidance on issues pertaining to child sex trafficking and child pornography victims every year at seminars and conferences throughout the United States, including seven major national conferences in the last three years on combating child exploitation and crimes against children, primarily addressing law enforcement personnel and prosecutors, both domestic and foreign.

12. In addition, CEOS attorneys travel around the world to train foreign law enforcement, prosecutors, investigators, and service providers involved in the investigation and prosecution of sexual exploitation crimes against children, including extraterritorial sexual exploitation of children by Americans.

13. The Department of Education (ED)'s Office of Safe and Healthy Students (OSHS) uses the Internet, listservs, and trainings to elevate the awareness of educators, parents, and students about trafficking of children and to increase victim identification of trafficked children in schools. For example, OSHS develops and disseminates materials about preventing human trafficking, including "Human Trafficking of Children in the United States: A Fact Sheet for Schools." The fact sheet is featured on a website established in June 2010 dedicated to resources on prostitution of children and forced child labor maintained by ED's Readiness and Emergency Management for Schools Technical Assistance Center. ([http://rems.ed.gov/index.php?page=resources\\_Additional&section=1i&section=1i1](http://rems.ed.gov/index.php?page=resources_Additional&section=1i&section=1i1)) It is also available at [www2.ed.gov/about/offices/list/oese/oshs/factsheet.html](http://www2.ed.gov/about/offices/list/oese/oshs/factsheet.html).

14. In 2011, OSHS sponsored a national conference on creating and maintaining conditions for learning. It included a plenary session on "Land of the Free: Schools Join the Fight to End Modern-Day Slavery" and workshops on the Commercial Sexual Exploitation of Children. Nearly 2,000 people attended the conference, including educators, administrators, school counselors, social workers, psychologists, health and mental health professionals, law enforcement personnel, justice personnel, and prevention personnel. Under the Safe and Healthy Students grant program, a toolkit on trafficking in persons is being developed for use by school personnel around the country. The training tool will help school personnel better identify and serve both students who are vulnerable to human trafficking recruitment and students who have been victimized by human trafficking. The toolkit is expected to be available in the spring of 2013.

#### **Reply to the issues raised in paragraph 3 of the list of issues**

15. In August 2010 DOJ transmitted The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress, consistent with the PROTECT Our Children Act, enacted in 2008, Public Law No. 110-401. As the report explains, "[t]his National Strategy outlines how we will, and must, act together as a nation to protect our children and provides a unique opportunity for us to act together as a nation to protect, as Nelson Mandela said, our society's soul by vigorously pursuing those who violate our children." The National Strategy "recognizes that investigation and prosecution will not alone defeat the threat our children face." Instead, "[a] multi-disciplinary approach to the problem is required because of the complexity of the threats involved. Solving this problem must include not only investigators and prosecutors, but social service providers, educators,

medical professionals, academics, non-governmental organizations, and members of industry, as well as parents and families.”

16. The National Strategy establishes the following broad goals:

(a) First, the Department will continue to partner closely with state, local, tribal and non-governmental entities, as well as other federal agencies and the private sector to implement the National Strategy in a coordinated fashion. Second, the Department will build on the success of the Project Safe Childhood initiative. Third, the Department will increase its commitment to a leadership role in finding a global solution to the transnational problem of the sexual exploitation of children. Fourth, the Department will work toward improving the quality, effectiveness, and timeliness of computer forensic investigations and analysis. Fifth, the Department will increase its commitment to effective and sophisticated training for prosecutors and investigators. Sixth, the Department will continue to partner with Industry to develop objectives to reduce the exchange of child pornography. Seventh, the Department will explore opportunities to increase the education and awareness of federal, state, local, and tribal judges of the difficult issues involved in child sexual exploitation;

(b) National Strategy (pp. 137-138). Further delineated goals and priorities are set forth on pages 138-143. The full text of the National Strategy is available at [www.justice.gov/psc/docs/natstrategyreport.pdf](http://www.justice.gov/psc/docs/natstrategyreport.pdf).

17. Since its release, the National Strategy has served as a roadmap for DOJ and its components in the Department’s ongoing fight against child exploitation. It has had the intended effect of focusing the efforts of those components on the threats identified in the Threat Assessment undertaken by the National Drug Intelligence Center (NDIC) to evaluate the extent and forms of child exploitation and the strategies identified in the report. The National Coordinator has had a leading role in directing and coordinating the implementation of the National Strategy. As a result, DOJ has enjoyed much tighter and focused coordination among its components that handle different aspects of the fight against child sexual exploitation, including criminal investigation, prosecution, policy, research, and funding for state and local law enforcement.

18. In accordance with the National Strategy goals, DOJ has built on the success of Project Safe Childhood (PSC) by expanding that initiative in 2011 to incorporate all federal offenses involving the sexual exploitation of children. U.S. Attorneys’ Offices (USAOs) are now conducting treatment assessments of the harm posed in their districts by crimes involving the commercial sexual exploitation of children. Under the expanded PSC, federal prosecutions involving child sexual exploitation have increased significantly as a result of a greatly increased number of international, federal, state, and local investigations. In FY 2011, USAOs obtained 2,713 indictments against 2,929 defendants for offenses involving the sexual exploitation of a minor—a 15 per cent increase in the number of indictments over FY 2007 (in which 2,364 indictments were filed against 2,470 defendants). In August 2011—a year after release of the National Strategy—DOJ brought charges against 72 defendants for their participation in an international criminal network dedicated to the sexual abuse of children. As of September 2012, 56 of the 72 charged defendants have been arrested in the United States and abroad. Forty-three individuals have pleaded guilty and 40 of the 43 individuals who have pleaded guilty for their roles in the conspiracy have been sentenced to prison and have received sentences ranging between 15 years and life in prison.

19. The National Coordinator has helped organize several National Strategy training events as part of DOJ’s continuing efforts to increase commitment to effective and sophisticated training for prosecutors and investigators. These events have offered investigators and prosecutors at all levels of government access to leading experts in the

field of child exploitation investigations and prosecutions. As just one example, in April 2012, DOJ hosted the 2012 National Law Enforcement Training on Child Exploitation for more than 1,700 investigators, agents, prosecutors, victim advocates, and community outreach specialists from across the country. The training featured instruction on investigative techniques, court room advocacy, digital forensics, behavioral profiling, victim advocacy, and community outreach.

20. DOJ has also continued its partnerships with the private sector to fight child exploitation. In October 2011, for example, the Attorney General convened a panel of experts from Facebook, Microsoft, and the National Center for Missing and Exploited Children to explore ways to prevent and deter child sexual exploitation. The national summit, titled “A Call to Action: Protecting Children from Sexual Exploitation,” which the National Coordinator helped organize, brought together attendees from law enforcement, industry, and child advocacy organizations.

21. As part of the National Strategy, DOJ’s Office of Justice Programs, through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), has awarded several grants to support the development of strategies to protect children from exploitation. The awards have provided support to Internet Crimes Against Children (ICAC) Task Forces, discussed in the second periodic report, paragraphs 69-70, by making available improved training and coordination activities, help in developing policies and procedures to identify child victims, assistance in the investigation and prosecution of adult perpetrators, and the identification and adoption of best practices for compassionate victim intervention. This support has had significant results. In FY 2011, ICAC investigations led to more than 5,700 arrests, over 45,000 forensic examinations, and the identification of hundreds of child victims of abuse and neglect. Also as part of the National Strategy, the U.S. Marshals Service launched a nationwide operation targeting the top 500 most dangerous, non-compliant sex offenders in the country.

**Reply to the issues raised in paragraph 4 of the list of issues**

22. Within the federal government, a variety of government agencies are responsible for implementing the Optional Protocol, with the DOJ Civil Rights Division playing a lead coordinating role. Numerous state and local governments within the United States have state and/or local civil rights and/or human rights organizations or commissions. Many of these organizations also coordinate their work with the federal government. Examples of activities at state, local, tribal, and territorial levels are provided in annex A to the U.S. common core document. A number of states of the United States have established offices of child advocates or ombudspersons, and others are considering establishing such offices to assist in providing oversight of children’s services. Over half of the states of the United States currently have either an ombudsman or an office of the child advocate with duties and purposes related to the welfare of children. Some of the offices are independent and autonomous while others operate within state government divisions of children and family services. Additional information is available at [www.ncsl.org/issues-research/human-services/childrens-ombudsman-offices.aspx](http://www.ncsl.org/issues-research/human-services/childrens-ombudsman-offices.aspx) and in paragraphs 98-100 of the second periodic report.

**Reply to the issues raised in paragraph 5 of the list of issues**

23. In response to the issues raised in paragraph 5(a), the DOS international travel website provides extensive essential information for persons traveling abroad. The website is heavily used because it provides information on a wide range of issues, including passport and visa requirements, travel alerts and warnings, and information on specific issues and countries. This includes information on U.S. criminal penalties, specifically setting forth the prohibition on illicit sexual conduct in a foreign country with a person

under the age of 18. See [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1467.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1467.html). The DOS website also provides country-specific fact sheets that repeat the prohibition. See, e.g., Mexico fact sheet at [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_970.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html); France fact sheet at [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1116.html#crime](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1116.html#crime).

24. The DOJ Child Exploitation and Obscenity Section (CEOS) website provides further information on the extraterritorial sexual exploitation statute, including the fact that the penalty for a violation of the prohibition is up to 30 years in prison. Citizen's Guide to U.S. Federal Law on the Extraterritorial Sexual Exploitation of Children, available at [www.justice.gov/criminal/ceos/citizensguide/citizensguide\\_trafficking.html](http://www.justice.gov/criminal/ceos/citizensguide/citizensguide_trafficking.html). CEOS also provides information on how to report such a violation on its crime reporting website at [www.justice.gov/criminal/ceos/report/report.html#reporttourism](http://www.justice.gov/criminal/ceos/report/report.html#reporttourism), including reporting to the National Human Trafficking Resource Center (NHTRC), by calling 1-888-3737-888, the Polaris Project by filing a confidential online report at [www.polarisproject.org/what-we-do/national-human-trafficking-hotline/report-a-tip](http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/report-a-tip), or to ICE, by calling the ICE hotline at 1-866-347-2423, emailing ICE at [predator@DHS.gov](mailto:predator@DHS.gov), or going to [www.ice.gov/tips](http://www.ice.gov/tips).

25. In response to the issues raised in paragraph 5(b), in FY 2010, USAOs filed 115 cases under 18 USC § 2423 and 153 defendants were found guilty. In FY 2011, USAOs filed 108 cases under § 2423 and 133 defendants were found guilty. In FY 2012 (through the end of August 2012), USAOs filed 122 cases under § 2423 and 96 defendants were found guilty.

26. Section 2423(c) of Title 18, United States Code, prohibits U.S. citizens or legal permanent residents from traveling in foreign commerce and engaging in "illicit sexual conduct" with a minor. Illicit sexual conduct includes two categories of sexual conduct: sexual acts (as defined in federal law) with minors and commercial sex acts with minors. Section 2423(g) provides that in cases where the defendant is accused of engaging in commercial sex acts with minors abroad, "it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years." We are not aware of a case where the defense has been successfully asserted. Section 2423(c) does not require that a U.S. citizen reside in the United States in order to be convicted under that section.

#### **Reply to the issues raised in paragraph 6 of the list of issues**

27. In response to the issues raised in paragraph 6(a), U.S. Citizenship and Immigrations Services (USCIS) denies any adoption petition in which it finds evidence of child-buying. Birth mothers may still receive payment for expenses associated with the birth of the child. In adjudicating adoption petitions, USCIS seeks to ensure that any payments made to birth mothers were reasonable and appropriate to cover only expenses related to the birth of the child.

28. In response to the issues raised in paragraph 6(b), Section 404 of the Intercountry Adoption Act of 2000 (IAA) provides for civil and criminal penalties for a violation of a number of requirements applicable to adoptions covered by the Hague Abduction Convention, including for improperly inducing consent as an intermediary for the adoption of a child. Civil penalties involve fines up to \$100,000 for a violation; criminal penalties, applicable to whoever "knowingly and willfully violates" specified IAA requirements provide for fines up to \$250,000, imprisonment of up to 5 years, or both. There does not appear to be case law that has interpreted the language of "knowing and willful" in this specific statute. Information drawn from other U.S. criminal statutes that use this standard and interpretations in case law suggest that to commit an act knowingly is to do so with knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reasons. Knowledge of the criminal statute governing the conduct is

not required. “Willful” means that the forbidden act was done deliberately and with knowledge, but does not require proof of evil intent.

29. In response to the issues raised in paragraph 6(c), USCIS works with DOS to ensure that adoption cases are processed in compliance with the obligations of the Optional Protocol, as embodied in U.S. law and regulations as discussed in paragraphs 240-294 of the second periodic report. The United States is taking steps to extend accreditation requirements applicable to adoption service providers processing adoptions covered by the Hague Convention on Adoption to all international adoptions (referred to as Universal Accreditation). Universal Accreditation legislation was introduced in the U.S. Senate in June 2012. It would require adoption service providers in non-Hague cases to comply with the Hague Convention on matters including ethical practices and responsibilities, licensing and governance, professional qualification and training for employees, information and fee disclosure, responses to complaints, record keeping, and the provision of certain pre- and post-placement adoption services. The United States is also working on an administrative effort to pre-process orphan adoption cases to assess the likelihood that the case meets the requirements of U.S. law before the family completes an adoption in the child’s country of origin (referred to as Pre-Adoption Immigration Review, or PAIR). USCIS and DOS are working to implement PAIR in a number of countries, including Taiwan, Ethiopia, Ghana, and Haiti.

30. In response to the issues raised in paragraph 6(d), the United States is not in a position to provide detailed information concerning investigations into the sale of children for adoption at the federal level as information on ongoing investigations is not permitted to be made publicly available.

31. In response to the issues raised in paragraph 6(e), the United States takes the rights and welfare of children in the intercountry adoption process very seriously. The primary goal of the United States is to ensure that intercountry adoptions are done in an ethical and transparent manner, which is why it encourages countries to become parties to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. With regard to the particular case, an application had been made to open an incoming case under the Hague Abduction Convention. The United States cannot accept cases under the Hague Abduction Convention, however, where the treaty was not in force at the time of the alleged wrongful removal or retention, such as this one. The appropriate venue in the United States to contest an intercountry adoption is in the state court that is competent to hold a full hearing. Due to privacy considerations, the United States cannot provide additional detail.

#### **Reply to the issues raised in paragraph 7 of the list of issues**

32. The offenses covered by articles 2 and 3 of the Optional Protocol are prohibited by a variety of federal laws, as noted in the second periodic report. As indicated in paragraph 9 of the second periodic report, at the time of U.S. ratification of the OPSC, U.S. federal and state law already satisfied the substantive requirements of the Optional Protocol and no new implementing legislation was required. Since that time additional legislation has been enacted including the William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA 2008). See Sections III-VI of the second periodic report for a full discussion of applicable law. As explained in paragraphs 9 and 10 of the second periodic report, a technical consideration caused the United States to enter a reservation with respect to offenses committed on board a ship or aircraft registered in the United States.

33. Under federal law, it is not necessary to prove the use of force, fraud, or coercion in cases involving the prostitution of children under 18. The relevant criminal statute, 18 USC § 1591 (a) criminalizes (in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States) recruiting, enticing, harboring,



transporting, providing, obtaining, or maintaining a person “knowing that . . . the person has not attained the age of 18 years and will be caused to engage in a commercial sex act.”

34. As to labor, both relevant U.S. law and article 3, paragraph 1(a)(i)c of the Optional Protocol address only cases involving victims of “forced” labor, which do require proof of force, fraud, or coercion (see 18 USC § 1589).<sup>1</sup>

35. The Trafficking Victims Protection Act (TVPA) was not reauthorized in 2011. President Obama has called on Congress to renew the TVPA and two different pieces of draft legislation are pending in Congress, one in the Senate and one in the House of Representatives. Although the Trafficking Victims Protection Reauthorization Act of 2011 was not enacted into law, this does not affect the ability of the United States to implement its obligations under the Optional Protocol because U.S. federal and state law already satisfied the substantive requirements of the Optional Protocol and no new implementing legislation was required at the time of U.S. ratification. Furthermore, the failure to enact the reauthorization in no way affects provisions of permanent law included in TVPA authorizations, including TVPRA 2008, discussed in paragraph 44 of the second periodic report.

#### **Reply to the issues raised in paragraph 8 of the list of issues**

36. A number of delegations, including the United States, stated their understanding during the negotiation of the Optional Protocol that the term “any representation” meant “visual representation.” The United States included an understanding in its instrument of ratification that stated in part that the term “child pornography” as defined in article 2(c) of the Optional Protocol means “the visual representation of a child.” Current U.S. law covers visual pornography in accord with this understanding. The United States notes that non-visual materials relating to the sexual exploitation of children, such as text or literature, may nonetheless also be criminalized under statutes relating to the distribution, sale, or receipt of obscene materials. See 18 USC §§ 1460-1466A; *United States v. Whorley*, 550 F.3d 326 (4th Cir. 2008) (affirming defendant’s conviction for knowingly receiving obscene emails describing the sexual abuse of children).

#### **Reply to the issues raised in paragraph 9 of the list of issues**

37. In its 2009 observations on the U.S. report on implementation of its obligations under ILO Convention No. 182 concerning the Worst Forms of Child Labor, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) strongly encouraged the United States to pursue its efforts to eliminate the trafficking of children under 18 years of age for labor and sexual exploitation. CEACR requested the United States to continue providing information on the measures taken with regard to article 3(a) of ILO Convention 182 (slavery and practices similar to slavery) and the results attained.<sup>2</sup> The

<sup>1</sup> The statute, 18 U.S.C. § 1589 criminalizes such action when a person “knowingly provides or obtains the labor or services of a person” by means of “(1) force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) serious harm or threats of serious harm to that person or another person; (3) the abuse or threatened abuse of law or legal process; or (4) any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint

<sup>2</sup> Article 3 defines “worst forms of child labor” to include, under Article 3(a), “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.” The CEACR made no observation on Article 3(b), which also includes in the definition “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.”

United States responded to the CEACR observations in Part III of its most recent report on implementation of Convention No. 182, filed with the International Labour Office on 21 November 2011. In its response as to article 3(a), the United States explained that the Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons (Attorney General's Trafficking Report), Fiscal Year 2009 contains information relevant to application of article 3(a) of the Convention, including the matters raised by the Committee of Experts. Since the filing of that reply, DOJ has released the Attorney General's Trafficking Report for Fiscal Year 2010. The 2010 report is available at: [www.justice.gov/ag/annualreports/tr2010/agreporthumantrafficking2010.pdf](http://www.justice.gov/ag/annualreports/tr2010/agreporthumantrafficking2010.pdf).

38. The Attorney General's Trafficking Report (2010) describes the U.S. Government's comprehensive campaign to combat trafficking in both adults and children during the fiscal year, including efforts to: (1) protect victims by providing benefits and services; (2) investigate and prosecute federal human trafficking crimes; and (3) prevent further trafficking-related crimes. In addition to reporting this information, the report includes an assessment of U.S. Government activities based on improvements since the last annual report and recommendations for further improvement. The efforts of many federal agencies are featured, including the Departments of Health and Human Services, Justice, Homeland Security, Labor, Education, State, and the Equal Employment Opportunity Commission.

39. Although the Department of Labor (DOL) has no authority to conduct criminal investigations into the sale of children, DOL's Wage and Hour Division (WHD) is committed to ensuring that the Fair Labor Standards Act (FLSA) is strictly enforced. The FLSA regulates minimum wage, overtime and child labor protections in the private sector and in federal, state, and local governments. In every investigation carried out by WHD, investigators look for violations of the FLSA's child labor provisions. In fact, as noted in the Attorney General's Trafficking Report for 2010 (at 59), WHD investigators are often the first government authorities to witness exploitative labor practices in the workplace. In industries with vulnerable workers, such as restaurants, garment manufacturing, and agriculture, investigators interview workers and assess situations where workers may have been intimidated, threatened, or held against their will. Investigators also review payroll records and inspect migrant farm worker housing. If in the course of their investigations WHD investigators identify an instance of trafficking of a minor into forced labor, they report suspected trafficking violations to DOJ and any other appropriate authorities. WHD coordinates with other law enforcement agencies, such as the FBI, offices of USAOs and ICE to ensure restitution on behalf of victims of trafficking. Complaints from the public about child labor, although not numerous, are given the highest priority within the agency. In Fiscal Year 2011, WHD concluded over 700 cases where child labor violations were cited. In this same fiscal year, WHD assessed over \$2 million in civil money penalties for violations of FLSA child labor laws.

#### **Reply to the issues raised in paragraph 10 of the list of issues**

40. According to Uniform Crime Reporting (UCR) data, which includes data from federal, tribal, state, and local law enforcement, 291 males and 882 females under the age of 18 were arrested in 2008 for prostitution and commercialized vice, 240 males and 844 females under the age of 18 were arrested for the same crimes in 2009, 150 males and 677 females under the age of 18 were arrested in 2010, and 191 males and 586 females under the age of 18 were arrested in 2011. That a state may arrest children engaged in prostitution does not necessarily indicate a failure of the victim-centered approach. A frequent challenge in cases involving prostituted children is establishing the age and identity of the victims. As indicated in the National Strategy, discussed above in response to the issues raised in paragraph 3 of the list of issues, arrests of children may also be due to the fact that children will represent themselves to be adults, and may provide false identification. Pimps

typically provide child victims of prostitution with false identification that indicates an adult age and the pimps instruct the children to lie about their ages if arrested. As a result, an officer may not be aware at the time of arrest that the individual is in fact a juvenile. Furthermore, state and federal prosecutors in the United States exercise prosecutorial discretion, which means they have the authority to decline prosecution in a case if it is warranted. Finally, there are occasions, for lack of other more appropriate resources, where arresting a child for prostitution may serve as a last resort to place her or him in a secure environment away from the exploiters. This can allow time for the victim to be stabilized and provided with treatment and services through the detention facility. Reliable data is not available regarding the number of minors engaged in prostitution who were prosecuted and punished since 2008. New UCR data collection requirements will be installed in 2013, making it possible to distinguish between arrests for prostitution and arrests for assisting, promoting, transporting, housing, or purchasing prostitution or attempts at any of these activities.

41. As discussed in the second periodic report, paragraphs 58-61, efforts by the federal government to combat child prostitution, include the work of the Innocence Lost Initiative, a partnership between the FBI, CEOS, and the National Center for Missing and Exploited Children (NCMEC), that seeks to identify and rescue children prostituted in the United States. Since the Initiative's inception in 2003, Innocence Lost task forces and working groups have recovered 1,871 children and dismantled or disrupted 350 trafficking organizations. The efforts of the task forces and working groups have led to over 600 convictions in state and federal court, according to FBI statistics.

42. Laws of the majority of states of the United States criminalize prostitution. (Prostitution is not a federal crime in the United States for either adults or children.) Each of the 50 states and the District of Columbia has its own, unique laws and procedures concerning the prosecution of juveniles for a variety of crimes, including prostitution. Due to its federal system, the U.S. federal government can encourage changes to state criminal laws, but it cannot directly effect such changes. In recent years, several states have followed New York's lead by passing safe harbor laws, including Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, Ohio, Tennessee, Vermont, and Washington. In 2010, the Texas Supreme Court held that minors under the age of 14 could not be prosecuted for prostitution.

43. The safe harbor laws in the states have various provisions, including provisions for immunity to prosecution, diversion to services or programs (rather than a juvenile delinquency proceeding), and services or programs. The New York law is discussed in paragraph 103 of the second periodic report. Connecticut law provides that prostitution is only a crime for actors 16 or older. It also provides a presumption that the actor was coerced into committing a prostitution offense by another person in any prosecution of a person who is 16 or 17 years old. Tennessee law provides immunity from prosecution as a juvenile or adult for a prostitution offense for a person under the age of 18 who is suspected or charged with such an offense. The law also provides that a law enforcement officer who takes a person under age 18 into custody for a suspected prostitution offense shall, after determining that the person is a minor, provide the minor with contact information for the National Human Trafficking Resource Center hotline and release the minor to the custody of a parent or legal guardian. The laws in Florida, Massachusetts, New York, Ohio, Vermont, and Washington provide diversion programs for minors arrested for prostitution offenses. Illinois law provides that persons under 18 are immune from prosecution for a prostitution offense and subject to state temporary custody provisions. Minnesota law provides that actors under the age of 16 cannot be prosecuted for prostitution and that actors ages 16 or 17 charged for the first time with a prostitution offense are eligible for a diversion program or protection or services. It also provides for the development of a statewide victim services model for sexually exploited youth and youth at risk of sexual

exploitation. New Jersey law provides an affirmative defense to prosecution for a prostitution offense to those defendants who are under the age of 18. The law also provides for the establishment of standard protocols for provision of information and services to minors charged with prostitution.

44. In addition, several states, including Illinois, New York, and Ohio, have enacted expungement provisions and/or laws to vacate criminal convictions of minor victims of trafficking.

**Reply to the issues raised in paragraph 11 of the list of issues**

45. The United States does not have the annual data requested by the Committee available at this time.

46. The United States does not agree with the statement that trafficked children “are often treated by government officials as offenders and rapidly deported back to their countries of origin without determination of their best interests being carried out.” As discussed at length in the second periodic report, paragraphs 350-423, U.S. agencies have effective programs to train those who might encounter unaccompanied and separated alien children to recognize indicators of human trafficking and to provide appropriate services to them. Those efforts have continued throughout the U.S. Government.

47. Since 2010 those efforts have continued. In March 2011, CBP implemented new web-based training designed to familiarize CBP Officers, Agriculture Specialists, and Border Patrol agents with, among other issues, the impact and the key indicators of human trafficking, appropriate treatment of minors, and the requirements of the TVPRA 2008 for the screening of unaccompanied alien children (UAC) from contiguous countries and treatment of all UAC.

48. In July 2011, DHS established a UAC Working Group to review DHS policies and procedures and to ensure that age-appropriate services are provided to such children encountered by DHS personnel. The Working Group contains three subcommittees tasked with addressing three primary areas for improvement in UAC-related policies and procedures: the Screening and Training Subcommittee, the Short-Term Care and Custody Subcommittee, and the External Coordination Subcommittee which handles coordination with state, local, federal, and international stakeholders.

49. DHS screens all UAC encountered at land borders and ports of entry to determine whether: (1) they have been victims of trafficking or are at risk of being trafficked upon returning; (2) they have a fear of persecution if they are returned to their home country; or (3) for those nationals or habitual residents of a contiguous country, they are unable to make an independent decision to withdraw their application for admission to the United States or to voluntarily return. All dispositions of UAC cases by CBP officers must be reviewed and approved by a supervisor prior to permitting a UAC to withdraw his or her application for admission at a port of entry, repatriating a UAC to a contiguous territory, or transferring a UAC to HHS pending removal proceedings.

50. During removal proceedings, UAC may seek immigration relief or protection from removal. They are also eligible for voluntary departure, which allows them to return to their country of origin without having been subject to an order of removal. UAC also may apply to DHS for certain immigration benefits that permit them to remain in the United States, including asylum (for those having suffered past persecution or having a well-founded fear of persecution in their country of nationality on account of a protected ground such as race or religion), T nonimmigrant status (T visa) (for victims of a severe form of trafficking in persons), U nonimmigrant status (U visa) (for victims of certain criminal activity), and Special Immigrant Juvenile status (for victims of abuse, abandonment, or neglect by one or both parents). In accordance with TVPRA 2008, UAC in removal proceedings present their

asylum applications in the first instance in a non-adversarial interview before a USCIS Asylum Officer rather than in adversarial proceedings before a DOJ Immigration Judge. If USCIS denies the asylum application, the UAC may renew it before the Immigration Judge. If the UAC claims for relief or protection from removal are unsuccessful, the UAC is eligible for voluntary departure, and DHS arranges for the child's safe return to his or her country of nationality.

51. As discussed in the reply to the issues raised in paragraph 12 of the list of issues, under TVPRA 2008, HHS is responsible for the care and custody of UAC while they are detained by federal authorities because of their immigration status. HHS receives referrals of UAC from all federal agencies and screens all UAC to determine if they have been victims of trafficking, exploitation, trauma, or any physical, sexual or emotional abuse in order to ensure that children who have been victimized receive the social services and benefits they need. All efforts are made to provide care and services that are in the children's best interest and are appropriate for their particular needs and circumstances.

**Reply to the issues raised in paragraph 12 of the list of issues**

52. As indicated in the second periodic report, the success of U.S. efforts to combat sale and exploitation of children and other issues related to trafficking in persons domestically hinges on pursuing a victim-centered approach. Paragraphs 351-406 of that report provide details of the service benefits available to such children. As discussed in paragraphs 352-391, residential treatment facilities are primarily under the purview of the HHS.

53. The HHS *Rescue & Restore Victims of Human Trafficking campaign*, in its tenth year, consists of *Rescue and Restore* coalitions of volunteer and dedicated social service providers, local government officials, health care professionals, leaders of faith-based and cultural organizations, and law enforcement personnel. The campaign's goal is to increase the number of trafficking victims who are identified and assisted in leaving the circumstances of their servitude, and connected to qualified service agencies and the HHS certification process so that they can receive the benefits and services for which they may be eligible. Along with identifying and assisting victims, coalition members and others use the Rescue and Restore campaign messages to educate the general public about human trafficking and the assistance available to victims of trafficking. More information on this program is available at [www.acf.hhs.gov/programs/orr/programs/anti-trafficking](http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking).

54. UAC who are trafficking victims may be referred to HHS's Unaccompanied Refugee Minors (URM) program, administered by the HHS Office of Refugee Resettlement (ORR). The URM program establishes legal responsibility for these children, under state law, to ensure that unaccompanied children receive the full range of assistance, care, and services available to all foster children in the state. A legal authority is designated to act in place of the child's unavailable parent(s). Safe reunification of children with their parents or other appropriate adult relatives is encouraged. The program offers a variety of care levels to meet children's individual needs, including licensed foster care homes, therapeutic group homes, residential treatment centers, and independent living programs. Other services include food, clothing, and medical care; independent living skills training; educational support; English language training; career/college counseling and training; mental health services; assistance adjusting immigration status; cultural activities; recreational opportunities; support for social integration; and cultural and religious preservation.

55. DOJ's Office for Victims of Crime (OVC) administers the Services for Victims of Human Trafficking Program, which builds the capacity of targeted communities to coordinate a full range of services for victims of sex trafficking and labor trafficking. This program funds services to support the physical, psychological, and social reintegration and

recovery of child victims of sex trafficking. The intended goal of the services provided through the OVC grant is to support social reintegration, physical, psychological and psychosocial recovery as well as compensation (when applicable); however, when working with victims through a victim-centered approach, the methods for accomplishing this are very individualized and dependent upon the victim's situation and readiness to engage in different services.

56. OVC-funded service providers work to engage a comprehensive array of services, including case management and emotional support, appropriate shelter, medical care, mental health counseling, support groups, substance abuse treatment, legal assistance, assistance with victim's rights enforcement (including restitution), life skills training, education, job training, and other essential services that a victim needs while on the path to recovery. Through this initiative, these services for child victims are most often provided in close coordination with HHS' URM Program, and with state and local child welfare agencies and residential settings designed specifically for youth. This program also supports outreach to victims (including child victims engaged in prostitution) and public awareness activities to ensure that the public is aware of available services. OVC also has funded a demonstration project and formal evaluation by the National Institute of Justice to identify the specialized service needs of U.S. youth under the age of 18 involved in sex trafficking or labor trafficking. OVC also works to increase the capacity of service providers and allied professionals to appropriately identify and serve commercially exploited children by providing training opportunities through individualized technical assistance, conference workshops, and web forums.

57. In FY 2011, ORR engaged with State Refugee Coordinators to increase the capacity of the URM program to serve trafficking victims through annual planning discussions; a mid-year assessment of capacity development activities; technical assistance; and monitoring. A main topic was diversifying URM placements, with an emphasis on development of specialized placements such as therapeutic foster homes, group homes and residential treatment centers. Three states were developing or opened group homes for older youth with significant mental or behavioral health needs in FY 2011. Other relevant topics addressed with states included language needs in staffing; placement capacity and access to mental health services; complex family reunification needs; independent living services and benefits; and access to pro bono immigration representation. ORR also provided technical assistance and training on URM cases, such as coordination with ICE, and state and federal partners on URM eligibility of siblings of trafficking victims.

---