

UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON THE SALE OF CHILDREN,
CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

PERIODIC REPORT

OF THE

UNITED STATES OF AMERICA

and

**U.S. RESPONSE TO RECOMMENDATIONS IN
COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008**

JANUARY 22, 2010

**PERIODIC REPORT OF THE UNITED STATES
TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
and Response to Committee Recommendations**

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Annex 2: BIENNIAL COMPREHENSIVE RESEARCH AND STATISTICAL REVIEW AND ANALYSIS OF SEVERE FORMS OF TRAFFICKING, SEX TRAFFICKING AND UNLAWFUL COMMERCIAL SEX ACTS IN THE UNITED STATES

Annex 3: USG FUNDS OBLIGATED IN FY 2008 FOR TRAFFICKING IN PERSONS (TIP) PROJECTS

Annex 4: DEPARTMENT OF EDUCATION COVER LETTER AND FACT SHEET

¹ All annexes have been submitted to the Committee on the Rights of the Child electronically and will be available at <http://www.state.gov/g/drl/hr/treaties/>.

Annex 5A: SALE OF ORGANS AND RELATED STATUTES

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INTRODUCTION

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Rights of the Child on measures giving effect to its undertakings under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol), pursuant to Article 12(2) thereof and ¶ 47 of the Committee's Concluding Observations of June 25, 2008, following the U.S. oral presentation. U.N. Doc. CRC/C/OPSC/USA/CO/1 (Committee's Concluding Observations).

2. The United States submitted its Initial Report to the Committee on May 10, 2007. U.N. Doc. CRC/C/OPSC/USA/1 (Initial Report). The United States provided additional information as requested by the Committee on May 13, 2008 (U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.1) (2008 Written Replies) and May 23, 2008 (U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.2), and made its oral presentation to the Committee on May 22, 2008. Accordingly, the purpose of this periodic report is to supplement and update relevant information, in keeping with the Committee's Revised Guidelines Regarding Initial Reports, U.N. Doc. CRC/C/OPSC/2.

3. This submission to the Committee consists of two parts. Part I provides the U.S. Periodic Report. Part II responds to recommendations included in the Committee's Concluding Observations.

4. The United States has sought to respond to the Committee's requests for information as fully as possible in this submission. In this regard, the United States notes the discussion of its reservation and understandings to the Optional Protocol in ¶¶ 7, 20, 29, and 50 of the U.S. Initial Report.

5. The United States became party to the Optional Protocol pursuant to Article 13(2), which provides that the Optional Protocol "is subject to ratification . . . by any State that is a party to the [Convention on the Rights of the Child (Convention)] or has signed it." Although the United States signed the Convention in February 1995, it has not proceeded to ratify it. Therefore, the United States stated in its instrument of ratification of the Optional Protocol that it "understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol." Neither provisions of the Convention nor interpretations of the Convention in the Committee's general comments affect the U.S. reporting requirement, and the United States takes no position in this report on Convention provisions and general comments referred to in the Guidelines and its annex. In the spirit of cooperation, the United States has provided as much information as possible on other issues raised, not limited to those that directly relate to U.S. obligations arising under the Optional Protocol.

6. The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

PART I

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

I. GENERAL GUIDELINES

7. In preparing this report, the Department of State has drawn on the expertise of the U.S. Department of Justice, the Department of Homeland Security, the Department of Health and Human Services, the Department of Labor, the Department of Education, the Department of Defense, and the U.S. Agency for International Development. The United States also solicited comments from non-profit organizations with shared interests in this field, and has drawn extensively on information available through a number of governmental and non-governmental sources.

8. The legal and policy framework through which the United States gives effect to its undertakings pursuant to the Optional Protocol has not changed significantly since the Initial Report.

9. As noted in ¶ 3 of its Initial Report, at the time of U.S. ratification of the Optional Protocol, U.S. federal and state law satisfied the substantive requirements of the Optional Protocol. Accordingly, no new implementing legislation was required to bring the United States into compliance with the substantive obligations that it assumed under the Optional Protocol, although at the time it became a State Party to the Optional Protocol a technical legal 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. Where legislation has been enacted that enhances U.S. implementation in other respects or to take measures consistent with the objectives of the Optional Protocol although not required under it, it is discussed in this report.

10. The reservation included in the U.S. instrument of ratification states:

[T]o the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4(1) of the Protocol.

Article 4(1) requires each State Party to “take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.” The United States has explained in previous submissions to the Committee that although U.S. law provides a

broad range of bases on which to exercise jurisdiction over offenses covered by the Optional Protocol that are committed “on board a ship or aircraft registered in” the United States, U.S. jurisdiction in such cases is not uniformly stated for all crimes covered by the Optional Protocol, nor is it always couched in terms of “registration” in the United States. Therefore, the reach of U.S. jurisdiction may not be perfectly co-extensive with the obligation contained in this Article. This is a minor technical discrepancy. As a practical matter, it is unlikely that any case would arise that could not be prosecuted due to the lack of maritime or aircraft jurisdiction. The United States did not, therefore, delay ratification of the Optional Protocol for this reason, but instead entered the reservation suspending the obligation that the United States establish jurisdiction over any covered offenses that may fall within this narrow technical gap. No additional legislation has been enacted since that time. Therefore, the United States is not in a position to withdraw the reservation at this time because there continues to be a narrow range of situations in which it might not be able to carry out its obligations in all situations where the action occurred on board a ship or aircraft “registered in” the United States. For further discussion, *see* Initial Report at ¶¶ 48-50.

11. Further information on U.S. implementation referenced in the General Guidelines is contained in information provided in subsequent sections of this report. As an initial matter, it is important to note that much of the legislation relevant to U.S. obligations under the Optional Protocol was initially enacted in the Trafficking Victims Protection Act of 2000 (TVPA). The stated purpose of the statute is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” Aspects of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol) addressing prevention and punishment of trafficking of children for exploitation, including for sexual exploitation and forced labor, and assistance for victims largely overlap with U.S. obligations under the Optional Protocol. Accordingly, although a number of the U.S. statutes, activities and reports use the terms “trafficking” and “trafficking in persons,” they demonstrably meet U.S. obligations under the Optional Protocol.² In fact, the Trafficking Protocol does not require the element of “remuneration or any other consideration” included in the definition of “sale” in the Optional Protocol. As a result, U.S. implementation goes beyond the requirements of the Optional Protocol in many instances.

12. A compilation of principal U.S. statutes is provided as Annex II to the U.S. Initial Report. Updates to that compilation are attached as Annex 1 to this submission.

² As to trafficking in organs, however, the United States took a reservation to the Trafficking Protocol to address the gap between the Trafficking Protocol’s requirement for criminalization of all trafficking for the removal of organs and U.S. federal laws that, by constitutional mandate, cannot address trafficking for the removal of organs where there is no link to federal or interstate commerce.

II. DATA

13. Because both law enforcement and victim service responsibilities in the United States are shared by federal, state and local authorities, comprehensive data is not available. A number of efforts have been undertaken and are underway to gather data, as reflected in this section. Additional information from law enforcement efforts is provided in Section III.B. and V.G.

A. Incidence of Child Prostitution and Pornography and other Sexual Abuse

14. While a number of studies have been carried out on youth under 18 involved in prostitution, a recent review of the literature concluded that the estimates were widely disparate and that none was sufficiently supported. “How Many Juveniles are Involved in Prostitution in the U.S.?” available at http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_factsheet.pdf. The Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP) is taking steps to correct this lack of information by funding a national prevalence study with two primary questions: how many youth under 18 were victims of commercial sexual exploitation in 2008 in the United States, and how many of the victims were known to law enforcement?

15. On October 1, 2009, the Department of Justice (DOJ) transmitted to Congress the first *Biennial Comprehensive Research and Statistical Review and Analysis of Severe forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States*, prepared by the National Institute of Justice in DOJ’s Bureau of Justice Statistics, attached as Annex 2, discussed further in ¶¶ 27-30. The report noted the lack of definitive data on unlawful commercial acts in the United States due to the inherent difficulties in researching an illegal, mostly hidden operation with a population that is uncooperative for varying reasons.

16. Nevertheless, it reported that some scientifically rigorous studies of prostitution that focused on small geographic locales, such as cities, revealed demographic profiles of prostitutes in those areas. Well over half of the individuals in a study of Chicago had first began engaging in prostitution before their 18th birthday. A study in San Francisco found that 78 percent of individuals engaging in street prostitution reported that they started doing so as juveniles, with 60 percent starting when they were 16 years old or younger. For those who began as juveniles, 53 percent had household members who engaged in prostitution.

17. Available information indicates that the children at risk are not just high school students -- studies show that pimps have preyed on victims as young as 12. Traffickers have been reported targeting their minor victims through telephone chat-lines and clubs, on the street and at malls, as well as using girls to recruit other girls at schools and after-school programs. The majority of American victims of commercial sexual exploitation tend to be runaway or abandoned youth living on the streets who become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them and often become involved in prostitution as a way to support themselves financially or to get the things they want or need. Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania (2001).

18. Other young people are recruited into prostitution through forced abduction. Once these children become involved in prostitution they are often forced to travel far from their homes and as a result are isolated from their friends and family. Children in this situation are often unable to develop new relationships with peers or adults other than the person who is

victimizing them. The lifestyle of most children involved in prostitution revolves around violence, forced drug use, constant threats, and various forms of victimization.

19. As of May 29, 2009, a total of 2,312 victims of child pornography crimes have been identified and many rescued, over 1000 of them since the launch of Project Safe Childhood in 2006, through enhanced law enforcement coordination and the efforts of the National Center for Missing and Exploited Children (NCMEC). Project Safe Childhood is discussed further in ¶¶ 63-68.

20. Another source of information providing some indication of the incidence of sexual exploitation offenses is the CyberTipline maintained by NCMEC. As explained on its website, NCMEC’s CyberTipline is authorized by Congress and operated in partnership with the Federal Bureau of Investigation, the Department of Homeland Security’s Immigration and Customs Enforcement, the U.S. Postal Inspection Service, the Internet Crimes Against Children Task Forces, the U.S. Secret Service, the Department of Justice’s Child Exploitation and Obscenity Section, as well as other international, state, and local law enforcement entities. Tips come from members of the public and, as required by law as reflected in 18 U.S.C. § 2258A, from entities that provide “electronic communication service or . . . remote computing service to the public through a facility or means of interstate or foreign commerce.” These tips provide some evidence of the magnitude of occurrence but do not represent confirmed incidents.

21. The table below sets forth reported tips for the week of April 20, 2009, as a snapshot example, and cumulative totals from March 9, 1998 through April 20, 2009.

Type of Incident	Week of April 20, 2009	Total since March 9, 1998
Child Pornography	1,919	593,963
Child Prostitution	19	7,676
Child Sex Tourism (U.S. national abroad)	1	3,083
Child Sexual Molestation (not in the family)	34	16,023
Online Enticement of Children for Sexual Acts	146	44,126
Unsolicited Obscene Material Sent to a Child	20	9,079 (since 9/1/2002)
Misleading Domain Name	9	9,079 (since 4/20/2004)
Misleading Words/Digital Images on the Internet	64	1,822 (since 10/24/2008)
Total # of Reports	2,212	683,487

22. The following table provides comparative NCMEC data on CyberTipline tips by year from 1998-2008. While there are variations year to year, the overall upward trend is evident. The total of all incidents reported in 1998 was 4,560, while the total number of reports in 2008 was 102,029. A new reporting category added on October 24, 2008, showed 725 incidents of Misleading Words or Digital Images on the Internet.

	Child Pornography (possession, manufacture, distribution)	Child Prostitution	Child Sex Tourism (U.S. national traveler)	Child Sexual Molestation (not by family)	Online Enticement of Children for Sexual Acts	Unsolicited Obscene Material Sent to Child (starting in 2002)	Misleading domain Names (starting in 2004)
2008	85,301	1,117	392	1,945	8,787	1,306	2,456
2007	83,959	1,821	655	2,523	11,422	1,920	2,961
2006	62,480	1,098	566	2,156	6,384	1,799	2,101
2005	64,250	553	205	1,641	2,664	613	842
2004	106,119	559	248	1,466	2,605	533	487
2003	76,2004	572	205	2,026	2,123	857	
2002	37,647	587	239	1,474	2,782	349	
2001	21,611	346	151	794	1,540		
2000	16,724	287	142	634	1,458		
1999	7,736	187	135	471	1,139		
1998	3,267	142	79	365	707		

23. NCMEC works closely with law enforcement officials in combating child exploitation. Data available from its Child Victim Identification Program (CVIP) provides some indication of the extent of child pornography in the United States. Law enforcement officials submit images and movies of children seized in child pornography cases for review to NCMEC's CVIP. This program has a dual mission: (1) to help prosecutors get convictions by proving that a real child is depicted in child pornography images; and (2) to assist law enforcement in locating unidentified child victims. The materials submitted are then screened through the Child Recognition and Identification System (CRIS), a specialized computer software designed to efficiently determine which seized content appears to contain identified children.

24. A critical function of CVIP is the effort to assist law enforcement agencies in rescuing the child victims depicted in these images from their abusers. Until they are located and identified, these children may continue to be abused. While reviewing contraband, CVIP analysts closely examine the images and videos submitted by law enforcement and document any clues that may lead to the location of an unidentified child victim. Once a location has been determined, the appropriate law enforcement agency may begin an investigation to rescue the child. Many children have been rescued from ongoing exploitation as a result of the cooperative efforts between CVIP and law enforcement.

25. In the table below, Column 1 provides the number of instances in which law enforcement requested a CRIS review and Column 2 indicates the number of files in the requested reviews. The increase in volume is evident between 2002 and 2008. Column 3 provides the number of identified child pornography series added to the system in a given year as a result of a law enforcement investigation where a child is identified and located. The term series refers to a collection of images of the same child or children named, referred to and traded by the perpetrators.

	1. Number of CRIS Requests	2. Number of Files Reviewed	3. Number of Newly Identified Series Added to System
Totals	16,435	19,683,222	1,349
2002	122	45,055	73
2003	747	449,323	53
2004	1,227	551,528	64
2005	2,113	1,982,486	224
2006	3,300	3,032,401	182
2007	4,297	5,018,886	236
2008	4,629	8,603,432	517

26. The Internet Crimes Against Children (ICAC) Task Forces, discussed in ¶¶ 69-70, collect data on criminal activity against children from 59 task forces located in every state of the United States. Data collected by ICAC concerning complaints related to child pornography and child prostitution, set forth below, provide another indication of the prevalence of these crimes. In this context, a complaint is any information that must be reviewed by law enforcement officials for investigative merit in order to determine if a full investigation is warranted. Complaints can be generated in a number of ways, including, for instance, undercover operations, law enforcement referrals, CyberTipline referrals, and citizen calls.

	FY 2006	FY 2007	FY 2008
ICAC Complaints: Child Pornography			
Total	12,120	12,030	22,001
Possession	5,578	6,398	9,087
Distribution	4,743	4,917	11,879
Manufacturing/Production	1,799	715	1,035
ICAC Complaints: Child Prostitution	119	257	300

B. Incidence of sale of children

27. Section 201(a) of the Trafficking Victims Protection Reauthorization Act 2005 (TVPRA 2005) (Public Law No. 109-164) requires the U.S. Attorney General to report biennially to Congress on the number and demographic characteristics of persons engaged in “severe forms of human trafficking,” which includes sex and labor trafficking of children and adults, and the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in this activity by states of the United States and their political subdivisions. As stated in ¶ 15, on October 1, 2009, the Department of Justice transmitted to Congress the first report in response to this requirement. *Biennial Comprehensive Research and Statistical Review and Analysis of Severe forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States*, prepared by the National Institute of Justice in the U.S. Department of Justice Bureau of Justice Statistics (Biennial Report, attached to this report as Annex 2).

28. The Biennial Report reported on two studies Congress required in the TVRPA 2005: (1) a comprehensive research and statistical review and analysis of severe forms of trafficking in

persons, and (2) a comprehensive research and statistical review and analysis of sex trafficking and unlawful commercial sex acts in the United States. (See ¶ 15). In order to complete these studies, the Bureau of Justice Statistics (BJS) collected data from federally funded anti-trafficking task forces across the United States. Similarly, the National Institute of Justice (NIJ) engaged researchers to collect data on sex trafficking and commercial sex acts in 60 counties across the United States, selected from areas where no anti-trafficking task forces operate. Finally, NIJ also conducted an extensive review of the existing literature on unlawful commercial sex acts and sex trafficking, including books, articles, studies and other sources. The initial lack of data and the demanding process of gathering it necessarily resulted in a longer time frame for the production of the studies and results that are less comprehensive than originally expected. As the Biennial Report notes, the Department of Justice is developing strategies to provide to the United States Congress a more complete picture of the scope of sex trafficking and commercial sex acts in the United States in future studies.

29. The Biennial Report indicated that the federally-funded anti-trafficking task forces reported a total of 1,442 victims involved in alleged human trafficking incidents during the period January 1, 2007 through September 30, 2008; this data includes information about both adult and minor victims of both sex and labor trafficking. Of these, the task forces reported information on the characteristics of 776 victims in 429 alleged human trafficking incidents. Twenty-seven percent of all human trafficking victims were younger than 18. Among sex trafficking victims, 30 percent were under 18. Labor trafficking victims tended to be older than other human trafficking victims; almost 70% were 25 or older.

30. The report provided further demographic information, although it was not available separately for adults and children. Over 90% of victims in alleged human trafficking incidents were female, including over 60% of labor trafficking victims and 99% of sex trafficking victims. Slightly more than half (55%) of human trafficking victims were U.S. citizens, while the remainder were either undocumented (38%) or qualified (6%) aliens. Sixty-three percent of all sex trafficking victims, compared to 4 % of labor trafficking victims, were U.S. citizens. Undocumented and qualified aliens accounted for 96% of labor trafficking victims.

31. Much of the information for the Biennial Report was based on information collected through the Human Trafficking Reporting System (HTRS). The Bureau of Justice Statistics (BJS) in the Department of Justice funded the development of the web-based HTRS, which collects incident, victim, and suspect data from federally-funded anti-trafficking task forces throughout the United States. The anti-trafficking task forces, which are designed to provide victim-centered support and a multi-agency approach to investigating and responding to suspected incidents of human trafficking, report monthly on the sex and labor trafficking of both adults and children concerning incidents, suspects, and victims identified and investigated.

32. The HTRS is an incident-based data collection system, recording claims of human trafficking or any investigation of other crimes in which elements of potential human trafficking were identified. Once entered into the system, an incident may or may not be determined to involve human trafficking. The reported data provides information on child sex trafficking separately from adults, but does not make the same distinction for labor trafficking. It should also be noted that the data reported by HTRS does not encompass geographic areas outside task force jurisdictions nor incidents identified by non-task force entities. Although the anti-trafficking task forces are not representative of the entire nation, they are widely dispersed geographically. 33. Using HTRS data from calendar year 2007 and the first three quarters of 2008, BJS published *Characteristics of Suspected Human Trafficking Incidents, 2007-08*,

available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>. This report in turn served as the basis in part for the Biennial Report discussed above.

34. The United States notes that the Committee requests data concerning the number of children adopted through the efforts of intermediaries using methods “incompatible with article 21 of the [Rights of the Child] Convention or other applicable international standards.” The United States has taken extensive legislative and regulatory steps to implement its obligations under the Hague Adoption in this regard, as discussed in Section V.J. This includes the establishment of a complaints registry, which has to date received no complaints alleging violations of the prohibition on improper inducement of consent.

35. The United States has no information on any incident concerning transfer of organs of a child for profit in any context, including the sale of children, and has no reason to believe that such incidents occur in the United States.

III. GENERAL MEASURES OF IMPLEMENTATION

36. In addition to information provided in this section, see Section V. for criminalization of offenses and Sections IV. and VI. on Prevention and Protection for provision of benefits and services to victims.

A. Applicable laws

37. The United States implements its obligations under the Optional Protocol through extensive legislation and programs. Federal and state statutes criminalizing offenses prohibited in Article 3 are set forth in Section V.

38. Recent years have seen significant legislative activity addressing the sexual exploitation of children. In April 2003, the United States enacted the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (PROTECT Act). Public Law No. 108-21. At the time of its enactment, the Department of Justice described it as “an historic milestone for our nation’s children” and promised to “dedicate the full force of our nation’s resources against those who victimize our nation’s youth.” See http://www.justice.gov/opa/pr/2003/April/03_ag_266.htm.

39. Among other things, the PROTECT Act:

- Established the AMBER Alert Program, providing for national coordination of state and local AMBER Alert programs, including appointment of a national AMBER Alert Coordinator and development of guidance for issuance and dissemination of AMBER Alerts;³
- Allowed law enforcement to use existing legal tools for the full range of serious sexual crimes against children;
- Made clear there is no statute of limitations for crimes involving abduction or physical or sexual abuse of a child, in virtually all cases;

³ Law enforcement issues an AMBER Alert to notify broadcasters and state transportation officials of a child abduction. AMBER Alerts interrupt regular programming and are broadcast on radio and television and on highway signs. AMBER Alerts can also be issued on lottery tickets, wireless devices such as mobile phones, and over the Internet. The name Amber originally came from that of a child who was abducted and murdered; it also stands for America’s Missing: Broadcasting Emergency Response. More information is available at www.amberalert.gov.

- Made it more difficult for defendants accused of serious crimes against children to be released on bail;
- Strengthened laws punishing sex tourism offenders;
- Increased penalties for non-family-member child abduction;
- Increased penalties for sexual exploitation of children and child pornography;
- Required life imprisonment for offenders who commit two serious sexual abuse offenses against a child;
- Revised and strengthened the prohibition on ‘virtual’ child pornography;
- Prohibited any obscene materials that depict children, and provided tougher penalties; and
- Encouraged greater voluntary reporting of suspected child pornography found by internet service providers on their systems.

40. The Adam Walsh Child Protection and Safety Act was enacted in July 2006. Public Law 109-248. The Act:

- Established a three-tier system of classifying convicted sex offenders, based on the severity of the offense; the most serious offenders, including juveniles, are required to register for life;
- Created a new federal felony offense for failing to register as a sex offender;
- Required defense review of child pornography materials in a government facility in most cases;
- Created new record-keeping requirements on age of persons in pornographic materials;
- Required certain mandatory bail conditions in some offenses where minors are victims;
- Increased penalties for sex trafficking of children and sexual offenses against children;
- Made a conviction for failure to register a deportable offense and imposed other immigration-related restrictions; and
- Created a National Child Abuse Registry.

41. The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401, enacted October 13, 2008, among other things:

- Required the Attorney General to create a National Strategy for Child Exploitation Prevention and Interdiction and to establish a National Internet Crimes Against Children Data System;
- Continued the National Internet Crimes Against Children Task Force Program consisting of state and local law enforcement task forces dedicated to developing effective responses to online enticement of children by sexual predators, child exploitation, and child obscenity and pornography cases;
- Prohibited the broadcast of live images of child abuse and the adaptation or modification of an image of an identifiable minor to produce child pornography;

- Required the National Institute of Justice to prepare a report to identify investigative factors that reliably indicate whether a subject of an online child exploitation investigation poses a high risk of harm to children; and
- Added reporting requirements of electronic communication service providers and remote computing service providers to the CyberTipline of the National Center for Missing and Exploited Children, which it must forward to a designated law enforcement agency and may forward to state, local, and foreign law enforcement officials or agencies.

42. As noted in ¶ 11, additional statutes relevant to U.S. implementation of its obligations under the Optional Protocol were enacted beginning in October 2000. The centerpiece of U.S. federal legislation to eliminate human trafficking, including the labor and sex trafficking of children, is the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. 106-386, most recently amended in the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, which took effect December 23, 2008. The TVPA defines trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102(8). This definition applies to both U.S. citizens and foreign nationals. The TVPA, which was designed to address the assistance needs of foreign victims of trafficking who were otherwise ineligible for entitlement programs and crime victims funds accessible to U.S. citizens, provided for a range of new protections and assistance for victims of trafficking. It expanded the crimes and enhanced the penalties available to federal investigators and prosecutors pursuing traffickers; and it expanded the U.S. Government’s international activities to prevent victims from being trafficked.

43. Specifically, as initially enacted, the TVPA:

- Provided for victim assistance in the United States by making foreign trafficking victims eligible for federally funded or administered health and other benefits and services; mandated U.S. Government protections and immigration status for foreign victims of trafficking and, where applicable, their families; outlined protections from removal, including T nonimmigrant status for trafficking victims over the age of 18 who cooperate with law enforcement in the investigation and prosecution of trafficking (victims under 18 are not required to cooperate in order to receive immigration benefits) , and allowed T nonimmigrant to adjust to permanent resident status;
- Created new crimes and enhanced penalties for existing crimes, including forced labor, trafficking with respect to peonage, slavery, involuntary servitude, sex trafficking of children, sex trafficking of adults by force, fraud or coercion, and unlawful conduct with respect to documents; criminalized attempts to engage in these behaviors; and provided for mandatory restitution and forfeiture; provided for assistance to foreign countries in drafting laws to prohibit and punish acts of trafficking and strengthen investigation and prosecution of traffickers; created programs to assist victims; and expanded U.S. Government exchange and international visitor programs focused on trafficking in persons; and
- Created the President’s Interagency Task Force to Monitor and Combat Trafficking to coordinate the U.S. Government’s anti-trafficking efforts. The TVPA directed the Task

Force, among other activities, to: (1) measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims; (2) expand interagency procedures to collect and organize data; (3) engage in efforts to facilitate cooperation among countries; (4) examine the role of the international sex tourism industry; and (5) engage in consultation and advocacy with governmental and non-governmental organizations (NGOs).

44. The TVPA was reauthorized and amended in 2003 and 2005, Pub. L. No. 108-193 and Pub. L. 109-164. Most recently, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, reauthorized the TVPA for four years and authorized new measures to combat human trafficking, including efforts to increase effectiveness of anti-TIP programs, providing interim assistance for potential child victims of trafficking, and enhancing the ability to criminally punish traffickers. For example, as relevant to children, the TVPRA 2008:

- Creates new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes. These violations are punishable to the same extent as the trafficking crimes themselves;
- Broadens the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor;
- Expands the crime of forced labor by providing that “force” is a means of violating the law (in addition to making threats of serious harm, using a scheme or plan, or abusing the law). It clarifies that the statute may be violated by offenders who engage in any one or all of these means. Additionally, the new law includes broad definitions of the previously undefined statutory terms “serious harm” and “abuse of the law”;
- Imposes criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the United States for employment within the United States by making materially false or fraudulent representations;
- Enhances the penalty for conspiring to commit trafficking-related crimes. The maximum penalty for violating this provision is now equal to the penalty for the underlying substantive offense;
- Penalizes those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes. The TVPRA 2008 expands the “benefitting financially” prohibition, previously applicable only to sex trafficking, to apply to those who knowingly benefit financially from participation in a venture engaged in peonage, forced labor, or document servitude;
- Expands the reach of criminal anti-trafficking statutes by allowing the government to prosecute trafficking crimes committed outside the United States, where the alleged offender is a national or lawful permanent resident of the United States or is present in the United States; and
- Expands the government’s authority to detain pending trial defendants who have been charged with trafficking offenses as a risk of flight or a danger to the community.

B. Coordination

45. The legislative framework outlined in Sections III. and V. of this report is in itself an important measure of the U.S. commitment to fight exploitation of children. The most important indication of U.S. success in preventing exploitation, punishing perpetrators, and providing benefits to victims is, however, evidenced by actions taken in carrying out these statutes. Given the federal structure of the United States and the importance of civil society, major components of this effort necessarily require coordinated efforts within the federal government, and with state and local governments and private entities.

46. This section provides a description of key implementation efforts. U.S. efforts internationally are discussed in Section VII.

1. Federal Inter-agency Coordination

47. At the federal level, major responsibilities are carried out by the Departments of Justice (DOJ), Homeland Security (DHS), Health and Human Services (HHS), Labor (DOL), State (DOS), Defense (DOD), and Education (DOE), and the U.S. Agency for International Development (USAID). Extensive means of cooperation exist among governmental and other entities implementing U.S. obligations under the Optional Protocol.

48. In accordance with the TVPA, Executive Order 13257, issued in February 2002, established the cabinet-level President's Interagency Trafficking Task Force (PITF) to coordinate federal efforts to combat trafficking in persons. At a July 2008 meeting, PITF principals signed a Declaration of Achievements summarizing the work of federal agencies to prosecute traffickers, protect victims, and prevent trafficking from 2001 to 2008, available at <http://2001-2009.state.gov/g/tip/rls/fs/08/107412.htm>. For more information on the PITF, see <http://2001-2009.state.gov/g/tip/rls/fs/08/107409.htm>.

49. The Senior Policy Operation Group (SPOG) reports to the PITF and is chaired by the director of the Department of State Office to Monitor and Combat Trafficking in Persons (TIP Office). Congress authorized the creation of the SPOG in the TVPRA 2003 to coordinate interagency policy, grants, research, and planning issues involving international trafficking in persons and the implementation of the TVPA.

50. The SPOG meets quarterly and includes representatives from the Departments of State, Justice, Homeland Security, Health and Human Services, Labor, Defense, and Education, as well as USAID, the Department of State Office of the Geographer and Global Issues representing the Office of the Director of National Intelligence, and the Office of Management and Budget. The National Security Council, the Domestic Policy Council, and the Office of the U.S. Global AIDS Coordinator also participate in SPOG meetings.

51. The SPOG plays a prominent role in identifying challenges and priorities in the areas of victim assistance, public awareness, actionable research and reports, international efforts, and program funding. The SPOG Subcommittee on Human Trafficking Research and Data was created to enhance the U.S. government's actionable research and data on the human trafficking issue, and to ensure that agencies' efforts to gather and fund such information are complementary. The SPOG Global TIP Coordination Subcommittee, established in March 2008 allows for consultation earlier in the program planning process and institutionalizes information-sharing to further enhance the complementarity of U.S. Government international anti-trafficking programs.

52. Through SPOG meetings and throughout the year, the SPOG agencies coordinate policy implementation, programs, and new initiatives. All SPOG program agencies comment on one

other's grant proposals for anti-trafficking projects to enhance coordination and focus on U.S. Government policy priority areas.

53. The SPOG agencies implement projects funded under the President's \$50 Million Trafficking in Persons Initiative. This multi-agency effort provided funding through the Departments of State, Justice, Labor, Health and Human Services, Homeland Security and USAID to eight foreign countries: Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania. The funding has supported training of local NGOs; resources and training for law enforcement units (where possible) to identify and rescue victims; emergency shelters, medical treatment, rehabilitation, reintegration services, and vocational training for those victims; and training of judges and prosecutors to prosecute and convict traffickers. For more information on the impact of certain projects under this initiative, see <http://2001-2009.state.gov/g/tip/rls/fs/08/111406.htm>.

54. Numerous federal agencies share a role in the fight against child pornography. Within the Department of Justice, several offices are involved in this effort, including the Child Exploitation and Obscenity Section (which prosecutes federal cases involving child sexual exploitation); the Federal Bureau of Investigation (including the Crimes Against Children Unit, which focuses on non-Internet sex offenses against children such as the prostitution of children and child sex tourism, and the Innocent Images National Initiative, which focuses on Internet-facilitated crimes against children); the Office of Justice Programs (OJP) (which houses the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the National Institute of Justice, Office for Victims of Crime, the Bureau of Justice Statistics, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office)); the Bureau of Prisons; the U.S. Marshals Service (which enforces sex offender registration laws); and the Executive Office for U.S. Attorneys. In addition, OJJDP dispenses significant grant funding, including for the Internet Crimes Against Children Task Forces which bring together federal and state law enforcement). Other federal agencies involved with the protection of children from sexual exploitation include the Department of Homeland Security's Immigration and Customs Enforcement (investigation); U.S. Postal Inspection Service (investigation); Department of Health and Human Services (victim services); Federal Trade Commission (internet safety); Federal Communications Commission (regulation of wireless, satellite, and cable systems); the Department of Education, the Department of State (international outreach, grant making); U.S. Probation Office (offender supervision). The Department of Justice recently appointed a national coordinator who will serve as the Department's liaison with all federal agencies regarding the development and implementation of a national strategy to combat child sexual exploitation and who will work to ensure proper coordination among agencies involved in child exploitation prevention and interdiction. See www.justice.gov/opa/pr/2010/January/10-ag-027.html. The Federal Agency Task Force on Missing and Exploited Children, which comprises representatives from numerous federal agencies and convenes quarterly to coordinate efforts to combat all forms of child exploitation, is yet another example of federal interagency coordination.

55. Finally, the Human Smuggling and Trafficking Center (HSTC) serves as an intelligence information clearinghouse for all federal agencies addressing illicit travel, specifically, human trafficking, human smuggling, and the facilitation of terrorist mobility. The HSTC seeks to facilitate the exchange of strategic and tactical information to support the U.S. strategy to investigate and prosecute criminals involved in domestic and international TIP. The HSTC conducts studies and prepares strategic reports for U.S. law enforcement and U.S. policy makers. These included a classified report in 2008, *U.S. Law Enforcement and Forced Child Labor*. Additional information on HSTC is available at <http://www.state.gov/m/ds/hstcenter/>.

56. U.S. implementation also depends on coordination between the executive and legislative branches of the federal government. On June 16, 2009, Secretary of State Hillary Rodham Clinton released the Ninth Annual Trafficking in Persons Report. In her remarks, Secretary Clinton stressed the importance of coordination within the United States government and with non-governmental organizations in fighting trafficking in persons in the United States and throughout the world. Secretary Clinton welcomed members of the U.S. Congress to the ceremony, stating “this truly is a partnership between the State Department and the Congress. If it weren’t for the Congress, we wouldn’t have the legislation, we wouldn’t have the follow-up, we wouldn’t have the kind of outreach that these members and others have been doing.”

2. Federal-state coordination

57. A number of federal agencies operate programs in coordination with state and other entities, as discussed here. Section V.G. provides further information on investigation, prosecutions, and sentences under many of these programs.

a. Department of Justice

58. In June 2003, the Federal Bureau of Investigation’s (FBI) Criminal Investigative Division, DOJ’s Child Exploitation and Obscenity Section (CEOS), and the National Center for Missing and Exploited Children (NCMEC), a non-profit organization, launched the Innocence Lost National Initiative (Initiative or ILI). Their combined efforts are aimed at addressing the growing problem of domestic sex trafficking of children for prostitution in the United States.

59. ILI brings together state and federal law enforcement agencies, prosecutors, and social service providers. In 2008, the Initiative resulted in the development of 34 dedicated task forces and working groups throughout the United States. In the 6 years from its inception through October 2009, ILI has identified almost 900 child victims of prostitution; obtained 510 convictions in state and federal courts, and seized over \$3 million of real property, vehicles, and monetary assets.

60. In June 2008, to mark the fifth anniversary of Initiative, the FBI Crimes Against Children Unit coordinated a national sting called Operation Cross Country to combat domestic sex trafficking in children. From June 18 to June 23, 2008, Innocence Lost Task Forces in 16 cities, ranging from Boston to Miami to San Francisco, participated in the operation by targeting venues where children are trafficked, such as truck stops, motels, casinos, and the Internet. The operation involved over 350 law enforcement officers from over 50 state, local, and federal law enforcement agencies who joined together to rescue child victims and arrest the criminals who victimize them. This operation resulted in the arrest of 356 individuals and the recovery of 21 children.

61. Operation Cross Country II took place in October 2008. A total of 630 law enforcement personnel participated in the operation, which resulted in 642 arrests, the disruption of 12 large-scale prostitution operations, and, most importantly, the rescue of 49 children—ages 13 to 17 years old—from the sex trade. Ten of those children had been reported as missing to NCMEC. Operation Cross Country III was conducted in 29 cities across the country in late February 2009. This operation led to the recovery of 48 children being prostituted domestically. Additionally, 571 individuals were arrested on a combination of state and federal charges for the domestic trafficking of children for prostitution and solicitation. Operation Cross Country IV took place in late October 2009, a four-day national enforcement action as part of the Innocence Lost National Initiative. The operation included enforcement actions in 36 cities across 30 FBI Divisions around the country and led to the recovery of 52 children who were being victimized through prostitution. 691 individuals were arrested on state and local charges. In total, 1,547

local, state and federal law enforcement officers representing 112 separate agencies have participated so far in Operation Cross Country and ongoing enforcement efforts.

62. In addition to the Innocence Lost Task Forces, the Innocence Lost Working Group is comprised of representatives from numerous government and non-governmental agencies, including DOJ, DOS, HHS, DHS' Immigration and Customs Enforcement (ICE), FBI, NCMEC, Polaris Project, the American Prosecutors Research Institute, Salvation Army, and Catholic Charities. These agencies dedicate resources to combating domestic sex trafficking of children and meet quarterly to share information, develop strategies, and coordinate efforts.

63. In 2006, the Department of Justice instituted the Project Safe Childhood (PSC) initiative. The PSC aims to combat the proliferation of technology-facilitated sexual exploitation crimes against children. The establishment of the PSC reflected the view that the threat of sexual predators soliciting children for physical sexual contact is well-known and serious, and the danger of perpetrators who produce, distribute and possess child pornography is equally dramatic and disturbing. PSC is implemented through a partnership of U.S. Attorneys, the Child Exploitation and Obscenity Section of the Department of Justice Criminal Division (CEOS), Internet Crimes Against Children (ICAC) task forces, the FBI, U.S. Postal Inspection Service, Immigration and Customs Enforcement and the U.S. Marshals Service; advocacy organizations such as NCMEC; and state and local law enforcement officials.

64. Under the PSC, the number of federal child exploitation prosecutions has increased significantly, along with the number of federal, state, and local investigations and convictions, and more victims are being identified. PSC's education and awareness efforts complement this focus on enforcement. U.S. Attorneys' Offices filed 2,211 indictments in fiscal year 2008 against 2,289 defendants. This represents a 33 percent increase over fiscal year 2006.

65. As of May 29, 2009, a total of 2,312 victims of child pornography crimes have been identified and many rescued, over 1000 of them since the launch of PSC in 2006, through enhanced law enforcement coordination and the efforts of NCMEC.

66. As an example of further coordination with civil society, Internet service providers (ISPs) are required by federal law to report information concerning child pornography on their systems to the NCMEC CyberTipline. ISPs can be fined up to \$150,000 the first time they willfully fail to comply with the reporting requirement, and up to \$300,000 for all subsequent willful failures to report. While ISPs are required to report instances of child pornography that come to their attention (for example, through a complaint received by a customer), they are not obligated to take proactive steps to look for child pornography on their systems. Nevertheless, some companies do voluntarily search for criminal activity on their servers.

67. In addition, NCMEC has created a Financial Coalition Against Child Pornography, which is comprised of private sector representatives who want to ensure that their products or services are not used in connection with child pornography offenses (e.g., providing credit cards that are used to purchase child pornography). The coalition includes leading banks, credit card companies, third party payment companies, and Internet services companies.

68. Since the inception of PSC, CEOS, in partnership with the FBI, U.S. Immigration and Customs Enforcement, and the United States Postal Inspection Service, has developed and coordinated sixteen nationwide investigations targeting the production, distribution, receipt, and possession child pornography by more than 8,000 individuals residing in the United States. This is in addition to the approximately nine national operations, identifying 4,300 U.S. targets, undertaken in the years prior to the launch of PSC. Many of these cases are prosecuted by the United States Attorney's Offices throughout the nation, often in conjunction with trial attorneys from CEOS.

69. Through the Office of Justice Programs, the Department also funds and provides training to Internet Crimes Against Children Task Forces (ICAC) located in every state of the United States. The ICAC Task Force program is a network of coordinated regional task forces engaged in helping state and local law enforcement agencies develop an effective response to cyber-enticement and child pornography cases. ICAC was developed in response to the increasing number of children and teenagers using the Internet, the proliferation of child pornography, and heightened online activity by predators seeking unsupervised contact with potential underage victims. As part of the PSC initiative, U.S. Attorneys' Offices have partnered with ICAC task forces that exist within their districts to develop district-specific strategic plans to coordinate the investigation and prosecution of child exploitation crimes.

70. The program is a national network of 59 coordinated task forces, with at least one in every state of the United States, representing over 2,000 federal, state, and local law enforcement and prosecutorial agencies. These agencies are engaged in proactive investigations, forensic investigations, and criminal prosecutions. By helping state and local agencies to develop effective, sustainable responses to online child victimization and child pornography, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has increased their capacity to address Internet crimes against children.

- Since the ICAC Task Forces program's inception in 1998, nearly 100,000 law enforcement officers, prosecutors, and other professionals have been trained in the United States and in 17 countries on techniques to investigate and prosecute ICAC related cases.
- Since 1998, ICAC Task Forces have reviewed more than 100,000 complaints of alleged child sexual victimization resulting in the arrest of more than 13,500 individuals.
- In fiscal year 2007, the ICAC program trained over 20,000 law enforcement personnel and nearly 1,700 prosecutors. In fiscal year 2008, the number of trained law enforcement personnel increased to over 26,500, while an additional 2,219 prosecutors were trained.
- In fiscal year 2007, ICAC investigations led to more than 10,500 forensic examinations, the identification of nearly 400 children who were victims of some form of abuse and neglect, and 2,400 arrests.
- In fiscal year 2008, ICAC task forces resulted in the arrest of more than 3,000 individuals, with over one-third of those arrests (1,109) resulting in the acceptance of a plea agreement by the defendant.

b. Department of Homeland Security

71. Operation Predator is a program designed to identify, investigate, and, as appropriate, administratively deport child predators through the efforts of U.S. Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS). Officially launched by ICE on July 9, 2003, Operation Predator is currently managed and administered by the ICE Cyber Crimes Center (C3). Operation Predator combined the prior immigration investigative and administrative initiatives that targeted foreign nationals, undocumented aliens, and previously deported criminal aliens involved in child exploitation crimes with prior customs efforts to investigate the importation and exportation of images of child abuse. With these elements, and with the addition of child sex tourism investigative responsibilities, Operation Predator was organized into five enforcement categories, including the investigation of individuals who engage in the receipt, transfer, distribution, trafficking, sale, facilitation, and production of child pornography in foreign commerce, including utilization of the Internet.

72. Operation Predator works in partnership with the DOJ's Project Safe Childhood. Through Operation Predator ICE maintains relationships with the National Center for Missing & Exploited Children, the FBI, U.S. Postal Inspection Service, U.S. Secret Service, the Department of Justice, and the Internet Crimes Against Children Task Forces. ICE focuses on the international, trans-border dimension of child exploitation and integrates this enforcement with the national and local efforts of other law enforcement agencies in the United States. Furthermore, ICE concentrates its resources where its federal laws have the greatest impact, specifically on the immigration and international aspects of child abuse. ICE routinely coordinates and integrates investigative efforts with foreign law enforcement, in order to identify, arrest and prosecute the principals who are involved in international pedophilic groups or who travel internationally for the purpose of having sex with children.

73. Under Operation Predator, ICE targets child pornographers, child sex tourists and facilitators, human smugglers and traffickers of minors, criminal aliens convicted of offenses against minors, and those deported for child exploitation offenses who have returned illegally. Those who prey on children are often trusted members of the victims' families or communities. Among the predators arrested by ICE were relatives of victims, clergymen, doctors, athletic coaches, daycare and camp directors, teachers, janitors, babysitters, law enforcement officers, firefighters, and military officers. Since the initiative was launched in July of 2003, there have been more than 11,500 individuals arrested nationwide.

c. U.S. Marshals Service

74. The U.S. Marshals Service is the lead law enforcement agency responsible for investigating sex offender registration violations and related offenses in connection with violations of the Adam Walsh Child Protection and Safety Act, discussed in ¶ 40. In 2005 the Marshals Service launched Operation FALCON (Federal and Local Cops Organized Nationally), a nationwide fugitive apprehension operation combining the resources of federal, state, city and county law enforcement agencies to locate and apprehend criminals wanted for crimes of violence, including sex offenders. A chart showing arrest statistics by year is available at <http://www.usdoj.gov/marshals/falcon>. Data concerning sex offenders is not, however, separated between those who offend against children and those who do so against adults.

C. Training

75. U.S. federal government agencies undertake a wide range of training in the issues addressed by the Optional Protocol. A number of those efforts have already been discussed in the preceding paragraphs focusing on coordination. This section provides information on additional efforts. *See also* references to training components in projects discussed in Sections IV.C. (public awareness) and VII.A (international assistance and cooperation).

1. Department of Justice

76. Department of Justice (DOJ) Criminal Division Attorneys with the Child Exploitation and Obscenity Section (CEOS) provide training and guidance to prosecutors, law enforcement officers, and victim service providers on issues pertaining to child sex trafficking and child pornography victims. During fiscal year 2008, CEOS attorneys and computer forensic specialists provided training over 200 times in various domestic and international venues, to more than 2,000 federal, state, and local prosecutors and investigators, as well as foreign officials.

77. These efforts included presentations at the Annual Crimes Against Children Conference in Dallas, Texas; 2nd Annual Sex Offender/Child Predator Enforcement Conference in Baton Rouge, Louisiana; the Project Safe Childhood National Conference held in September 2008, in Columbus, Ohio; the National Training Conference on the Sex Trafficking of America's Youth held in Dallas, Texas, and sponsored by Shared Hope International, an NGO dedicated to the prevention of sex trafficking and the rescue and restoration of trafficking victims; the 20th Annual Crimes Against Children Conference in Dallas, Texas; the "Protecting Victims of Child Prostitution" course, a week-long seminar being held at the National Center for Missing and Exploited Children in Alexandria, Virginia; and a training program conducted at the Commercial Sexual Exploitation of Children Community Intervention Project Training Institute in Atlantic City, New Jersey. In addition, CEOS sponsored the Project Safe Childhood Advanced Online Child Exploitation Seminar held at the National Advocacy Center in August of 2008. In addition to these efforts, CEOS distributes newsletters on a quarterly basis that provide guidance concerning numerous issues pertaining to all federal child exploitation crimes, including the sex trafficking of children.

78. In September 2008 in Atlanta, Georgia, DOJ held its fourth annual conference on human trafficking. The event featured workshops and discussions led by practitioners in the field, fellow task force members, and DOJ and other U.S. Government officials. Topics included child exploitation, forced labor and sex trafficking cases, and task force coordination and cooperation. The Atlanta conference marked the last annual DOJ trafficking conference. As provided in TVPA § 201(a)(2), subsequent conferences will be held on a biennial basis, beginning in 2010.

79. DOJ Civil Rights Division attorneys and victim-witness staff conducted over seventy-five training programs for federal, state, and local law enforcement agencies, DOJ-funded anti-trafficking task forces, non-governmental and health care organizations, business leaders, academia and legal practitioners in locations throughout the United States. These training programs focus on identifying and assisting victims of human trafficking, including child victims, and victim-centered approaches to investigating and prosecuting human trafficking crimes. The Civil Rights Division also conducts both live and interactive televised trainings to hundreds of federal prosecutors and law enforcement agencies and their task force partners on enforcement of anti-trafficking statutes and victim protection.

80. Through the Bureau of Justice Assistance (BJA) anti-human trafficking task forces, more than 24,821 law enforcement officers and other persons likely to come into contact with victims of human trafficking have been trained from July 1, 2007 through June 20, 2008, on the identification of trafficking and its victims. The total number of law enforcement and other persons trained by the task forces since the inception of the program is 85,448. In addition, through a cooperative agreement with the Upper Midwest Regional Community Policing Institute (UMRCPI), 1,268 law enforcement officers and other persons likely to come into contact with victims of human trafficking have been trained in 2008. The total number of persons trained by UMRCPI is 5,314.

2. Department of Homeland Security

81. In the Department of Homeland Security, because law enforcement representatives may be the first to encounter a trafficking victim in the immediate aftermath of an escape or rescue, Immigration and Customs Enforcement (ICE) ensures that its coordinators, both full-time and collateral duty, receive critical training on issues such as victims' rights and immigration relief provisions in the TVPA and its reauthorizations, as well as knowledge and capacity building in victim-sensitive interviewing, provision of emergency assistance, and the roles of partner agencies such as non-governmental service providers. ICE victim-witness coordinators provide investigative support, services associated with statutory requirements of the Crime Victims' Rights Act and other relevant legislation, and emergency assistance and referrals for victims of trafficking. They

participate on human trafficking task forces and often serve as the primary point of contact between ICE and victim service providers. ICE coordinators are also trained on special issues related to minor victims, including referrals to Child Advocacy Centers for child forensic interviews, requests for eligibility from the HHS Office of Refugee Resettlement, and facilitation of placements in the Unaccompanied Refugee Minors program.

82. In furtherance of the ICE Trafficking in Persons Strategy (ICE TIPS), ICE frequently conducts training for law enforcement officials, consular officials, prosecutors, and social service providers, participating in and giving presentations at a number of TIP conferences and workshops. These events included the U.S. Customs and Border Protection Trafficking Symposium as well as the 2008 Human Trafficking Conference in St. Paul, MN. ICE domestic field offices conducted local outreach efforts to over 7,000 domestic law enforcement officials representing over 1000 agencies.

83. In August 2008, ICE sponsored an advanced training course on human trafficking of both children and adults for ICE special agents at the Federal Law Enforcement Training Center (FLETC) in Brunswick, GA. ICE Victim Assistance Program staff served as instructors for the portions of the course related to victim identification, needs of human trafficking victims, and victim services and immigration benefits. This course will be offered on a more frequent basis during fiscal year 2009.

84. The FLETC, within the Department of Homeland Security, serves as an interagency law enforcement training organization for 89 federal agencies, as well as state, local, and international law enforcement agencies. The FLETC provides consolidated and consistent entry level and advanced training for uniformed officers and criminal investigators/special agents to provide them with the skills needed to detect and investigate criminal violations of child protection and related laws. The FLETC is currently leading a working group comprised of DHS components (Civil Rights and Civil Liberties, CIS, Policy, ICE, and CBP), representatives from the U.S. Attorney's Office in Washington, D.C., and state and local officers to develop training for law enforcement officers to increase awareness of indicators of human trafficking of both adults and children.

3. Department of Defense

85. All Department of Defense (DOD) military members and civilian employees are required to take the general awareness trafficking in persons training module available since 2005. DOD awareness training is provided via the military services' knowledge-on-line systems. Overseas Combatant Commands provide theater/country specific training. A general awareness presentation and interactive multimedia modules are also available online. DOD is adding training on the Optional Protocol on the Involvement of Children in Armed Conflict to existing training modules on Combating Trafficking In Persons. This training will be required of all military and civilian personnel annually. DOD also provides a senior leader's module that outlines U.S. government and DOD responsibilities regarding trafficking in persons. A law enforcement TIP training module is mandatory for all law enforcement and investigative agencies within the Department. All training modules are available on the DOD website at <http://www.defenselink.mil/ctip>.

4. Department of State

86. The entry-level training program for new State Department diplomats includes a section on human trafficking, presented by the Department of State TIP Office. The TIP Office also provides anti-trafficking information during on-going training for U.S. ambassadors and career personnel. Additionally, the State Department incorporates anti-trafficking training in a program for U.S. civilian police candidates prior to their deployment to overseas peacekeeping missions. The

latter training includes basic anti-trafficking information, U.S. government policy, and awareness of the relevant international instruments, including the Optional Protocols on the Sale of Children and Involvement of Children in Armed Conflict. In 2008, 1,451 civilian police candidates received this information.

87. The Department of State’s Bureau of Democracy, Human Rights and Labor (DRL) also provides training throughout the year for foreign service officers on forced labor and trafficking in persons. Discussion of child victims includes information on the Optional Protocol on Sale. In addition, the Department of State provides training each year to editors and drafters of the Human Rights Reports that includes training on the trafficking of children and the offenses covered by the OP Sale. Relevant aspects of the Human Rights Reports are discussed in ¶ 463-65.

D. Collection of data concerning implementation of the Optional Protocol

88. There are a number of ongoing data collection efforts including, for instance, the Human Trafficking Reporting System collecting data from the anti-trafficking task forces around the United States, discussed in ¶¶ 31-32. The U.S. National Strategy currently being developed will also address data collection.

E. Budget allocated to activities implementing obligations under the Optional Protocol

89. The United States funds activities of a number of its agencies and state and local governments and provides grants to non-profit organizations to carry out its obligations under the Optional Protocol, as discussed throughout this report. The United States does not, however, prepare and maintain its federal budget in a manner that provides a meaningful picture of funding allocated to such implementation. Furthermore, as this report illustrates, implementation actions are undertaken at every level of the government in the United States, including federal, state and local governments, as well as non-profit organizations and other members of civil society. Nevertheless, the United States has attempted in this section to provide some examples of allocation of funds that are relevant to implementation of the Optional Protocol.

90. The U.S. Office of Management and Budget (OMB) tracks estimated trafficking in persons appropriations for each fiscal year. Funding reflected in these estimates comes from appropriations to a number of U.S. departments and agencies, including the Department of State, the Department of Justice, the Department of Labor, the Department of Health and Human Services, and the Department of Homeland Security.

91. Total appropriations to these agencies authorized by the Trafficking Victims Protection Act (TVPA) of 2000, as amended, are as follows:

Fiscal Year	2005	2006	2007	2008	2009
Appropriated amount	\$109.6 million	\$152.4 million	\$153.1 million	\$167.4 million	\$182.7 million

92. The United States provides extensive funding annually of both foreign and domestic anti-trafficking in persons projects. A chart providing a description and funding amount for each of the projects for fiscal year 2008 is attached as Annex 3. An April 2009 fact sheet accompanying the release of the fiscal year 2008 chart indicated that the U.S. Government

obligated a total of approximately \$93.2 million for these purposes, approximately \$76 million to 140 international TIP projects benefiting over 70 countries and approximately \$23 million to 82 domestic anti-TIP projects. The fact sheet is available at <http://www.state.gov/g/tip/rls/fs/2009/121359.htm>. Among other things, the fact sheet explains that funding of domestic projects comes from the Department of Justice to fight domestic human trafficking and provide support services to pre-certified victims in the United States and from the Department of Health and Human Services, focusing primarily on raising awareness and assisting trafficking survivors within the United States. The Department of State, Department of Labor, and USAID fund international anti-human trafficking projects. Annual project funding charts for fiscal year 2002 through 2008 are available at <http://www.state.gov/g/tip/c12606.htm>. Section VII.A.3. provides further information on the foreign projects.

93. These sources do not reflect all resources devoted to agencies' efforts to combat the offenses set forth in the Optional Protocol. In the Department of State, for instance, the salaries and operations budget of the Office to Monitor and Combat Trafficking in Persons (TIP Office) was \$4.3 million for fiscal year 2008 and \$4.4 million for fiscal year 2009. The TIP Office of course covers both adults and children; at the same time, a number of other Department of State offices are involved in issues related to the Optional Protocol, including the Bureau of Democracy, Human Rights and Labor, the Office of the Legal Adviser, the Bureau of International Organizations, and personnel around the world.

94. As another example, the Department of Health and Human Services (HHS) contributes major funding to state programs that provide assistance to children in need across a broad spectrum, far more children than those that are victims of the offenses under the Optional Protocol. Nevertheless, the child victims share in these benefits although the dollar amount cannot be separated from the funding as a whole. HHS obligated \$53 million in fiscal year 2008 for runaway and homeless youth basic centers, \$43 million in grants for the transitional living program, and \$17 million in education grants to reduce sexual abuse of runaway youth. HHS also obligated approximately \$428 million in fiscal year 2008 to promote safe and stable families, including \$388 million for grants to states and tribes, and \$32 million for state court improvement activities. HHS also obligated \$282 million in fiscal year 2008 for state child welfare services (which states match at 25%), approximately \$42 million for community-based child abuse prevention, \$26 million child abuse state grants, and \$37 million for discretionary grants to address child abuse. The HHS Children's Bureau in the Administration of Children and Families administers millions of dollars in grants to protect and promote foster care and adoption to states. Actual services are provided by state, county, city and tribal governments, and public and private local agencies. While such state programs play an important role in providing needed services to victims of the offenses covered by the OP and protection of those who might otherwise be vulnerable to trafficking or child prostitution, funds are not allocated or identified separately for those individuals.

95. In March 2008, the Senior Policy Operation Group, discussed in ¶¶ 49-53, created the Global TIP Coordination Subcommittee. The Subcommittee is reviewing current U.S. Government funds to fight human trafficking, coordinating broadly to ensure complementarity in programs and funding, and examining funding priorities.

96. State ombudsman and child advocate offices, discussed in ¶¶ 98-101, have funding at various levels, including over \$1.3 million a year for the Michigan Office of the Children's Ombudsman and \$2 million for the New Jersey Office of the Child Advocate.

F. National Strategy

97. The Department of Justice is developing a National Strategy for Child Exploitation Prevention and Interdiction to further this critical goal, consistent with the PROTECT Our Children Act, enacted in 2008, Public Law No. 110-401. The National Strategy will establish long-range goals for preventing child exploitation, including annual objectives for measuring the Government's progress in meeting those goals. A national coordinator has been appointed to facilitate the development and implementation of this strategy. *See* <http://www.justice.gov/opa/pr/2010/January/10-ag-027.html>.

G. Ombudspersons and similar autonomous public institutions

98. 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. The website of the National Conference of State Legislatures (NCSL) provides background and other information about children's ombudsman offices at <http://www.ncsl.org/IssuesResearch/HumanServices/ChildrensOmb%20udsmanOffices/tabid/16391/Default.aspx>. As explained there, the purpose of these offices is to:

- handle and investigate complaints from citizens and families related to government services for children and families -- this may include child protective services, foster care, adoption and juvenile justice services;
- provide a system accountability mechanism by recommending system-wide improvements to benefit children and families -- often in the form of annual reports to the Legislature, Governor and public. For example, Delaware's Office of the Child Advocate examines policies and procedures and evaluates the effectiveness of the child protection system, specifically the respective roles of the Division of Family Services, the Attorney General's Office, the courts, the medical community and law enforcement agencies; and reviews and makes recommendations concerning investigative procedures and emergency responses;
- protect the interests and rights of children and families -- both individually and system-wide; and
- monitor programs, placements and departments responsible for providing children's services -- which may include inspecting state facilities and institutions.

99. Approximately 29 states currently have either an ombudsman or an office of the child advocate with duties and purposes related to the welfare of children and others are in the process of creating such offices. Some of the offices are independent and autonomous while others operate within state government divisions of children and family services.

100. A number of states have child advocate offices that are independent and autonomous: Connecticut Office of the Child Advocate (<http://www.ct.gov/oca/site/default.asp>); Delaware (<http://courts.delaware.gov/childadvocate/>); Georgia Office of the Child Advocate (<http://gachildadvocate.org/02/ca/home/0,2697,84387339,00.html>); Massachusetts Office of the Child Advocate (<http://www.mass.gov/childadvocate/>); Michigan Office of Children's Ombudsman (<http://www.michigan.gov/oco>); Missouri Office of Child Advocate (<http://www.oca.mo.gov>); New Jersey Office of the Child Advocate

(<http://www.state.nj.us/childadvocate>); Rhode Island Office of the Child Advocate: (<http://www.child-advocate.ri.gov/index.php>); Tennessee Commission on Children and Youth (<http://www.tn.gov/tccy/ombuds.shtml>) and Washington Office of Family and Children's Ombudsman (<http://www.governor.wa.gov/ofco>).

101. Legislation in some states provides for especially comprehensive services in addition to investigating complaints and making recommendations for systems change including, among other things, the ability to initiate litigation against a state agency on behalf of children; inspect, monitor and review foster homes, group homes, juvenile detention centers, residential treatment centers and other state facilities; develop and provide quality training to other state officials, law enforcement officers, the medical community, family court personnel, educators, day care providers, and others on the various standards, criteria and investigative technology; and recommend legislation.

102. The interdisciplinary Children's Studies Center of Brooklyn College of The City University of New York is one example of the essential role of academic and non-profit institutions in developments in this area. Prompted by the Concluding Observations of the Committee, on February 6, 2009, the Center convened its Third Child Policy Forum of New York: *Implementation and Monitoring of the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. The Proceedings, together with the text of the Optional Protocol and the Committee's Concluding Observations have been published and are also available online at <http://www.brooklyn.cuny.edu/pub/departments/childrenstudies/>. The Forum reviewed the degree to which statutes, regulations, and programs of New York State serve to protect children and adolescents from sexual exploitation with a focus upon necessary law reform and mechanisms to implement and monitor the articles of the Optional Protocol.

103. The work of the Center, along with other non-governmental advocates, has been crucial in the adoption of new laws in the state of New York. The Safe Harbor for Sexually Exploited Youth Act, enacted September 25, 2008, made New York the first state in the nation to provide specialized services and safe housing for children who have been sexually exploited. Effective April 1, 2010, the Safe Harbor law allows for child victims of prostitution to defer criminal prosecution and instead petition for consideration as a person in need of supervision; the act also provides critical support and social services to child victims of prostitution. The New York Anti-Human Trafficking Act of 2007 (Ch. 74 of The Laws of 2007) created new crimes of sex and labor trafficking and facilitation of sex tourism, and established services for human trafficking victims. The Center's 2004 policy symposium *Children and the Law in New York* led directly to the drafting of legislation for an independent New York State Office of the Child Advocate; the legislation has passed the New York Assembly annually but has yet to be enacted. Most recently the Center has assembled a full-text compilation of New York statutes relevant to the obligations in the Optional Protocol.

104. In the United States civil society performs a significant role in areas that might otherwise be assumed to be the responsibility only of the government. Nongovernmental organizations, including professional associations, academic faculties, and charitable groups, provide services directly to child victims. These entities also serve in many cases as powerful advocates for child victims, ensuring that they obtain the benefits for which they are eligible from the government. Finally, they collect, analyze, and convey information to the U.S. Government and others about the status of efforts both to combat child exploitation and to meet the needs of victims. For instance, the National District Attorneys' Association, the largest

professional organization for criminal prosecutors in the world, provides extensive resources not only to its members but to all interested persons through its website at <http://www.ndaa.org>. Other active child-focused NGOs include NCMEC, Polaris Project, Shared Hope, and End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes.

105. Each of the agencies involved in implementing the Optional Protocol takes its human rights responsibilities seriously. While the United States does not have an independent national human rights institution as such, the United States has a mosaic of offices charged with protecting human rights domestically. These include, for example, the Civil Rights Division at the Department of Justice, the U.S. Commission on Civil Rights, the Equal Employment Opportunity Commission, the Office of Fair Housing and Equal Opportunity at the Department of Housing and Urban Development, and the civil rights offices of various agencies such as the Departments of Homeland Security, Health and Human Services, and Education.

106. The Civil Rights Division of the Department of Justice has responsibilities for protecting human rights of all individuals, including children, throughout the United States. The Division was established by the passage of the Civil Rights Act of 1957. Some of the major functions relevant to children are to:

- Investigate and, when warranted by the findings, initiate legal proceedings seeking injunctive and other relief in cases involving discrimination in areas including education, public accommodations and facilities, federally funded programs, the rights of prisoners, and mentally and physically disabled persons.
- Prosecute violations of criminal statutes that prohibit specified acts of interference with federally protected rights and activities, such as conspiracies to interfere with or deny a certain individual or group of individuals the exercise of these rights.
- Prosecute child labor violations of anti-trafficking statutes, and play a strong role in identifying, protecting, and assisting victims of human trafficking.
- Implement Executive Order 12250, concerning non-discrimination in federal programs, by studying, reviewing and approving regulatory changes proposed by all federal executive branch agencies as they pertain to civil rights.
- Serve as the principal advisor to the Attorney General on all matters pertaining to civil rights.
- Provide Department representation to, and maintain close liaison and cooperation with, officials and representatives of other divisions, federal agencies, state and municipal governments and private organizations on civil rights issues.

107. As noted above, civil rights offices of other agencies make important contributions to ensuring the protection of human rights at the federal level. In the Department of Homeland Security, for example, the Office for Civil Rights and Civil Liberties (CRCL) provides advice to the Department's leadership on a wide range of civil rights and civil liberties issues. It is also charged with investigating and resolving complaints. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, it reviews and assesses information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Office provides information to the public on filing a complaint at http://www.dhs.gov/xabout/structure/editorial_0373.shtm.

108. Finally, the agencies that are engaged in carrying out the obligations of the Optional Protocol have independent inspectors general appointed by the President, with the advice and consent of the Senate, pursuant to the Inspector General Act of 1978, as amended. The

inspectors general provide another means of monitoring the programs of these agencies to ensure that they reflect all of their intended goals, including human rights issues related to sale of children, child pornography, and child prostitution.

IV. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

A. Reducing demand

109. Enactment of statutes that prohibit the offenses covered by the Optional Protocol and active efforts to enforce those prohibitions in themselves reduce demand and are further supported by efforts to reduce demand abroad. For example, a groundbreaking undercover law enforcement investigation implemented last year targeted individuals who sought to pay to have sex with children. See <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>. As discussed in ¶ 128, a public awareness campaign was developed specifically to discourage individuals from engaging in child sex crimes. Section VII. addresses efforts to promote international cooperation in furthering the objectives of the Optional Protocol, including law enforcement cooperation, diplomatic initiatives, and assessments of other countries' performance in combating child trafficking, the use of forced child labor, and other violations, as well as funding of crucial programs in those countries. All of these efforts serve to reduce demand by making it more difficult for perpetrators to act. This section addresses further efforts to reduce demand for forced and other child labor, contributing to the prevention of trafficking of children for that purpose.

110. Domestic U.S. efforts go beyond efforts to curb forced child labor by strictly regulating all forms of child labor under the Fair Labor Standards Act (FLSA) and related regulations, implemented by the Department of Labor (DOL). The FLSA sets a minimum age for jobs in general and separately for jobs that have been determined to be particularly hazardous, and by limiting the hours that children are permitted to work. Separate standards address employment in agricultural and non-agricultural work.

111. A DOL fact sheet on FLSA standards in non-agricultural work explains that “[c]hildren of any age are generally permitted to work for businesses entirely owned by their parents, except those under 16 may not be employed in mining or manufacturing, and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.” Young persons 14 and 15 years of age may be employed in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions, including that the employment occurs outside school hours. Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting. See <http://www.dol.gov/whd/regs/compliance/whdfs43.pdf>, which includes a list of declared hazardous occupations.

112. Under the separate standards applicable to agricultural work, youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor, while youths 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent. Youths under 12 years of age

may work outside of school hours in non-hazardous jobs with parental consent, but only on farms where none of the employees are subject to the minimum wage requirements of the FLSA. Youths of any age may work at any time in any job on a farm owned or operated by their parents and youths ages 16 and above may work in any farm job at any time. See fact sheet at <http://www.dol.gov/esa/whd/regs/compliance/whdfs40.pdf>, which also sets forth the relevant hazardous occupations.

113. The FLSA authorizes DOL to seek injunctions to halt the movement in interstate commerce of goods tainted by ‘oppressive child labor.’ Section 12(a) (29 U.S.C. § 212(a)) prohibits producers, manufactures, and dealers from shipping or delivering such ‘hot goods’ in interstate commerce. In 2008 civil monetary penalties were increased to a maximum penalty of \$50,000 for each violation that causes the death or serious injury to any employee under the age of 18 years and \$100,000 penalty for repeated or willful violations that cause death or serious injury. 29 U.S.C. §. 216(e)(1)(A)(ii).

114. The United States also works to limit demand for exploitative child labor in foreign countries. Section 1307 of Title 19 of the U.S. Code prohibits importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict or/and forced or/and indentured labor under penal sanctions, with certain exceptions. “Forced labor or/and indentured labor” for purposes of § 1307 is defined to include forced or indentured child labor. Pursuant to its implementing regulations, 19 CFR §§ 12.42-12.45, the Department of Homeland Security encourages voluntary action by importers to avoid importing such goods. However, in the absence of voluntary compliance, DHS agencies may take one of two types of enforcement action to keep goods or merchandise produced in a foreign country with forced or indentured child labor from being imported into the United States, based on determinations by the Commissioner of Customs and Border Protection: (1) provisional detention of the merchandise, which may apply to an individual shipment or to the entire output of a type of product from a given firm or facility or (2) a more formal finding that the class of merchandise is the product of forced or indentured child labor, which bars it from the U.S. market while the finding remains in effect. A list of goods subject to detention orders and findings for goods covered by § 1307 is available at www.cbp.gov/xp/cgov/trade/trade_outreach/convict_importations.xml. 19 CFR § 12.44(b) provides for seizure and forfeiture of goods covered by a finding of probable cause that they were produced with forced or indentured child labor. For additional information on DHS enforcement, see U.S. Immigrations and Customs Enforcement *Forced Child Labor Advisory*, available at <http://www.ice.gov/doclib/pi/internationalaffairs/forced-child-labor-advisory-brochure.pdf>. Additional sanctions may apply in specific cases, including criminal sanctions. Under 18 U.S.C. § 545, it is a felony for a person to fraudulently or knowingly import or bring into the United States merchandise contrary to law, or to knowingly facilitate transportation, concealment, or sale of such merchandise after importation. Violations of § 545 are subject to a maximum sentence of 20 years, a fine, and forfeiture of the merchandise. 18 U.S.C. § 542 makes it a felony to enter or introduce merchandise into the commerce of the United States, or to attempt to do so, by means of false or fraudulent statements, documents or practices. Violations are subject to fine and/or imprisonment of not more than two years. Civil sanctions under 19 U.S.C. §§ 1592 and 1595a(b) may also apply.

115. For further discussion of U.S. assessments of foreign government performance on combating forced child labor and other offenses under the Optional Protocol, see Section VII.A.2.

B. Protecting the most vulnerable

116. The United States shares the Committee's concerns in protecting children who are especially vulnerable to the offenses covered by the Optional Protocol in keeping with Article 9(1). All of the efforts to prohibit and prevent offenses as well as public awareness, training, and protection efforts benefit the most vulnerable. The provisions of the Trafficking Victims Protection Act are at the center of this effort for children vulnerable to sale. This section provides examples of U.S. efforts to specifically address this always pressing issue.

117. The United States recognizes that unaccompanied and separated children entering the United States may be particularly vulnerable to exploitation for sex, forced labor, or neglect of their needs. The Trafficking Victims Protection Reauthorization Act of 2008 enhances protection and safety assessments for unaccompanied alien children during repatriation as well as temporary placement, as discussed in ¶ 351.

118. As explained in ¶¶ 360-65, the Department of Health and Human Services has extensive programs supporting assistance, care and services for unaccompanied children in immigration proceedings and for runaway and homeless youth in addition to programs more specifically geared to children identified as victims of trafficking.

119. The interagency Unaccompanied and Separated Children Working Group, with representatives from DHS, DOJ, DOS, and HHS, as well as non-governmental organization meeting attendees, focuses on children who are unaccompanied or separated from their parents, whether in populations of migrants, asylum seekers, refugees, or the internally displaced. In October 2008, the working group sponsored the Conference on Protection of Unaccompanied and Separated Children. More information is available at the conference website: <http://childalone.gmu.edu/>.

120. Particularly vulnerable children also benefit from protections included in federal statutes providing special protections for children, including child victims of offenses covered by the Optional Protocol. A few specific examples include:

- The Trafficking Victims Protection Reauthorization of 2008 (TVPRA 2008) § 235(c)(6) authorizes HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. The advocate would have access to materials necessary to effectively advocate for the best interest of the child, and would not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child while serving as child advocate. In addition, the child advocate is to be presumed to be acting in good faith and be immune from civil and criminal liability for lawful conduct of duties.
- The Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. §§ 5101 et seq., as amended, authorizes states to create citizen review panels that include a balance among children's attorneys, child advocates, and Court Appointed Special Advocates (CASA) volunteers familiar with the child protection system. The purpose of the panel is to review complex cases of child maltreatment and evaluate the extent to which the state is fulfilling its child protection responsibilities in accordance with its CAPTA State plan. Panels examine the policies, procedures and practices of state and local child protection agencies; and review specific cases, where appropriate. The panels are also authorized to review the child fatalities and near fatalities in the states. (CAPTA, section 106(c)).

121. The Department of Health and Human Service's (HHS) Children's Bureau supports research on the causes, prevention, and treatment of child abuse and neglect; demonstration programs to identify the best means of preventing maltreatment and treating families at risk; and the development and implementation of training programs. Grants are provided nationwide on a competitive basis to state and local agencies and organizations. Projects have focused on every aspect of the prevention, identification, investigation, and treatment of child abuse and neglect. HHS's Children's Bureau also administers the Community-Based Child Abuse Prevention program which provides funding to states for the maintenance of a statewide prevention network and the provision of prevention services at the local level, as well as the Court Improvement Program focusing on the work of the courts in child welfare cases.

122. In February 2008, HHS included five grantees from the ACF Family and Youth Services Bureau (FYSB) Youth Development Division Street Outreach Program in its pilot program aimed at increasing public awareness and victim assistance for U.S. victims. The Street Outreach Program's congressional mandate requires FYSB to serve sexually exploited runaway and homeless youth, a client base with high vulnerability to sex trafficking. HHS In-Reach Campaign meetings had suggested a significant intersection between FYSB's runaway and homeless youth populations and U.S. domestic minor sex trafficking populations, and pointed out a lack of trafficking knowledge and victim identification capacity within FYSB. Pilot expansion provided participating FYSB sites with intensive on-site human trafficking training and ongoing technical assistance.

123. The HHS Health Resources and Services Administration (HRSA) Bureau of Primary Care (BPC) works closely with migrant agricultural workers, a population with a high vulnerability to labor and sex trafficking. Meetings between leadership led to June 2008 WebEx training in which HRSA's Bureau of Primary Care provided Rescue and Restore partners with WebEx training on how HRSA Community Health Centers can work in partnership with anti-trafficking stakeholders.

C. Public Awareness

124. Recently a memorandum from the Legal Adviser of the U.S. Department of State distributed to all federal agencies by the National Security Council transmitted the U.S. Initial Report on the Optional Protocol, as well as the Committee's Concluding Observations, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State's Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body's concluding observations, including those for the Optional Protocol, on its website at <http://www.state.gov/g/drl/hr/treaties/index.htm>. Additionally, the United States is in the process of implementing a plan that would ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports. All agencies with a role in implementing the Optional Protocol have necessarily become more familiar with provisions of the Optional Protocol in the process of its implementation and in preparing the reports for this Committee.

125. A number of federal agencies and non-governmental organizations (NGOs) in the United States conduct public awareness campaigns utilizing a variety of mediums to alert the

public about the threat of and demand for the sexual exploitation of children. The campaigns are intended to raise public awareness about the crime and to act as a deterrent for potential violators. Extensive efforts are also made to reach victims and educate them on the availability of benefits. Some agencies have begun involving mainstream media outlets to assist with ongoing investigations. This type of assistance has proved valuable for the apprehension and assisted in the prosecution of numerous predators. All levels of law enforcement are encouraged to provide information and conduct public outreach campaigns to ensure continued public awareness of this type of crime. See also public awareness aspects included in training in Section III.E. and international programs in Section VII.A.

1. Department of Justice

126. In 2007, DOJ, in partnership with NCMEC and the Ad Council, launched a series of television and radio ads to educate young people on Internet safety and, in particular, encourage young people to “Think Before You Post.” Then, in 2008, the Department of Justice, in collaboration with Project Safe Childhood partners INOBTR (“I Know Better”), iKeepSafe, and the Hispanic Communications Network (HCN), launched an additional National Public Awareness Campaign regarding Internet safety. See <http://www.projectsafechildhood.gov>.

127. HCN produced two separate series of Spanish-language public service announcements (PSAs) for television, radio, print and the Web. The first targets parents, while the second targets potential predators. The Spanish-language information can be found on <http://www.ProtégelosAhora.org> for the parent campaign and <http://www.NoTeArruines.org> for the potential predator campaign. In addition, HCN produced an English-language short video for online distribution. The video, or Webisode, illustrates the dangers children face online and urges parents to become informed and involved, and to supervise their children’s Internet and mobile phone activity.

128. INOBTR created a PSA entitled “Exploiting a Minor Is a Major Offense.” This cutting-edge campaign is designed to warn potential online predators that exploiting a child online is a serious federal offense. Elements of this campaign include television, movie theaters, print, radio and Web banners. For more on this PSA, see <http://www.stopanonlinepredator.org>.

129. iKeepSafe developed one of the PSAs, entitled “Know Where They Go,” to highlight the risks children face on the Internet. The PSA illustrates how, in the digital world, children can travel anywhere, and why it is important that parents monitor what sites their children visit and who they are talking to. Elements of this campaign include television, print, radio and Web advertisements. For more on this PSA, see <http://www.KnowWhereTheyGo.org>.

130. DOJ closely works with NGOs that serve trafficking victims on a case-by-case basis. In fiscal year 2008, Civil Rights Division staff frequently participated in outreach and training programs oriented to NGO audiences to enhance collaboration between law enforcement and non-governmental organizations to identify and assist victims of human trafficking. For example, members of the Human Trafficking Prosecutions Unit (HTPU) in the Civil Rights Division participated in the annual Freedom Network USA Conference in both 2008 and 2009. The Freedom Network is a consortium of over two dozen service providers who specialize in direct service provision and host training events nationally.

131. As part of the mission of the Office for Victims of Crime (OVC) to increase the nation’s awareness of the rights and services available to victims of all types of crimes, OVC included the issue of human trafficking in several products and public awareness initiatives that were completed in 2008. For example, in April 2008, in coordination with National Crime

Victims Rights Week, OVC released a video entitled “Faith-Based Responses to Crime Victims.” This video, which included a specific segment on services provided to human trafficking victims, provides the faith community and the victim services field with examples of successful collaborations that are making a difference in victims’ lives. In addition, the 2008 National Crime Victims Rights Week Resource Guide, which was disseminated to thousands of NGOs across the United States to assist with public awareness activities, included general information and a statistical overview of human trafficking as well as other forms of victimization.

132. OVC also released a 30-minute training DVD and accompanying Resource Guide in April 2008 entitled “Responding to Victims of Human Trafficking” that is designed to educate traditional victim service providers on the dynamics of trafficking and strategies for expanding their capacity and resources to meet the comprehensive service needs of human trafficking victims. OVC worked closely with Safe Horizon, an experienced victim services grantee whose work in providing training and technical assistance to other trafficking services providers has helped to shape the content of the video.

133. OVC worked with agencies within DOJ and other federal agencies to ensure that the Fourth Annual Human Trafficking Conference included representation from all trafficking service providers funded by OVC. OVC staff was involved in the planning of several workshops, including sessions entitled “Special Issues With Child Victims in Forced Labor and Sex Trafficking Cases” and “Best Practices for Victim Intake by NGOs, In Light of a Prosecution.” OVC also developed a breakout session entitled “T Visas, U Visas and Other forms of Immigration Relief: The Roles of Law Enforcement, NGOs, and the Vermont Service Center.” This session generated extensive discussion between victim service providers and law enforcement regarding on-going challenges in this area.

2. Department of Health and Human Services

134. The Department of Health and Human Services (HHS) offered training and technical assistance in fiscal year 2008 to over 4,000 public health officials, local law enforcement officials, social service providers, ethnic organizations, and legal assistance organizations. HHS educated professionals at national or regional conventions of the International Association of Forensic Nurses, the National Migration Conference, Latino Social Work Organization, and the Migrant Clinician Network. HHS conducted child-focused trainings in fiscal year 2009 at the National Conference on Child Abuse and Neglect, the Annual Conference of the Association of Administrators of the Interstate Compact on the Placement of Children, and the Migration and Child Welfare National Network Conference, as well as to other audiences. HHS’s popular Rescue and Restore WebEx training events have educated national, regional, and grassroots organizations on a variety of crucial topics, including special considerations for child trafficking victims, the role of State Refugee Coordinators in assisting trafficking victims, how to create a shelter for human trafficking victims, and how social services agencies can collaborate with federal law enforcement to apply for immigration benefits on behalf of trafficking victims.

135. During fiscal year 2008, HHS’s public awareness contractor sub-awarded nearly \$350,000 to support local organizations’ coalition management activities. In addition to facilitating local and regional communication between NGOs, law enforcement, and other anti-trafficking stakeholders, HHS-funded and independent Rescue and Restore coalitions mounted a number of innovative public awareness events addressing both child and adult victims. HHS

leverages its public awareness mandate to lead a U.S. Domestic Trafficking in Persons Notification Pilot Program, discussed in ¶¶ 370-73.

136. The Rescue and Restore Victims of Human Trafficking campaign's fifth year increased public awareness efforts by reaching over 1.3 million persons. Besides targeting individuals or entities that are most likely to come into contact with victims, the campaign also targeted the general public to increase awareness of human trafficking of both adults and children. The campaign's media outreach component continued pursuing media stories and launched new efforts with billboard public service announcements across markets in the United States. Media outreach in fiscal year 2008 included pitching and responding to key national media requests, monitoring the news daily and, when appropriate, following up with reporters to encourage additional stories incorporating the HHS perspective and writing letters to the editor and/or op-eds in response to key stories. In the spring of 2008, the campaign began its billboard media initiative with outdoor advertisements in Newark, New Jersey. Nineteen more cities, including Atlanta, Chicago, and Las Vegas, were added during the month of May.

137. HHS distributed over 612,000 pieces of original, branded material publicizing the National Human Trafficking Resource Center (NHTRC). These materials included posters, brochures, fact sheets, and cards with tips on identifying victims in eight languages: English, Spanish, Chinese, Indonesian, Korean, Thai, Vietnamese, and Russian. The materials can be viewed and ordered at no cost on the HHS web site, <http://www.acf.hhs.gov/trafficking>, which is incorporated into all public awareness materials. HHS's site is also accessible through the Rescue and Restore website address, <http://www.rescueandrestore.org>. In fiscal year 2009, the web site logged 157,910 unique visitors with nearly half a million page views.

3. Department of Homeland Security

138. U.S. Immigration and Customs Enforcement's (ICE) trafficking in persons (TIP) outreach and training inherently is tied to children. ICE's TIP training highlights the fact that the majority of trafficking victims are women and children. The victim assistance portion of ICE's TIP training focuses on the special needs of child victims and the need for child forensic interviews.

Furthermore, ICE conducts robust Forced Child Labor (FCL) and Child Sex Tourism (CST) training worldwide. This training specifically addresses human trafficking of children abroad. These child victims are not covered by U.S. trafficking laws as the exploitation does not occur on U.S. soil, and thus they would not be eligible for services in the United States like special immigration benefits. However, ICE's FCL and CST outreach and training does focus on the trafficking of children abroad, including victim identification, victim interviews and services, and highlights the statutes (Protect Act and Smoot-Hawley Tariff Act of 1930) that U.S. law enforcement can utilize to prosecute the criminals who are exploiting or profiting from the exploitation of children abroad.

139. The Federal Law Enforcement Training Center also supports training on human trafficking for federal law enforcement. The training is conducted by the International Organization for Migration (IOM), Department of State, and the Department of Homeland Security (primarily ICE).

140. In fiscal year 2008, ICE Office of Investigations participated in and provided training at domestic conferences and seminars that included large numbers of NGO attendees. Pursuant to its Trafficking in Persons Strategy, ICE domestic field offices conducted local outreach efforts to over 8,000 NGO representatives from over 1,000 organizations.

141. ICE staff collaborates with NGOs that provide adult and child victims with services. Many NGOs have been instrumental in helping identify trafficking cases and victims. Outreach activities include presentations to corporate associations, academic groups, and local agencies.

Outreach addresses multi-jurisdictional issues, collaborative activities, and problems of distinguishing between TIP and migrant smuggling.

142. In 2008, ICE Victim Assistance staff provided speakers to the Freedom Network Conference in Decatur, Georgia, and the New Mexico Attorney General's statewide effort to promote awareness of human trafficking. ICE's Office of International Affairs has placed an increased emphasis on providing anti-trafficking training and outreach to foreign governments and law enforcement agencies, NGOs, and international organizations. The training and outreach are conducted through a variety of formats, including formal training academies, conferences, visits with international delegations in the U.S., and informal meetings.

143. An integral component of ICE's foreign training and outreach relates to victim issues. ICE continues to provide training on its direct victim assistance efforts in trafficking cases to foreign law enforcement officers, NGO representatives, and other officials through the International Visitors Program and the International Law Enforcement Academies. The victim assistance staff who provide specialized briefings and training highlight the features of the victim-centered approach to investigations, the rights of foreign victims in the United States (including immigration relief), and special considerations for appropriate response to trafficked minors and traumatized victims.

144. In May 2008, ICE launched a media and public outreach campaign focused on human trafficking in the United States. The objectives of the campaign were threefold:

- raise general awareness of the tragedy of human trafficking;
- highlight ICE's role in combating the problem; and
- offer the public an opportunity to be a part of the solution to this social concern.

145. On May 26, 2008, ICE launched a billboard campaign in the New York City area entitled *In Plain Sight*. The trafficking awareness postings were displayed on highway billboards, subway platforms, the exterior and interior of buses, bus shelters, urban panels, and dioramas. In June 2008, the billboard campaign was expanded to Baltimore, Chicago, Houston, Los Angeles, Miami, Phoenix, San Diego, San Francisco and Washington, D.C. To ensure effectiveness, the postings in the Los Angeles and Miami areas were printed in both English and Spanish. The campaign encouraged viewers to report human trafficking via the ICE tip line at 1-866-DHS-2-ICE. Reporting this crime gives the public an opportunity to be a part of the solution to this social concern. ICE is expanding this campaign to additional cities during fiscal year 2009.

146. ICE developed and produced a PSA on human trafficking in order to enhance the awareness of the general public on this serious issue. The public at large will serve as a force-multiplier toward law enforcement's efforts in identifying and rescuing victims, thus enabling ICE to identify more cases of human trafficking. The PSA is a 60-second visual focusing on victim recognition in order to raise awareness among the public at large, thereby enabling ICE to capitalize upon its expertise, infrastructure, and investigative resources to better combat this crime of modern day slavery. The PSA was originally made available in English and Spanish. However, in 2008, translations into Arabic, Chinese, French, Russian and Korean were added in order to reach the widest possible audience.

4. Department of State

147. The Office to Monitor and Combat Trafficking in Persons (TIP Office) distributes a variety of public awareness materials annually, including the Trafficking in Persons Report and

various fact sheets. The TIP Office has developed an informational CD of useful tools on child sex tourism, including a fact sheet and a *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*; public service announcements; anti-child sex tourism posters and campaigns; and research. The CD is being widely shared with NGOs, the travel and tourism community, the general public, and foreign governments, in an effort to raise awareness of child sex tourism and the penalties associated with the crime.

148. During 2008, news media coverage on the release of the annual Trafficking in Persons Report in June reached over 1.2 billion people. In calendar year 2008 and the first eight months of 2009, the TIP Office conducted speeches and briefings at more than 100 events for NGOs, foreign officials, journalists, students, and the general public, reaching more than an estimated 6,200 individuals in the United States and around the world.

149. The TIP Office also organized several briefings for Washington-based. In calendar year 2008 and the first eight months of 2009, the TIP Office conducted separate post-TIP Report briefings for NGOs and foreign diplomats (both with record number of attendees and organizations represented); the first North American trilateral TIP meeting with the United States, Mexico, and Canada; and an international symposium on Human Trafficking Aftercare, featuring 10 experienced victim service providers who discussed how best to protect and assist victims of human trafficking after they are identified and rescued. The product of this symposium is a Summary Report that identifies guiding principles, core aftercare services, including trauma-informed treatment of young victims, capacity building strategies, and examples of promising practices for aftercare programs. The TIP Office developed a fact sheet from this symposium, "Developing a Consensus on Aftercare Services for Victims of Human Trafficking." The TIP Office co-hosted an event with the Department of Labor, the NGO network Interaction and the NGO Save the Children to discuss the problem of child labor and trafficking.

150. The TIP Office worked closely with the White House Office of Faith-Based and Community Initiatives on the October 2008 Roundtable, "Success Against Slavery, Strategies for the Future: Promising Practices in International Programming," marking the eighth anniversary of the signing of the TVPA. The Roundtable featured six NGOs on two panels focused on both sex trafficking and trafficking for forced labor. The audience included U.S. Government officials, policymakers, business leaders, foundation representatives, philanthropists, and community leaders from religious committees and social service providers. The TIP Office also raised awareness of child sex tourism through its efforts to promote a leading film on child sex tourism, "Holly," and through participation in several expert discussions accompanying the film as it was released across the United States. Partnering with the film makers, the TIP Office also screened "Holly" in a major theater in Washington, D.C.

151. The Bureau of Democracy, Human Rights and Labor (DRL) reports on trafficking in persons as one of many human rights issues in its annual *Country Reports on Human Rights Practices*, discussed further in ¶¶ 463-65. Through its Office of International Labor and Corporate Social Responsibility (ILCSR), DRL continued to engage with a wide range of NGOs and the media to collect information and raise awareness on forced labor and trafficking in persons. DRL has funded numerous programs with NGO partners to promote human rights and combat exploitative labor practices, which may include trafficking in persons. In 2008, DRL co-hosted with the Belgian government a multi-stakeholder forum to address the worst forms of child labor, including trafficking in persons, in the cocoa sector in West Africa. DRL co-hosted with the U.S. Institute of Peace a public forum to address issues related to children and armed

conflict, touching upon issues such as the forcible recruitment and use of children, including those trafficked into soldiering. The audience included U.S. and foreign government officials, UN, NGOs, academia, journalists, and many others. DRL also hosted a roundtable to discuss private sector initiatives to combat forced and slave labor in Brazil, particularly to address labor supply chain issues. In addition to the Brazilian government, several prominent Brazilian NGOs participated in the event.

152. As discussed in Section V.J., in November 2008, on National Adoption Day, the Department of State launched a website providing extensive resources for adopting parents, agencies, and foreign governments concerning intercountry adoptions at <http://Adoption.State.Gov>. See ¶ 275.

5. Department of Education

153. The U.S. Department of Education (DOE) Office of Safe and Drug-Free Schools (OSDFS) developed and released “Human Trafficking of Children in the United States – A Fact Sheet for Schools” and identified new listservs, organizational partners, and ways to promote this fact sheet. In 2009 the fact sheet was updated and posted on the Department of Education website at <http://www.ed.gov/about/offices/list/osdfs/factsheet.html>. A cover letter accompanying the fact sheet drew attention to the Optional Protocol and provided a link to the Committee's website. A copy of the fact sheet and cover letter is attached as Annex 4.

154. In 2009 DOE included two sessions on the issues of human trafficking and commercial sexual exploitation in their 2009 annual conference, “The Power of Change: Healthy Students, Safe Schools, and Engaged Communities.” The conference attracted over 2,400 attendees including school principals, educators, security staff, and school nurses from across the United States. In addressing the conference, Ambassador Luis C. deBaca, director of the TIP Office, referred to the Optional Protocol and stressed that this audience constitutes the “first responders” in their ability to learn that children are being subjected to abuse, including sexual and labor exploitation. See <http://www.state.gov/s/g/tip/rls/rm/2009/127142.htm>.

155. On December 16, 2009, the Secretary of Education joined the Chairs of the Federal Trade Commission and the Federal Communications Commission in launching *Net Cetera*, a new guide for parents to help them talk to their children about Internet safety. The guide, part of the federal government's *Onguard Online* program, is designed to help parents address three areas related to their children's online activities: inappropriate conduct, inappropriate contact, and inappropriate content. The aim is to protect children against, among other things, online predators and pornography. In its web posting, available at <http://www.onguardonline.gov/topics/net-cetera.aspx>, *Onguard Online* indicated that it is looking for schools to partner with in a pilot project using *Net Cetera*.

V. PROHIBITION AND RELATED MATTERS (arts. 3; 4, paras 2 and 3; 5; 6 and 7)

156. Article 3 of the Protocol requires each State Party “to ensure that, as a minimum, [enumerated] acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis.” As explained in ¶ 3 of the U.S. Initial Report, at the time the United States entered into the Optional Protocol, U.S. federal and state laws fully implemented its obligations under Article 3.

A. Sale of Children Offenses

157. Article 3(a) applies the requirement for criminalization, “in the context of sale of children as defined in Article 2” to the following:

- (i) The offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
- (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption; . . .”

Article 2 defines “sale of children” to mean “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

Article 3(a) imposes the requirement for criminalization “whether these offences are committed domestically or transnationally or on an individual or organized basis.”

1.a. Sale for Sexual Exploitation of the Child: Federal

158. As discussed in ¶¶ 15-16 of the U.S. Initial Report, the term “sexual exploitation” is not defined in the Optional Protocol, but it was generally understood during the negotiations that the term means prostitution, pornography, or other sexual abuse in the context of the sale of children.

159. Federal law passed as part of the Trafficking Victims Protection Act of 2000 prohibits recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining a child knowing that the child would be caused to “engage in a commercial sex act.” 18 U.S.C. § 1591. “Commercial sex act” is defined to mean “any sex act, on account of which anything of value is given to or received by any person.” There is no requirement to prove that fraud, force or coercion was used against the child or that the child was moved across state or international borders, provided it can be shown that the conduct is “in or affecting interstate or foreign commerce.” This statute also prohibits individuals from benefiting from participation in a venture that has engaged in sex trafficking, defining “venture” to mean two or more individuals “associated in fact, whether or not a legal entity.” In certain instances, the prosecution does not need to prove that the defendant knew the victim was a minor; in all other cases, the prosecution need only show that the defendant recklessly disregarded the fact that the victim was a minor. The U.S. federal statutes governing trafficking of children for sexual exploitation do not require the element of “sale.” In other words, they apply regardless of whether there is any consideration involved in the transfer of the child and thus reach more conduct than is required under the Optional Protocol.

160. Punishment for these offenses is ten to fifteen years up to life imprisonment or a fine or both. See also requirement for mandatory restitution, discussed in ¶¶ 421-23.

161. Pursuant to Section 1594, individuals who attempt to violate § 1591 face the same punishment as if they had completed the violation. Defendants also face a punishment of up to life in prison if they conspire to commit this offense. Section 1594 requires the court to order forfeiture of assets related to commission or attempted commission of the offense.

162. 18 U.S.C. §§ 2421-2423 also cover interstate and international transportation of adults and children for purposes of prostitution or any other illegal sexual activity. With one

exception, these provisions require actual travel across a state or international boundary. The Mann Act, 18 U.S.C. § 2421, prohibits transporting a person across foreign or state borders for the purpose of prostitution or other unlawful sexual activity and carries a 10 year maximum sentence. In addition to this general prohibition, § 2423(a) specifically prohibits transportation across foreign or state borders of any individual under age 18 with the intent that the “individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense.” This crime is punishable by no less than 10 years in prison, up to life.

163. Section 2422(a) prohibits enticing or coercing a person to travel across a state or international boundary in order to engage in prostitution or other unlawful sexual activity and carries a 20 year maximum sentence; § 2422(b) which prohibits using the mail or other interstate communications such as the telephone or the internet to entice or coerce a person under 18 to engage in prostitution or other unlawful sexual activity, is punishable by imprisonment for no less than 10 years in prison, up to life. Attempts to violate §§ 2421-2423 are punishable in the same manner as a completed offense, as are conspiracies under § 2423.

164. For further discussion of sexual exploitation of children, see discussions below of prostitution and pornography.

1.b. Sale for Sexual Exploitation of the Child: Other U.S. jurisdictions

165. Most states of the United States and U.S. territories criminalize sale for sexual exploitation of the child, usually in a statute addressed to human trafficking. A summary listing of the provisions, with sentencing provisions, is available on the website of the National District Attorneys Association (NDAA) at

http://www.ndaa.org/pdf/ncpca_statute_human_trafficking_08.pdf. Trafficking in children for prostitution is also penalized in state law; *see*

http://www.ndaa.org/pdf/ncpa_statute_prostitution_children_oct_08.pdf.

166. A compilation of state laws penalizing other sexual exploitation of children, e.g., rape, sexual assault, molestation, and sodomy, with sentencing provisions, is available at http://www.ndaa.org/pdf/ncpca_statute_sexual_offenses_mar_09.pdf.

2.a. Sale of Children for Transfer of Organs of the Child for Profit: Federal

167. As explained in ¶¶ 17-18 of the U.S. Initial Report, U.S. federal law contains comprehensive protections against sale (or exchange for valuable consideration) of human organs, including those of a child, if the transfer affects interstate commerce. Since the transfer of organs of a child must be within the context of the sale of a child to come within the purview of the Optional Protocol, situations in which the transfer of the organ does not involve valuable consideration and the child itself is not being transferred for remuneration or any other consideration are not prohibited. To clarify the scope of the obligation to criminalize the transfer of organs under the Optional Protocol the United States included the following understanding in its instrument of ratification:

The United States understands that the term “transfer of organs for profit” as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent. Moreover, the United States understands that the term “profit”, as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with the

transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

168. This understanding is reflected in the federal law, which prohibits “any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce,” subject to a fine of up to \$50,000 and imprisonment up to 5 years. 42 U.S.C. § 274e. Section 274e(3) provides that the term “valuable consideration” does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.” Section 274e was amended in 2007 by Public Law No. 110-144 to provide that “kidney paired donation does not involve the transfer of a human organ for valuable consideration.” This amendment clarifies the ability of two or more donors (donors A & B)--each of whom is biologically incompatible with the patient to whom he or she wishes to donate an organ (patients A* & B*), but each of whom is compatible with the desired recipient of the other donor-- to agree to donate to the patient with whom he or she is compatible. Thus, in this example, donor A can donate an organ to patient B* and donor B can donate to patient A*.

2.b. Sale of Children for Transfer of Organs of the Child: Other U.S. jurisdictions

169. As also explained in the Initial Report at ¶¶ 19-20, although U.S. state law may not always criminalize the sale of organs per se, the situation addressed in the Optional Protocol would inevitably fall within the scope of one or more criminal state statutes. Depending on the nature of the crime and state law, the conduct prohibited by the protocol would constitute assault, and might also be battery, maiming, child abuse or criminal homicide. A compilation of relevant state statutes prepared for this report by the National District Attorneys Association is attached in Annex 5A.

3.a. Sale of Children for Engagement in Forced Labor: Federal

170. As explained in ¶¶ 21-24 of the Initial Report, providing or obtaining a person, including a child, for forced labor is specifically prohibited by 18 U.S.C. § 1589, enacted as part of the Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386. As amended in 2008, § 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.”

171. Subsection (d) provides a penalty of fines and/or imprisonment up to 20 years, or up to life imprisonment if death results from the violation or if it includes kidnapping, attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill. These penalties also apply to anyone who knowingly benefits, financially or by receiving anything of value, from participation in a venture engaged in these activities, knowing or in reckless disregard of the fact that the venture was so engaged.

172. In addition, § 1590, as amended, prohibits anyone from “knowingly recruit[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, any person for labor or services in violation of this chapter” (including peonage, slavery, involuntary servitude, forced labor, and trafficking). Section 1590 provides for the same penalties as under § 1589 and imposes these penalties as well on anyone who obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of § 1590.

173. Other provisions of the U.S. Code provide criminal penalties for peonage, enticement into slavery, involuntary servitude and sex trafficking, and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor. 18 U.S.C. §§ 1581, 1583, 1584, 1591, and 1592.

174. Attempts to commit such crimes are punished under 18 U.S.C. § 1594 in the same manner as a completed action. Section 1594 also requires the court to order forfeiture of assets related to commission or attempted commission of the offense. See also discussion of mandatory restitution in ¶¶ 421-23 and 18 U.S.C. § 1593A prohibiting benefits from participation in a venture.

175. Finally, the provisions of 18 U.S.C. § 241, the federal civil rights conspiracy statute, prohibit conspiracies to violate the Thirteenth Amendment. The Thirteenth Amendment prohibits slavery and involuntary servitude and has been interpreted broadly. “The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States.” *Pollock v. Williams*, 322 U.S. 14, 17 (1944).

3.b. Sale of Children for Engagement in Forced Labor: Other U.S. jurisdictions

176. Most states of the United States, the District of Columbia, and U.S. territories criminalize sale for child labor, usually in a statute addressed to trafficking in humans. A summary listing of the provisions, with sentencing provisions, is available on the website of the NDAA at http://www.ndaa.org/pdf/ncpca_statute_human_trafficking_08.pdf. The Department of Labor also provides extensive information on state laws applicable to employment of children under 18 at <http://www.youthrules.dol.gov/states.htm>.

4. Sale of Children by Improperly Inducing Consent, as an Intermediary, for the Adoption of a Child in Violation of Applicable International Instruments on Adoption

177. See ¶ 262 setting forth the criminal and civil sanctions for improper inducement of consent in adoption and ¶ 245 concerning applicable state statutes.

5. Kidnapping and related statutes

178. In addition to more specific statutes, the federal kidnapping statute criminalizes kidnapping persons, including minors, across state lines. 18 U.S.C. § 1201. Section 1201 provides for imprisonment up to life and, if the death of any person results, capital punishment or life imprisonment.

179. Similar statutes exist in states for kidnapping within the state. Where other aspects of articles of the Optional Protocol are met, these statutes could also be relied on in prosecuting offenders in crimes that would constitute violations of the Optional Protocol. A compilation of state statutes and related information that would be relevant in cases of sale of a child for adoption or other purposes prepared by the NDAA for this report is attached in Annex 5B.

B. Child Prostitution Offenses

180. Article 3(b) of the Optional Protocol requires states parties to criminalize “[o]ffering, obtaining, procuring or providing a child for child prostitution, as defined in article 2.” Article 2(b) defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.”

1. Child Prostitution: Federal

181. The transfer of children for prostitution is covered in the discussion of child sex trafficking above. In addition, U.S. federal law punishes those who patronize child prostitutes or profit from sex tourism. 18 U.S.C. § 2423(b) prohibits anyone from travelling across state lines or into the United States for the purpose of engaging in any illicit sexual conduct (which includes any commercial sex act with a person under 18) and prohibits a U.S. citizen or lawful permanent resident from travelling in foreign commerce for the purpose of engaging in any such sexual conduct, subject to a 30 year maximum sentence. Section 2423(c) prohibits a U.S. citizen or lawful permanent resident from travelling in foreign commerce and engaging in illicit sexual conduct, and carries a 30 year maximum sentence. Section 2423(c) does not require that the citizen have travelled outside the country with the purpose of engaging in illicit sexual conduct in a foreign country. Section 2423(d) prohibits arranging or facilitating, for financial gain, another person’s travel to engage in illicit sexual conduct and carries a 30 year maximum sentence. Attempt or conspiracy to commit a crime under § 2423 is punishable in the same manner as the completed offense. In a prosecution under § 2423 based on illicit sexual conduct with a person under 18, 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 was at least 18 years old.

182. Section 236 of TVPRA 2008 added a requirement that the Attorney General notify the Secretary of State and the Secretary of Homeland Security of the name of any individual convicted of violating § 2423 for the purpose of revoking the offender’s passport, with certain limited exceptions.

2. Child Prostitution: other U.S. jurisdictions

183. As explained in the U.S. Initial Report at ¶ 31, all 50 states prohibit prostitution activities involving minors. A compilation of statutes penalizing those who procure, pander or use child prostitutes in U.S. states, the District of Columbia, and U.S. territories, prepared by the NDAA is available at http://www.ndaa.org/pdf/ncpca_statute_prostitution_children_oct_08.pdf. The compilation includes sentencing provisions.

C. Child Pornography Offenses

1. Child Pornography: Federal

184. Article 3(c) prohibits “[p]roducing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.” Article 2(c) defines child pornography to mean “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”

185. Child pornography is defined in 18 U.S.C. § 2256(8) 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.

186. Sexually explicit conduct is defined as “actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person.” 18 U.S.C. § 2256(2).

187. As described in greater detail in the U.S. Initial Report, ¶¶ 32-34, U.S. federal law prohibits the production, advertisement, distribution, receipt, sale and possession of child pornography, if the pornographic depiction had ever been transported using the mail or any means or facility of interstate or foreign commerce (i.e., over the internet or thorough the phone lines), or if the image was transported interstate or across a U.S. border. 18 U.S.C. §§ 2251-2252A. U.S. federal law severely punishes all conduct related to child pornography. For example, the statute prohibiting production or advertisement of child pornography carries a fifteen year mandatory minimum sentence. The statutes that penalize receipt or distribution of such material carry a five year mandatory minimum for first-time offenders. Conspiracy and attempts to violate the federal child pornography laws are also chargeable federal offenses with the same penalties.

188. Specifically, 18 U.S.C. § 2251 establishes as criminal offenses the use, enticement, employment, coercion, or inducement of any minor to engage in “any sexually explicit conduct for the purpose of producing any visual depiction” of that conduct or, as amended in 2008, “for the purpose of transmitting a live visual depiction of such conduct.” Section 2251 further prohibits the transportation of any minor in interstate or foreign commerce with the intent that the minor engage in sexually explicit conduct for the purpose of producing or transmitting live such visual depiction. Parents, legal guardians and custodians are punishable under this provision if they permit a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct that the parent or guardian knows or has reason to know will be transported or has been transported in interstate or foreign commerce. The provision also subjects to criminal penalty those who produce and reproduce the offending material, as well as those who advertise seeking/offering to receive such materials or seeking/offering participation in visual depictions of minors engaged in sexually explicit conduct.

189. Federal law also prohibits (1) the transfer, sale, purchase, and receipt of minors for use in production of visual depictions of minors engaged in sexually explicit conduct, 18 U.S.C. § 2251A; (2) knowingly transporting, shipping, receiving, distributing, or possessing any visual depiction involving a minor in sexually explicit conduct, 18 U.S.C. §§ 2252 and 2252A; (3) the use of a minor to produce child pornography for importation into the United States, and the

receipt, distribution, sale, or possession of child pornography intending that the visual depiction will be imported into the United States, 18 U.S.C. § 2260. For purposes of these statutes, a minor is defined as anyone under age 18. 18 U.S.C. §2256(1).

190. Recognizing that establishing the identity of every performer in a depiction of sexually explicit conduct is critical to ensuring that no performer is a minor and that, hence, the depiction is not child pornography, 18 U.S.C. §§ 2257 and 2257A impose certain name- and age-verification, record-keeping, and labeling requirements on producers of such material. Section 2257 requires producers of visual depictions of actual human beings engaged in sexually explicit conduct to “ascertain, by examination of an identification document containing such information, the performer’s name and date of birth,” and “any name, other than the performer’s present and correct name, ever used by the performer . . .” and to record and retain this information. Section 2257A, enacted in 2006, imposes similar record-keeping requirements on producers of visual depictions of simulated sexually explicit conduct. Violations of the record-keeping requirements are criminal offenses punishable by imprisonment of not more than five years for a first offense and not more than 10 years for subsequent offenses.

191. The Department of Justice published a final rule on December 18, 2008, implementing §§ 2257 and 2257A, 73 Fed. Reg. 77431 (Dec. 18, 2008). As explained in the Federal Register, “[p]roducers are less likely as a result of these requirements to exploit children and to create child pornography through carelessness, recklessness, or deliberate indifference. As for those who intentionally produce material depicting minors engaged in sexually explicit conduct, the statute and regulations provide an additional basis for prosecuting such individuals besides the applicable child-exploitation statutes. In addition, the statute and the regulations ‘deprive child pornographers of access to commercial markets by requiring secondary producers to inspect (and keep a record of) the primary producers’ proof that the persons depicted were adults at the time they were photographed or videotaped.’ *Am. Library Ass’n v. Reno*, 33 F.3d 78, 86 (D.C. Cir. 1994).”

192. 18 U.S.C. § 2258A obligates electronic communication service providers and remote computing service providers who have actual knowledge of child pornography on their servers to report such information to the CyberTipline of the National Center for Missing and Exploited Children. Some Internet Service Providers may voluntarily proactively search for criminal activity on their servers and are required to report any child pornography that is identified through such efforts. In addition, law enforcement operations have effectively shut down numerous Internet trading venues for child pornography related violations, such as commercial child pornography sites, newsgroups, and bulletin boards. These law enforcement actions not only control such use of the Internet, but also provide deterrence.

193. The U.S. Supreme Court has recently addressed and found constitutional one aspect of the child pornography laws. *U.S. v. Williams*, 535 U.S. 285, 128 S. Ct. 1830 (2008). In that case, the Court found that 18 U.S.C. § 2252A(a)(3)(B), which criminalizes, in certain specified circumstances, the pandering or solicitation of child pornography, did not violate the First Amendment of the U.S. Constitution because “offers to provide or requests to obtain child pornography are categorically excluded from the First Amendment.” *Id.* at 1842. The Court also concluded that the provision was not unconstitutionally vague under the Due Process Clause of the Fifth Amendment. According to *Williams*, an individual can be prosecuted for pandering material as child pornography, even if the material in question does not actually depict the sexual abuse of children. The Court stated:

Child pornography harms and debases the most defenseless of our citizens. Both the State and Federal Governments have sought to suppress it for many years, only to find it proliferating through the new medium of the internet. This Court held unconstitutional Congress's previous attempt to meet this new threat, and congress responded with a carefully crafted attempt to eliminate the First Amendment problems we identified. As far as the provision at issue in this case is concerned, that effort was successful

Id. at 1846-47.

2. Child Pornography: other U.S. jurisdictions

194. As also explained in the U.S. Initial Report (¶ 36) each state of the United States has enacted laws addressing child pornography. The precise scope of the statute varies from state to state; however, they all prohibit the visual depiction by any means of a child engaging in sexually explicit conduct. In addition, all state statutes address the following three areas: (1) production: employment or use of a minor to engage in or assist in any sexually explicit conduct for the purpose of producing a depiction of that conduct; (2) trafficking: distributing, transmitting or selling child pornography; and (3) procurement: inducing or persuading a minor to be the subject of child pornography.

195. A compilation of the child pornography statutes and information on penalties, methods and/or burdens of proof in the states, the District of Columbia, and U.S. territories, and the federal government, prepared by the NDAA, is available at http://www.ndaa.org/pdf/ncpca_statute_child_pornography_dec_09.pdf.

D. Laws Applicable to Members of the U.S. Military

196. Members of the U.S. military are subject to prosecution in state or federal civilian courts for violations of relevant state and federal laws, as discussed in paragraph 60 of Part IV of the Manual for Courts-Martial (MCM) of the United States,⁴ or trial by a U.S. military court-martial.

197. In federal and state courts military members could be prosecuted under any of the statutes discussed in Section V so long as jurisdictional requirements were met. Even where offenses are committed abroad, U.S. federal courts would have jurisdiction where the federal statute violated provides for extraterritorial criminal jurisdiction. *See* ¶¶ 301-303. As noted there, the term "special maritime and territorial jurisdiction of the United States" (SMTJ), 18 U.S.C. § 7, with respect to offenses committed by or against a national of the United States includes the premises of military entities in foreign countries, including the military's buildings and land appurtenant or ancillary thereto or used for its mission or purpose, irrespective of ownership. This expanded coverage extends to residences used by assigned U.S. personnel. The effect is to establish "footprints" around the globe in foreign countries where crimes committed could be subject to federal prosecution in the United States.

⁴ The Manual for Courts-Martial (MCM) of the United States implements by Presidential Executive Order the Uniform Code of Military Justice (UCMJ; chapter 47 of title 10, United States Code). The MCM consists of its Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures, with supplementary materials. Paragraph 4, Part I, MCM at I-1. The MCM is available at www.jag.navy.mil/documents/MCM2008.pdf.

198. Furthermore, the Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C. § 3261 et seq., provides jurisdiction over persons while employed by or accompanying the Armed Forces outside the United States. In certain cases it provides jurisdiction over a member of the Armed Forces subject to the Uniform Code of Military Justice (UCMJ), as codified in chapter 47 of title 10 of the U.S. Code, for conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if committed within the SMTJ. MEJA only applies to actions committed by a member of the Armed Forces subject to the UCMJ if the member ceased to be subject to the UCMJ before being charged, or the service member is charged with committing the offense with one or more other defendants, at least one of whom is not subject to the UCMJ.

199. Persons subject to the UCMJ are also subject to trial by a U.S. military court-martial. The UCMJ applies in all places (Article 5, UCMJ; 10 U.S.C. § 805). Persons subject to UCMJ jurisdiction include active duty members of the Armed Forces, members of the reserve components while on inactive duty for training, members of the national guard when serving in federal status, retired members of the regular components of the Armed Forces who are entitled to pay, and in time of declared war or contingency operation, persons who serve with or accompany the armed forces in the field. *See* Article 2, UCMJ; 10 U.S.C. § 802. UCMJ jurisdiction applies to any person who, at the time of the offense, is subject to Article 2, regardless of where the offense is committed (within the United States or overseas) and whether the person is on or off duty, and whether or not the offense is committed on or off a military installation. *See* Rule for Courts-Martial (R.C.M.) 201, MCM at II-9.

200. Courts-martial jurisdiction extends to violations of U.S. federal statutory offenses in the U.S. Code and to violations of the criminal statutes or codes of the various states of the United States. Article 133 and Article 134 of the UCMJ (10 U.S.C. §§ 933 and 934) allow UCMJ jurisdiction to reach beyond the offenses normally covered and, under certain circumstances, incorporate other offenses for UCMJ disciplinary purposes.

201. Article 134 establishes jurisdiction over “all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty.” Part IV of the MCM, “Punitive Articles,” provides a list of offenses cognizable under Article 134, but that list of specific crimes is not intended to be exhaustive or all-encompassing.⁵ As explained in Part IV, MCM at pp. IV/112-113, the reach of Article 134 is much broader than the list:

Article 134 makes punishable acts in three categories of offenses not specifically covered in any other article of the code (i.e., the UCMJ). These are referred to as “clauses 1, 2, and 3” of Article 134. Clause 1 offenses involve disorders and neglects to the prejudice of good order and discipline in the armed forces. Clause 2 offenses involve conduct of a nature to bring discredit upon the armed forces. Clause 3 offenses involve noncapital crimes or offenses which violate Federal law, including law made applicable through the Federal Assimilative Crimes Act, [18 U.S.C. § 13]. . . .

⁵ The UCMJ sets forth specific punitive offenses in articles 80 through 132. As relevant here, for instance, Article 120 (10 U.S.C. § 920), “Rape, sexual assault, and other sexual misconduct” includes specific offenses for rape of a child, aggravated sexual abuse, and aggravated sexual contact with a child.

202. Generally, under clauses 1 and 2 of Article 134, UCMJ, an act in violation of a local civil law or of a foreign law may be punished in a court-martial if it constitutes a disorder or neglect to the prejudice of good order and discipline in the armed forces or if it is of a nature to bring discredit upon the armed forces.

203. Article 133, UCMJ, is a general article of the UCMJ that applies only to military commissioned officers and cadets or midshipmen attending the U.S. Military Academies. A charge under Article 133 must meet the criterion that, under the circumstances, the acts or omissions constitute “conduct unbecoming an officer and a gentleman” (or gentlewoman).

204. A military member may also be charged under Article 77, UCMJ, as a person who aids, abets, counsels, commands, or procures commission of an offense or causes an act to be done which if directly performed by him would be punishable under the UCMJ, and would be punished as a principal in the commission of the crime. Attempts are punishable under Article 80, UCMJ, and participation in a conspiracy can be charged under Article 81, UCMJ.

E. Criminal Penalties

205. As evident in the discussion of specific statutes discussed above, U.S. federal and state laws punish the offenses covered by the Optional Protocol with severity, often setting minimum imprisonment sentences and authorizing up to life imprisonment. *See also* ¶¶ 40-43 of the Initial Report.

1. Juvenile offenders

206. Most youth involved with the juvenile justice system are under the jurisdiction of state laws; sentencing and procedures vary greatly among the states in terms of the minimum age of criminal liability, sentencing, and other aspects of juvenile justice. Information on state laws governing juvenile justice, statutory compilations, and analysis can be found at the website of the National Center for Juvenile Justice (NCJJ), the research arm of the National Council of Juvenile and Family Court Judges, available at <http://www.ncjj.org/stateprofiles>. The majority of juveniles who violate federal laws are prosecuted in state courts, largely due to the fact that most federal law violations also constitute a violation of state law.

207. Federal prosecutions of juveniles occur only in limited circumstances: when the state courts are unwilling or unable to assume jurisdiction, the state has no adequate rehabilitative treatment plans, or the juvenile is charged with a federal crime of violence or with drug trafficking. Many of the federal juvenile cases are concentrated in areas beyond state jurisdiction, primarily Indian country; thus the majority of federal delinquency proceedings involve Native American youth.

208. The constitutional rights available to juveniles in federal delinquency proceedings are much like those found in adult criminal trials, except that unlike adult proceedings, federal proceedings do not require grand jury indictment, public trial, or trial by jury.

209. Juveniles found delinquent may be released under suspended sentence, placed on probation, ordered to pay restitution and/or sentenced to the custody of the Attorney General for detention. Individuals under the age of 18 at the time of sentencing face a maximum term of detention equal to the lesser of the time before they reach 21 or the sentence an adult would receive for the same conduct. A juvenile sentenced to detention may also be sentenced to a term of juvenile delinquent supervision to be served following the juvenile’s release from detention. 18 U.S.C. § 5037.

2. Sentences for attempts and complicity

210. Under 18 U.S.C. § 2, an individual who aids, abets, counsels, commands, induces or procures the commission of a federal crime, including those addressing offenses covered by the Optional Protocol, is punishable as a principal, that is, the same as the person who committed the crime. Many of the federal statutes relevant here also punish attempts or conspiracies to commit an offense punishable under the Optional Protocol, as discussed in the context of each statute.

211. The United States notes that Article 3(2) of the Optional Protocol, which requires punishment of attempt and complicity or participation, provides that “subject to the provisions of a State Party’s national law, the same [criminalization requirement] shall apply to any attempt to commit any of these acts and to complicity or participation in any of these acts.” The phrase “subject to the provisions of a State Party’s national law” was specifically incorporated into Article 3(2) to reflect the fact that practice with respect to the coverage of attempts differs in individual nation’s laws and thus does not require criminalization of all attempts.

F. Statutes of Limitations

1. Statutes of Limitations: Federal

212. Under U.S. federal law, the usual statute of limitations for a criminal offense is five years, except as otherwise expressly provided by law. 18 U.S.C. § 3282. Several significant exceptions to that rule are relevant here. Section 3299, “Child abduction and sex offenses,” provides that, “notwithstanding any other law,” no limitation applies for “any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110 (except for section[s] 2257 and 2257A), or 117, or section 1591.” In basic terms, this means that there is no statute of limitations for any federal crime involving the sexual exploitation of a child, including child pornography, child prostitution, and child sex tourism offenses.

213. Two additional statutes applicable to children as well as adults remove or alter limitations. 18 U.S.C. § 3281 removes the statute of limitations altogether for any offense punishable by death and § 3298, “Trafficking-related offenses,” extends the statute of limitations to ten years after the commission of the offense for non-capital offenses under “section 1581 (Peonage; Obstructing Enforcement), 1583 (Enticement into Slavery), 1584 (Sale into Involuntary Servitude), 1589 (Forced Labor), 1590 (Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor), or 1592 (Unlawful Conduct with Respect to Documents in furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor) of this title or under section 274(a) of the Immigration and Nationality Act unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.” Finally, § 3283, “Offenses against children,” provides that no statute of limitations shall preclude prosecution during the life of the child, or for ten years after the offense, whichever is longer, for “an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years.” These provisions thus extend the statute of limitations on offenses such as forced labor of children to at least ten years and possibly up to the life of the child or, under § 3281, could remove the limitation altogether.

2. Statutes of Limitations: Other U.S. Jurisdictions

214. A compilation of statutes in U.S. states, the District of Columbia, and U.S. territories that toll, extend or eliminate time limitations for charging criminal offenses relating specifically

to child victims is available on the website of the National District Attorneys Association, at http://www.ndaa.org/pdf/ncpca_statute_limitations_offenses_against_children.pdf.

G. Investigations, Prosecutions, and Sentences

215. Within the Department of Justice Criminal Division, attorneys in the Child Exploitation and Obscenity Section (CEOS) are the subject matter experts on the prosecution of child sexual exploitation crimes, including child pornography offenses, the sex trafficking of minors and child sex tourism. CEOS trial attorneys and federal prosecutors in U.S. Attorney's Offices around the country prosecute federal child sexual exploitation crimes. The Criminal Section of DOJ's Civil Rights Division, which includes a specialized Human Trafficking Prosecution Unit, in collaboration with U.S. Attorneys' Offices nationwide, has principal responsibility for prosecuting, among other things, cases involving forced child labor.

216. As discussed in ¶¶ 58-62, the FBI, CEOS, and NCMEC launched the Innocence Lost National Initiative in June 2003 to address the growing problem of domestic sex trafficking of children in the United States, with significant success in investigations, rescue of children, and prosecutions. Among other things, this program has resulted in the conviction of over 350 pimps, madams, and their associates who exploit children through prostitution.

217. Combating child pornography on the Internet is a priority of the Department of Justice. Under Project Safe Childhood, discussed in ¶¶ 63-68, the number of federal child exploitation prosecutions has increased significantly, along with the number of federal, state, and local investigations and convictions, and more and more victims are being identified. In 2007 and 2008, the federal government filed over 4,000 indictments against child sex offenders, an increase of almost 28% from previous years. Approximately 3,684 of these defendants were found guilty either by plea or trial, an increase of the conviction rate by almost 22%. In these same two years, 19 defendants were sentenced to a term of life imprisonment and over 1,700 defendants were sentenced to a term of prison of 61 months or more. Focusing specifically on fiscal year 2008, U.S. Attorneys' Offices filed 2,211 indictments in fiscal year 2008 against 2,289 defendants. This represents a 33 percent increase over fiscal year 2006.

218. For example, fourteen U.S. defendants were indicted for their activity in a global child pornography trafficking enterprise. Seven of the defendants pled guilty, and seven went to trial in January of 2009. Of the seven who went to trial, all of them were convicted of multiple charges and subsequently sentenced to life in prison. Sentences for the defendants who pleaded guilty before trial ranged from 164 months (for a cooperating defendant) to 365 months in prison. See http://www.usdoj.gov/criminal/ceos/Press%20Releases/NDFL_SEVEN-DEFENDANTS_1-14-09.pdf and http://www.usdoj.gov/criminal/ceos/Press%20Releases/MDFL_Mumpower_sentence_07-21-09.pdf. The following chart shows the number of defendants charged in federal Internet child pornography-related cases from 2006 through 2009, the number of defendants who plead guilty in those cases, the number of defendants who went to trial, and the number of defendants who were acquitted of all charges.

Year	Defendants	Guilty Pleas	Trials	Acquittals
2006	1,374	1,089	53	4
2007	1,833	1,312	69	2
2008	1,953	1,580	68	5
2009	2,074	1,769	102	3

219. The Internet Crimes Against Children (ICAC) Task Forces, combining the expertise of federal and state law enforcement in cities around the country is a key part of this effort, as discussed in ¶¶ 69-70. ICAC data, based on their activities in all 50 states, show the following on arrests, plea agreements, and trials for all crimes against children for fiscal years 2006 through 2008.

	FY 2006	FY 2007	FY 2008
Arrests	2,046	2,403	3,047
Pleas	703	942	1,131
Trials	133	215	203

220. In the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), the Cyber Crimes Center (C3) is actively involved in investigating the sexual exploitation of children overseas. Since the PROTECT Act was enacted in 2003, ICE has conducted over 495 investigations of U.S. citizens travelling abroad for the purpose of sexually exploiting children, resulting in over 65 convictions. C3 also supports Child Sex Tourism investigations through assistance provided by the Computer Forensics Program. C3 Computer Forensics Agents have assisted in the examination of numerous computers seized in conjunction with Child Sex Tourism investigations. Child sex tourism cases are among the most difficult cases to investigate. The child victims are frequently from very poor families in rural areas of underdeveloped countries. Often, ICE agents must travel for days to reach the site of the crime and then identify the victims. Investigators must then face the difficult obstacle of bringing the children back to the United States to testify against the perpetrator. Prior to trial, many children and their families simply disappear back to rural villages, some paid off by often wealthy defendants.

221. ICE initiated 108 cases involving sex tourism in fiscal year 2008. In 2008, nine sex tourists were convicted after being identified through ICE investigations. In addition to those numbers, an ICE undercover operation targeting sex tourists caught seven sex tourists in 2008 and obtained three convictions. This operation, as well as undercover operations being conducted by the FBI, is ongoing. In another example, in September 2009 the Department of Justice announced the arraignment of an American on sex tourism charges for acts occurring in Cambodia. The announcement indicated that he was one of four Americans who had been arrested by ICE agents within a two-week period for sexually exploiting minors in Cambodia. The cases were described as the result of unprecedented cooperation among U.S. authorities, the Cambodian government, and non-governmental organizations to target American sex tourists in Cambodia. See http://www.usdoj.gov/criminal/ceos/Press%20Releases/DHI_MITCHELL-ARRAIGNED_09-09-09.pdf. As another example, a U.S. Citizen was indicted in late October on charges that he engaged in child sex tourism in the Philippines. See <http://www.justice.gov/opa/pr/2009/October/09-crm-1169.html>.

222. Operation Predator, as described in ¶¶ 771-73, is a comprehensive ICE initiative launched in 2003 to identify, arrest, and/or deport foreign national sex offenders, international sex tourists, Internet child pornographers, and human traffickers.

223. As of March 31, 2009, 12,085 sexual predators have been arrested as a result of initiatives conducted under the auspices of Operation Predator since its establishment in July 2003. Of those, 6,327 have been deported from the United States.

224. Operation Predator has an important international component as leads developed by domestic ICE offices are shared with ICE Attaché offices overseas and foreign law enforcement for action.

225. In fiscal year 2008, the Department of Justice Civil Rights Division's anti-trafficking efforts resulted in a record number of cases filed in a single year, including a record number of child and adult labor trafficking and adult sex trafficking cases. Collectively, the Civil Rights Division and United States Attorneys' Offices initiated 183 investigations, charged 82 defendants in 40 cases and obtained 77 convictions involving human trafficking, meaning the sex and labor trafficking of adults and children. Traffickers were ordered to pay restitution awards totalling approximately \$4.2 million.

226. Trafficking cases prosecuted by the Civil Rights Division and U.S. Attorneys Offices have included prosecutions involving the forced labor and involuntary servitude of children. For example, on October 19, 2009, in *United States v. Afolabi* a defendant was convicted in connection with a scheme to hold over 20 young West African victims—ranging from 10 to 19 years old-- in forced labor in hairbraiding salons in New Jersey, using threats, violence, and psychological intimidation to compel the victims to work long hours, seven days a week, without pay. Another defendant who had previously pled guilty in August 2009 admitted to participating in the scheme and to sexually abusing two minor victims. Sentencing is scheduled for early 2010.

227. In May 2008, a defendant was sentenced to 87 months in prison and ordered to pay the victim over \$162,000 in restitution in *United States v. Paiulin*. The defendant and her co-conspirators had recruited the 14-year-old victim from Haiti on false promises of an education, then held her as a domestic servant for nearly six years, working her up to 15 hours a day, seven days a week without pay, using a combination of psychological coercion, physical beatings, and threats until the victim escaped with the help of a family friend.

228. Previously, in a Maryland case, a defendant was sentenced in *United States v. Mubang* to 17½ years in prison and ordered to pay the victim \$100,000 in restitution, for luring the child victim to the United States from Cameroon on false promises of an education and a better life, only to compel her into domestic service, using physical beatings and threats.

229. In *United States v. Djoumessi*, two defendants were convicted and sentenced to 218 months and 60 months imprisonment, respectively, for holding a young Cameroonian girl, initially recruited at the age of 14, as a domestic servant, using physical and verbal abuse to compel her to work long days, seven days a week, with no pay at the defendants' home near Detroit, Michigan. The victim was also subjected to sexual abuse at the hands of the male defendant. At the time of sentencing in June 2007, the defendants were ordered to pay the victim \$100,000. On August 20, 2008, the United States Court of Appeals for the Sixth Circuit upheld the convictions.

230. These cases are just a few examples of the ongoing use of the forced labor and involuntary servitude statutes to protect children exploited for forced labor.

231. In a report released in December 2007, *Federal Prosecution of Child Sex Exploitation Offenders, 2006*, the Bureau of Justice Statistics reported that 3,661 suspects were referred to U.S. attorneys for child sex exploitation offenses. Of the referrals 69% were for child pornography, 16% for sex abuse, and 14% for sex transportation. Almost 6 in 10 of the suspects were prosecuted in 2006, up from 4 in 10 in 1994. Of those 9 of 10 were convicted and sentenced to prison, up from 8 in 10 in 1994. The median prison sentence increased from 36 months to 63 months over this period. Most suspects charged were white, male, U.S. citizens,

and had attended some college. Suspects arrested and booked by the U.S. Marshals Service for a sex offense increased from 431 in 1994 to 2,191 in 2006. This was a 15% annual average increase, making sex offenses among the fastest growing crimes handled by the federal justice system. Data for the report came from the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, and the U.S. Sentencing Commission.

232. According to this report, the main sex exploitation offense referred to U.S. attorneys shifted from sex abuse (73%) in 1994 to child pornography (69%) in 2006. Child pornography matters accounted for 82% of the growth in sex exploitation matters referred from 1994 to 2006. Sex transportation referrals accounted for 17% and sex abuse accounted for 1% of the growth over this period. Overall, 57% (2,039) of sex exploitation suspects in matters concluded by U.S. attorneys were prosecuted, an increase from 40% (313) prosecuted in 1994. The report is available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpcseo06.pdf>.

233. Within the Department of Homeland Security, ICE's Financial, Narcotics and Public Safety Division systematically follows the trail of illicit monies of organizations that traffic in humans. The ICE Asset Identification Removal Group (AIRG) targets the finances and assets of trafficking organizations and focuses on civil asset forfeiture. The ICE Law Enforcement Support Center (LESC) serves as a national enforcement operations center and provides timely information on the immigration status and identities of aliens, including potential traffickers.

234. The ability to arrest and detain traffickers for immigration law violations is often critical to an investigation. Trafficking cases are extremely resource intensive and often rely on the testimony of frightened and abused victims. It takes time for victims to feel comfortable enough with the U.S. criminal justice system to tell their stories. ICE human trafficking investigations are closely linked to victim assistance services.

235. In fiscal year 2008, ICE opened 432 human trafficking investigations, which consisted of 170 investigations of forced labor and 262 investigations of commercial sexual exploitation. ICE made 189 criminal arrests for offenses related to human trafficking. Of the 189 arrests, 128 were for crimes involving sexual exploitation and 61 were for forced labor related violations.

236. In the FBI, special agents in the Civil Rights Unit (CRU) and in field offices around the country investigate trafficking in the United States. FBI Legal Attachés at U.S. embassies around the world support investigations with international links. In addition, FBI agents in the CRU coordinate with agents in the Organized Crime and Crimes Against Children Units to ensure that cases initially identified as smuggling cases, Internet crimes against children, and/or sex tourism are also identified for potential human trafficking elements. On August 30, 2005, the FBI began its Human Trafficking Initiative. The initiative involved the FBI's field offices determining, via a threat assessment, the existence and scope of the trafficking problem in their region; participating in an anti-trafficking task force; establishing and maintaining relationships with local NGOs and community organizations; conducting victim-centered investigations; and reporting significant case developments to the CRU. In 2008 13 children were recovered in FBI human trafficking cases. The FBI participates in a significant majority of the human trafficking task forces funded by DOJ's Bureau of Justice Assistance as well as other human trafficking task forces and/or working groups.

237. The Department of Labor investigates compliance, as to both minors and adults, with labor standards laws such as the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act in industries with vulnerable workers, such as restaurants, garment manufacturing, hotel and motel, construction, janitorial services, and agriculture.

Provisions addressing child labor are discussed in ¶¶ 110-13. DOL's Wage and Hour Division (WHD), with the support of the Department's Office of the Solicitor, carries out the Department's enforcement responsibilities in these areas. To determine compliance with these laws, WHD investigators interview workers, review payroll records, and inspect migrant farm worker housing. If in the course of their investigations WHD investigators identify an instance of trafficking, they report suspected trafficking violations to the Department of Justice and any other appropriate authorities. WHD coordinates with other law enforcement agencies, such as the FBI, offices of Assistant U.S. Attorneys, and ICE, to ensure restitution on behalf of victims of trafficking. Additionally, criminal enforcement agents from DOL's Office of the Inspector General (OIG) have worked with their FBI and ICE counterparts on a growing number of criminal investigations, particularly those involving organized crime groups. DOL-OIG has joined the Attorney General's International Organized Crime Council and works in partnership with the Council's other members to identify and help prosecute international organized crime groups that violate U.S. laws or threaten the safety and wellbeing of the American worker, as well as the nation's security.

H. Review of legislation

238. The United States remains aware that laws can be amended to strengthen or respond to changing situations. The United States regularly reviews relevant laws and their application for completeness and efficacy. In 2008 two major pieces of federal legislation included provisions relevant to the issues covered by the Optional Protocol: The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401, enacted October 13, 2008, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law No. 110-457, enacted December 23, 2008, (TVPRA 2008). See ¶¶ 41 and 44.

I. Criminal liability of legal persons

239. U.S. law is consistent with Article 3(4) of the Optional Protocol, which requires each State Party "subject to the provisions of its national law, to "take measures, where appropriate," to establish the liability of legal persons for offences established in [Article 3(1)]. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative." U.S. law does not specifically address the liability of corporations. Nevertheless, in appropriate cases corporations have been held criminally liable for the acts of its employees or agents if the employee's or agent's acts (1) lie within the scope of employment and (2) are motivated at least in part by an intent to benefit the corporation (see *United States v. Sun Diamond*, 138 F.3d 961, 970 (D.C. Cir. 1998)). Liability has in appropriate cases been imputed to the corporation even though the employee's conduct was not within the employee's actual authority (provided it was within his "apparent authority") and even though it may have been contrary to the corporation's stated policies (see *United States v. Hilton Hotels, Inc.*, 467 F.2d 1000, 1004 (9th Cir. 1972)). Thus, when appropriate, corporations could be held criminally responsible for violations of criminal laws by its employees and agents when these conditions are met.

J. Adoption

1. Applicable international legal instruments on adoption

240. Article 3(1)(a)(ii) of the Optional Protocol requires States parties to criminalize “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption.” Article 3(5) requires generally that states parties “shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.”

241. The U.S. instrument of ratification to the Optional Protocol included an understanding that “the reference to ‘applicable international legal instruments’ in Article 3(1)(a)(ii) and 3(5) of the Optional Protocol refers to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 [Hague Convention].” *See* ¶ 243. The annex to the Guidelines states a broader interpretation of the phrase “applicable international instruments” without indicating the source of that interpretation.

242. Paragraph 19 of the Committee Guidelines requests information on measures taken to ensure that all persons involved in the adoption of children “act in conformity with [applicable bilateral and multilateral] agreements and with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (General Assembly Resolution 41/85 of 3 December 1986).” To the extent that any provisions of the Declaration, the Convention on the Rights of the Child, the 1967 European Convention, or the 1990 African Charter, all mentioned in the annex, are also provisions of the Hague Convention, the United States would be bound by those provisions.

2. Legal and other measures to prevent illegal adoptions

243. At the time the United States ratified the Optional Protocol, it was not yet a party to the Hague Convention. Therefore, its instrument of ratification stated:

[U]ntil such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

244. On April 1, 2008, the Hague Convention entered into force for the United States. As a result, the United States now has an obligation to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Optional Protocol and to take all appropriate legal and administrative measures required by Article 3(5) of the Optional Protocol. The Intercountry Adoption Act of 2000 (IAA, Public Law No. 106-279) was enacted on October 6, 2002, implementing the Hague Convention. Pursuant to § 505(a)(2) of the Act, a number of provisions were effective upon enactment; others, such as civil and criminal sanctions, including the criminal sanction relevant to Article 3.1(a)(ii) of the Optional Protocol, became effective on April 1, 2008, with the entry into force for the United States of the Hague Convention.

245. A number of states of the United States also have criminal laws in place that would apply to improper inducement of consent or other situations in which a child is sold for

adoption purposes. A compilation of relevant state statutes and related material prepared by the National District Attorneys Association for this report is attached in Annex 5B.

3. Accreditation and approval of entities to provide adoption services: Hague Convention adoptions under the IAA

246. Section 201 of the IAA (42 U.S.C. § 14921) generally restricts the offering of certain defined adoption services to accredited and temporarily accredited entities or approved persons, providing:

(a) In General.--Except as otherwise provided in this title, no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person--

(1) is accredited or approved in accordance with this title;

or

(2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

247. Subsection 201 (b) provided an exception to subsection (a) for certain services if performed by someone who is not providing any other adoption service in the case, including background studies and home studies, child welfare services, legal services, and prospective adoptive parents acting on their own behalf to the extent not prohibited by the law of the U.S. State in which the prospective parents reside.

248. Section 404 provides civil and criminal penalties for violations of § 201 and certain other prohibited acts, as follows:

(a) Civil Penalties.--Any person who--

(1) violates section 201;

(2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country--

(A) a decision by an accrediting entity with respect to the accreditation of an agency or approval of a person under title II;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention; or

(C) a decision or action of any entity performing a central authority function;

or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2),

shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than \$50,000 for a first violation, and not more than \$100,000 for each succeeding violation.

(b) Civil Enforcement.--

(1) Authority of attorney general.--The Attorney General may bring a civil action to enforce subsection (a) against any person in any United States district court.

(2) Factors to be considered in imposing penalties.--In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) Criminal Penalties.--Whoever knowingly and willfully violates paragraph (1) or (2) of subsection (a) shall be subject to a fine of not more than \$250,000, imprisonment for not more than 5 years, or both.

249. Agencies and persons that provide any one of six adoption services identified by the IAA generally must be accredited, temporarily accredited, approved, exempted or supervised. These six adoption services are:

1. Identifying a child for adoption and arranging an adoption;
2. Securing the necessary consent to termination of parental rights and to adoption;
3. Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
4. Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;
5. Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; and
6. When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

250. Section 203 of the IAA establishes minimum requirements for accreditation of agencies and approval of persons for a period of 3-5 years and requires the Secretary of State to issue regulations prescribing “the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the convention.” To be eligible for accreditation an agency must be a “private nonprofit organization” while a person seeking approval must be an “individual or private for-profit entity.” The minimum requirements are the same for both agencies and persons, including that they be licensed to provide adoption services in at least one State of the United States. *See* 22 CFR 96.30(a).

251. Section 203(b) of the IAA sets forth the following minimum requirements applicable to both accredited agencies and approved persons are as follows:

(A) Specific requirements.--

(i) Records. The agency provides prospective adoptive parents of a child in a prospective Convention adoption a copy of the medical records of the child (which, to the fullest extent practicable, shall include an English-language translation of such records) on a date which is not later than the earlier of the date that is 2 weeks before: (I) the adoption; or (II) the date on which the prospective parents travel to a foreign country to complete all procedures in such country relating to the adoption.

(ii) Reports. The agency ensures that a thorough background report (home study) on the prospective adoptive parent or parents has been completed in accordance with the Convention and with applicable Federal and State requirements and transmitted to the Attorney General with respect to each Convention adoption. Each such report shall include a criminal background check and a full and complete statement of all facts

relevant to the eligibility of the prospective adopting parent or parents to adopt a child under any requirements specified by the central authority of the child's country of origin under section 102(b)(3), including, in the case of a child emigrating to the United States for the purpose of adoption, the requirements of the child's country of origin applicable to adoptions taking place in such country. For purposes of this clause, the term ``background report (home study)" includes any supplemental statement submitted by the agency to the Attorney General for the purpose of providing information relevant to any requirements specified by the child's country of origin.

(iii) The agency provides prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(iv) The agency employs personnel providing intercountry adoption services on fee for service basis rather than on a contingent fee basis.

(v) The agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.

(B) Capacity to provide adoption services.—The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this Act, all adoption services in cases subject to the Convention.

(C) Use of social service professionals.--The agency has established procedures designed to ensure that social service functions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials.

(D) Records, reports, and information matters.--The agency is capable of--

(i) maintaining such records and making such reports as may be required by the Secretary, the United States central authority, and the accrediting entity that accredits the agency;

(ii) cooperating with reviews, inspections, and audits;

(iii) safeguarding sensitive individual information; and

(iv) complying with other requirements concerning information management necessary to ensure compliance with the Convention, this Act, and any other applicable law.

(E) Liability insurance.--The agency agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.

(F) Compliance with applicable rules.--The agency has established adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this Act, and any other applicable law.

252. Regulations issued by the Secretary of State pursuant to the IAA further elaborate on these requirements. See 22 CFR part 96, subpart F (*available at* <http://ecfr.gpoaccess.gov/cgi/t/text/text->

idx?c=ecfr&sid=f34d79ccb9ca8763552a4f4d55f21d47&rgn=div6&view=text&node=22:1.0.1.1.0.51.6&idno=22), for full accreditation and approval, and § 96.96, for temporary accreditation.

253. Section 202 of the IAA requires the Secretary of State to designate accrediting entities to carry out many of the functions that foreign central authorities perform, such as accrediting, supervising, and monitoring adoption service providers.

254. The duties of the accrediting entities, set forth in § 202(b), include the initial accreditation of agencies and approval of persons to provide adoption services in the United States in cases subject to the Convention and subsequent oversight and enforcement responsibilities. Under § 202(d) fees assessed by accrediting entities are subject to approval by the Secretary of State and may not exceed the costs of accreditation.

255. Pursuant to § 202, in July 2006 the Secretary of State designated two accrediting entities: the Council on Accreditation (COA) and the Colorado Department of Human Services (CDHS). Each entity completed a Memorandum of Agreement with the Department in July 2006. *See* 71 Fed. Reg. 38,442 (July 6, 2006) and 40,771 (July 18, 2006).

256. COA and CDHS developed and the Department of State approved a Substantial Compliance System to evaluate whether the adoption service provider applying for accreditation or approval was in substantial compliance with applicable accreditation standards in 22 CFR part 96. Those providers accredited or approved by February 2008 were announced as Hague accredited when the Convention entered into force on April 1, 2008. As new adoption service providers apply for accreditation or approval and successfully complete the process, the Department adds them to the list of the accredited and approved providers published on <http://adoption.state.gov>.

257. Section 204 of the IAA charges the Secretary of State with monitoring the performance of each accrediting entity that has been designated to authorize adoption service providers to provide adoption services in Hague Convention cases. This oversight includes reviewing each accrediting entity's performance in carrying out the duties enumerated under IAA Section 202. It also includes monitoring each entity's compliance with all requirements established by the Convention, the IAA, other applicable law and implementing regulations.

258. In accordance with the accreditation regulations, the Department follows a yearly cycle of monitoring and oversight divided into three main areas – ongoing activities, onsite inspections, and senior level performance reviews. Department personnel performed the first series of oversight visits to COA and CDHS in November 2008 and January 2009, respectively. Ongoing activities include document reviews, consultations, and conversations occurring on a daily basis. The accrediting entities regularly submit questions on the interpretation of the accreditation standards, as well as policies and procedures for approval by the Department. In addition, the Department's Accrediting Entity Liaison and other staff members take part in weekly webinars to discuss the status of pending applications. Frequent in-person visits to COA and CDHS complement this ongoing monitoring.

4. Fees

259. Regulations implementing IAA §§ 203(b)(1)(A)(iv) and (v) on fees and compensation are set forth in 22 CFR §§ 96.34 and 96.40. For accreditation or approval, an agency or person must “not compensate any individual who provides intercountry adoption services with an incentive fee or contingent fee for each child located or placed for adoption” in accordance with § 96.34, which elaborates on specific aspects of compensation.

260. In accordance with § 96.40, an accredited agency or approved person “provides to all applicants, prior to application, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of when and how the fees and expenses must be paid.” Before providing any adoption service to prospective adoptive parents, the agency or person “itemizes and discloses in writing [specified] information for each separate category of fees and estimated expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption.” The listed categories covered are home study fees and expenses, adoption expenses in the United States, foreign country program expenses, care of the child fees and expenses, translation and document expenses, contributions, post-placement and post-adoption reports fees and expenses, third party fees, and travel and accommodation expenses.

261. Before issuing the regulation as a final rule, the Department of State published it for public comment in the Federal Register. The Department responded to suggestions by several commenters requesting that it set fee limits for adoption services as follows:

. . . Setting caps would be impractical and difficult to enforce, especially if the expectation was that the Department would somehow make countries of origin conform to the Department's fee structure. We would be unable to set fee caps that would take into account all of the variables in the various countries that are involved in Convention adoptions, not to mention the fluctuations in exchange rates and currency values. We do agree, however, that the services the fees relate to should be readily transparent, provided to clients, and subject to accrediting entity oversight. Thus, we have included standards in § 96.40 that require agencies and persons to provide prospective adoptive parent(s) with extensive information on fees and expenses related to the adoption.

71 Fed. Reg. 8064, 8093 (Feb. 15, 2006).

5. Prohibition on improper inducement of consent

262. As set forth in ¶ 248, effective April 1, 2008 the Intercountry Adoption Act (IAA) established civil and criminal penalties for, among other things, “mak[ing] a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offer[ing], giv[ing], solicit[ing], or accept[ing] inducement by way of compensation, intended to influence or affect in the United States or a foreign country . . . the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention.” Regulations related to these prohibitions are included in regulations of both the Department of State, as a basis for denying accreditation/approval or taking adverse action related to accreditation and approval, and the Department of Homeland Security, as related to individuals involved in an adoption.

263. Under regulations issued by the Department of State, to be accredited or approved, agencies or persons must “provide[] adoption services ethically and in accordance with the Convention's principles of: (1) Ensuring that intercountry adoptions take place in the best interests of children; and (2) Preventing the abduction, exploitation, sale, or trafficking of children.” 22 CFR § 96.35. The regulation details extensive disclosure standards against which the accrediting entity evaluates the adoption service provider's suitability in this context.

264. Section 96.36, “Prohibition on child buying,” provides as follows as a requirement for accreditation or approval:

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs.

265. As to the expenses specifically allowed under § 96.36(a), the Department of State explained as follows in publication of the final rule. 71 Fed Reg 8064, 8092-93 (Feb. 15, 2006).

The standard in § 96.36 (a) clearly prohibits agencies and persons from “giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child.” This means that, if the intent of any payment is to buy a child or to obtain consents for adoption, then the agency or person has violated this standard. This standard is derived from the current, longstanding DHS regulations at 8 CFR 204.3, and protects birth parents, children, and adoptive parents. Regardless of how adoption services fees are described, characterized, or classified, if the fee is remitted as payment for the child, or as an inducement to release the child, then the standard is violated and appropriate action may be taken against an agency or person. The standard takes into account that the country of origin's adoption laws and procedures, not the Department's regulations on U.S. adoption service providers, determine what type of expenses, such as the care of the child or contribution for child protection services, must be covered as part of the adoption services fees. The Convention country of the child's origin has the authority to determine allowable adoption expenses in that country as long as the expenses are consistent with the Convention requirements of Article 4 (consents may not be induced by payment or compensation of any kind) and other requirements are followed. In its role as Central Authority, the Department can, however, communicate any concerns about a country of origin's laws and provisions for allowable adoption services expenses.

Finally, to address the concerns of commenters who believe the broad prohibition against child-buying could be interpreted by accrediting entities to exclude certain types of fees, such as the charitable contribution required in China, the standard highlights that, if permitted or required by the child's country of origin, reasonable payments for the provision of child welfare and child protection services may be made. The Convention and the IAA do not prohibit contributions to support family and child protection services in Convention countries. If the contribution is not intended to induce an individual to place a child for adoption, it is not inconsistent with these accreditation/approval standards. Therefore, we are not prohibiting a required contribution to an orphanage or State welfare organization in a child's Convention country. In § 96.40(b)(6), however,

we do require that the client receive an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for. Overall, we believe that the standard is responsive to the significant concerns about having the flexibility to take account of Convention country practices while upholding the basic principle against payments for a child.

266. The Department of Homeland Security has issued implementing regulations governing prospective adoptive parents seeking an intercountry adoption covered by the Hague Convention. Among those provisions is 8 CFR § 204.304, "Improper inducement prohibited." Section 204.304(b) elaborates on prohibited and permissible payments:

(a) Prohibited payments. Neither the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give to any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning:

- (1) The placement of a child for adoption;
- (2) The consent of a parent, a legal custodian, individual, or agency to the adoption of a child;
- (3) The relinquishment of a child to a competent authority, or to an agency or person as defined in 22 CFR 96.2, for the purpose of adoption; or
- (4) The performance by the child's parent or parents of any act that makes the child a Convention adoptee.

(b) Permissible payments. Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. A payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided. The permissible services are:

- (1) The services of an adoption service provider in connection with an adoption;
- (2) Expenses incurred in locating a child for adoption;
- (3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child;
- (4) Counseling services for a parent or a child for a reasonable time before and after the child's placement for adoption;
- (5) Expenses, in an amount commensurate with the living standards in the country of the child's habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child;
- (6) Expenses incurred in obtaining the home study;
- (7) Expenses incurred in obtaining the reports on the child as described in 8 CFR 204.313(d)(3) and (4);
- (8) Legal services, court costs, and travel or other administrative expenses connected with

an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency; and
(9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.

8 CFR § 204.304. Prospective adoptive parents seeking approval to proceed with an adoption covered by the Convention are required to disclose all fees and other expenses paid in relation to the adoption.

267. In adopting the above regulation as an interim rule, the Department of Homeland Security addressed the issue of improper payments to induce consent to adoption. 72 Fed. Reg. 56,832 (Oct. 4, 2007). Excerpts below address § 204.304:

New 8 CFR 204.304(a) provides a clear statement of what 8 CFR 204.3(i)[concerning non-Hague adoptions] and article 4 [of the Hague Convention] are intended to prevent. The decision of a parent or other custodian to release a child for adoption must be a free act for the adoption to be valid. Any payment or other consideration, no matter how small, will lead to denial of the [immigration] Form I-800 if the evidence of record establishes that the payment or other consideration was given specifically to induce the child's release.

New 8 CFR 204.304(b), in turn, identifies the type of payments that may generally be considered appropriate. This paragraph is modeled on the 1994 edition of the Uniform Adoption Act, as recommended by the National Conference of Commissioners on Uniform State Laws. The text of the Uniform Adoption Act is available on line at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uaa94.htm>. Certain payments to a prior parent may be proper, such as expenses related to the birth of the child, or to care of the child, or to care of a birth mother while pregnant and immediately after the child's birth. Any payment for any service related to an adoption will be reasonable only if it is permitted under the law where the payment is made, and if the amount is commensurate with the costs or living standards of the country in which the related service was provided. The new Form I-800 will require the petitioner to disclose the fees and other expenses paid in relation to the adoption.

268. The DHS regulations further expand on the issue of consent, defining “irrevocable consent,” used in § 101(b)(1)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(G), as added by IAA § 302 and required for the Form I-800, as set forth below. Among other things, the definition makes clear that the consent of the mother can be provided only after the birth of the child, as required by Article 4(c)(4) of the Hague Convention, thus reducing the potential for influence from payment of pre-natal expenses.

Irrevocable consent means a document which indicates the place and date the document was signed by a child's legal custodian, and which meets the other requirements specified in this definition, in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. If the irrevocable consent is signed by the child's birth mother or any legal custodian other than the birth father, the irrevocable consent must have been signed after the child's birth; the birth father may sign an irrevocable consent before the child's birth if permitted by the law of the child's habitual

residence. This provision does not preclude a birth father from giving consent to the termination of his legal relationship to the child before the child's birth, if the birth father is permitted to do so under the law of the country of the child's habitual residence.

(1) To qualify as an irrevocable consent under this definition, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, then the document does not qualify as an irrevocable consent unless the document is accompanied by a declaration, signed, by an identified individual, establishing that that identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

(2) If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

8 CFR § 204.301.

6. Amendments to immigration laws

269. Section 302 of the IAA amended the Immigration and Nationality Act to add § 1101(b)(1)(G) to implement the new adoption procedures under the Hague Convention. Among other things, § 1101(b)(1)(G) provides that a child under the age of sixteen involved in a Hague Convention adoption may be classified under U.S. immigration laws as an “immediate relative” if certain requirements are met, including specifically that

the child’s natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child’s emigration and adoption;

270. Anyone wishing to adopt a child abroad or to bring a child to the United States for adoption under the Hague Convention must file a DHS Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, with the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). Form I-800 requires, among other things, a list of all payments made and anticipated, including “all fees, expenses, in-kind contributions, and other compensation . . . made either directly or indirectly, to any individual, agency, entity,

governmental authority, or other payee or recipient.” It also requires prospective adoptive parents to certify, under penalty of perjury under the laws of the United States, that each answer they have given is true and correct to the best of their knowledge, information, and belief and that they

have not paid, given, or transferred any money or any other thing of value to any individual or entity as compensation or inducement for that person’s consent to the child’s adoption, and . . . have not authorized, permitted, or in any way condoned any such payment, gift, or transfer by any individual or entity acting on [their] behalf.

271. As explained in the Federal Register publication of the regulations, “[t]he decision of a parent or other custodian to release a child for adoption must be a free act for the adoption to be valid. Any payment or other consideration, no matter how small, will lead to denial of the Form I-800 if the evidence of record establishes that the payment or other consideration was given specifically to induce the child’s release.” 72 Fed. Reg. 56832, 56842 (Oct. 4, 2007).

7. Other aspects of implementation

272. In October 2009, the Department of State submitted to relevant Congressional committees its first Annual Report on Intercountry Adoptions pursuant to IAA § 104, providing information on implementation of the Hague Convention.⁶ The report is available at http://adoption.state.gov/pdf/Adoption%20Report_v9_SM.pdf.

273. The Department of State, as the U.S. Central Authority under the Hague Convention, believes that one of its most important efforts has been in outreach initiatives, both domestically and internationally. Among other things, the Department hosted and participated in a series of conferences, panels, and meetings with non-governmental organizations in the United States to provide information on U.S. implementation of its obligations under the Hague Convention and to address any questions and concerns.

274. Additional outreach was conducted through webinars and conference calls with prospective adoptive parents, adoption service providers, and adoption organizations. The Department also authored articles published in many magazines and newsletters announcing the Convention’s entry into force on April 1, 2008.

275. In November 2008, on National Adoption Day, the Department launched a new website devoted to intercountry adoption at <http://adoption.state.gov>. Since the launch, the site has received over 350,000 visitors. It provides adopting parents, agencies, and foreign governments with a starting place and central source of information on adoptions to and from the United States. The website offers country specific information, background on the Hague Convention, and other important information, such as:

- who is eligible to adopt;
- the protections provided by the Hague Convention;
- statistics on where American citizens choose to adopt children;

⁶ As explained in the report, it covers the date of entry into force for the United States through the end of the fiscal year, April 1 through September 30, 2008. Further, “since the IAA mandated that the Convention could not enter into force for the United States until the Convention system was immediately implementable, the report describes activities that took place before April 1, 2008, to provide background and context.”

- how an adoption service provider obtains or renews its accreditation; and
- considerations for selecting an accredited or approved adoption service provider.

276. A critical element of the new website was a revision of the information provided on the requirements for adoptions from Hague Convention countries as well as expanded information about the Hague Convention itself, accreditation and approval of adoption service providers, outgoing adoptions (i.e., adoptions of children who are emigrating from the United States), and *Frequently Asked Questions* about Hague Convention procedures. The new website also includes new sections devoted specifically to providing technical information to adoption professionals, foreign Central Authorities, and state authorities.

277. The Department as U.S. Central Authority (USCA) participated extensively in the creation and revision of drafts of The Hague Permanent Bureau's *Guide to Good Practice* for the Convention, which was published in 2008. The newsletter of the Permanent Bureau of the Hague Conference on International Law published an article in March 2008 provided by the Department announcing the upcoming entry into force and resulting changes to U.S. adoption procedures.

278. The USCA participated in meetings with Central Authority counterparts, including those from Australia, Belgium, Cambodia, Canada, China, Colombia, the Czech Republic, Germany, Guatemala, Hungary, India, Latvia, Mexico, the Netherlands, New Zealand, Slovakia, Switzerland, and the United Kingdom. These meetings, as well as additional conference calls and written correspondence, covered a wide range of issues, including home study preparation, the interpretation of habitual residence, special needs adoptions, and prospective adoptive parents acting in their own behalf.

279. The USCA also met with officials in many non-Convention countries during fiscal year 2008 to discuss the importance of the Hague Convention and to urge ratification or accession to the treaty. These countries included Japan, Kazakhstan, Kyrgyzstan, Nepal, Russia, South Korea, Ukraine, and Vietnam.

280. As required by Sections 102(e) of the IAA, the Department created the Adoptions Tracking Service (ATS), a case registry that permits tracking of all intercountry adoption cases involving the United States. ATS allows non-government users to access the system and provide information required by the IAA and its implementing regulations.

281. ATS has four primary functions:

1. track all incoming and outgoing adoption cases involving the United States, regardless of whether the case occurs under the Convention;
2. manage and track the accreditation or approval status of adoption service providers;
3. manage adoption service provider and accrediting entity contact information; and
4. record and track complaints lodged against adoption service providers.

282. ATS securely integrates specified data from U.S. Citizenship and Immigration Services in the Department of Homeland Security and the State Department's Visa Office with data required to be submitted by the Department-designated accrediting entities and adoption service providers. The Department also requires certain information from adoption service providers who offer services in connection with outgoing intercountry adoptions that are not covered by the Convention.

283. Another component of ATS is the Hague Complaint Registry. The Department receives complaints through an online form located on the Department’s public website, <http://adoption.state.gov>, which allows any party to an adoption, or any other concerned party, to report complaints against accredited or approved adoption service providers that raise an issue of compliance with the Convention, the IAA or the IAA’s implementing regulations. Among its purposes, the Hague Complaint Registry will:

- record complaints about accredited and approved adoption service providers;
- make complaint information available to the relevant accrediting entity, and to the Department;
- record information about the relevant accrediting entity’s actions taken to resolve each complaint;
- allow the accrediting entities to track compliance with any deadlines applicable to the resolution of complaints; and
- generate reports to show possible patterns of complaints.

284. During the period the system has been operating, it has received 53 complaints. Many of these involve a perceived lack of adequate communication and the Department-designated accrediting entity that accredited or approved each adoption service provider that is the subject of a particular complaint is investigating those complaints that concern whether that adoption service provider is in substantial compliance with applicable accreditation standards set forth in the regulations. None of the complaints alleged violations of the prohibition on improper inducement to consent.

8. Preventing improper attempts to persuade mothers or pregnant women to give up children for adoption

285. As discussed in ¶ 248, § 404 of the IAA provides civil and criminal penalties for actions related to adoption applicable, among other things, to “(a) [a]ny person who . . . (2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—. . . (B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention; or (3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2).”

286. These measures apply to preventing intermediaries from attempting to persuade mothers or pregnant women to give their children for adoption. As discussed above, consistent with the Hague Convention (Art. 4(c)(4)), pregnant women are not allowed to give their consent to adoption until after the child is born.

287. There is no prohibition in the Hague Convention or the Optional Protocol against all attempts to persuade either parent to give up a child for adoption.

9. Preventing advertising by unauthorized persons or agencies for services concerning adoption

288. As discussed in ¶ 262, U.S. law and regulations expressly prohibit anyone from “offer[ing] or provid[ing] adoption services in connection with a Convention adoption in the

United States” unless accredited or approved pursuant to detailed procedures and standards. Specific civil and criminal penalties that apply to persons who violate the prohibition are set forth in IAA § 404. Advertising would be one means of “offering” such services proscribed by that provision.

10. Preventing the theft of young children and fraudulent birth registration

289. Kidnapping for adoption purposes would of course violate 18 U.S.C. § 1201 if it were across state lines and would violate the laws of individual states if the kidnapping were within a state. *See* ¶¶ 178-79. In addition, depending on the facts of a specific case, in the context of adoption, the criminal sanctions of IAA (§ 404) and implementing regulations of both the State Department and Department of Homeland Security prohibiting child buying could also apply. Birth certificates are strictly regulated by state law.

11. Waiver of parental consent requirement

290. Under DHS regulations, and as reflected on Form I-800, discussed in ¶ 267, a child may be considered to have a sole birth parent whose consent to adoption is required, where “the competent authority has determined that the child’s other birth parent has abandoned or deserted the child, or has disappeared from the child’s life, and the child has not acquired another parent.” In that case there may be a living birth parent whose consent is not required. If both birth parents have similarly disappeared, there could be two living birth parents whose consent is not required.

291. Safeguards designed to ensure that consent is informed and freely given include the prohibition on improper inducement under U.S. statute and regulations. *See* ¶¶ 262-68. As set forth in 8 CFR § 204.301, for a document to provide irrevocable consent, it must “specify whether the legal custodian is able to read and understand the language in which the consent is written.” If not, the document must be “accompanied by a declaration, signed, by an identified individual, establishing that that identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands.”

292. In addition, the DHS regulations require submission of evidence with the filing of a Form I-800 that, among other things, sets forth a summary of information provided to the petitioner under 22 CFR § 96.49(d) and (f), including “(D) [i]f a sole birth parent was the legal custodian, the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child’s life.” 8 CFR § 204.313(d)(4)(iv).

12. Domestic and non-Hague intercountry adoptions

293. The specific references to adoption in the Optional Protocol are those set forth in Article 3.1(a)(ii) and 3.5, which impose obligations to act in conformity with “applicable international legal instruments.” As discussed in ¶¶ 240-42, the United States views the applicable international instrument as the Hague Convention. Although the provisions of the Hague Convention are not applicable to domestic adoptions nor to international adoptions with countries that are not parties to the Hague Convention, the United States can confirm that all states of the United States regulate domestic adoption of children. Indeed, the regulations implementing the Hague Convention require that an adoption agency applying for accreditation for Hague adoptions be licensed or otherwise authorized in the first instance by a state of the

United States. Furthermore, most states specifically criminalize all child trafficking and/or exchanging payment or compensation in connection with receiving or offering adoption services. State statutes generally provide an exception for reasonable medical and legal expenses. *See* ¶ 245.

294. The Immigration and Nationality Act requires that a parent or parents have “irrevocably released” a child for emigration and adoption. 8 U.S.C. § 1101(b)(1)(F). The regulations thus continue to require that an immigration petition on behalf of an orphan, in situations not covered by the Hague Convention, must be denied if parental consent has been improperly induced. 8 CFR § 204.3(i) provides:

(i) Child-buying as a ground for denial. An orphan petition must be denied under this section if the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings.

As indicated above, the website established by the Department of State in 2008 at <http://adoption.state.gov>, provides resources on both Hague and non-Hague adoptions, and the Adoptions Tracking Service established under the International Adoption Act covers both types of intercountry adoptions.

K. Advertising of offenses

295. Child pornography: 18 USC § 2251(d) imposes criminal penalties on anyone who knowingly “makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering” child pornography. Although the statute requires a link to interstate or foreign commerce as a basis for federal jurisdiction, that standard is not difficult to meet in the case of advertising. The sanctions for advertising are the same as for other violations of 2251, ranging from a mandatory minimum of 15 years to life imprisonment. Similarly, 18 U.S.C. § 2252A(a)(3)(B) prohibits individuals from advertising, promoting, presenting, distributing, or soliciting any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains child pornography. As discussed in ¶ 193, the Supreme Court recently held that this provision is constitutional. In addition, 18 U.S.C. § 2251A prohibits offering a child to be used to produce child pornography, punishable by a sentence of 30 years to life imprisonment.

296. Child prostitution: As indicated in ¶ 90 of the Initial Report, advertising or promoting child prostitution could, in some circumstances, be punished under federal law if it aids and abets child prostitution or constitutes a conspiracy to violate child prostitution laws.

297. *See* ¶ 288 concerning prohibition on advertising of unauthorized adoption.

L. Jurisdiction

298. Article 4(1) of the Optional Protocol provides that each State party must take measures as may be necessary to establish jurisdiction over the criminal offenses identified in

Article 3(1) when the offense is committed in its territory or onboard a ship or aircraft registered in that State. Article 4(3) further requires each State Party to establish jurisdiction when the alleged offender is present in its territory and it does not extradite him to another State party on the ground that the offense has been committed by one of its nationals. Article 4(2) provides that each State Party may, but is not obligated to, establish jurisdiction in cases where (1) the alleged offender is a national of or has his habitual residence in that State and (2) when the victim is a national of that State.

299. As explained in ¶¶ 47-50 of the U.S. Initial Report, the United States included a reservation and an understanding in its instrument of ratification regarding its obligations concerning jurisdiction under these provisions. As to the general nature of the U.S. obligations under the Optional Protocol, the U.S. understanding sets forth the shared roles of federal and state law:

The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of the Protocol.

300. As to the jurisdictional reach, federal laws criminalizing the offenses described in the Optional Protocol confer jurisdiction over such offenses committed on U.S. territory. State laws confer jurisdiction over offenses occurring within the specific state.

301. Extra-territorially, U.S. laws extend special maritime and territorial criminal jurisdiction (18 U.S.C. § 7) over crimes involving (among others) sexual abuse, (18 U.S.C. §§ 2241-2245), child pornography (18 U.S.C. §§ 2252 and 2252A), sex trafficking (18 U.S.C. § 1591), assault (18 U.S.C. § 113), maiming (18 U.S.C. § 114), murder (18 U.S.C. § 1111), and manslaughter (18 U.S.C. § 1112). Special maritime and territorial jurisdiction (SMTJ) extends to any vessel or aircraft belonging in whole or in part to the United States, or any citizen or corporation thereof, while such vessel or aircraft is on or over the high seas or any other waters within the admiralty or maritime jurisdiction of the United States and out of the jurisdiction of any particular State and to certain vehicles used or designed for flight or navigation in space. SMTJ also extends to any place outside of the jurisdiction of any nation with respect to an offense by or against a national of the United States. SMTJ extends also to lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, and any place acquired by the United States by consent of the legislature of the state in which it is, for the erection of a fort, magazine, arsenal, dockyard, or other necessary building. Most recently §7 was amended to provide specifically for jurisdiction over offenses committed by or against a national of the United States on the premises of U.S. diplomatic, consular, military or other U.S. Government missions or entities in foreign States and residences in foreign States and the land appurtenant or ancillary thereto, used for purposes of those missions or entities or by U.S. personnel assigned to those missions or entities. Similarly, 18 U.S.C. § 3261 provides jurisdiction over persons employed by or accompanying the Armed Forces outside the United States or while a member of the Armed Forces subject to the Uniform Code of Military Justice for conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if committed within the special maritime and territorial jurisdiction. See also discussion of laws applicable to members of the U.S. military, ¶¶ 196-204.

302. Federal law extends special aircraft jurisdiction over the following crimes (among others) if committed on aircraft registered in the United States (49 U.S.C. §§ 46501, 46506): assault (18 U.S.C. § 113), maiming (18 U.S.C. § 114), murder (18 U.S.C. § 1111), manslaughter (18 U.S.C. § 1112), and attempts to commit murder or manslaughter (18 U.S.C. § 1113). For cases not covered by special aircraft or special maritime and territorial jurisdiction, U.S. law extends jurisdiction in other ways. U.S. law extends jurisdiction over the production of child pornography abroad when the individual intends to or actually transports the image to the United States. 18 U.S.C. §§ 2251, 2260. U.S. law also prohibits U.S. citizens from traveling from the United States and engaging in illegal sex acts with children abroad, and it prohibits anyone from traveling from the United States with intent to engage in illegal sexual conduct in foreign places. 18 U.S.C. § 2423(b) and (c). U.S. law also broadly extends criminal jurisdiction over vessels used in peonage and slavery (18 U.S.C. §§ 1582, 1585-1588), and the statute outlawing child sex trafficking applies in cases in or affecting foreign commerce as well (18 U.S.C. § 1591).

303. As noted in the Initial Report, the inclusion of jurisdiction by a State party over its nationals as perpetrators or victims outside the United States is not mandatory and the United States, unlike some other legal systems, does not routinely do so. Similarly, the requirement to establish jurisdiction over an alleged offender present in a State Party if the State Party refuses to extradite the offender on the basis of nationality is inapplicable to the United States because U.S. nationality is not a grounds for denying extradition. Nevertheless, although not required by the Optional Protocol, in 2008, Public Law No. 110-457 added additional extra-territorial jurisdiction over

any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if—

- (1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence. . . ; or
- (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

18 U.S.C. § 1596. The referenced offenses involve peonage and slavery, including trafficking for forced labor and sexual exploitation, *see* ¶¶ 170-74.

304. As a result, as discussed in ¶ 10, while U.S. law provides a broad range of bases on which to exercise jurisdiction over offenses covered by the Optional Protocol that are committed “on board a ship or aircraft registered in” the United States, U.S. jurisdiction in such cases is not uniformly stated for all crimes covered by the Optional Protocol, nor is it always couched in terms of “registration” in the United States. Therefore, the reach of U.S. jurisdiction may not be co-extensive with the obligation contained in this article. This is a minor technical discrepancy. As a practical matter, it is unlikely that any case would arise which could not be prosecuted due to the lack of maritime or aircraft jurisdiction. The United States did not, therefore, delay ratification of the Optional Protocol for this reason, but instead entered a reservation at the time of ratification that suspended the obligation that the United States establish jurisdiction over any covered offenses that may fall within this technical gap.

305. The reservation that accompanied the U.S. instrument of ratification stated:

To the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that the United States domestic law is in full conformity with the requirements of Article 4(1) of the Protocol.

306. To date there have been no developments in U.S. law pertaining to offenses committed on board a ship or aircraft registered in the United States. Thus, the U.S. reservation continues to be necessary. The United States emphasizes, however, the technical nature of the reservation and notes that as a practical matter, it is unlikely that any case would arise that could not be prosecuted due to the lack of maritime or aircraft jurisdiction.

M. Extradition, Mutual Legal Assistance and Assets Forfeiture

1. Extradition

307. The administration of international extradition requests by the United States is carried out by the U.S. federal government on behalf of federal, state, and local prosecuting authorities. Where another country requests an extradition from the United States, the United States represents the requesting country before a U.S. judge or magistrate. Extradition proceedings in the United States are neither wholly criminal nor wholly civil although they are informed by principles from both. At its core, the extradition hearing in the United States is designed to determine whether there is “probable cause” to believe a crime was committed and whether the offense was committed by the defendant. Extradition treaties also provide rules with respect to, among other things, when a fugitive can be arrested prior to receipt of a full extradition request (“provisional arrest”) and the grounds on which extradition may be denied or postponed.

308. Moreover, since the United States has a general regime requiring a treaty for extradition, no obligation exists under Article 5(3) to extradite to States with which the United States does not have an extradition treaty.

309. The United States has entered into nine additional extradition treaties since becoming a Party to the Optional Protocol, for a total of more than 120 extradition treaties, and additional treaties may come into force for the United States in the near future. All such treaties incorporate the concept of dual criminality, which requires that, for an offense to be extraditable, it must be punishable under the laws of both States, usually for a minimum period of more than one year or a more severe penalty. In the United States, the offenses covered by the Optional Protocol satisfy this standard and are therefore extraditable if they also meet this standard under the Requested State’s laws.

310. Available records indicate the following as to U.S. extradition practice. Since becoming a Party to the Optional Protocol, the United States has not refused any requests for the extradition of a person who was accused by another State of any of the offences covered by the Optional Protocol. Since it became a Party, the United States has granted 3 extradition requests for the offences covered by the Optional Protocol; one of these involved child pornography and two involved child prostitution. One additional request is pending. During the same period, the

United States has requested extradition for offenses covered by the Optional Protocol in 30 cases; 13 have been granted and 17 are pending. Of the 13 that were granted, one involved child prostitution and 12 involved child pornography. Of the 17 pending, 6 involve child prostitution and 11 involve child pornography. No new legislation, regulations or judicial rules concerning extradition have been proposed, drafted or adopted in the United States that would affect the extradition of persons accused of offences covered by Article 3 of the Optional Protocol.

311. In the United States, the extradition process is almost exclusively regulated by bilateral treaty. The Optional Protocol, like other multilateral treaties with comparable provisions, effectively amends existing bilateral extradition treaties where both are parties to the multilateral treaty to include the offenses defined in Article 3(1) as extraditable offenses for purposes of those treaties. The administration of international extradition requests by the United States is carried out by the U.S. federal government on behalf of federal, state, and local prosecuting authorities.

312. Where another country requests an extradition from the United States, the United States represents the requesting country before a U.S. judge or magistrate. Extradition proceedings in the United States are neither wholly criminal nor wholly civil although they draw rules from both. At its core, the extradition hearing in the United States is designed to determine whether there is “probable cause” to believe a crime was committed and the offense was committed by the fugitive and whether the crime is covered by the relevant treaty. Extradition treaties also provide rules with respect to, among other things, when a fugitive can be arrested prior to receipt of a full extradition request (“provisional arrest”) and the grounds on which extradition may be denied or postponed.

313. As indicated in ¶ 303, United States law and policy do not provide for refusal of extradition on the basis of nationality. Therefore, the requirement of Article 4(3) does not apply to the United States.

2. International legal assistance

314. International cooperation with the United States regarding exchange of information and evidence may be conducted in a number of ways, including through mutual legal assistance treaties, letters rogatory or letters of request, executive agreements, and multilateral instruments. In addition, a number of less formal mechanisms for exchange of information and evidence exist. With respect to formal means of sharing and exchanging evidence and information, particularly where compulsory process is required, an efficient process is through modern mutual legal assistance treaties (MLATs). The United States has MLATs with more than 50 countries and could offer assistance to and request assistance from those countries to the extent provided for under each MLAT. Pursuant to U.S. MLATs, treaty partners have an international legal obligation to provide assistance, and Central Authorities in the executive branch of each government are designated to make and receive requests under the treaty. While MLATs may differ in scope, these treaties, in general, encompass a wide range of legal assistance – even at the early stages of an investigation – in order to prevent, investigate and prosecute offenses. Often, except with respect to the most intrusive forms of cooperation such as search and seizure, U.S. MLATs do not require dual criminality of offenses before assistance can be granted.

315. Executive agreements are similar to mutual legal assistance treaties, although they are usually more limited in scope than MLATs, may provide for limited forms of mutual legal assistance, or may be confined to specific subjects. Certain multilateral treaties may also provide

an alternative means of providing mutual legal assistance among those countries that have ratified them for the offenses covered.

316. If no formal mutual legal assistance treaty exists with a particular country (and no other formal arrangement applies), a request may be made through the use of letters rogatory or, in a limited number of countries, in a manner prescribed by the domestic law of the country from which the assistance is sought. In some States, a “letter of request” can be used, which – unlike a letter rogatory – does not require approval by a judge of the requesting State. In each case, the requested court has no obligation to provide the assistance; it is solely a matter of judicial discretion and comity. In the United States, in the absence of a treaty, 28 U.S.C. § 1782 permits a U.S. district judge to order the production of evidence for a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.

317. The United States has successfully cooperated with other States in numerous cases concerning offenses covered by the Optional Protocol. Child pornography cases, for instance, have involved obtaining and providing both extradition and mutual legal assistance in matters related to the production and distribution of such material. The United States has also had success in cooperating with other States on cases involving child sex tourism, conduct that may be prosecuted in the United States even though it takes place abroad.

3. Assets forfeiture

318. As discussed in ¶¶ 61-65 of the U.S. Initial Report, U.S. law contains several provisions authorizing forfeiture for offenses covered by the Optional Protocol. 18 U.S.C. § 1594 authorizes criminal forfeiture and civil (in rem, non-conviction-based) forfeiture for violations of federal laws prohibiting forced labor and child sex trafficking. 18 U.S.C. §§ 2253 and 2254 authorize, respectively, criminal and civil forfeiture for violations of federal child pornography laws. 18 U.S.C. § 2428 authorizes criminal and civil forfeiture for violations of federal laws prohibiting transportation and enticement for criminal sexual activity and travel for illicit sexual conduct. These provisions all authorize forfeiture of all property, real and personal, used or intended to be used to commit or to facilitate the commission of the offense, and all property constituting or derived from proceeds of the offense. Sections 2253 and 2254 also authorize forfeiture of the pornographic depictions themselves. Most of the offenses that are predicates for these forfeiture statutes are also predicates for money laundering prosecutions pursuant to 18 U.S.C. §§ 1956 and 1957. Property involved in money laundering, and property traceable to such property, are forfeitable under 18 U.S.C. § 981 (civil forfeiture) and 18 U.S.C. § 982 (criminal forfeiture).

319. Certain other U.S. statutes authorize forfeiture of obscene materials, not limited to materials involving children. 18 U.S.C. § 1467, as amended in July 2006 by the Adam Walsh Child Protection and Safety Act of 2006, authorizes civil and criminal forfeiture of obscene materials, real or personal property constituting or traceable to proceeds of obscenity offenses, and real or personal property used to commit or to promote the commission of such offenses. 19 U.S.C. § 1305 authorizes civil forfeiture of obscene materials being imported into the United States.

320. Thus, consistent with Article 7 of the Optional Protocol, existing federal statutes authorize forfeiture of obscene and pornographic materials, proceeds derived from the subject offenses, and real and personal property used to commit the offenses.

321. U.S. law provides for the execution of foreign confiscation orders and judgments for any foreign offense for which there would be forfeiture under U.S. federal law, if that offense

had been committed within the United States. *See* 28 U.S.C. § 2467. This means that the United States can enforce foreign confiscation orders and judgments against the proceeds and instrumentalities of offenses set forth in the Optional Protocol as to which forfeiture is authorized under U.S. law. The only prerequisite for such assistance is that both the United States and the party requesting the assistance are parties to a treaty or agreement that provides for confiscation or forfeiture assistance, as the Optional Protocol does.

VI. PROTECTION OF THE RIGHTS OF VICTIMS (arts. 8 and 9, paras. 3 and 4)

A. Rights of child victims

322. As discussed in the U.S. Initial Report, ¶¶ 66-74, it is a general policy underlying both federal and state law that the best interests of the child are a primary consideration in the treatment of child victims. U.S. law at both the federal and state levels recognizes the special needs of child victims and witnesses. Federal and state law also provide for informing child victims of their rights and the progress of their cases. The federal government also helps provide for appropriate notification of victims through funding to states. Guidelines and statutes at the state level further provide extensive procedures for victim notification of the victim's rights and of the scheduling of proceedings.

B. Protection of children in the criminal justice system

1. Federal

323. U.S. law at both the federal and state levels recognizes the special needs of child victim witnesses. The primary federal source for accommodating the special needs of children who are victims of offenses criminalized under the Optional Protocol is 18 U.S.C. § 3509, "Child victims' and child witnesses' rights." The term "child" is defined to mean a person under the age of 18, who is or is alleged to be a victim of a crime of physical abuse, sexual abuse, or exploitation, or a witness to a crime committed against another person. Exploitation is defined to mean child pornography or child prostitution; sexual abuse "includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children."

324. Although there are constitutional limitations that severely restrict the use of out-of-court testimony, § 3509(b) provides alternatives to live in-court testimony in a proceeding involving an alleged offense against a child. These include (1) child's live testimony by 2-way closed circuit television if the court finds that the child is unable to testify in open court in the presence of the defendant because of fear, a substantial likelihood that the child would suffer emotional trauma, the child suffers a mental or other infirmity, or conduct by the defendant or defense counsel causes the child to be unable to continue testifying; and (2) a videotaped deposition of the child if the court makes a preliminary finding that the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for the same reasons as under (1). The court may admit the videotaped deposition into evidence in lieu of the child's testifying at the trial if it finds at the time of trial that the child is unable to testify for the reasons described. The videotaped deposition may only be introduced as evidence at trial if the defendant, through his attorney, had the opportunity to cross-examine the child.

The court can order that the defendant view the taking of the deposition via closed-circuit television, rather than being in the same room with the child.

325. Section 3509(c) provides for competency examinations of child witnesses. Section 3509(d) requires that the name and other information concerning a child in connection with a criminal proceeding be kept confidential. When a child testifies, § 3509(e) permits the court to exclude all persons, including members of the press, who do not have a direct interest in the case if the court determines that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate.

326. Federal law also allows the views and needs of child victims to be presented in a manner consistent with procedural rules. Section 3509(f) specifically requires a probation officer to request information from a multidisciplinary child abuse team (as provided in 3509(g)) and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. It also requires a guardian *ad litem* appointed under 3509(h) to make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. Through guidelines and statutes, states provide for victims' presentation of their views at different stages of proceedings.

327. Section 3509(g) requires a multidisciplinary child abuse team to be used when it is feasible to do so. The members of the team provide services in their professional roles, including medical diagnoses and evaluation services, telephone consultation services, medical evaluations related to abuse or neglect, psychological and psychiatric diagnoses and evaluation services, expert medical, psychological, and related professional testimony; case service coordination and assistance, training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

328. Nationwide, there are over 600 Child Advocacy Centers engaged in these efforts, supported by various combinations of federal, state and local funds. In order to reduce the need for multiple interviews by the various disciplines involved in a case, which can be traumatic to the child, Child Advocacy Centers can arrange for one key interviewer who is observed and provided questions by the rest of the team in one interview. The Federal Government also aids states in reducing the trauma to child sexual abuse victims through funding to states under the Children's Justice Act, established in the Victims of Crime Act (VOCA), and the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5101 et seq.; 42 U.S.C. § 5116 et seq.). See ¶ 120.

329. Section 3509(h) permits a court to appoint a guardian *ad litem*, with reasonable compensation and payment of expenses, for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. A guardian *ad litem* may attend all depositions, hearings and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. He or she may also have access to all necessary reports, evaluations and records, except attorney's work product, and is to marshal and coordinate the delivery of resources and special services to the child. CAPTA requires that all states receiving federal funds under CAPTA provide a guardian *ad litem* to all child abuse victims involved in court proceedings related to their victimization (42 U.S.C. § 5106a(b)(2)(A)(xiii)).

330. In addition, § 3509(i) establishes the right of a child testifying at or attending a judicial proceeding to be accompanied by an adult attendant to provide emotional support to the

child. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding.

331. Section 3509(j) provides that in a proceeding in which a child is called to give testimony the court may designate the case as being of special public importance and expedite the proceeding and ensure that it takes precedence over any other in order to minimize the length of time the child must endure the stress of involvement with the criminal process. In addition, the Sixth Amendment to the U.S. Constitution requires a speedy trial for all criminal cases. *See* 18 U.S.C. § 3161 et seq.

332. Under § 3509(l) anatomical dolls or other demonstrative devices may be used as aids during forensic interviewing to assist a child in testifying if deemed appropriate by the court and after the court has consulted with a child psychologist, licensed social worker or other child welfare professional. Use of such dolls or other devices must also take into consideration the age, any special needs of the child, and case specific information.

333. Additionally, 18 U.S.C. § 3509(m) provides for images of child pornography to remain in the care, custody, and control of the government or the court during criminal proceedings, thereby minimizing further dissemination of the images. Many state statutes contain similar provisions.

334. In 2005, the U.S. Attorney General issued a new edition of Guidelines on Victim and Witness Assistance, which includes guidance specific to child victims and witnesses. These guidelines are intended to guide every Justice Department law enforcement officer, investigator, prosecutor, victim-witness professional, and staff member in the proper and appropriate treatment of child victims and witnesses as well as instruct Department personnel to be aware of the trauma child victims and witnesses experience when they are forced to relive the crime during the investigation and prosecution of a criminal case, particularly while they are testifying in court. The guidelines establish a primary goal for Justice Department officials to reduce the trauma to child victims and witnesses caused by their contact with the criminal justice system and provide a variety of tools and services to achieve this goal. The Guidelines are available at http://www.justice.gov/olp/pdf/ag_guidelines.pdf.

335. In the Department of Homeland Security Immigration and Customs Enforcement (ICE), Victim Witness Coordinators provide similar guidance to ICE agents to ensure compliance with the protocols established through the Department of Justice. When dealing with victims, ICE agents generally rely on child victim experts and they coordinate with the respective U.S. Attorneys' Offices to ensure that victims are apprised of their rights.

336. ICE/Cyber Crimes Center (C3) developed the National Child Victim Identification System (NCVIS), which is a searchable consolidated information system for identifying digital child pornography images that is designed to help law enforcement identify and possibly rescue the children featured in those images. NCVIS serves law enforcement agencies worldwide with the identification of victims and assists with the prosecution of child predators.

2. Other U.S. Jurisdictions

337. States, the District of Colombia, and U.S. territories provide special accommodation for child victims and witnesses, including the use of videotaped or closed-circuit testimony, child interview specialists, and developmentally-appropriate questioning. The following information is made available on the website of the National District Attorneys' Association:

338. A list of state statutes on competency of child witnesses to testify in criminal proceedings is available at http://www.ndaa.org/pdf/ncpca_statute_competency_child_witnesses_aug_06.pdf.

339. A list of state statutes on use of leading questions with child witnesses to testify in criminal proceedings is available at <http://www.ndaa.org/pdf/statutes-leading-ques-child-witnesses-082008.pdf>. The NDAA compilation notes that this area of law is highly dependent on case law to determine whether or not a state will allow the use of leading questions with child witnesses.

340. A number of states have “speedy trial” statutes for allegations involving children in an effort to minimize the length of time the child must endure the stress of involvement in the proceedings. A list of those statutes, with brief excerpts, is available at http://www.ndaa.org/pdf/ncpca_statute_speedy_trial_statutes_chart.pdf.

341. A compilation of state statutes on use of closed circuit television testimony in criminal child abuse proceedings is available at http://www.ndaa.org/pdf/CCTV_2009.pdf.

342. A compilation of statutes in states that provide for admissibility of videotaped interviews and statements in criminal child abuse proceedings is available at http://www.ndaa.org/pdf/ncpca_statute_videotaped_interviews_july_06.pdf.

343. Several states and Puerto Rico have statutes permitting the use of anatomical dolls in child abuses cases. A compilation of those statutes is available at <http://www.ndaa.org/pdf/statutes-anatomical-dolls-112008.pdf>

C. Investigation where actual age unknown

344. When the age of the child is unknown, or when it is unclear if the victim is, in fact, an adult, normal procedure is for the investigation to continue with investigators seeking to determine the child's age while investigating all aspects of the case. As indicated in ¶ 79 of the U.S. Initial Report, nothing in U.S. federal or state law prohibits an investigation of exploitation of a child from going forward in these circumstances. Once authorities have determined the age of the victim, specific procedures determined by states and localities are followed to handle issues related to child care and custody, health and welfare, and appropriate law enforcement interview techniques. Authorities are trained to approach any potential child victims in a manner that is child-friendly and developmentally appropriate.

D. Legal, psychological or other training for those who work with victims of the offenses prohibited in the Optional Protocol

345. As indicated in ¶ 81 of the U.S. Initial Report, consistent with Articles 8(4) and 8(5), it is a general policy of federal and state governments to provide training for those who work with child victims, and to adopt measures where appropriate to protect those involved with prevention of such offenses and the protection and rehabilitation of children. The United States also satisfies its obligations by providing federal funding to states where such training is needed. These federal funds are administered by, inter alia, the Department of Health and Human Services (HHS) and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Office for Victims of Crime (OVC).

346. Similar provisions exist at the state level. Within the applicable constitutional limits, all states provide special accommodation for child victims and witnesses, including the

use of videotaped or closed-circuit testimony, child interview specialists, and developmentally-appropriate questioning.

E. Allowing entities and individuals to work without fear of interference or reprisals

347. U.S. law and policy provide, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation. At both the federal and state levels there is a general policy of attempting to establish promptly the criminal responsibility of service providers, customers, and intermediaries in child prostitution, child pornography, and child abuse, in part in order to provide for the safety of victims and their families. In addition, safe havens may be provided on a discretionary basis for children escaping from sexual exploitation, as well as protection for those who provide assistance to victims of commercial exploitation from intimidation and harassment. *See, e.g.*, Federal Witness Protection Act, 18 U.S.C. § 3521.

348. In most states, a person who reports suspected child abuse in good faith is absolutely immune from criminal and civil liability, providing both an incentive to report suspected abuse and immunity from liability for doing so as an additional layer of protection to those who work with child victims.

F. Rights of accused persons to a fair and impartial trial

349. The U.S. Constitution protects the rights of all persons accused of crimes in the United States to a fair and impartial trial under the Due Process clause of the Fifth Amendment. Nothing in the efforts to protect children under the Optional Protocol supersedes these Constitutional protections.

G. Programs to provide benefits to child victims

350. The success of U.S. Government efforts to combat sale and exploitation of children and other issues related to trafficking in persons domestically hinges on pursuing a victim-centered approach. In addition to the benefit programs discussed here, see also discussion of public awareness efforts in ¶¶ 124-55.

1. Service benefit programs

351. As an initial matter, it should be noted that TVPRA 2008 makes several changes and enhancements to protection and safety assessments for unaccompanied alien children during repatriation as well as during temporary placement. Section 235 provides for the development of policies and procedures to combat child trafficking at the border and ports of entry of the United States; providing safe and secure placements for unaccompanied alien children in the United States; providing legal orientation presentations and, to the greatest extent practicable, access to legal counsel and child advocates for unaccompanied alien children in the United States; modifying the process by which aliens who have been abused, abandoned, or neglected can be eligible for permanent protection in the United States through special immigrant juvenile status; and improving unaccompanied alien children's access to asylum protection. It also mandates a

screening process for human trafficking of all unaccompanied alien children from contiguous countries. In addition, parole may be granted to family members of trafficking victims who are pursuing civil litigation against their traffickers.

a. Department of Health and Human Services

352. The TVPA designates the Department of Health and Human Services (HHS) as the agency responsible for helping foreign trafficking victims become eligible to receive benefits and services so they can rebuild their lives safely in the United States. The HHS Anti-Trafficking in Persons Division (ATIP) in the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), performs activities under the TVPA.

353. Sections 212 and 213 of TVPRA 2008 give the Secretary of Health and Human Services (HHS) new authority to provide interim assistance to non-U.S. citizen, non-LPR children (under 18) who may have been subjected to a severe form of trafficking in persons, to provide long-term assistance to foreign child trafficking victims, and to train federal staff and state and local officials to improve identification and protection of trafficking victims.

354. Under § 212, the Secretary of HHS has exclusive authority to determine if a child is eligible, on an interim basis, for assistance available under federal law to foreign child victims of trafficking. This provision authorizes the Secretary of HHS to make a foreign child in the United States eligible for interim assistance (i.e., the same benefits available to a refugee child) when there is credible information that the child may have been subjected to a severe form of trafficking in persons. Interim assistance could last up to 120 days. During this interim period, the HHS Secretary, after consultation with the Attorney General, the Secretary of Homeland Security and nongovernmental organizations with expertise on victims of trafficking, is required to determine eligibility for long-term assistance for child victims of trafficking.

355. Section 212 also requires that, not later than 24 hours after a federal, state, or local official discovers that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons, the official shall notify the HHS Secretary to facilitate the provision of interim assistance.

356. Section 107(b)(1)(E) of the TVPA states that the Secretary of HHS, after consultation with the Attorney General and the Secretary of Homeland Security, may certify an adult victim of a severe form of trafficking who meets certain criteria. The TVPA authorizes the “certification” of adult victims to receive certain federally funded benefits and services, such as cash assistance, medical care, food stamps, and housing. Children who are found to be victims of trafficking do not need to receive certification; instead, child victims who have been identified by law enforcement or social service providers can receive “Eligibility Letters” from HHS to obtain the same types of benefits and services. A child who meets the definition of a victim of a severe form of trafficking in persons does not need to meet the certification criteria to be eligible for assistance.

357. In fiscal year 2009 HHS issued 50 Eligibility Letters to children. The following chart shows data for Fiscal Years 2001-2009.

Fiscal Year	Eligibility Letters Issued to Children
2001	4
2002	18
2003	6
2004	16
2005	34
2006	20
2007	33
2008	31
2009	50
TOTAL	212

358. Of the minor victims who received Eligibility Letters in fiscal year 2009, 66 percent were female. Thirty-eight percent of minor victims who received Eligibility Letters were victims of sex trafficking, 56 percent were victims of labor trafficking, and six percent were victims of both labor and sex trafficking.

359. Certification and Letter of Eligibility data does not cover all victims identified. HHS grantees and contractors work with trafficking victims at every stage of the victim identification process, from initial contact with suspected victims to helping certified victims rebuild their lives. Language barriers, safety concerns, and trauma present significant barriers to victims coming forward. Still other foreign-born victims may elect to return to their country of origin without seeking any benefits in the United States.

360. TVPRA 2008 sets new standards for how unaccompanied children from other countries will be treated in federal custody and the conditions under which they can be repatriated. The Act authorizes HHS to appoint child advocates for vulnerable children, and requires that HHS make placements in the “best interest” of the unaccompanied child and in the least restrictive setting.

361. Unaccompanied alien children (those without a parent or legal guardian in the United States who is willing or able to provide care) who are victims of trafficking may be referred to HHS’s Unaccompanied Refugee Minors (URM) program. The URM program establishes legal responsibility for these children, under state law, to ensure that they 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 different levels of care to meet children’s individual needs: licensed foster care homes, therapeutic group homes, residential treatment centers, and independent living programs. Additional services provided include food, clothing, and medical care; independent living skills training; educational support; English language training; career/college counseling and training; mental health services; referral to pro bono attorneys for immigration assistance; cultural activities; recreational opportunities; support for social integration; and ethnic and religious preservation.

362. HHS’s Division of Unaccompanied Children’s Services (DUCS) program funds a network of shelters, group homes, and foster care programs to provide services for

unaccompanied alien children who are in immigration proceedings. DUCS care provider facilities are state-licensed and must meet HHS requirements to ensure a high level of quality of care. The facilities, which operate under cooperative agreements and contracts, provide children with classroom education, health care, socialization/recreation, vocational training, mental health services, family reunification, access to legal services, and case management. At minimum, all unaccompanied children in the custody of HHS receive individual counseling services once a week and group counseling services twice a week. Additional psychological and psychiatric services are provided, as needed, through agreements with the U.S. Department of Veterans Affairs and trauma-focused treatment providers. DUCS care providers provide pre-service and on-going training on child trafficking to staff that work directly with UAC. ATIP has an ORR/DUCS Trafficking Liaison that conducts on-site trainings for grantees and federal staff serving unaccompanied children on identifying victims of child trafficking. Children referred to the DUCS program are screened for potential trafficking concerns through a battery of admissions assessments conducted by Masters level clinicians and social workers. Licensed mental health professionals administer a standardized child trafficking assessment as soon as any trafficking concerns are identified, and prior to releasing any unaccompanied children through reunification. When credible trafficking concerns are identified, unaccompanied children are assessed for eligibility for benefits and referred to federal law enforcement for possible investigation of the case. Identified trafficking victims who have no family reunification options in the United States, and are in need of safe, long-term placement, may be referred to the URM program.

363. In fiscal year 2008, the Office of Refugee Resettlement (ORR) added an Associate Director for Child Welfare to oversee and promote child welfare practices in ORR's child-serving programs, including efforts by HHS Anti-Trafficking in Persons division (ATIP) to increase identification of child trafficking victims and improve capacity to care for unaccompanied children. The Associate Director for Child Welfare coordinates with the HHS Children's Bureau on efforts to better integrate state and county child protective service systems in response to both foreign national and U.S. citizen child trafficking victims.

364. Also in fiscal year 2008, the DUCS and ATIP divisions of ORR jointly hired a Child Protection Specialist to provide specialized victim identification and victim care training to DUCS shelter staff, working to increase DUCS's capacity to conduct thorough, timely victim screening and crisis care. During fiscal year 2008, the Child Protection Specialist conducted eight workshops for DUCS care providers in Los Fresno, Houston, Corpus Christi, and El Paso, Texas; and San Francisco, Fullerton, El Cajon, and San Diego, California. The workshops trained over 300 direct-care staff on (1) the federal definition of human trafficking; (2) overcoming barriers to identifying child victims; (3) accessing benefits and services for victims; and (4) providing specialized care and safety planning for trafficked children. As a result, the number of trafficked children who were identified in DUCS and issued Eligibility Letters more than doubled from the previous fiscal year. In fiscal year 2009, the Child Protection Specialist conducted six on-site workshops for all DUCS care providers in Illinois, Virginia, New Jersey, Arizona and Washington. In fiscal year 2009, DUCS care providers tripled the number of children identified as victims of trafficking compared to fiscal year 2008. Twenty-five trafficked children identified in DUCS were placed in the Unaccompanied Refugee Minors Program. Plans for fiscal year 2010 include continued on-site and web-conference training and technical assistance for DUCS care provider facilities and stakeholders.

365. In fiscal year 2009, the ATIP division hired a second Child Protection Specialist. Both Child Protection Specialists provide case coordination for child trafficking victims brought to ORR's attention and play a key role in facilitating the issuance of all Eligibility Letters, regularly coordinating with service providers, HHS leadership, and federal law enforcement and other stakeholders to obtain crucial information and develop time-sensitive crisis care plans. They conduct emergency referrals of unaccompanied trafficked children to the Unaccompanied Refugee Minors foster care program and do post-placement follow up that includes consultations on safety planning, victim rights in criminal prosecutions, referrals to immigration legal services, and emancipation issues. HHS created a new fact sheet that takes into account provisions of TVPRA 2008, outlines the process of obtaining an Eligibility Letter for a child victim, and encourages the field to contact the ATIP Child Protection Specialist for technical assistance. This enhanced focus on the special needs of child trafficking victims has improved interagency communication on children's cases and facilitated an increase in the number of child trafficking victims referred to the URM program.

366. HHS's Rescue and Restore Victims of Human Trafficking Regional program to promote greater local responsibility for anti-trafficking efforts employs an intermediary model to conduct outreach, identification, and service activities for victims of human trafficking, including child exploitation victims. The Rescue and Restore Regional program reinforces and is strengthened by other ATIP program activity, including Street Outreach grants, the Per Capita Services contract, the public awareness campaign, the National Human Trafficking Resource Center (NHTRC), and the voluntary Rescue and Restore coalitions.

367. ORR has used both contracts and grants to create a network of service organizations available to assist victims of a severe form of trafficking in persons. In fiscal year 2009, ORR continued a contract with the U.S. Conference of Catholic Bishops (USCCB) to provide comprehensive support services to foreign victims of human trafficking. Through this contract, ORR has streamlined support services to help victims gain access to shelter, job training, and health care, and provided a mechanism for victims to receive vital emergency services prior to receiving certification. USCCB provides case management services to pre-certified and certified victims on a per capita reimbursement basis. At the start of fiscal year 2010, USCCB had 106 subcontracts with service providers in 128 locations to provide services to trafficking victims in their communities. USCCB regularly provides training and technical assistance for its subcontractors that includes information on child case management.

368. HHS Rescue and Restore coalitions consist of dedicated social service providers, local government officials, health care professionals, leaders of faith-based and ethnic organizations, and law enforcement personnel. The goal of the coalitions is to increase the number of trafficking victims who are identified, assisted in leaving the circumstances of their servitude, and connected to qualified service agencies and to the HHS certification process so that they may receive the benefits and services for which they are eligible. Along with identifying and assisting victims, coalition members use the Rescue and Restore campaign messages to educate the general public about human trafficking.

369. In fiscal year 2008, HHS worked with anti-trafficking Rescue and Restore coalitions in 25 areas throughout the United States. As part of its Campaign to Rescue and Restore Victims of Human Trafficking, HHS has provided resource guides for health care workers, law enforcement officials, and social services organizations to raise awareness and assist them in identifying and assisting victims of human trafficking. The guides for healthcare practitioners, for instance, explain that the purpose of the outreach effort is to correct that fact that "you may

have treated victims of human trafficking without realizing their circumstances, and therefore, have lost a chance to help them escape a horrific situation.” Fact sheets and tool kits provided include the following: Child Victims of Human Trafficking, Federal Efforts to Assist Victims of Trafficking, Tips for Identifying and Helping Trafficking Victims, Screening Questions to Assess Whether a Person Is a Trafficking Victim, Understanding the Mindset of a Human Trafficking victim, Communicating with Victims of Human Trafficking, Health Problems Seen in Trafficking Victims, and PowerPoint Presentation for Health Care Providers. *See http://www.acf.hhs.gov/trafficking/campaign_kits/index.html#social.*

370. HHS has leveraged its public awareness mandate to lead a U.S. Domestic Trafficking in Persons Notification Pilot Program. The Notification Pilot Program aimed to increase public awareness and victim assistance for U.S. citizen and legal permanent residents—that is, U.S. domestic—trafficking victims. The pilot provided 240 suspected U.S. domestic trafficking victims with full information regarding the benefits and services for which they may be eligible by virtue of their citizenship or immigration status. Of these, 61% of those receiving Notifications reported trafficking in prostitution, and 75% of the clients trafficked in prostitution were minors at the first experience of exploitation.

371. Under the Pilot Program, HHS/ATIP Street Outreach grantees and intermediary contractors submitted Requests for Notification on behalf of U.S. domestic TIP victims in their current caseload. Awardees maintained sole responsibility for using specially developed HHS screening materials to determine a client’s victim status; a signed Notification Request stood as proof that the organization believed the client was a U.S. domestic TIP victim. HHS/ATIP reviewed the requests and provided a notification or a denial letter.

372. The Pilot Program did not confer benefits on a victim nor provide a determination of TIP victim status. Rather, the program solicited client information from NGOs that are at the forefront of U.S. domestic TIP outreach and services, and then provided those clients and their case managers with full information regarding the benefits and services for which they may be eligible. NGOs and case managers retained full responsibility for assisting victims in the benefits determination and receipt process.

373. In February 2008, HHS expanded participation in the Pilot Program to include five grantees from the ACF Family and Youth Services Bureau (FYSB) Youth Development Division Street Outreach Program.

374. Building capacity to identify and serve victims, both children and adults, at the regional level is the heart of the HHS anti-trafficking program. HHS requires the recipients of its funding who administer regional programs to sub-award at least 60 percent of these funds to create anti-trafficking networks and bring more advocates and service providers into the Rescue and Restore anti-trafficking movement. In this way, HHS builds infrastructure by providing financial assistance to existing programs of direct outreach and services to populations among which victims of human trafficking could be found in order to support and expand these programs’ capacity to identify, serve, and seek certification for trafficking victims in their communities.

375. In fiscal year 2008, HHS funded three contracts to intermediary” organizations to foster connections between the Rescue and Restore national campaign and local awareness-building and service provision. These intermediaries served as the focal points for regional public awareness campaign activities and the intensification of local victim identification, encouraging a cohesive, collaborative approach in the fight against modern-day slavery. The

role of each Rescue and Restore intermediary was to oversee and build the capacity of a local anti-trafficking network.

376. In fiscal year 2008, intermediaries made contact with at least 568 adult and child victims or suspected victims, including 210 foreign citizens, 319 U.S. citizens, and 39 persons whose citizenship could not be determined. Of the 210 foreign citizens with whom intermediaries interacted, over 60 percent (130) were referred to law enforcement for possible case investigations and 20 percent (42) received HHS certification. Intermediaries used a Victim Identification Pipeline to track interactions with vulnerable persons, chronicling the slow-building relationships of trust that often result in certification and, where possible, prosecution of a trafficker.

377. HHS's Rescue and Restore Victims of Human Trafficking Regional program reinforces and is strengthened by many other ATIP program activities for adult and child victims, including street outreach and regional coalition building. Like HHS intermediaries, each Rescue and Restore Regional Program award recipient sub-awards 60 percent of the funds it receives under the grant to local organizations whose efforts to identify trafficking in persons victims it manages and develops. Rescue and Restore Regional grantees work with victims of any nationality, so the numbers of suspected and confirmed victims they assist include both U.S. citizens and foreign nationals. In fiscal year 2008, Rescue and Restore Regional grantees made contact with nearly 70 victims or suspected victims, including 54 foreign citizens, 12 U.S. citizens, and 3 persons whose citizenship could not be determined. Of the 54 foreign citizens with which Rescue and Restore Regional grantees interacted, 18 were referred to law enforcement for possible case investigations and 12 received Certification.

378. Examples of the work of HHS's five fiscal year 2008 Rescue and Restore Regional Program awardees include the following:

- Houston Rescue and Restore Coalition conducted an innovative project to conduct outreach among state-wide corporate truck stop owners. By initiating relationships with truck-stop companies and providing appropriate outreach on trucking professionals and how they drive demand for the sex trafficking industry, truck stops in Texas have begun to understand the role they play in combating trafficking, including sexual exploitation of girls under 18. Truck stops across Texas will soon display Rescue and Restore public awareness materials and specialized educational materials focused on ending the demand for sex trafficking.
- Catholic Charities of Louisville has provided 26 training sessions, including training on child trafficking, to at least 891 individuals, including crisis center staff, university students and faculty, attorneys, local police, Kentucky Alcohol and Beverage Control investigators, immigrant groups, sexual assault nurse examiners, victims' advocates, faith-based communities, and other NGOs. Catholic Charities also distributed Rescue and Restore materials to more than 200 area agencies and businesses and at events such as the Americana World Festival, the World Fest International Festival, and the Honduran Consulate Visit, where more than 100,500 people were in attendance. In addition to working with the two existing law enforcement task forces in Louisville and Lexington, Kentucky Rescue and Restore facilitated the establishment of a new task force in Covington in March 2009.

379. In fiscal year 2008, ORR provided continued funding to 18 organizations to conduct street outreach services to help identify victims, both children and adults, of trafficking among

populations they already serve. The grants supported direct, person-to-person contact, information sharing, counseling, and other communication between agents of the grant recipient and members of a specified target population. Grantees included public, private for-profit (although HHS funds may not be paid as profit), and private nonprofit organizations, including community- and faith-based organizations. Some of the vulnerable populations to whom grantees provided outreach were homeless, runaway, and at-risk youth; women and girls exploited through the commercial sex industry; migrant farm workers; people in prostitution; and women forced to work in beauty parlors and nail salons. Grantees were eligible for these grants regardless of whether they had previously participated in anti-trafficking efforts.

380. Like intermediary contractors and Regional Program grantees, Street Outreach grantees used a Victim Identification Pipeline to track interactions with vulnerable persons of all ages that chronicles the slow-building relationships of trust that often result in certification and, as possible, prosecution of a trafficker. The numbers of suspected or confirmed victims tracked in the pipeline include both U.S. citizens and foreign nationals.

381. In fiscal year 2008, Street Outreach grantees made contact with approximately 1660 victims or suspected victims, both adults and children, including 373 foreign citizens, 1209 U.S. citizens, and 78 persons whose citizenship could not be determined. Of the 373 foreign citizens with whom street outreach grantees interacted, approximately 46 percent (170) were referred to law enforcement for possible case investigations and 24 individuals received certification. Examples of the work of the Street Outreach grantees in fiscal year 2008 include the following:

- Southeastern Network of Youth and Family Services of Alabama and its subgrantee, Family Connection, launched the Greater Birmingham Rescue and Restore Coalition, recruiting members such as the U.S. District Attorney, the Birmingham Police Department and its Victim Advocate for Domestic Violence, the FBI, the State Coalition Office of Montgomery, Pathways residential treatment and placement center, Firehouse Shelter for adults, the Salvation Army, and local immigration attorneys. Southeastern Network has also trained personnel at several runaway and homeless youth shelters on human trafficking.
- Through collaboration with the Dallas Independent School District, Mosaic Family Services' outreach staff members have received permission to train counselors, teachers, nurses, and other staff to identify victims, especially in schools with large numbers of immigrant populations. Additionally, to reach out to law enforcement and property managers, outreach staff members have conducted weekly training at Crime Watch meetings, educating apartment, loft, condo and other property owners on how to identify a possible human trafficking situation in their properties.
- Girls Education and Mentoring Services (GEMS), a non-governmental organization in New York City, has helped about 200 commercially sexually exploited girls each year. Its outreach teams meet girls and young women in the court system, in detention facilities, and on the streets. GEMS staff provides counseling, tutoring and job training, along with classes in other subjects directed toward the girls' health and well-being.

382. HHS has also made extensive efforts to educate all components of the agency to raise awareness of human trafficking issues. These issues include, as discussed earlier, the sale of children for sexual and labor exploitation. Formally launched in April 2007, the HHS ATIP In-Reach Campaign aims to: (1) galvanize HHS leadership and program staff to address human

trafficking issues in their programs and areas of research expertise; (2) leverage existing HHS funding mechanisms to better serve human trafficking victims; (3) increase U.S. citizen and international human trafficking victim identification and service provision across HHS; and (4) map, strengthen, and streamline the HHS U.S. citizen and international human trafficking victim service provision pipelines.

383. The Campaign's work has included quarterly meetings open to HHS staff on issues such as victim identification, street outreach, and victim services. In fiscal year 2008, HHS hosted agency-wide In-Reach meetings focused on topics related to anti-trafficking programming and research. As a part of this series, the Campaign featured Free the Slaves, an international anti-trafficking NGO; Polaris Project, HHS's NHTRC grantee; Shared Hope International, an NGO addressing child sex trafficking in the United States and other countries; and Dr. Jay Silverman, Harvard School of Public Health, who presented his recent research on the connection between sex trafficking and vulnerability to HIV infection.

384. The ATIP In-Reach Campaign also facilitates leadership and program-level education and training meetings between the HHS ATIP Division and HHS offices serving populations vulnerable to trafficking. Programs ready to move to the next level of strategic involvement have the opportunity to receive targeted assistance from the Polaris Project, HHS's training and technical assistance grantee. Examples of In-Reach programs include:

- ATIP staff provided trainings to grantees of the ACF Family and Youth Services Bureau in Texas and California to help them identify indicators of human trafficking in the runaway and homeless youth population.
- The Substance Abuse and Mental Health Services Administration (SAMHSA) has been one of the In-Reach Campaign's most active partners. In fiscal year 2008, SAMHSA appointed the Confidential Assistant to the Administrator as a special liaison to the In-Reach Campaign. The liaison heads a SAMHSA working group bringing together leaders from the three SAMHSA centers to share information and ideas on anti-trafficking integration within SAMHSA. SAMHSA's Center for Substance Abuse Prevention (CSAP) has moved forward in targeted anti-trafficking work, conducting joint briefings with ATIP. With the assistance of ATIP, CSAP is developing an educational module for all project managers regarding victim identification and resources.
- The Health Resources and Services Administration (HRSA) Bureau of Primary Care (BPC) works closely with migrant agricultural workers, a population with a high vulnerability to labor and sex trafficking. Meetings between leadership led to June 2008 WebEx training in which HRSA's Bureau of Primary Care provided Rescue and Restore partners with WebEx training on how HRSA Community Health Centers can work in partnership with anti-trafficking stakeholders.
- As part of its research agenda for 2008, the Office of the Assistant Secretary for Planning and Evaluation within the Office of the Secretary of HHS partnered with ATIP to host a National Health and Human Trafficking Symposium that brought together experts from governmental and non-governmental agencies and representatives from the health and human trafficking communities. The symposium, which was held in Washington, D.C., on September 22, 2008, was an opportunity for a unique, broad base of sectoral experts to network and share knowledge. Clinicians, scholars, legal experts, and advocates discussed issues including human trafficking legislation, victims' rights, and the role of the health care community; victim identification and disclosure issues; and

promising practices in health-service provision to victims and survivors. Attendees pointed out that child victims/survivors require specialized attention, especially children who are at heightened risk for trafficking as a result of their mothers being in prostitution. Victims of labor trafficking often suffer permanent and/or chronic medical conditions requiring intensive and frequently life-long treatment. For children, these medical conditions can severely affect their physical development.

385. During fiscal year 2008, HHS strategically revamped its hotline to create the National Human Trafficking Resource Center (NHTRC). Re-launched in the fall of 2007, the Resource Center has emerged as a highly respected 24/7 trafficking victim referral crisis line for both adults and children: (888) 373-7888. The NHTRC is also a premier source for anti-trafficking educational materials, promising practices, and training opportunities. Under the management of the Polaris Project, a leading anti-trafficking NGO that has HHS's Training and Technical Assistance program grant, the Resource Center's call volume has increased substantially and remains consistently high—averaging, since December 2007, approximately 550 calls per month regarding trafficking tips, service needs, and training requests. NHTRC also provides 24/7 responses to email tips and inquiries.

386. From December 2007 through the end of fiscal year 2009, NHTRC received a total of 11,404 calls, including 133 crisis calls, 1,572 tips regarding possible human trafficking incidents, 1,095 requests for victim care referrals, 2,707 calls seeking general human trafficking information, and 453 requests for training and technical assistance. Calls referencing potential trafficking situations included the trafficking of foreign nationals, U.S. citizens and LPRs -- both adults and children. In fiscal year 2009, the NHTRC fielded 192 calls about potential situations of labor trafficking and 511 calls about potential situations involving sex trafficking.

387. The majority of NHTRC calls originated in Texas, California, Florida, New York, and Illinois. The NHTRC conducted 80 percent of calls in English and 10 percent of calls in Spanish. Other callers included those speaking Korean, Ukrainian, Polish, Mandarin, Tagalog, Russian, Cantonese, Armenian, Portuguese, Farsi, Hindi, Arabic, Punjabi, Persian, Amharic, French, Vietnamese and Turkish who received translation services.

388. One of NHTRC's central functions is to facilitate timely referrals to appropriate law enforcement and social services entities. Of the 300 calls that required law enforcement referrals, NHTRC reported callers' information to DOJ's Human Trafficking Prosecution Unit, DHS/ICE Investigations Headquarters, the Innocence Lost Task Force, and the National Center for Missing and Exploited Children (NCMEC). Of the 697 calls requiring social services referrals in fiscal year 2009, the NHTRC connected callers with organizations providing a variety of specifically requested services, including emergency shelter, mental health care, substance abuse treatment, employment services, English as a Second Language/language training, and general case management.

389. The NHTRC also responds to email inquiries. From December 2007 through the end of fiscal year 2009, the NHTRC received 1,032 emails providing tips or requesting general information, training and technical assistance, or victim care referrals.

390. Since December 2007, the NHTRC has provided over 231 training and technical assistance consultations to more than 400 organizations, educating more than 11,197 audience members, including public health officials, social service providers, ethnic organizations, government agents, and law enforcement. Consultations focused on issues including victim identification, victim care and case management, street outreach strategies, NGO-law

enforcement collaboration, and the role of civil society in U.S. federal anti-trafficking initiatives. In fiscal year 2009, the NHTRC launched its web portal, <http://www.traffickingresourcecenter.org>, as another avenue to contact the NHTRC and to receive valuable information on human trafficking in the United States.

391. As discussed above, specific benefits for foreign trafficking victims permit certain foreign trafficking victims to access government benefits and services from which they might otherwise be barred. The Family and Youth Services Bureau of the Department of Health and Human Services administers grant programs supporting a variety of locally based youth services. These services include youth shelters, which provide emergency shelter, food, clothing, outreach services, and crisis intervention for victimized youths; “transitional living programs” for homeless youth, which assist these youth in developing skills and resources to live independently in society; and education and prevention grants to reduce sexual abuse of runaway, homeless, and street youth. HHS’s Children’s Bureau administers the Chafee Independent Living Program, which serves: youth who are likely to remain in foster care until age 18; youth who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption; and young adults ages 18-21 who have “aged out” of the foster care system. Activities and programs include, but are not limited to, financial assistance to further educational opportunities, job training, financial management, housing, emotional support and assured connections to caring adults for older youth in foster care.

b. Department of Justice

392. The Department of Justice Office of Justice Programs’ Office for Victims of Crime (OVC) has administered the Services for Trafficking Victims Discretionary Grant Program since January 2003. The overall goals of this program are to address the effect of the 1996 Welfare Reform Act’s restriction of access to federal benefits described in ¶ 419, by (1) providing timely, high-quality comprehensive services to foreign adult and child victims of sex and labor trafficking who have not yet been “certified” by HHS; and (2) enhancing interagency collaboration and coordinated responses to victims of severe forms of trafficking. OVC grantees provide, either directly or indirectly through local partnerships, a comprehensive array of culturally and linguistically appropriate services, including case management, interpretation, food, clothing, shelter, legal/immigration assistance, mental health treatment, medical and dental care, transportation and other necessary services. Multi-disciplinary, cross-agency collaboration is necessary to ensure that victims have access to the services they need from the time they are encountered.

393. The Department of Justice Office of Justice Programs’ Office for Victims of Crime (OVC) expanded its Services for Trafficking Victims Discretionary Grant Program in 2009 to include three Demonstration Projects focused on Services to Domestic Minor Victims of Human Trafficking. The purpose of this expansion is to identify promising practices in the delivery of a wide array of services to domestic minors who have been subjected to sex or labor trafficking. Specifically, the goals of this demonstration project are to (1) provide a comprehensive array of timely and high-quality services to victims of sex and labor trafficking who are U.S. citizens or lawful permanent residents under the age of 18; (2) develop, enhance, or expand the community response to domestic minor victims of all forms of human trafficking; and (3) produce a final report about the implementation of the project, including a discussion of successes, challenges, and lessons learned, that may be disseminated through OVC. OVC has dedicated this funding to ensure that grantees can work in coordination with existing community-based resources to meet

the immediate and long-term needs of trafficked children regardless of whether or not the trafficked child is returned to a family or relative, placed in a group home or foster care, or placed in a detention facility.

394. As of the end of December 2008, OVC had 36 active grants to victim service organizations working in collaboration with federally funded task forces across the United States. All but one victim service organization, Project REACH, is funded to provide comprehensive services directly to victims. Project REACH, a program of the Justice Resource Institute in Boston, MA, provides rapid response mental health consultations for trafficking victims and training and technical assistance for service providers across the United States regarding mental health needs of trafficking victims.

395. OVC continues to work in partnership with DOJ's Bureau of Justice Assistance (BJA) to ensure that wherever there is a federally funded anti-human trafficking law enforcement task force, there is an OVC-funded service provider available to coordinate services on behalf of both adult and child victims. In fiscal year 2008, OVC awarded a total of \$5,489,999 in funding to 21 organizations to provide services in new and existing anti-trafficking task forces regions. In fiscal year 2008, OVC and Bureau of Justice Assistance (BJA) selected three new law enforcement organizations and three victim service organizations to form three new anti-trafficking task forces. Each of the victim service providers associated with the new task forces received grants up to \$460,000 for three years. Within the OVC fiscal year 2008 competitive solicitation, OVC announced the opportunity for victim service providers to apply competitively for up to \$230,000 to work collaboratively with existing task forces in the states of Alaska and Colorado.

396. In fiscal year 2008, OVC and BJA convened a federal working group of key stakeholders that provide the federal response to human trafficking to address the training and technical assistance needs of both agencies' trafficking grantees. The working group provided input to BJA and OVC regarding the development of collaborative training and technical assistance strategies for the task forces. OVC and BJA decided that the training and technical assistance could best be coordinated under the auspices of the OVC Training and Technical Assistance Center (OVC TTAC). The funding dedicated to the first 12-18 months of this initiative is \$1,040,000. As of December 31, 2008, OVC TTAC was working on an implementation plan to support training and technical assistance activities that will be responding to the needs of all task forces and will be cost effective. Continued involvement by key stakeholders to serve in an advisory capacity will be critical to the success of the strategy. Wherever possible, OVC TTAC will utilize and expand existing technical assistance resources that are currently available to the field. It will also contract with a broad range of expert practitioners who have strong credibility with victim service providers and law enforcement, as opposed to relying solely on in-house personnel. OVC TTAC will be responsible for coordinating the delivery of individualized training and technical assistance resources on site, via telephone, via email, through regional meetings, and through the development of stand alone products and deliverables, such as a web-based Anti-Trafficking Task Force Development and Operation Guide that can be updated easily and continually. This resource will be made available nationwide to ensure that all communities have access to "lessons learned," protocols, and other resources to assist them in implementing anti-trafficking initiatives.

397. From the inception of the program in January 2003 through June 30, 2008, OVC grantees provided services to 2,238 pre-certified potential victims of trafficking. Data collected

from July 1, 2007 to June 30, 2008 indicate that 357 victims were enrolled as new clients by the OVC-funded grantees and were provided comprehensive services.

398. In addition to providing direct services, OVC grantees work to improve the capacity of organizations within the community to identify and respond appropriately to victims of trafficking. During the 12-month period from July 1, 2007 to June 30, 2008, grantees trained over 29,054 professionals representing law enforcement, immigration attorneys, victim service providers, medical and mental health professionals, faith-based organizations, and other community-based organizations.

399. OVC service providers expend a significant effort in the development of close collaborative relationships among a broad range of professionals within the community, such as other social service providers and local, state, and federal law enforcement agencies. The International Institute of Buffalo, for example, was contacted by a U.S. Immigration and Customs Enforcement (ICE) agent to help investigate a possible labor trafficking case involving approximately 20 workers, three of whom were minors, who were detained in various ways in several New York counties. The case was initially being investigated as a labor violation case; however, with the support of the staff of the International Institute of Buffalo and its legal service provider, Farm Workers Legal Services of New York, the ICE agent was able to obtain enough information through interviews to identify 18 victims of human trafficking. ICE requested continued presence on behalf of many of the victims, including the minors.

400. OVC grantees are responsible for coordinating a variety of services to address individual needs of trafficking victims. One OVC grantee, Safe Horizon, has noted that there is a significant amount of stigma attached to mental health therapy, particularly in immigrant communities. Safe Horizon has responded to this stigma by developing a program that is used as a segue to introducing the idea of therapy to survivors of human trafficking. The Safe Horizon Empowerment Support Group is facilitated by Safe Horizon's Intensive Case Managers within their trafficking program. Groups are conducted over six to eight weeks and are composed of practical skills-building sessions as well as therapeutic-based sessions (e.g., learning relaxation methods). The group concentrates on helping clients move forward with their lives, as opposed to re-visiting their traumatic experiences. The program has been successful in generating referrals to therapists upon completion of the group.

c. Department of Homeland Security

401. The Department of Homeland Security Immigration and Customs Enforcement (ICE) also recognizes that the vast majority of victims of trafficking, including children, receive their first victim assistance from federal agents and victim assistance staff assigned to federal agencies. This first response can strongly influence victims' subsequent participation in the investigation and prosecution of the crime. Therefore, the ICE Victim Assistance Program (VAP) administers a Federal Crime Victim Assistance Fund for Victims of Crime for emergency services.

402. ICE has four full time staff members in its Washington, D.C., headquarters that are dedicated to the provision of victims' rights and assistance in all ICE investigations with crime victims. In addition, the VAP has 350 Victim Assistance Coordinators in the field who work at the local level to provide assistance, resources, and referrals. ICE also has Victim Assistance Coordinators in its Office of Investigations, Office of Detention and Removal Operations, Office of Professional Responsibility, Office of International Affairs, and Office of the Principal Legal Advisor. Recognizing the high degree of specialization needed to serve crime victims as well as

the resource-intensive nature of these cases, full-time Victim Specialist positions have been created in several instances to support local investigations. These subject matter experts serve as a liaison with other partners and first responders and also provide direct victim assistance in ICE investigations, including trafficking cases.

403. ICE also works to ensure that non-U.S. citizen human trafficking victims encountered in ICE investigations receive the support and emergency assistance they need for their immediate physical, emotional, and psychological safety. If a U.S. citizen victim is encountered in an ICE investigation, he or she is provided with a referral to a victim service provider. While the long-term care and support for trafficking survivors remains the responsibility of HHS- and DOJ-funded victim service providers, ICE provides funding to secure emergency shelter, medical and dental care, and other basic needs until other forms of assistance become available. Recognizing the importance of victim-sensitive interviewing, when possible during large operations, ICE also provides funding and arranges for space to interview victims in a non-detention setting.

404. The Department of Labor's One Stop Career Centers provide employment and training services—including job search assistance, career counseling, and access to occupational skills training—to victims of trafficking, including older children. These services are provided in accordance with the Training and Employment Guidance Letter No. 19-01, change 1, which was reissued by DOL's Employment and Training Administration (ETA) in 2008. In addition to informing the state and local workforce systems about federal resources for victims of trafficking, the guidance letter notes that no state or U.S. territory may deny services available to victims of severe forms of trafficking based on their immigration status. Any such services are provided directly by state and local grantees to trafficking victims.

405. The Job Corps program provides basic literacy training and other academic and vocational services to victims of trafficking. Job Corps assists eligible youths in achieving a high school diploma or GED; provides vocational skill training and an array of life-success skills to assist the youths in becoming employable and independent; and helps youths secure meaningful jobs or opportunities for further education. Job Corps does not collect information on the extent to which these services are offered or utilized by trafficking victims.

406. The Legal Services Corporation (LSC) is a private, non-profit corporation established by Congress to fund legal aid programs throughout the nation to assist low-income persons with gaining access to the civil justice system. Under section 107(b) of the TVPA, LSC must make legal assistance available to trafficking victims, who often need assistance with immigration and other matters. LSC has issued guidance to all LSC program directors describing LSC's obligations to provide legal services to trafficking victims. The current guidance is available at:

https://grants.lsc.gov/Easygrants_Web_LSC/Implementation/Modules/Login/Controls/PDFs/Progltr05-2.pdf.

2. Immigration benefits

407. Department of Homeland Security Immigration and Customs Enforcement (ICE) automatically provides Continued Presence to all foreign child victims of human trafficking in the United States. The term Continued Presence refers to short-term immigration relief granted to trafficking victims in accordance with § 107(c)(3) of the TVPA. ICE has a rigorous training program for its enforcement personnel and victim/witness coordinators, posted both domestically and abroad, to recognize victims of human trafficking and related victim issues. This is

accomplished through general and specialized courses in basic training, mandatory on-line refresher courses, and regularly scheduled training conferences.

408. In fiscal year 2008, the ICE Law Enforcement Parole Branch (LEPB) received 239 requests for Continued Presence for children and adults. Of these, 225 requests were authorized and 13 requests were either withdrawn by the requesting federal law enforcement agencies or denied because there was insufficient evidence to substantiate that the individual was a victim of a severe form of human trafficking as defined by statute; one request was withdrawn because the victim was already a legal permanent resident. ICE also authorized 101 requests for extensions to existing Continued Presence. In addition, the LEPB received eight requests for termination of Continued Presence status either because the victim either received a T Visa or returned to his or her home country. The chart below provides data on adults and children who applied for, who were granted, and who were denied Continued Presence in fiscal years (FYs) 2005-2008.

FY	2005	2006	2007	2008
Requests for Continued Presence	160	117	125	239
Number Awarded	158	112	122	225
Number Withdrawn or Denied	2	5	3	14
Extensions Authorized	92	80	5	101
Countries Represented	29	24	24	31
Countries with the Highest Number of Victims	Korea, Peru, and Honduras	Mexico, El Salvador, and South Korea	Mexico, El Salvador, and China	Mexico, Philippines, and South Korea
Cities with the Most Continued Presence Requests	New York, San Francisco, and Newark	Houston, Newark, and New York	Los Angeles, Newark, Houston, and New York	Miami, Newark, Atlanta, San Francisco, and Los Angeles

409. From July 1, 2007 through June 30, 2008, the BJA Human Trafficking Task Forces identified 1,360 potential victims of human trafficking. Continued presence was requested on behalf of 188 of these victims. The cumulative total of potential victims that have been

identified by BJA-funded task forces during three years of operation is now 3,336 with 397 persons having had continued presence requested on their behalf by federal law enforcement.⁷

410. Victims of trafficking may also apply with U.S. Citizenship and Immigration Services (USCIS) for T nonimmigrant status, otherwise known as a “T visa,” which is available to an alien who (1) is a victim of a severe form of trafficking in persons; (2) is physically present or arriving in the United States or a U.S. territory on account of human trafficking; (3) has complied with reasonable requests for assistance in the investigation and prosecution of acts of trafficking or is less than 18 years old; and (4) would suffer extreme hardship involving unusual and severe harm upon removal. Victims who receive T nonimmigrant status are eligible to remain in the United States for up to four years, unless their status is extended for law enforcement or other exceptional reasons. They can also bring their eligible family members to the United States as provided for by the TVPA. For minor victims, this opportunity for family reunification is particularly important. After three years, T non-immigrants are eligible to apply for adjustment of status to lawful permanent residence subject to certain statutory criteria.

411. The chart below provides information for adults and children who applied for, who were granted, and who were denied T visas in fiscal years 2005-2008.

Applications for T visas	FY 2005	FY 2006	FY 2007	FY 2008
<i>Victims</i>				
Applied	229	346	230	394
Approved*	112	182	279	247
Denied**	213	46	70	64
<i>Family of Victims</i>				
Applied	124	301	149	290
Approved*	114	106	261	171
Denied**	18	39	52	19

*Some approvals are from prior fiscal year(s) filings.

**Some applicants have been denied twice (i.e., filed once and were denied, filed again.)

412. Since 2001, the United States government has granted more than 2,300 T visas to victims of human trafficking and their immediate family members. Subject to some limitations, eligible child victims of trafficking may apply for lawful immigration status for their parents. The immigration laws also provide that a child victim of trafficking may not be removed from the United States based solely on information provided by the trafficker and sets forth robust confidentiality protections for child trafficking victims. 8 U.S.C. § 1367.

⁷ To understand the gap between the number of potential victims and the number of those identified for which Continued Presence (CP) was requested, it is helpful to understand the process for obtaining CP status. CP requests are reviewed and, when warranted, authorized by the Parole/Humanitarian Affairs Branch (PHAB), pursuant to authority delegated to it by the Secretary of Homeland Security. Several factors can cause someone identified as a potential victim to not have CP requested on their behalf, such as the federal law enforcement agencies determining there was insufficient evidence to substantiate that the individual was a victim of a severe form of human trafficking as defined by statute. Also, CP would not be sought for trafficking victims who have requested to return home or who have received another form of immigration relief nor would CP be sought for victims of crimes other than human trafficking.

413. During 2008 the Department of Homeland Security published a new rule providing for adjustment of status for qualified T nonimmigrants, thus creating a pathway for U.S. citizenship. 73 Fed. Reg. 75, 540 (Dec. 12, 2008).

414. The Department of State Bureau of Population, Refugees, and Migration (PRM) supports the Return, Reintegration, and Family Reunification Program for Victims of Trafficking, which reunites eligible family members with trafficked persons identified in the United States. PRM's implementing partner, the International Organization for Migration (IOM), works collaboratively with NGOs and U.S. Government agencies to assist the families of identified trafficking victims. As noted above, T nonimmigrants, including child victims, can bring their eligible family members to the United States as provided for by the TVPA. Through this program, IOM may provide financial and logistical support for travel of immediate family members through pre-departure assistance with travel documents, transportation arrangements, airport assistance, and escorts for children.

415. For trafficked persons who do not wish to avail themselves of the T visa benefits in the United States, the program also works to ensure safe return and reintegration assistance in home communities. This may include pre-departure assistance, travel documentation, transportation, and reception upon arrival by IOM partners on the ground, when possible. Reintegration assistance may be provided through NGO partners to reduce the likelihood of re-trafficking and may include: temporary shelter, health care, training and education, and small grants for income-generating activities. In 2008, this U.S.-funded program assisted 105 cases: of the cases assisted, 103 family members were reunited with trafficking survivors in the United States, and two victims of trafficking in persons elected to return to their country of origin. Since it started in 2005, this program has facilitated the reunification of 231 family members with victims of trafficking in the United States, and assisted 13 trafficking victims who wished to return to their country of origin. In total some 35 countries of origin were involved.

416. In some instances, foreign child victims of offenses covered by the Optional Protocol may be eligible for relief from removal based on asylum; special immigrant juvenile status due to having been abused, abandoned, or neglected; status due to having been the victim of a severe form of trafficking; or status due to having suffered substantial physical or mental abuse as a result of having been a victim of criminal activity. As a matter of prosecutorial discretion, when circumstances (including humanitarian considerations) warrant, DHS also has the ability to defer action to remove an alien. Additionally, § 235(c) of TVPRA 2008 requires federal personnel who have substantive contact with unaccompanied alien children to be trained to identify children who are victims of severe forms of trafficking in persons and children for whom asylum or special immigrant juvenile status may be appropriate.

417. Children may be eligible for asylum under U.S. law if they have suffered persecution or have a well-founded fear of persecution on account of a protected characteristic (race, religion, nationality, membership in a particular social group, or political opinion) and are not subject to one of the criminal or national security-related bars to eligibility. The Department of Homeland Security through the U.S. Citizenship and Immigration Services (USCIS) Asylum Division published updated *Guidelines for Children's Asylum Claims* on March 21, 2009. Section II., "International Guidance," includes the Optional Protocol as one of the relevant international instruments. The Guidelines also instruct that under TVPRA 2008, USCIS now has initial jurisdiction over any asylum application filed by an unaccompanied alien child, effective March 23, 2009. As a result, unaccompanied minors filing for asylum who previously would have had their cases heard by an immigration judge in the first instance will now receive

affirmative interviews with an asylum officer. A copy of the guidelines is available at http://www.uscis.gov/files/article/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims.pdf.

418. Children are also protected by U.S. immigration laws implementing the U.S. obligations under the non-refoulement provisions of the Convention against Torture and the Convention relating to the Status of Refugees, the latter made applicable to the United States through its accession to the 1967 Refugee Protocol.

3. Comparison of assistance provided to alien children and children who are nationals

419. As explained in the U.S. Initial Report, and discussed in detail in the preceding subsections, a wide range of federal and state programs provide assistance to foreign victims. Many of the benefits were statutorily authorized or required by the TVPA in response to the fact that the welfare reform law of 1996 (PRWORA) restricted alien access to federal and state benefits based on immigration status and on whether grant of status and presence in the United States was before or after the date PRWORA was enacted. Children who are foreign victims of severe forms of trafficking, and who thus would be otherwise ineligible to access general crime victim funds and entitlement programs, are eligible pursuant to the TVPA to receive benefits and services to the same extent as refugees.

420. U.S. citizen victims, including children, remain statutorily eligible for other federal crime victim benefits and social service benefit programs. There is currently little data to assess the extent to which U.S. citizen trafficking victims are accessing the benefits for which they are eligible. TVPRA 2008 has directed studies to determine the existence and extent of any “service gap” between foreign nationals and U.S. victims. Under §§ 107(b)(1) and (b)(2) of the TVPA, various federal agencies must extend some existing benefits to trafficking victims and are authorized to provide grants to effectuate such assistance. Currently the studies and some of the new programs await funding.

4. Damages available to child victims

421. As noted in ¶ 89 of the U.S. Initial Report, U.S. federal law provides mandatory restitution for victims in many of the cases covered by the Optional Protocol. 18 U.S.C. § 2259 provides for mandatory restitution for child sexual exploitation and other abuse offenses (18 U.S.C. 2251, 2251A, 2252, 2252A, 2260). Under § 2259(b)(3), restitution is to be for the “full amount of the victim’s losses,” including any costs incurred by the victim for—

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

422. 18 USC § 1593 provides for mandatory restitution of “the full amount of the victim’s losses” for any offense committed under §§ 1581- 1591 (peonage and slavery, including trafficking for child forced labor or sexual exploitation). Under § 1593(3) the “full amount of the victim’s losses” is defined to have the same meaning as under § 2259(b)(3), above, and also includes “the greater of the gross income or value to the defendant of the victim’s services of

labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Stands Act (29 USC 201 et seq.)” Section 1595, added in 2008, provides a civil remedy for victims. The statute of limitations is 10 years after the cause of action arose.

423. In addition, 18 U.S.C. § 2255 provides victims of child exploitation and abuse offenses (under 18 U.S.C. 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, and 2423) with a civil remedy to recover actual damages and the cost of the suit, where the victim suffers physical injury as a result of the offense. This statute provides that any child victim of such offenses who has sustained physical injury is deemed to have sustained damages of no less than \$150,000 in value. The statute of limitations for this remedy is six years after the right of action first accrues.

VII. INTERNATIONAL ASSISTANCE AND COOPERATION (Art. 10)

A. International cooperation

424. On the international level, the United States engages extensively in international efforts to combat the offenses covered by the Optional Protocol through bilateral and multilateral legal assistance treaties with foreign governments, and direct working relationships with foreign law enforcement. In its Initial Report at ¶¶ 93-106, the United States reported at length on international arrangements and other efforts to promote all of the objectives and obligations of the Optional Protocol. Additional undertakings are detailed here.

1. Law enforcement and victim assistance cooperation, training and technical assistance

425. Operation Joint Hammer is the U.S. component of an ongoing global enforcement operation targeting transnational rings of child pornographers. Operation Joint Hammer is the result of close coordination among the FBI, DHS Immigration and Customs Enforcement, U.S. Postal Inspection Service and the Department of Justice's Child Exploitation and Obscenity Section (CEOS), working with European law enforcement, including Europol and Eurojust. A Department of Justice press release of December 12, 2008, announced that the operation had to date led to the arrest of more than 60 people in the United States involved in the trade of child pornography. Eleven child victims have been identified through Operation Joint Hammer.

426. Operation Joint Hammer responds to the reality that cyber crimes can only be effectively confronted with law enforcement agencies around the world working in close coordination. It was initiated through evidence developed by European law enforcement and shared with U.S. counterparts by Europol. The European portion of this global enforcement effort, “Operation Koala,” was launched after the discovery of a handful of people in Europe who were molesting children and producing photographs of that abuse for commercial gain. Further investigation unveiled a number of online child pornography rings—some of which hosted dangerous offenders who not only traded child pornography, but who themselves sexually abused children.

427. Eurojust and Europol brought together law enforcement officers from 28 countries, including the United States, to share information about possible customers of websites located in their countries and to coordinate enforcement actions against these child pornographers. With close cooperation from European law enforcement, U.S. law enforcement has been able to identify a

number of U.S.-based customers of the websites. Further investigation into those targets resulted in the identification of a number of Internet-based trading sites dedicated to the sharing of child pornography. A number of the U.S. targets belonged to more than one site, revealing an interconnected web of underground child pornography trading. See http://www.usdoj.gov/criminal/ceos/Press%20Releases/JOINT-HAMMER_12-12-08.pdf. As just one example, a 45-year-old man identified through Operation Joint Hammer was sentenced to life in prison on September 9, 2009, for advertising, transporting, receiving and possessing child pornography. See http://www.usdoj.gov/criminal/ceos/Press%20Releases/EDPA_MERZ-SENTENCED_09-09-09.pdf. As a result of the success of this operation, coordination efforts between the United States and Eurojust have continued in the hope of establishing a permanent Eurojust-United States working group centered on international child exploitation enforcement.

428. In addition, over the past several years, the United States has actively promoted issues of child exploitation in multilateral fora. For example, CEOS and DOJ's Office of International Affairs, along with the State Department, have worked with the G-8, the U.N. Commission on Crime Prevention and Criminal Justice, and the Council of Europe on various declarations and resolutions designed to heighten awareness of child exploitation, and to promote effective legal responses to it. Examples of these efforts include a Justice and Home Affairs Ministers' statement drafted by the United States for the G-8 entitled *Reinforcing the International Fight Against Child Pornography*, as well as the recent International Symposium to Assess the Risk to Children Posed by Child Pornography Offenders, organized by CEOS, which brought together in the United States a collection of experts from around the world in the areas of child pornography offenses and offenders to share their findings and develop consensus on the risks to children associated with child pornography.

429. The Department of Justice also works closely with Interpol on all aspects of international law enforcement and cooperation. The United States is currently discussing the possibility of creating an "experts group" involving Eurojust and Europol to improve case coordination.

a. Department of Homeland Security

430. The Department of Homeland Security Immigration and Customs Enforcement (ICE) is the primary agency with jurisdiction to investigate U.S. citizens and/or permanent residents who are arrested in, or travel to, a foreign country in order to engage in sexual acts with children. ICE identifies potential predators planning trips to child sex tourism "hotspots" and alerts foreign law enforcement where appropriate and legal. The Department's efforts to deal with these offenders depend heavily on the efforts of foreign law enforcement in the destination countries and U.S. domestic tracking abilities. ICE's Cyber Crimes Center (C3) continually provides training, education and enforcement assistance to foreign law enforcement in combating child sex tourism.

431. ICE's involvement in the Virtual Global Task Force (VGT) can be viewed as one example of the agency's dedication to strengthening international cooperation in the prevention, detection, investigation, prosecution and punishment of child exploitation. The VGT is a collaborative effort of international law enforcement agencies with the common goal of protecting children from sexual exploitation. The mission of the VGT is to make the Internet a safer place; to identify, locate and help children at risk; and to hold predators appropriately to account. The VGT was established in 2003 and includes the United States (ICE), United Kingdom (CEOP), Canada (RCMP), Australia (AFP), Italy (Postal and Communication Police)

and Interpol as current members. The VGT is intended to augment, not supplant, existing law enforcement initiatives and international relationships related to child exploitation issues. ICE has been the exclusive United States representative to the VGT since its inception in 2003.

432. Child pornography and child prostitution are and will continue to be ICE investigative priorities. ICE Office of International Affairs (OIA) combats child prostitution and the sale of children through its human trafficking and forced child labor efforts worldwide. ICE OIA continually fosters international cooperation through outreach and education programs by numerous overseas attaché offices, which are critical in the collaborative struggle against child exploitation in the international arena. An example of its efforts are the three Forced Child Labor/Human Trafficking/Child Sex Tourism Fora that ICE OIA hosted in Morocco, the Philippines, and Panama, in fiscal year 2009, to include the participation of foreign law enforcement and prosecutors. DOJ's Human Trafficking Prosecution Unit collaborated as presenters at the programs. Additionally, ICE has developed Forced Child Labor and Human Trafficking outreach materials which are distributed worldwide. These materials are already available in several languages and are currently being translated into several more languages. ICE, in collaboration with CBP, leads enforcement efforts resulting from outbound operations at ports of entry targeting individuals traveling for the purpose of exploiting children.

433. ICE attachés, in collaboration with domestic field offices and the foreign law enforcement community, also aggressively investigate incidents of Child Sex Tourism occurring overseas through the PROTECT Act.

434. ICE Victim Assistance routinely supports training coordinated by ICE Office of International Affairs through the International Visitors Program as well as training for attaché offices overseas. The training typically includes representatives from NGOs as well as foreign law enforcement agencies seeking to enhance their response to human trafficking of children and adults. The goal is to show the importance of integrating victim assistance into each investigation and training is co-facilitated with an investigator from the Human Smuggling and Trafficking Unit (HSTU). Presentations focus on the creation of a victim-centered investigation through inclusion of victim assistance considerations in planning of enforcement operations, victim-sensitive interview techniques including the appropriate use of interpreters, safety issues, immigration relief, and resources for meeting the diverse needs of both sex and labor trafficking victims.

435. In addition, ICE's HSTU proactively promotes training in adult and child smuggling and trafficking investigations to countries that are susceptible to exploitation by human smuggling and trafficking organizations. In fiscal year 2008, training sessions were held in Argentina, Austria, Cyprus, Curacao, Ecuador, Egypt, El Salvador, France, Greece, Honduras, Hungary, Philippines, Saudi Arabia, Singapore, Switzerland, and Taiwan. More than 12,000 law enforcement personnel received ICE training in human smuggling and trafficking investigations in fiscal year 2008.

In fiscal year 2009, in addition to providing outreach and training to over 7,200 officials from foreign law enforcement agencies, NGOs and international organizations, ICE hosted three major international Child Sex Tourism/Forced Child Labor/Trafficking in persons training seminars in Morocco, the Philippines and Panama. ICE also conducted seven similar regional training seminars in Argentina, Bahrain, Brazil, Ghana, Mexico and Panama in fiscal year 2009.

436. ICE OIA collected ICE Trafficking in Persons Strategy (ICE TIPS) reports for fiscal year 2008 on outreach and training conducted by ICE's 54 international offices in more than 42 countries. During this period, the Attaché offices provided over 12,700 individuals with anti-

trafficking training and information about ICE's activities to combat human trafficking. ICE OIA trained personnel from foreign law enforcement agencies and international organizations, and over 7,000 representatives from over 100 NGOs. In just one example, the ICE Assistant Attaché Athens provided human trafficking training to 30 members of the Hellenic National Police in Athens, Greece as well as 50 Cypriot law enforcement officers and prosecutors in Nicosia, Cyprus. The training included presentations on human trafficking, forced child labor, sexual exploitation, and smuggling of women and children. The ICE Attaché in Buenos Aires and the HSTU provided training at three seminars and conferences on human trafficking: First Latin American Congress Regarding Human Smuggling and Trafficking, hosted by the University of Buenos Aires in Buenos Aires, Argentina; Human Smuggling and Trafficking Training Seminar, hosted by Cordoba Province Attorney General in Cordoba, Argentina; and First International Symposium of MERCOSUR and Associated States Regarding Human Trafficking and Child Pornography, hosted by the Argentine Ministry of Justice, Human Rights, and Security in Buenos Aires, Argentina. More than 100 law enforcement and NGO entities were present in total at the three seminars.

437. ICE provides presentations on a variety of topics to foreign law enforcement and government officials who are visiting the United States through its International Visitors Program. In fiscal year 2008, ICE conducted 41 Human Smuggling/Trafficking briefings, six Victim Witness Assistance Program briefings, and 21 Cyber Crimes/Child Exploitation briefings for 290 foreign government officials and NGO representatives from 42 countries.

438. One of ICE's most important international training activities is its participation in the International Law Enforcement Academies (ILEA) funded by the Department of State in Bangkok, Thailand; Budapest, Hungary; Gaborone, Botswana; and San Salvador, El Salvador. ICE developed the human trafficking training modules that are part of the permanent curricula at those academies, including a new course, Trafficking in Women and Children, presented in Gaborone in fiscal year 2008. ICE trained a total of 439 law enforcement personnel from 56 countries.

439. ICE has a legislative and investigative mandate to train its cadre of agents and officers stationed internationally to recognize and conduct investigations of forced child labor. Subject to certain exceptions, section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307), discussed in ¶ 114, prohibits importation into the United States of goods made with convict, forced, or indentured labor.

440. ICE receives significant funds from Congress to investigate alleged violations of forced labor and to pursue criminal convictions against violators. DHS' Customs and Border Patrol has been delegated the authority to issue administrative orders prohibiting the entry of goods made with forced labor into the United States for predetermined or indefinite periods of time. ICE is also recognized as a lead federal agency in combating human trafficking and child sex tourism.

441. In order to complete the mandates above, ICE agents posted overseas must have a full understanding of all U.S. Government programs, international organizations, and NGOs available as investigative and informational resources in these areas. In fiscal year 2008, ICE OIA conducted two international conferences to train ICE Attachés, ICE Representatives, and ICE Foreign Service National Investigators to effectively and efficiently investigate allegations of forced labor, forced child labor, prison labor, and child exploitation. Further, in fiscal year 2008, every ICE Office of International Affairs employee slated for a permanent change of station from the United States to a place outside the United States attended a mandatory

outbound training program which included blocks of instruction on forced labor, forced child labor, prison labor, and human trafficking investigations.

b. Department of Justice

442. Department of Justice attorneys with the Child Exploitation and Obscenity Section (CEOS) conducted extensive outreach to its foreign counterparts, both through participation in meetings and trainings abroad, and through meetings with foreign officials in the United States. CEOS attorneys participated in trainings concerning child sex trafficking and child exploitation held in Phnom Penh, Siem Reap, and Sihanouk Ville, Cambodia; and spoke at conferences in Chisinau, Moldova; Copenhagen, Denmark; and Singapore.

443. In the United States, CEOS attorneys met with delegations from 27 countries. CEOS attorneys also met with federal prosecutors who were serving as legal advisors in foreign countries, including Kosovo and Thailand. At these meetings, CEOS shared information about its efforts to combat child sex trafficking and child sex tourism. Many of these meetings were organized by DOJ's OPDAT, whose efforts are described more fully in ¶¶ 448-451.

444. In addition, Department of Justice attorneys, including both Civil Rights Division's Human Trafficking Prosecution Unit and Criminal Division's DOJ's CEOS attorneys, also train foreign law enforcement officials on investigating and prosecuting human trafficking and child pornography offenses. These trainings include sessions with foreign delegates who visit the United States as part of the State Department's International Visitor Program, as well as overseas training programs. For example, DOJ attorneys have traveled to Latvia, Nepal, Thailand, Morocco, Nigeria, Armenia, and Indonesia to provide training on investigating and prosecuting child exploitation cases.

445. During fiscal year 2008, the Civil Rights Division provided extensive training and technical assistance to foreign officials both here and abroad and collaborated with a variety of foreign governments to locate and prosecute human traffickers.

446. DOJ uses information from trafficking cases within the United States to initiate investigations involving recruiters and other perpetrators in the country of origin. These efforts are enhanced by the Civil Rights Division's ongoing outreach to officials from around the world who visit the United States. Building these relationships is critical to the Department's anti-trafficking efforts, and experienced trafficking personnel regularly participate in training and strategy sessions involving key officials from foreign governments. Civil Rights Division personnel met with officials from Albania, Algeria, Argentina, Brazil, Canada, Egypt, England, Indonesia, Japan, Kyrgyzstan, Malta, Mexico, Moldova, Netherlands, Poland, Republic of Kosovo, Russia, Taiwan, Tajikistan, Thailand, and Ukraine.

447. In addition, Civil Rights Division personnel travel abroad to engage key anti-trafficking officials from foreign governments, including lawmakers, mid-level managers responsible for policy implementation, prosecuting attorneys, and investigators, as well as NGOs. These efforts involve both training sessions and the exchange of information on effective law enforcement anti-trafficking tactics and addressing victim needs, interviewing techniques, and the roles that NGOs, law enforcement agents, and prosecutors have with respect to victims. In fiscal year 2008, Civil Rights Division personnel participated in outreach missions to Bulgaria, Tanzania, Singapore, Qatar, and Uzbekistan, and United Nations Conferences in Vienna, Austria, that involved delegations from multiple countries.

448. The Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) draws on DOJ's resources and expertise to strengthen foreign criminal justice sector institutions and enhance the administration of justice abroad. With funding provided by the Department of State and USAID, OPDAT supports the law enforcement objectives and priorities of the United States by preparing foreign counterparts to cooperate more fully and effectively with the United States in combating terrorism and transnational crime such as human trafficking. It does so by encouraging legislative and justice sector reform in countries with inadequate laws; by improving the skills of foreign prosecutors and judges; and by promoting the rule of law and regard for human rights.

449. Combating trafficking in persons, including child exploitation, is a top OPDAT priority. OPDAT provides substantial technical assistance throughout the world based on a holistic model encompassing the "Three Ps of TIP:" Prevention, Protection, and Prosecution. OPDAT assistance includes training and developmental projects with overseas law enforcement officials geared to strengthening its international partners' capabilities to prevent transnational trafficking; protect victim witnesses and thereby encourage their participation in investigations and prosecutions; and effectively investigate and prosecute trafficking cases. OPDAT also works with host countries on developing evidence collection techniques which can generate evidence usable in transnational prosecutions, including those brought by DOJ in the United States. OPDAT also does legislative reform and drafting in the area of TIP to ensure that TIP law is victim-assistance centered and compliant with the Trafficking Protocol to the UN Organized Crime Convention.

450. OPDAT regularly calls upon the expertise of Department attorneys from CEOS, the Civil Rights Division, and the United States Attorneys' Offices (USAOs) in both the design and execution of anti-TIP technical assistance and training programs overseas. Advisors regularly furnish legislative drafting and implementation assistance with the help of Departmental experts from CEOS, the Civil Rights Division, and USAOs, who are selected for their expertise in a specific area or their work on a successful TIP prosecution that they can present as a case study to their foreign counterparts. When appropriate, OPDAT collaborates on TIP programs with the International Criminal Investigative Training Assistance Program (ICITAP), its sister organization that develops and provides training to foreign police and criminal investigation institutions.

451. In fiscal year 2008, OPDAT conducted 49 programs involving 20 countries. Many of these programs include child exploitation; examples of programs focused on children follow:

Latin America and the Caribbean:

- Brazil: During fiscal year 2008, the OPDAT Resident Legal Advisor (RLA) to Brazil provided assistance to the Brazilian Government in drafting a child pornography law, enacted in November 2008. Before the law was enacted, the RLA conducted the first ever program on child pornography in Brazil, to familiarize judges, prosecutors, and police with the specifics of the new law.
- Mexico: In June and July 2008, OPDAT conducted two out of a series of three workshops on investigating and prosecuting TIP cases in Mexico City, Mexico, for Mexican prosecutors. The programs covered the distinction between trafficking and smuggling; Mexico's new trafficking laws; techniques for interviewing victims, particularly underage ones; victim assistance and witness protection; and task force development. They were forerunners to the arrival in early October 2008 of OPDAT's

first ever Regional Legal Advisor dedicated to trafficking in persons, who will be assisting the Mexicans in implementing their newly passed trafficking law.

Eurasia:

- Georgia: From October 8-12, 2007, the OPDAT Resident Legal Advisor to Georgia conducted a legislative drafting seminar on combating child pornography in Tbilisi, Georgia, for representatives from the Georgian Office of Public Prosecution Service, Georgian National Communications Commission, and the leading Internet Service Provider. Georgia became the first country in Eurasia to draft and introduce legislation criminalizing child pornography and other forms of exploitation via the Internet in line with international standards.
- Moldova: From March 10-14, 2008, OPDAT, in conjunction with the Government of Moldova and DOS, conducted a regional program in Chisinau on best practices to combat child exploitation in Eurasia for over forty-five delegates from six countries (Armenia, Georgia, Kazakhstan, Moldova, Russia, and Ukraine). One of the primary focuses was to encourage countries to draft laws to combat child exploitation that comply with international standards.
- Russia: In 2008 OPDAT joined with the Department of Justice Child Exploitation and Obscenity Section (CEOS) and a number of Russian partners to address problems of child pornography. Efforts have focused on bringing Russia into compliance with international child pornography legislative norms and on increasing law enforcement efforts against these crimes. Successes to date include the agreement of the Russian Ministry of Internal Affairs to participate in the FBI's Innocent Images Global Task Force, a multinational law enforcement task force set up to facilitate investigations into child pornography. Since OPDAT started working with police and prosecutors, Russian child pornography investigations have increased ten-fold.

452. The Department of Justice International Criminal Investigative Training Assistance Program (ICITAP) conducts programs addressing law enforcement capacity-building efforts specifically aimed at human trafficking and more broadly to promote human rights and human dignity, rule of law, anti-corruption, and police-community cooperation—conditions that have been identified by Department of State's TIP Office as vital for an effective anti-trafficking effort. ICITAP's programs are primarily funded by and conducted in partnership with DOS.

453. ICITAP uses the following strategies to build overseas law enforcement capacity to combat trafficking in trafficking in persons, including exploitation of children:

- increasing awareness and understanding in host country law enforcement institutions of the devastating impact to victims and threats to health and security posed by TIP;
- helping foreign governments create new law enforcement tools to combat TIP through legislative reform, whenever possible in concert with ICITAP's sister agency, OPDAT;
- building sustainable institutional capacity to fight TIP through the development of host country policies, procedures, and training resources and capabilities;
- building tactical and investigative capacity, including the creation of specialized investigative units;
- building technical capacity, including case management, border security, other systems for data collection, data sharing, and data analysis;
- improving coordination of police and prosecutors on TIP cases;

- incorporating TIP—one of the revenue sources of organized crime groups—as an issue in assistance programs focused on combating transnational organized crime;
- facilitating cross-border, law enforcement cooperation among countries in the region that are part of the same human trafficking network;
- facilitating partnerships between police and other stakeholders, including victims’ advocacy groups, labor and social protection organizations, and the community; and
- ensuring coordination with international organizations and other donors.

454. While many of ICITAP’s programs address issues related to child as well as adult victims, the following are recent examples of law enforcement development activities with particular focus on children’s issues:

Europe/Eurasia

- **Ukraine:** ICITAP Forensic Services Section provided assistance to the Ukraine Forensic Center in the areas of digital evidence, DNA, and quality assurance. The donation of training, equipment, and technical assistance increased Ukrainian capacity to process evidence seized in a major transnational investigation of a global child pornography ring. The Forensic Center seized 27 servers and 32 computers from an Internet Service Provider in Ukraine, and it is estimated that the seized media contains 160 terabytes (160,000 gigabytes) of information. All evidence is being analyzed and stored in accordance with the Forensic Center’s Standard Operation Procedures, which were developed with ICITAP guidance in accordance with International Organization for Standardization (ISO) standards for forensic laboratories.
- **Bulgaria:** ICITAP was instrumental in establishing an agreement between the Bulgarian police directorate’s Department of Missing Persons and the National Center for Missing and Exploited Children (NCMEC), a U.S. NGO. Under this arrangement the NCMEC provides age progression images of missing persons submitted by the Bulgarian agency. During the last year, images of four missing persons from Bulgaria were sent to the NCMEC for age progression, and the age-progressed images were returned to Bulgaria for investigative purposes.

Africa

- **Uganda:** With a full-time, in-country law enforcement advisor, ICITAP is conducting a dynamic anti-TIP program in Uganda. One early sign of success is an increase in the number of trafficking victims being referred by the police to NGOs for protection. In fiscal year 2008, ICITAP developed a cadre of local instructors who, in cooperation with ICITAP, trained more than 2,000 law enforcement personnel in four locations throughout the country. By integrating investigators, prosecutors, immigration, and labor officials in the same classroom, the training established the foundation for stronger law enforcement coordination on the fight against human trafficking. Many recommendations have been adopted, including the establishment of an inter-ministerial task force to which the ICITAP advisor will provide technical assistance and the establishment of an anti-TIP police unit to be housed under the Child and Family Protection Department.
- **The Gambia:** ICITAP provided support to the Government of the Gambia for implementing the country’s new anti-trafficking law. The law prohibits all forms of human trafficking and also provides for the appropriate treatment and reintegration of

trafficking victims. ICITAP's program has improved collaboration among the key government and non-governmental stakeholders with responsibility for addressing this problem. ICITAP trained a cadre of local instructors from the Gambia Police Service on effective police and investigative skills and assistance to trafficking victims. ICITAP distributed pocket guides on interviewing adult victims and children to all training participants.

455. In its efforts to facilitate cross-border cooperation addressing the crime of human trafficking, the Human Smuggling and Trafficking Center (HSTC) participates in international outreach programs with multinational organizations and representatives of foreign law enforcement and intelligence. Because of its close ties and cooperation with EUROPOL, the HSTC is the only non-EU law enforcement organization invited to participate in the annual EUROPOL Experts Meeting on Trafficking in Human Beings. Additionally, the HSTC participated in the EU's usually restricted Trafficking Analysis Work File meeting in September 2008. The HSTC is also the U.S. lead and head of delegation to the Pacific Rim Immigration Intelligence Conference. Finally, HSTC partnered with OPDAT in its Russian program, discussed above.

456. The Department of Health and Human Services hosted 23 international delegations in fiscal year 2008. Law enforcement agents, non-governmental leaders, officials from health and social service ministries, medical personnel, immigration officers, and other anti-trafficking leaders from around the globe received briefings from HHS's ATIP division staff on HHS's efforts to combat both adult and child human trafficking and assist victims in the United States. Officials represented agencies and organizations in 36 countries.

457. The Department of Defense has been a leading participant in NATO's trafficking in persons training and training program development.

2. U.S. diplomatic engagement and assessments of foreign government performance

458. Through the Office to Monitor and Combat Trafficking in Persons (TIP Office) and the Bureau of Democracy, Human Rights and Labor, the Department of State (DOS) represents the United States in the global fight to address human trafficking, engaging with foreign governments, international and inter-governmental organizations, and civil society to develop and implement effective strategies for confronting this form of modern-day slavery. The director of the TIP Office also chairs the Senior Policy Operating Group, the senior-level interagency working group that coordinates U.S. Government's efforts to fight trafficking and addresses interagency policy, program, and planning issues.

459. The Secretary of State issued the ninth annual *Trafficking in Persons Report* (TIP Report) on June 16, 2009, available at <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>. The TIP Report is the U.S. Government's principal diplomatic tool used to engage foreign governments on the subject. It places countries in tiers according to government efforts to combat trafficking. It also includes information in the Introduction section on forced child labor, child soldiers, child sex trafficking and related abuses, the role of parents in child trafficking, and child trafficking in gold mines. The 2009 TIP Report highlights the following: (1) human trafficking is prevalent throughout the world, as shown by the report's expanded coverage to 175 countries; (2) subtle but potent forms of coercion are often used against victims, including threats of deportation or imprisonment, or severe reputational or financial harm that make them feel they

have no choice but to continue in service; (3) fraudulent recruitment practices, excessive recruitment fees and debt, and lack of legal protections for migrants are contributing to human trafficking; (4) there remains a stark disparity between the large global problem of forced labor and the low numbers of prosecutions and convictions of labor trafficking cases (less than 10 percent of all convictions); (5) during the reporting period, 26 countries enacted new anti-trafficking legislation; and (6) more than half of the world's countries have now enacted criminal legislation prohibiting all forms of human trafficking).

460. The TIP Office engaged in extensive outreach to foreign counterparts in 2008 and 2009. In preparation for the report released in 2009, the TIP Office's Reports and Political Affairs Section traveled to 59 countries to meet with foreign government officials and international organizations and NGO representatives. The TIP Office also reached out to foreign governments through regular briefing of foreign officials and other international visitors in Washington, D.C. These briefings provided insight on what the U.S. Government is doing to combat TIP in the United States and around the world. The DOS Bureau of Educational and Cultural Affairs' International Visitors Program sponsored several groups that came to the United States specifically to learn more about the U.S. experience with combating human trafficking.

461. The TIP Office made 33 presentations to over 268 visitors from more than 120 countries in calendar year 2008, concerning both child and adult trafficking issues. These participants in DOS's International Visitor Leadership Program ranged from prosecutors and judges to NGO representatives to labor inspectors. The TIP Office also participated in 8 Digital Video conferences which covered topics that included, among others, Madagascar's Tier 1 ranking in the 2008 TIP Report, DOS and DOJ sharing best practices with the Netherlands on handling forced labor cases, and the coordinated response of NGOs and government in Bulgaria to combat TIP.

462. The TIP Office is also actively engaged in multilateral venues. The TIP Office led an inter-agency delegation to the UN GIFT Vienna Forum in February 2008, an event organized by the UN Office on Drugs and Crime (UNODC). This international conference on human trafficking garnered significant media attention and drew approximately 1500 participants, including first ladies, government ministers, senior business representatives, NGOs, and celebrities. The U.S. Government participated through a national statement, panel presentations, media interviews, and an information booth.

463. Each year, Department of State Bureau of Democracy, Human Rights and Labor (DRL) develops, edits, and submits to Congress a comprehensive, 5,000-page report on human rights conditions in over 190 countries. The *Country Reports on Human Rights Practices* (Human Rights Reports) cover internationally recognized civil, political and worker rights, as set forth in the Universal Declaration of Human Rights, pursuant to 22 U.S.C. § 2304(a). That provision establishes that "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries."

464. The reports include information on child exploitation internationally – including commercial sexual exploitation of children for prostitution or for pornographic purposes and the trafficking of children for the purposes of both forced labor and sexual exploitation. The reports are used as a resource for shaping policy, conducting diplomacy, and making assistance, training, and other resource allocations. They also serve as a basis for the U.S. Government's cooperation with private groups to promote the observance of internationally recognized human rights. The Overview to the 2008 Human Rights Reports, released February 25, 2009, described the extensive efforts employed in preparing the reports each year:

Our overseas U.S. missions, which prepared the initial drafts of the reports, gathered information throughout the year from a variety of sources across the political spectrum. These sources included government officials, jurists, the armed forces, journalists, human rights monitors, academics, and labor activists. . . .

[In reviewing and finalizing the reports], the Bureau of Democracy, Human Rights and Labor, in cooperation with other Department of State offices drew on their own sources of information. These included reports provided by U.S. and other human rights groups, foreign government officials, representatives from the United Nations and other international and regional organizations and institutions, experts from academia, and the media. Officers also consulted with experts on worker rights, refugee issues, military and police topics, women's issues, and legal matters. The guiding principle was to ensure that all information was assessed objectively, thoroughly, and fairly.

465. Secretary of State Hillary Rodham Clinton, in her remarks on the release of the Human Rights Reports in 2009, stressed the essential role that the promotion of human rights plays in U.S. foreign policy, stating:

[H]uman progress depends on the human spirit, and this inescapable truth has never been more apparent than it is today. The challenges of this new century require us to summon the full range of human talents to move our nation and the world forward. Guaranteeing the right of every man, woman and child to participate fully in society and to live up to his or her God-given potential is an ideal that has animated our nation since its founding. It is enshrined also in the United Nations Universal Declaration of Human Rights, and was reflected in President Obama's Inaugural Address when he reminded us that every generation must carry forward the belief that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness. Our foreign policy must also advance these timeless values which empower people to speak, think, worship and assemble freely, to lead their work and family lives with dignity, and to know that dreams of a brighter future are within their reach

The full text of the Secretary's remarks is available at <http://www.state.gov/secretary/rm/2009a/02/119786.htm>. The Human Rights Reports issued in 1999 through 2009 (covering 1998 through 2008) are available at <http://www.state.gov/g/drl/rls/hrrpt/>.

466. The United States monitors the use of child labor abroad through a number of additional undertakings. Executive Order 13126 (E.O. 13126 (1999)), *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor* is intended to ensure that federal agencies comply with laws relating to forced or indentured child labor in the procurement process. E.O. 13126 requires the Department of Labor, in consultation with the Department of State and the Department of Homeland Security, to publish and maintain a list of products, by country of origin, which the three Departments have a reasonable basis to believe may have been mined, produced, or manufactured by forced or indentured child labor. Under procurement regulations implementing E.O. 13126, a federal contractor who supplies end products of a type identified by country of origin on the list must certify that (1) it will not supply any end product on the list that was mined, produced, or manufactured in a country identified on the list for that

product or (2) that it has made a good faith effort to determine whether forced or indentured child labor was used and is unaware of any such use of forced or indentured child labor. If a contracting officer has reason to believe that forced or indentured child labor was so used, he or she must refer the matter for investigation. Violations of the regulations' requirements include contract termination and suspension and/or debarment of the contractor. 48 CFR subpart 22.15.

467. The current E.O.13126 list can be found on the DOL website at <http://www.dol.gov/ILAB/regs/eo13126/main.htm>. It includes 11 products from Burma and one from Pakistan. Based on DOL research and information submitted by the public, DOL issued an initial determination on September 11, 2009, announcing proposed updates to the E.O. 13126 list and requesting public comments. 74 Fed. Reg. 46,794 (Sept. 11, 2009). The update lists 29 products from 21 countries. After analysis of all public comments received, DOL will issue a final determination updating the E.O. 13126 list, in consultation and cooperation with DHS and DOS.

468. The Trafficking Victims Protection Reauthorization Act of 2005 requires in addition that DOL “develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs (ILAB) has reason to believe are produced by forced labor or child labor in violation of international standards.” 22 U.S.C. § 7112(b). The initial list was published on September 10, 2009. 74 Fed. Reg. 46,620 (Sept. 10, 2009). ILAB identified 122 goods produced with forced labor, child labor, or both, in 58 countries. The countries on the list span every region of the world and are at different stages of development. More goods were found to be made with child labor than forced labor. By sector, agricultural crops comprise the largest category, followed by manufactured goods and mined or quarried goods. The most common agricultural goods listed are cotton, sugarcane, tobacco, coffee, rice, and cocoa; in the manufacturing sector, bricks, garments, carpets, and footwear are the most common; and gold and coal are the most frequently listed mined or quarried goods. The list and supplemental information on methodology and sources are available in a report entitled *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor (Report)*, at <http://www.dol.gov/ilab/programs/ocft/PDF/2009TVPRA.pdf>. The list is provided in two formats in the Report: sorted by country at 13-20 and sorted by good at 21-28.

469. The primary purposes of the list are to raise public awareness about the incidence of child labor and forced labor in the production of goods in the countries listed and to promote efforts to eliminate such practices. A related mandate in the TVPRA directs ILAB to work with persons involved in the production of goods on the list to create a standard set of practices that will reduce the likelihood that they will produce goods using child and forced labor. In 2008, ILAB funded a project with the National Academy of Sciences (NAS) to bring together experts in the fields of child labor, forced labor, program evaluation, and corporate social responsibility for a workshop on good practices used by firms, industries, governments, and public-private partnerships to reduce child labor and forced labor in the production of goods internationally. In 2009, ILAB funded a new contract with the Center for Reflection, Education, and Action to build upon the NAS project by producing a compendium of good business practices to eliminate child labor and forced labor.

470. The list will be updated periodically, in response to submissions of information from the public and through DOL's own research. It is important to note that the list covers goods being produced with forced labor or child labor, not service activities being carried out under these abusive labor conditions. DOL's definition of a good is “goods, wares, articles, materials, items, supplies, and merchandise.” Thus, for example, pornography is included in the list, but

prostitution and related activities are not. It is also important to note that DOL's analysis focused on forced and child labor situations, irrespective of the process that led individuals into these situations.

471. Finally, the Trade and Development Act of 2000 (TDA) and Trade Act of 2002 expanded the eligibility criteria for several U.S. trade preference programs to include beneficiary country efforts to eliminate the worst forms of child labor. The new criterion applies to eligibility for receipt of trade benefits for the Generalized System of Preferences, the U.S.-Caribbean Basin Trade Partnership Act, Andean Trade Preference Act/Andean Trade Promotion and Drug Eradication Act, and Africa Growth and Opportunity Act and defines the worst forms of child labor in accordance with ILO Convention 182. Among other activities identified as worst forms of child labor, the Act identifies "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" and "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes." The TDA requires the Secretary of Labor to issue annual findings on beneficiary country initiatives to implement their international commitments to eliminate the worst forms of child labor. Findings in the report include information on the prevalence and nature of trafficking of children and children's engagement in prostitution and pornography, as well as beneficiary government efforts to address these worst forms of child labor. The most recent report was released on September 10, 2009, available at <http://www.dol.gov/ilab/programs/ocft/PDF/2008OCFTreport.pdf>. In addition to other data collection methods in preparing its annual report, the Department of Labor invites public comment through a notice in the Federal Register. See 73 Fed. Reg. 77,841 (Dec. 19, 2008). While most comments come from foreign countries, a private company that conducts safety, quality, and social responsibility audits has also provided comments. See also ¶ 114 on prohibition on shipping or receiving goods in which "oppressive child labor" has been used.

472. In September 2008, the Department of State and the Department of Justice sent representatives to an Organization for Security and Co-operation in Europe (OCSE) conference of national TIP rapporteurs in Vienna, Austria.

473. In October 2008, an inter-agency delegation from the United States participated in the 4th UN Conference of Parties (COP) to the Convention on Transnational Organized Crime in Vienna, Austria. During the COP's discussion on implementation of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, a TIP Office representative presented the U.S. Government's victim-centered and multi-disciplinary approach to combating human trafficking

474. The United States sent a multi-disciplinary delegation to the November 2008 World Congress III Against Sexual Exploitation of Children and Adolescents (<http://www.iiicongressomundial.net>), and prepared a Report for the Rapporteur of World Congress III reflecting the U.S. Government's efforts to combat sexual exploitation of children since World Congress II in Yokohama. While in Rio, the U.S. Government was an active participant in working on the Rio Declaration and Plan of Action to Prevent and Stop Sexual Exploitation of Children and Adolescents. The World Congress III report is available as Annex 6.

475. The United States also participated in four regional and thematic preparatory experts consultations (Thematic Expert Consultations on Combating Child Sex Tourism in Florence, Italy hosted by UNICEF in April 2008; Thematic Expert Consultations on Corporate Social Responsibility and Public Private Sector Partnerships in Winnipeg, Canada convened by

UNICEF; the Canadian / U.S. Expert Consultations in Washington, D.C. hosted by ECPAT, Shared Hope, and Beyond Borders; and the Thematic Expert Consultation on Legal Frameworks, Procedures and Enforcement in Preventing and Responding to Sexual Exploitation of Children in Bern, Switzerland). The United States collaborated with NGOs in the Report of the Canada-United States Consultation in preparation for World Congress III against Sexual Exploitation of Children and Adolescents.

476. In 2007, the United States actively promoted the issue of confronting commercial sexual exploitation of children in multilateral fora. For the annual UN Commission on Crime Prevention and Criminal Justice (“Crime Commission”), the United States successfully pushed for the issue of commercial sexual exploitation of children to be one of two Commission themes. The United States introduced a resolution that was subsequently adopted. “Effective Crime Prevention and Criminal Justice Responses to Combat Sexual Exploitation of Children.” During the Crime Commission, the United States delegation also co-hosted a successful event for representatives of member states that included screening of the movie *Human Trafficking* and an expert panel discussion on child trafficking.

477. The G-8 Lyon-Roma Group finalized two U.S.-drafted documents related to commercial sexual exploitation of children: a Justice and Home Affairs Ministers’ statement, “Reinforcing the International Fight Against Child Pornography,” and “Experience in the Implementation of Extraterritorial Jurisdiction for Sex Crimes.”

478. The U.S. Department of State served as chair of the Regional Conference on Migration (RCM), an organization composed of Central and North American immigration and policy officials. Trafficking in persons was the theme of the 2007 ministerial meeting in New Orleans. At this meeting, the United States worked in tandem with other member countries to adopt a non-binding document “Regional Guidelines for Special Protection in Cases of the Repatriation of Child Victims of Trafficking.” Through the RCM, ICE, and U.S. Customs and Border Protection (CBP) organized a training workshop on trafficking in persons and smuggling that included presentations by RCM members Honduras, Mexico, Canada, and El Salvador.

3. International grants to combat trafficking

479. Through the Department of State, the Department of Labor’s Bureau of International Labor Affairs (ILAB), and the U.S. Agency for International Development (USAID), the U.S. Government provides a substantial amount of international assistance aimed at preventing trafficking in persons, protecting victims, and prosecuting traffickers abroad. Such assistance is often relevant to the obligations of the Optional Protocol. In fiscal year 2008, the U.S. Government supported 140 international anti-trafficking programs, totaling approximately \$76 million and benefiting over 70 countries. A chart providing a description and funding amount for each of the projects for fiscal year 2008 is attached as Annex 3. Annual project funding charts for fiscal year 2002 through 2008 are available at <http://www.state.gov/g/tip/c12606.htm>. This section provides further information on assistance provided to foreign countries for child-related projects.

a. Department of Labor

480. Between 1995 and 2009, the Department of Labor (DOL) provided \$330 million for anti-trafficking and commercial sexual exploitation (CSE) projects around the world. In fiscal year 2009 alone, the Department provided over \$42 million to fund 8 trafficking and CSE-related projects in 14 countries. Projects funded by the Department may address trafficking and/or CSE

as a central focus of the project, as one component of the project, or through capacity building, awareness-raising and research. The 2009 anti-trafficking and CSE projects related to child labor, which were funded in Benin, Bolivia, Brazil, Cote D'Ivoire, Ecuador, Ghana, Indonesia, Kenya, Nigeria, Malawi, Mexico, Nepal, Paraguay, and Philippines, include:

- Towards the Elimination of the Worst Forms of Child Labor in West Africa: Supporting and Monitoring the Implementation of National Action Plans in Benin, Cote D'Ivoire, Ghana and Nigeria and Strengthening Sub-Regional Cooperation through ECOWAS (trafficking component)—\$7,950,000 (International Labor Organization's International Program on the Elimination of Child Labor (ILO-IPEC));
- Combating the Worst Forms of Child Labor (WFCL) through Horizontal Cooperation in South America (trafficking component) —\$6,750,000 (ILO-IPEC);
- Uninterrupted Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector of Cote D'Ivoire and Ghana (trafficking component)—\$1,200,000 (Tulane University);
- Support for the implementation of the Kenyan National Action Plan for the Elimination of the WFCL with special focus on agriculture and older children (trafficking component)—\$4,600,000 (ILO-IPEC);
- Combating the WFCL in Indonesia through an area based approach (trafficking component)—\$5,500,000 (Save the Children Federation, in association with World Education)
- Project of Support to the National Action Plan to Combat Child Labor in Malawi (trafficking component)— \$2,757,621 (ILO-IPEC);
- Contribution to the Prevention and Elimination of Child Labor in Mexico, in particular the worst forms in the Agriculture Sector (trafficking component)—\$4,750,000 (ILO-IPEC);
- Combating the WFCL, with a focus on Forced Child Labor and Trafficking of Children into Commercial Sexual Exploitation (trafficking component)—\$4,248,224 (World Education, in association with Terres Des Hommes); and
- Towards a Child Labor-Free Philippines: Supporting the 'Philippine Program Against Child Labor' in Building on Past Gains and Addressing Challenges (trafficking component)—\$4,750,000 (ILO-IPEC).

481. In 2009, DOL funded a new project in Indonesia that will prevent or withdraw children from multiple worst forms of child labor, including: children engaged in domestic work, children working on palm oil plantations, street children, and children who have been trafficked for commercial sexual exploitation or forced labor. The project will provide direct services, including education or training opportunities. In addition, the project will implement other trafficking-related activities such as awareness raising and capacity building. The project will establish 5 community support and reintegration centers to provide individualized care for some children being withdrawn from exploitive labor, including children who have been trafficked. These centers are meant to serve as one stop service shops for these children, who will each be assigned a case manager. Trafficked children will either be reintegrated with their family or placed in foster care. The project will provide support for children placed in foster care and continue to monitor all child direct beneficiaries.

482. Also in 2009, in Malawi, DOL funded a new project that will support the Government of Malawi's efforts to implement the National Action Plan to combat child labor. As part of the overall goal of combating child labor in several sectors, the project will advocate for the passage of the country's Trafficking Bill. With district level partners, the project will use a multi-sectoral approach to combat trafficking. Under the care of child labor committees, transition homes will be created for victims of trafficking who were withdrawn from child labor. Children will also receive counselling and assistance to access formal or informal schools and/or vocational training. The project will also support the Ministry of Labor as it institutes discussions and collaboration with the Ministries of Foreign Affairs, Home Affairs, and other relevant authorities in neighbouring countries (Zambia, South Africa, and Mozambique) for the return of trafficked children.

b. Department of State

483. In fiscal year 2008 and fiscal year 2009 the TIP Office awarded more than \$38.6 million for anti-human trafficking programs: 123 projects in 64 countries totaling over \$31.65 million; 13 regional projects totaling \$4.05 million; and 12 global projects totaling over \$2.9 million. Nearly all of these awards were funded through the office's competitive grant process. In fiscal year 2008 and fiscal year 2009 approximately \$12.3 million of the total projects awarded included a child protection component. In fiscal year 2008, the Department of State Bureau of Population, Refugees, and Migration (PRM) funded approximately \$4.3 million in support of anti-trafficking activities implemented by the International Organization for Migration (IOM). The 25 projects were carried out in Africa, Asia, the Middle East, and Latin America and the Caribbean. In fiscal year 2008, USAID provided approximately \$11.6 million in anti-trafficking assistance.

484. Examples of current Department of State projects include:

- In Burma, the TIP office funded Save the Children to establish effective child protection systems in communities and townships. Save the Children's overarching objective is to establish effective child protection systems in communities and townships. Specifically, the project will focus on building collaboration and establish effective counter-trafficking community-based systems in three townships: Thaton in Mon State, Hpa'an in Karen State, and Namkham in Northern Shan State. The local protection committees will address internal and cross-border trafficking to tackle a range of child protection issues, such as physical and sexual abuse, child labor and child recruitment into armed forces. They will primarily serve children ages 10-18 who are at risk of being trafficked, are returning trafficking victims, are working in exploitative labor, and/or are internally displaced or migrating. Project activities include awareness-raising and conducting trainings in communities, collaboration within communities to establish child protection systems; and facilitation of local and national policy discussions to improve policies and procedures on human trafficking, migration, and child protection.
- In Cambodia, the TIP Office funded the International Justice Mission (IJM), which focuses on children in prostitution as their first priority, to implement a police training program in Kratie and Sihanoukville. IJM will also create a replicable program in Phnom Penh aimed at empowering and investing in survivors of commercial sexual exploitation (CSE) who, through the support and guidance of IJM aftercare partners, will reach a high level of recovery and express the desire to assist newly rescued CSE victims. In addition

to being empowered as leaders, participants will become educators in their communities, provide crisis care and mentorship to newly rescued victims, and assist in preventing trafficking in high risk areas. Also in Cambodia the TIP Office funded Mith Samlanh to establish a prevention and reintegration system for young people, mainly young women, and their families who are at risk of being trafficked. Mith Samlanh will provide educational services and activities to thousands of children; they will also provide reintegration services to street children at risk of being trafficked to support reintegration into their families. Materials on safe migration and referrals for services will be printed and distributed, new referral agents will be trained, and children will be referred to other organizations by Mith Samlanh for additional services.

- In Haiti, the TIP Office funded Anti-Slavery International to create a service model that combines community dialogue with targeted interventions, economic alternatives, and psychological support. Anti-Slavery International will use groundbreaking methods of community dialogue so that people can discuss the damaging effects of use of children for domestic servitude, referred to as *restaveks*, and can commit to ending abuses of children's rights. It will also broadcast radio programs and help to build a national movement of grassroots activists against the *restavek* system. Anti-Slavery International will also conduct a study to gather data regarding families' knowledge on how to prevent trafficking of children. The results of this survey will be used in the development and implementation of trainings aimed to increase families' understandings of trafficking in persons.
- In Côte d'Ivoire, the TIP office funded Côte d'Ivoire Prospérité to establish a reception and a transit center for young girls who are victims of trafficking and sexual exploitation. This center will include a room for registration of boarders, a dormitory equipped with beds, a dining hall, and rooms for learning activities, training, and social activities. The shelter's residents will learn an income generating activity to assist with their socio-economic reintegration. The shelter will also work to repatriate survivors. The project's goal is to improve the condition of life and existence of young girls who are victims of trafficking and sexual exploitation.
- In Egypt, the TIP office funded Catholic Relief Services (CRS) to execute a project aimed at combating trafficking in girls amongst the most vulnerable communities in Alexandria, Egypt. CRS proposes to establish and operate a shelter to serve trafficked girls, train government officials, local law enforcement and NGOs on TIP, and raise awareness on trafficking among at-risk communities in Alexandria.
- In Guinea-Bissau, the TIP office funded the International Organization for Migration (IOM) to strengthen the Guinea-Bissau government's ability to respond effectively to human trafficking. Guinea Bissau is a major centre of recruitment for child trafficking in the West African Region. In order to strengthen Guinea-Bissau's weak system and structures for child protection in the country, IOM will conduct training for law enforcement/border officials and NGOs on the issue of trafficking in children. IOM will also work to establish a National Task Force against Child Trafficking to become a coordination mechanism for counter trafficking activities in the country. Finally, IOM will provide support to a new victim shelter and provide technical assistance in shelter management and service delivery to shelter staff.
- In Afghanistan, the TIP office funded the Afghan Women Skills Development Center (AWSDC) to facilitate partnerships between communities and law enforcement agencies

fighting against sexual abuse of women and girls through human trafficking. AWSDC plans to address trafficking of women and girls through awareness raising and action research activities throughout 14 districts in the Faryab province. AWSDC will form District Advocacy Groups (DAG) comprised of attorneys, government officials, NGOs, and IOs in an effort to strengthen relationships among relevant stakeholders on the issue of TIP, as well as raise awareness of trafficking at the district level. AWSDC will also conduct research to support public legislators in their efforts related to advocating for additional measures against internal trafficking and improve existing anti-trafficking legislation.

- In India, the TIP Office funded Prayas Juvenile Aid Centre to strengthen support to children and young women violated by all forms of trafficking in persons by increasing coordination among police, concerned government departments, judiciary, prosecutors, NGOs, and other civil society organizations. This project will enhance the implementation and enforcement of already existing legislation by educating service providers and the general public. Recommendations for improvements in the laws will be developed. This project will also strengthen structures for the victims of trafficking through four model targeted interventions in Delhi, Assam, Bihar, and Gujarat. Also in India, the TIP Office funded Bachpan Bachao Andolan (BBA) to provide victim assistance by identifying, rescuing, repatriating, and rehabilitating trafficking victims of forced labor. BBA will raise awareness about the trafficking of children through an advocacy campaign. BBA will also form Peoples' Vigilance Committees to monitor and combat trafficking at both source and transit locations. BBA will equip grassroots organizations in source areas with the knowledge and technology necessary to combat trafficking and also work in partnership with government and civil society.
- In Kenya, the TIP Office funded The American Center for International Labor Solidarity (ACILS) to combat the exploitation of children in the agricultural sector. ACILS will partner with workers, trade union leaders and activists, employers, and local government officials to raise awareness of trafficking in this sector and support union capacity building to prevent trafficking and identify and assist victims. In addition, ACILS will work to improve understanding of the importance of childhood education as a prevention mechanism.
- In Guatemala, the TIP Office funded the Association for the Elimination of Child Prostitution and Pornography, Sexual Tourism and Trafficking of Children and Adolescents (ECPAT) to increase the capacity of members of the judiciary to detect and rescue victims of trafficking and to better investigate such cases. ECPAT will conduct workshops and training sessions for members of the Justice Center, the Ministry of Foreign Affairs, law enforcement, and youth members of the Youth Network Project. ECPAT will also target specific border areas of the country to help provide incentives to law enforcement coordinate prevention and detection methods and to support updating trafficking laws. ECPAT will distribute awareness raising materials in these areas in several languages and media, including radio spots.
- In the Philippines, the TIP Office funded the International Justice Mission (IJM) to continue to implement its anti-trafficking programs in Manila. IJM will provide training for local law enforcement officials to increase their capacity in terms of investigations and arrests, while increasing the ability of the government to provide post-investigation

assistance. IJM will also implement a similar program in Samar, which is a source area for children trafficked to Manila.

- At the multi-regional level, the Department of State Bureau of Population, Refugees and Migration (PRM) funded the International Organization for Migration (IOM) to develop a set of seven Counter-Trafficking Training Modules in response to the need for practical, “how to” training materials for NGOs, government officials (including law enforcement), and other stakeholders engaged in counter-trafficking activities around the world. Designed for quick delivery at modest cost, these modules enhance understanding of the key elements necessary in building a comprehensive counter-trafficking strategy. The modules provide an introduction to essential components of a comprehensive counter-trafficking response, and include topics such as: information campaigns; return and reintegration assistance; capacity-building; cooperation and networking; victim identification and interviewing techniques; direct assistance; and children’s protection. These training modules are currently available in English, Spanish, and French, and are being used for training in various parts of the world, including in the Caribbean, Southern Africa, and Southeast Asia, and Central America. IOM is currently working on translating some of these modules in other languages such as Arabic.
- In line with the goal to monitor and evaluate U.S.-funded activities to combat trafficking in persons, PRM joined efforts with the IOM to develop a module on Performance Indicators to help assess the impact and effectiveness of activities carried out in the 3-P areas of combating trafficking in persons (Protection, Prosecution, Prevention). The result is the Handbook on Performance Indicators for Counter-Trafficking Projects. This first of its kind reference tool is available for downloading to anyone interested on the IOM website at <http://www.iom.int/jahia/Jahia/pid/748> or the PRM website at <http://www.state.gov/g/prm>.

c. U.S. Agency for International Development

485. At the end of 2009, USAID was funding the following programs:

- In the Democratic Republic of Congo, through the Cooperazione Internazionale (COOPI) Program for Psychosocial Support and Reintegration of Survivors of Sexual and Gender-Based Violence in Eastern DRC, survivors of sexual and gender-based violence receive services to improve quality of life, including livelihoods and education as appropriate. The program targets victims of trafficking in persons, which includes children associated with armed groups, and those forced into prostitution or forced labor. Program runs from fiscal year 2008 to fiscal year 2011.
- In Thailand, USAID in collaboration with MTV's End Exploitation and Trafficking Campaign has raised youth awareness throughout the region, targeting those most at-risk of being trafficked or whose behavior encourages trafficking and exploitation. The program focuses on leveraging MTV’s leadership, brand appeal, and the use of high-profile celebrities to provide a platform for NGOs, governments and others to prevent trafficking and assist victims. This is a multi-year program that started in 2007.
- In Vietnam , USAID is funding the An Giang and Dong Thap Alliance on Prevention of Trafficking (ADAPT) which addresses prevention efforts through safe migration campaigns aimed at secondary schools and education centers while providing training to local officials in the Mekong Delta. UN Inter-Agency Project on Human Trafficking

(UNIAP) helps GVN analyze TIP cases to inform development of anti-TIP laws. Analysis also resulted in shelter improvements and services.

- In Albania, USAID is working with Terre des Hommes/Creative Associates to reduce child trafficking through prevention and protection efforts. These organizations are awarding and managing sub-grants to facilitate prevention and reintegration activities throughout the country.
- In Bosnia and Herzegovina, USAID is coordinating with Catholic Relief Services (CRS) to expand trafficking education to the secondary school system, improve reintegration programs to national victims by training social workers, and improve the implementation of the Bosnian Action Plan for anti-trafficking.
- In Moldova, USAID is working with UNDP in the Better Opportunities for Youth and Women in Moldova Project. The project established a network of self-sustaining transitional living and educational “halfway houses” in Moldova. The purpose of the network is to reduce the vulnerability of returned trafficking victims and state boarding school and orphanage graduates to the criminal trade in human beings in Moldova by providing safe, affordable, supervised learning and living environments where they will have access to life-skills, job and employment training, health services and counseling, and tangible work experience that can prepare them for meaningful employment in Moldova and successful (re) integration into the community.
- In Brazil, USAID in coordination with the Solidarity Center continues efforts to conduct an assessment of labor rights in industrial activity in the northeastern state of Pará. New activities with partners in Pará will produce a report on worst abuses by employers (such as forced labor, trafficking in persons and child labor) that catalogues systematic violations of ILO core labor rights.
- In Jamaica, USAID and a local umbrella NGO called Peoples Action for Community Transformation have developed public education and advocacy campaigns, targeting at-risk populations; awareness raising campaigns including the media and community organizations; strengthening the capacity of an NGO shelter for victims in a tourist resort; supporting NGO managed help line for victims of trafficking; skills training for vulnerable youth.

B. International cooperation to address root causes, in particular poverty and underdevelopment

486. In his inaugural address on January 20, 2009, President Barack Obama said, “To the people of poor nations, we pledge to work alongside you, to make your farms flourish and let clean waters flow; to nourish starved bodies and feed hungry minds.”

487. On the release of the 2009 Trafficking in Persons Report, Secretary of State Hilary Clinton commented specifically on the importance of addressing such issues in that context, stating:

Today, the State Department releases our annual report on trafficking in persons. It underscores the need to address the root cause of trafficking, including poverty, lax law enforcement, and the exploitation of women.

488. Many of the programs discussed above address efforts to assist those populations most vulnerable to the crimes prohibited under the Optional Protocol. Assistance provided by USAID, for instance, is provided pursuant to the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005, Pub. L. No. 109-95, enacted to respond to the global orphans and vulnerable children crisis. As required by the statute, the Secretary of State has appointed a Special Advisor for Assistance to Orphans and Vulnerable Children. In fiscal year 2008, the United States provided an estimated \$1,860,650,020 for programs within the Act's coordination framework. Under the Act, seven U.S. departments and agencies--Agriculture, Defense, Health and Human Services, Labor, Peace Corps, State, and USAID--provided assistance for 2,044 projects in 113 countries to nongovernmental organizations, faith-based organizations, UN agencies, international organizations, and host-country government partners to directly help children in crisis; strengthen family, community, and government capacity to identify and respond to their most vulnerable children; and conduct research and evaluations to identify the most effective interventions to care for and protect children.

489. In 2009 the Department of State compiled information on U.S. contributions to combat the debilitating effects of poverty by helping developing countries establish sound economic, social and governance policies. The paragraphs that follow are based on that compilation. See fact sheet, "The U.S. Commitment to Development," available at <http://www.state.gov/e/eeb/rls/fs/2009/113995.htm>.

490. U.S. Official Development Assistance (ODA) levels increased substantially across sectors and worldwide in 2008. The United States is the largest single donor in the world on the basis of net annual disbursements. In calendar year 2008, U.S. ODA was \$26.8 billion, an increase of 23% over the calendar year 2007 level. The United States has dramatically increased ODA from \$8.8 billion in 1998 to \$26 billion in 2008. This increase of 196% over the decade is a faster rate than at any time since the period immediately following World War II. In 2008, over \$13 billion of the U.S. ODA was dispersed through the United States Agency for International Development (USAID).

491. In 2008, U.S. ODA to the Least Developed Countries increased by over 40%, to \$6.9 billion, from \$4.8 billion in 2007. In advance of the 2005 G-8 Summit, the United States committed to doubling its assistance to sub-Saharan Africa from 2004 to 2010. From a 2004 base of \$4.3 billion, with planned increases in annual disbursements, the United States remains dedicated to meet that pledge. In 2008, U.S. bilateral and imputed multilateral aid to sub-Saharan Africa was \$7.8 billion.

492. Committed to using assistance more effectively, the United States has endorsed both the 2005 Paris Declaration on Aid Effectiveness and the 2008 Accra Agenda for Action to advance Paris Declaration implementation.

493. The Millennium Challenge Act (MCA) is an innovative model of development assistance focused on supporting good policies, country ownership and measurable results. It is built on the principle that foreign aid is most effective when it reinforces good governance, economic freedom, and investments in people. MCA investments reduce global poverty by promoting sustainable economic growth. Since its inception in 2004, the Millennium Challenge Corporation (MCC), which implements the account, has approved agreements totaling \$6.4 billion, called Compacts, with 18 country partners. These Compacts are benefitting more than 22 million people, as improved infrastructure, agricultural systems and practices and other public services spur economic growth, investment and raise local incomes.

494. May 5, 2009, President Obama announced that his Administration is committed to spending \$63 billion over six years to bring better health to people around the globe. In addition to robust funding for global HIV/AIDS, malaria, and tuberculosis, there will be increased focus on child and maternal health, family planning, neglected tropical diseases, and health system strengthening. This comprehensive global health approach can yield significant returns by investing in efforts to:

- prevent millions of new HIV infections;
- reduce mortality of mothers and children under five, saving millions of lives;
- avert millions of unintended pregnancies;
- eliminate some neglected tropical diseases.

495. A key component of the President's Global Health Initiative, the President's Emergency Plan for AIDS Relief (PEPFAR) continues to be the largest commitment by any nation to combat a single disease in history. By the end of fiscal year 2009, the American people will have invested \$25 billion in the global fight against HIV/AIDS and tuberculosis through PEPFAR. Additionally, through PEPFAR, the U.S. Government is the largest single contributor to the Global Fund to Fight AIDS, Tuberculosis, and Malaria, having contributed over \$3.3 billion and pledged \$5.3 billion since the launch of the Fund in 2002.

496. The President's Malaria Initiative (PMI), launched in June 2005, is a five-year, \$1.2-billion program. PMI challenges other governments and the private sector to join the U.S. Government in combating malaria, with the goal of cutting the malaria mortality rate by 50% in 15 countries in Africa. In the third year of implementation, the Initiative's work reached more than 32 million people. In fiscal year 2009, USAID will expand the fight against malaria by committing \$585 million. These funds will contribute to reducing deaths by malaria for children under five.

497. The United States is taking the lead to massively scale up global integrated control of neglected tropical diseases (NTDs) that disproportionately affect approximately 1 billion people globally. In less than 3 years, the U.S. Government has delivered 136 million treatments to 60 million people in 8 countries as part of its goal to deliver at least 300 million integrated treatments to people in 30 countries by 2013. The United States has encouraged investments from other donors. More than \$590 million worth of drugs were donated in 2008 in countries where the United States expanded programs, building on the long-standing contributions from the pharmaceutical industry.

498. At the G8 summit in 2005, the United States led efforts to obtain G8 approval of the Multilateral Debt Relief Initiative (MDRI). The initiative called for 100% cancellation of heavily indebted poor countries' (HIPC) eligible debt obligations to the World Bank, African Development Bank, and the International Monetary Fund.

499. The United States is the world's largest bilateral contributor to the United Nations, the multilateral development banks (MDBs), and the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund). In 2008, United States contributions to multilateral organizations including the UN, the Global Fund, the World Bank, and other MDBs totaled approximately \$2.9 billion. These contributions are to organizations promoting economic growth, poverty reduction, and increased living standards through development and humanitarian assistance. Our assistance leverages tens of billions of dollars from other donors.

500. The United States is working to help countries most affected by hunger and the impact of the global financial crisis. The U.S. Government is providing over \$5.5 billion to fight global hunger in 2008 and 2009. Speaking in London in April 2009 at the G-20 Summit, President Obama announced his intention to work with Congress to double agricultural development assistance to over \$1 billion, to give “people the tools they need to lift themselves out of poverty.” These funds are designed to work with partner countries to increase productivity and rural incomes by modernizing developing country agriculture. In June 2009, Secretary Clinton identified seven principles that support sustainable systems of agriculture in rural areas at the 2009 World Food Prize ceremony:

- Increasing agricultural productivity by expanding access to quality seeds, fertilizers, irrigation tools and rural credit;
- Stimulating the private sector by improving the storage and processing of foods and improving rural roads and transportation;
- Maintaining natural resources so that land can be farmed by future generations;
- Expanding knowledge and training to cultivate the next generation of plant scientists;
- Linking small producers to markets; supporting policy reform and good governance; and
- Supporting women, who make up 70% of the world’s farmers.

These seven principles will guide upcoming work and will help set benchmarks. The United States Government has a long tradition of providing longer term agricultural development assistance. Increasingly, such assistance focuses not only on sustainable agricultural production, but on post-production storage, land management, marketing, and food quality.

501. In fiscal year 2008, the United States through USAID and the MCC committed more than \$1 billion in over 50 developing countries around the world to increase access to safe water and sanitation, improve water resources management, and increase the productivity of water. The United States also worked to strengthen cooperation on shared waters in key river basins in Africa, Asia and the Middle East. As a result of U.S. efforts, over 4.5 million people gained first-time access to an improved water source and more than 2 million gained first-time access to basic sanitation.

502. The United States has committed over \$3 billion in foreign assistance funding for climate change activities as part of its development mission since 1991. President Obama and Secretary Clinton have made it clear that the United States is fully committed to addressing the climate crisis and have proposed substantial funding increases in foreign assistance to address climate change. For fiscal year 2010, the State Department, USAID, and the Treasury Department are requesting more than \$1.2 billion in bilateral and multilateral assistance to promote clean energy in developing countries, cut emissions from forests and land use, and help the most vulnerable countries prepare for and respond to the impacts of climate change. This request includes significant increases across the board, including \$312M for climate adaptation - a nearly nine-fold increase.

503. The U.S. investments in a multitude of conservation initiatives worldwide – from the Coral Triangle Initiative to the Congo Basin Forest Partnership – play pivotal roles in building local capacity and providing support, training, and expertise to developing countries. The United States has invested more than \$100 million through the Congo Basin Forest Partnership (CBFP) to support sustainable forest management and improve livelihoods throughout the region since

2002. The success of these investments in the region, in turn, helped to attract other donors and leverage at least \$300 million in additional investments.

504. To ensure that the United States remains a global leader in efforts to assist all girls and boys to access quality basic education, the fiscal year 2010 President's Budget includes \$1 billion (including \$20.7 million in P.L. 480 non-emergency development food aid) for international basic education programs to help all learners, including at-risk and out-of-school youth, to master basic skills. The United States Government, primarily through USAID, will support assistance for basic education programs in over 50 countries in Africa, Asia, the Middle East, Latin America and Eurasia, including improvements in early childhood, primary, and secondary education quality and access. An additional \$188 million was requested in fiscal year 2010 for higher education programs. Additionally, several other U.S. agencies support international education-related activities as part of programs that address their broader mission goals such as the Peace Corps, the Millennium Challenge Corporation, Agriculture (USDA), Defense (DOD), and Labor (DOL). For example, DOL supports alternative school programs as a way to remove children from exploitative work, USDA supports school feeding programs, and DOD constructs dormitories and schools to provide better access for children who have to travel long distances to attend classes.

505. In addition, the Department of State fosters mutual understanding between the people of the United States and the people of other countries through international exchange and educational programs. These programs engage current and future leaders in many fields in the United States and over 160 other countries through academic, youth, cultural and professional exchanges and programs. Over 1 million individuals around the world have participated in these programs and alumni include more than 40 Nobel Laureates and more than 300 current and former heads of state and government. Funding for these programs is not included in Official Development Assistance figures.

506. The United States is the largest donor country of official humanitarian aid for victims of famine, persecution, armed conflict and natural disasters. U.S. humanitarian assistance totaled roughly \$4.4 billion for 2008 and was aimed at helping those affected by disaster through the rapid delivery of food, water, shelter, and health care. The United States is also the largest single country supporting refugee protection, assistance and durable solutions. As the largest single country providing food aid, the United States gave \$2.8 billion in food aid in 2008 to food insecure countries.

507. In addition to funding to protect and assist victims of conflict and natural disasters, the United States has contributed over \$1.4 billion since 1993 to mine clearance, mine survivors assistance, mine risk education, and research and development on detection and clearance technologies through the Humanitarian Mine Action Program. These efforts have contributed to a dramatic drop in casualties from persistent landmines and other explosive remnants of war.

508. Trade is a powerful anti-poverty tool, spurring economic growth, increasing opportunity, and creating new and better paying jobs. In recognition of this fact, the U.S. Government has led by example in promoting trade with developing countries. The United States is the largest net importer from developing countries at \$610 billion in 2008 (\$1,089 billion in imports minus \$479 billion in exports). Excluding China, net developing country imports total \$325 billion in 2008 (\$733 billion in imports minus \$408 billion in exports). These amounts dwarf the size of other financial flows to these countries, creating jobs for millions of people. Through preference programs including the African Growth and Opportunity Act, the Caribbean Basin Initiative, the Andean Trade Preference Act, and the Generalized System of

Preferences, many developing country goods receive zero-tariff access to the U.S. market. The United States is also a leader in “trade capacity building“ programs (also known as “Aid for Trade”) aimed at allowing developing nations to better integrate into and benefit from the global trading system and also building the competence of trade partners for effective environmental and labor protection. The United States has contributed \$9.9 billion total since 2000. For fiscal year 2008, the U.S. Government reports an annual trade capacity building assistance total of \$2.24 billion, which is 59% higher than in fiscal year 2007.

509. The United States is the leading country in private financial flows to the developing world, with net capital flows exceeding \$99 billion in 2007. In addition, residents of the United States lead the world in their personal generosity, sending over \$48 billion in personal remittances and giving an estimated \$12 billion in private charitable contributions in 2007. This funding is not included in total Official Development Assistance figures.

510. USAID’s Global Development Alliance (GDA) was created in 2001 to forge public-private alliances that leverage the skills and resources of non-traditional partners in development efforts. To date, USAID has cultivated over 900 public-private partnerships with more than 1,700 local and multi-national businesses, foundations and others to address development issues that are of mutual strategic interest. These partnerships have leveraged over \$9.6 billion⁸ in partner resources. The Overseas Private Investment Corporation, U.S. Export-Import Bank, U.S. Trade and Development Agency, the Millennium Challenge Corporation and the Office of the U.S. Global AIDS Coordinator, as well as many USAID headquarters and field offices, also engage in public-private alliances, implementing programs ranging from increasing access to potable water to providing technology for sustainable environmental protection among the world’s poor. In April 2009, Secretary Clinton announced the Global Partnership Initiative at the State Department to lead and facilitate the overall U.S. engagement with foundations, nongovernmental organizations, the private sector, faith-based groups, and diaspora in order to achieve U.S. smart power objectives.

⁸ Partner contributions are estimates provided to USAID by its partners and may include contributions by various partners including the private sector, non-governmental organizations, foreign governments and other organizations. Estimated contributions include cash and in-kind resources. In-kind resources estimates may have been valued by non-USAID partner organizations. Partner contribution estimates are not audited.

Part II

United States Response to Recommendations by the Committee on the Rights of the Child in its Concluding Observations Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The United States appreciates the Committee's comments on positive aspects of U.S. implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. We have considered all of the Committee's recommendations included in the Committee's Concluding Observations, June 25, 2008 (CRC/C/OPSC/USA/CO/1) (Committee's Concluding Observations) and appreciate the opportunity to transmit our responses in Part II.

As a preliminary matter, the United States appreciates the ongoing dialogue with the Committee on the issues identified in the Committee's Concluding Observations. Many of these issues are also covered in the Committee's Revised Guidelines Regarding Initial Reports, CRC/C/OPAC/22 (Guidelines), which guided U.S. preparation of its Periodic Report, included as Part I of this submission. Rather than repeating material provided in the Periodic Report in those instances, the United States has provided a brief response here, with cross-references to further information on the relevant topic in the Periodic Report. For issues not addressed in the Periodic Report, Part II provides a full response.

Committee Recommendation ¶ 9:

“9. The Committee recommends that the State party consider developing and implementing a comprehensive and systematic mechanism of data collection, analysis and monitoring on all the issues covered by the Protocol. The data should be disaggregated, inter alia, by the nature of the offence and by age, sex, ethnicity, socio-economic status and geographical location. The coverage of data collection and studies should include all of mainland United States as well as the insular areas and other dependent areas over which the United States exercises sovereignty. The Committee also recommends that the State party consider using, in the development of programmes and activities in all the areas covered by the Optional Protocol, the definitions used therein or contained in other international standards to which the State party has adhered.”

U.S. Response to ¶ 9:

The United States has provided extensive data in response to the Committee's Guidelines throughout its Periodic Report, included as Part I of this submission, in particular in Section II. Collection of data is necessarily more complicated for the United States because of its federal system. Nevertheless, the National Strategy on trafficking in persons discussed in response to the Committee's Recommendation in ¶ 11 below will address many of the issues relevant to the Optional Protocol.

For U.S. states and territories, the United States has provided information in Section V of the Periodic Report on such key issues as the relevant criminal laws of U.S. states, the District of Columbia, and territories.

As to the Committee's comment on definitions, the United States generally relies on definitions in the Optional Protocol and other relevant international instruments that represent international obligations agreed to by the United States. *See also* U.S. response to ¶ 33 below.

Committee Recommendation ¶ 11:

“11. The Committee recommends that the State party develop a National Plan of Action aimed at addressing comprehensively all the issues covered by the Optional Protocol and provide adequate human and financial resources for its implementation.”

U.S. Response to ¶ 11:

The Department of Justice is developing a National Strategy for Child Exploitation Prevention and Interdiction to further this critical goal, consistent with the Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401. The National Strategy will establish long-range goals for preventing child exploitation, including annual objectives for measuring the Government's progress in meeting those goals. Currently, as the Committee recognizes, the United States has extensive programs to combat trafficking in persons, including children, which exist for both cross-border and domestic trafficking. As discussed in ¶ 11 of the Periodic Report, the wide-reaching U.S. implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol) addressing prevention and punishment of trafficking of children for exploitation, including for sexual exploitation and forced labor, and assistance for victims largely overlap with U.S. obligations under the Optional Protocol.

Committee Recommendation ¶ 13:

“13. The Committee recommends that the State party strengthen coordination among the different agencies and governmental departments working in the areas covered by the Optional Protocol, both at federal and state levels. The State party is also encouraged to strengthen the coordination with nongovernmental organizations in the implementation and evaluation of the Optional Protocol.”

U.S. Response to ¶ 13:

As discussed in Section III.B. of the Periodic Report, the United States relies on extensive coordination among federal executive branch agencies and between federal and state governmental entities to implement its obligations under the Optional Protocol. Many of these programs include significant participation by non-governmental entities such as the National Center for Missing and Exploited Children. In preparing its Periodic Report, the United States sought input from interested non-governmental entities, including holding two meetings with representatives of interested organizations.

Committee Recommendation ¶ 15:

“15. The Committee recommends that the State party:

- (a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups, including law enforcement personnel, judges, lawyers, social and health-care workers, immigration and customs officers, religious and community leaders, civil society organization organizations accredited for adoption;**
- (b) Strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material specifically for children;**
- (c) Promote, in cooperation with civil society and the media—in line with article 9, paragraph 2, of the Optional Protocol—awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of all the offences referred to in the Optional Protocol, including by translating into appropriate languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in accessing such information, education and training programmes.”**

U.S. Response to ¶ 15:

The United States continues to develop its extensive training and public awareness activities related to the Optional Protocol both in the United States and abroad. *See* Sections III.C., IV.C. and VII.A. of the Periodic Report. U.S. programs to provide service benefits to victims offer multiple examples of the crucial role of community participants in public awareness and the actual provision of the benefits, as discussed in Section VI.G. of the Periodic Report.

As discussed in response to the Committee’s Recommendations in ¶¶ 45 and 46, the United States has launched a new effort to increase awareness of the importance of its obligations under the Optional Protocol.

As to school curricula specifically, Section IV.C.5. of the U.S. Periodic Report provides information disseminated by the Department of Education to promote attention to protecting school children from the offenses in the Optional Protocol. The goal of these efforts is to raise awareness among teachers, principals, guidance counselors, and others who are in daily contact with children in the school system. Efforts actually undertaken by the school systems are, however, a matter of state and local prerogative in the U.S. federal system. The National Center for Missing and Exploited Children and the Boys and Girls Clubs of America provide extensive resources for school children on the crucial issue of internet safety through NetSmartz.org. Online resources are available for teenage children at www.netsmartz.org/netteens.htm and for younger children at www.netsmartzkids.org/indexFL.htm.

Committee Recommendation ¶ 17:

“17. The Committee recommends that the State party:

(a) Provide more information in the next report on the budget allocations for the implementation of the Optional Protocol, in particular those addressed to services for child victims of the offences covered by the Protocol;

(b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention of the offences, protection and rehabilitation of child victims and prosecution of the perpetrators of all the offences covered by the Protocol;

(c) Adopt a human rights approach to its budgeting with particular focus on children.”

U.S. Response to ¶ 17:

The United States has provided available information on funds budgeted to activities covered by the Optional Protocol in Section III.E. of the Periodic Report.

Committee Recommendation ¶ 19:

“19. The Committee recommends that the federal and state governments consider the creation of human rights institutions in accordance with the Paris Principles to monitor and promote the Optional Protocol. These institutions should be provided with the necessary human and financial resources to carry out their mandates.”

U.S. Response to ¶ 19:

U.S. mechanisms for human rights enforcement and relevant institutions are discussed in Section III.G. of the U.S. Periodic Report. The United States hopes that the Committee will consider the effect of the tight network of agencies and offices dedicated to ensuring the protections of all human rights which the United States believes achieves the results sought by the Committee.

The United States has again reviewed the Paris Principles, “Principles relating to the status of national institutions,” annexed to UN General Assembly Resolution 48/134. This review has confirmed the U.S. view that it has many ways of ensuring compliance with its human rights obligations, within the federal government, in state governments, and with NGOs and other members of civil society, without a national human rights institution per se. The United States notes in this regard that the General Assembly “welcome[d]” the Principles and “encourage[d]” the establishment of national institutions but did not purport to mandate their creation.

Committee Recommendation ¶ 21:

“21. The Committee is of the view that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach,

addressing the contributing factors thereto, and recommends that the State party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism. Particular attention in the preventive efforts should be given to protect children throughout the State party who are especially vulnerable to such practices.”

U.S. Response to ¶ 21:

The United States believes that the information provided throughout the Periodic Report will relieve the concerns indicated by the Committee as to the focus of the United States on sale of children, child prostitution and child pornography. The United States shares the Committee’s view of the importance of preventing the offenses covered in the Optional Protocol. To that end, the United States has made extensive efforts to address the root causes contributing to the vulnerability of children to the offenses covered by the Optional Protocol. U.S. efforts to prevent these offenses and protect children, including those who are most vulnerable due to poverty, marginalization, and other factors, are discussed in particular in Sections IV. B. and VII. B. of the U.S. Periodic Report.

Committee Recommendation ¶ 23:

“23. The Committee recommends that demand for sexual services involving the exploitation of children be addressed through both prevention and prosecution measures. Preventive measures should include, among others, public awareness campaigns aimed at the individuals and groups creating demand for sexual exploitation of children.”

U.S. Response to ¶ 23:

Reduction in demand is indeed a crucial element of preventing the occurrence of the offenses covered by the Optional Protocol. The United States has taken extensive efforts to address demand, including those discussed in Section IV.A. of the U.S. Periodic Report.

Committee Recommendation ¶ 25:

“25. The Committee recommends that the State party continue to combat child prostitution, both involving foreign children trafficked into the country and “internal” child prostitution. To this end, the Committee recommends, inter alia, that the State party monitor enforcement and implementation of child prostitution laws at the state level and consider increasing human and financial resources for protection programmes, including awareness campaigns and training.”

U.S. Response to ¶ 25:

The United States agrees with the Committee that combating child prostitution and providing assistance to victims must be and is a high priority. The Periodic Report demonstrates the U.S. commitment in this regard. Section II.A. of the U.S. Periodic Report discusses the available information on the incidence of child prostitution and pornography in the United States and the fact that the United States is taking steps to increase reliable data by funding a national prevalence study with two primary questions: how many youth under 18 were victims of commercial sexual exploitation in 2008 in the United States, and how many of the victims were known to law enforcement? The first *Biennial Comprehensive Research and Statistical Review and Analysis of Severe forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States*, prepared by the National Institute of Justice in the U.S. Department of Justice Bureau of Justice Statistics is attached to this submission as Annex 2.

As discussed in Sections III.B. and V.G. of the U.S. Periodic Report, the federal government works with state governments through task forces and grants to support enforcement and implementation of laws relevant to all of the offenses in the Optional Protocol, many of which focus on issues related to child prostitution.

Protection programs, including awareness campaigns, are discussed in Sections IV.C. and VI. of the U.S. Periodic Report. The United States continues to pursue increased funding to achieve greater awareness and broader training opportunities.

Committee Recommendation ¶ 27:

“27. The Committee recommends that the State party

- (a) Improve enforcement of the existing legislative framework on child pornography;**
- (b) Intensify its efforts to take the necessary measures to address the rapidly changing nature of technology;**
- (c) Strengthen its measures to identify and assist child victims of child pornography;**
- (d) Continue to strengthen international cooperation to prevent and punish child pornography.”**

U.S. Response to ¶ 27:

The United States is working hard to reduce its role as producer and consumer of child pornography and to combat the rise in cyber-crimes involving children, including pornography. By way of example, law enforcement programs such as Project Safe Childhood, Internet Crimes Against Children task forces, the Innocence Lost Initiative, and Operation Predator under the Cyber Crimes Center of the Department Homeland Security all focus on internet crimes, many specifically those dealing with children. Operation Joint Hammer and the Virtual Global Task Force are but two examples of international cooperation in fighting internet crimes. The existing criminal laws on child pornography are set forth in Section V.C. of the U.S. Periodic Report; enforcement is discussed in Sections III.B., V.G. and VII.A.1., and prevention in Section IV.

As discussed in ¶ 41 of the U.S. Periodic Report, in October 2008 the President signed into law The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008 (PROTECT Our Children Act of 2008), Public Law No. 110-401, which provides new tools for fighting internet crimes.

The U.S. Department of Justice has a dedicated section of its Criminal Division, the Child Exploitation and Obscenity Section (CEOS), created in 1987, to focus on these issues domestically, and the Department of Homeland Security Immigration and Customs Enforcement (ICE) focuses on the international, trans-border dimension of child exploitation. Both agencies have a heavy emphasis on child pornography. The work of both offices is discussed extensively throughout the U.S. Periodic Report.

Committee Recommendation ¶ 29:

“29. The Committee recommends that the State party continue to strengthen its measures to combat sex tourism, including by raising awareness to tackle attitudes, such as the idea that is acceptable to abuse and exploit children living in poverty in foreign countries. The Committee also recommends that the State party take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and cooperating closely with travel operators, media, NGOs and civil society organizations to combat all forms of commercial sexual exploitation of children in travel and tourism.”

U.S. Response to ¶ 29:

The United States has a strong record in successfully combating sex tourism as discussed in the Periodic Report in Sections II.B., III.G.; IV.C.; V.B., F., G., L., M.; and VII.A. As noted in ¶ 302 of the Periodic Report, recent legislation has expanded the tools with which U.S. officials can pursue those who engage in sex tourism.

Committee Recommendation ¶ 31:

“31. In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party:

- (a) Adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes;**
- (b) Ensure that not only the accredited agencies, but also the approved persons, pursue only non-profit objectives;**
- (c) Expressly prohibit all forms of possible active solicitation for children, including the payment of pre-natal and other expenses;**
- (d) Intensify its efforts to prevent and punish all the cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale;**

(e) Seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention;

(f) Effectively apply the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to ensure that American children are primarily adopted in the United States.”

U.S. Response to ¶ 31:

Section V.J. of the U.S. Periodic Report provides detailed information on U.S. implementation of its obligations under the Hague Adoption Convention.

a. Paragraphs 262-268 of the Periodic Report specifically address prohibitions on child buying. As explained there, § 404 of the Intercountry Adoption Act criminalizes improper inducement as required by Article 3.1(a)(ii) of the Optional Protocol and consistent with Articles 4.c and 32 of the Hague Adoption Convention.

b. The United States has fully implemented its obligations under the Hague Adoption Convention. The United States believes that its provision for approval of individuals or private for-profit entities should allay the Committee’s stated concern with the role of for-profit persons in the U.S. adoption system; all such persons and entities are required to meet strict standards of performance. The recommendation that the United States ensure that approved persons “pursue only non-profit objectives” is not based on a requirement of the Hague Adoption Convention or the Optional Protocol.

Article 22(1) of the Convention provides that the functions of a Central Authority (which, as defined under the Convention include adoption services) “may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.” The United States agrees that bodies accredited under Chapter III are obligated to comply with the requirement in Article 11 that “an accredited body shall (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation.” Paragraph (2) of Article 22, however, establishes an alternative to paragraph (1), not subject to Chapter III. Paragraph (2) provides that the functions of the Central Authority under Articles 15-21 may be performed, “to the extent permitted by the law and subject to the supervision of the competent authorities of [the] State, *also* by bodies or persons who – (a) meet the requirements of integrity, professional competence, experience and accountability of that State and (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.” (Emphasis added). As the Committee notes in its comments in ¶ 30, this is the provision applicable to approved persons.

As explained in the explanatory report prepared by Rapporteur Gonzalo Parra Aranguren,

Paragraph 2 of Article 22 . . . entitles any Contracting State to declare that the procedural functions assigned to the Central Authority under Articles 15 to 21 may also be performed, but only in that State, by persons or bodies other than the public authorities or bodies accredited according to Chapter III.

Hague Conference on Private International Law, Actes et Documents (Proceedings) of the 17th Session, Tome II, Adoption – Cooperation (1994), at ¶ 378.

Pursuant to Article 22(2), the United States included the following declaration in its instrument of ratification of the Convention:

The United States declares, pursuant to Article 22(2), that in the United States the Central Authority functions under Articles 15-21 may also be performed by bodies or persons meeting the requirements of Articles 22a and b, and 32.⁹ In addition, such bodies or persons will be subject to federal law and regulations implementing the Convention as well as state licensing and other laws and regulations applicable to providers of adoption services. The performance of Central Authority functions by such approved adoption service providers would be subject to the supervision of the competent federal and state authorities in the United States.

In keeping with this declaration, § 203 of the Intercountry Adoption Act establishes minimum requirements applicable to both accreditation of agencies and approval of persons, and requires the Secretary of State to issue regulations prescribing “the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the convention.” The minimum requirements established in the regulations are the same for both agencies and persons, including that they be licensed to provide adoption services in at least one state of the United States. For further discussion of these provisions, see Section V.J.3. of the U.S. Periodic Report.

c. The United States prohibits all forms of possible active solicitation for children, as indicated above in its response to Committee Recommendation 31. In ¶ 26 of its Initial Report to the Committee, the United States explained that it had stated, at the final session of negotiations of the Optional Protocol, that it understood the term “improperly inducing consent” to mean knowingly and willfully inducing consent by offering or giving compensation to secure the relinquishment of parental rights. No delegation stated a contrary understanding. The payment of reasonable “medical, hospital, nursing, pharmaceutical, travel, or similar expenses incurred by a mother or her child in connection with the birth or any illness of the child” is permitted under U.S. law, but cannot be used for improperly inducing consent. As discussed in Section V.J.5. of the U.S. Periodic Report, both the Department of State and the Department of Homeland Security have regulations specifically prohibiting child buying. Department of Homeland Security regulations make clear that the consent of the mother can be provided only after the birth of the child, as required by Article 4(c)(4) of the Hague Convention, thus reducing the potential for influence from payment of pre-natal expenses.

d. Sections II.A., IV. and V.A. of the U.S. Periodic Report, among others, discuss U.S. efforts to prevent and punish all cases of sale of children, irrespective of the purpose of the sale. As indicated in response to the Committee’s Recommendation in ¶ 27, the Child Exploitation and Obscenity Section of the Department of Justice Criminal Division actively pursues the enforcement of internet crimes that target children.

In response to an additional question from Ms. Rosa María Ortiz, Vice Chair, Committee on the Rights of the Child, U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.2, the United States provided the following information, modified slightly here to address sale by anyone, rather than limited

⁹ Article 32 of the Convention provides that “(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption. (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid. (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”

to the focus of the original question on sale by a mother. There is no difference, however, in the applicable laws.

Whether a particular act can be prosecuted by federal or state law would depend on a wide range of circumstances. We can assure the Committee, however, that prohibition and criminal punishment of the sale of children as provided for in the Optional Protocol would be fully covered by U.S. law, including a sale via the internet.

More specifically, federal law prohibits the sale of a child on the internet for adoption where the seller knows that the child will be caused to engage in a commercial sex act (18 U.S.C. § 1591) or will be portrayed in child pornography (18 U.S.C. § 2251A), or where the seller transports the child to be prostituted or for involvement in sexual activity (18 U.S.C. §§ 2423(a) or 2423(b)).

In addition, the federal government may prosecute anyone who sells (or, in the case of 18 U.S.C. § 2251A, attempts to sell) her child over the internet where:

- The seller knows that the child will be caused to engage in a commercial sex act (see 18 U.S.C. § 1591. If the child is under the age of 14, the mandatory minimum sentence for this crime is 15 years; otherwise it is 10 years); or
- The seller knows that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct; or the seller intends to promote the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct (see 18 U.S.C. § 2251A. There is a 30 year mandatory minimum sentence for this crime).

e. Section V.J.12. discusses key aspects of adoptions from countries not parties to the Hague Adoption Convention. While there is no international obligation to extend the safeguards guaranteed in the Convention to such adoptions, the United States takes steps to protect children in all adoptions. Indeed, the United States would like all countries to join the Hague Adoption Convention, and is working together with some countries toward that goal, so that all intercountry adoptions to and from the United States meet Hague Convention standards.

f. Section 303 of the U.S. Intercountry Adoption Act (IAA) sets forth requirements applicable in an adoption under the Adoption Convention involving the emigration of a child residing in the United States to a foreign country. As the Committee notes, this includes the requirement set forth in § 303(a)(1)(B), which requires assurance that the accredited agency or approved person, in accordance with the Convention, “(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and (ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner.” These requirements are effectively applied as set forth in §§ 303(a)(2) and (b). Subsection (a)(2) requires the accredited agency or approved person (or in certain circumstances the prospective adoptive parent or parents) to ensure compliance with all § 303 requirements, including § 303(a)(1)(B), and to furnish to the state court with jurisdiction over the case documentation of, among other things, the matters described in § 303(a)(1).

In turn § 303(b) provides that the court shall not enter an order declaring an adoption to be final or granting custody for the purpose of adoption of a child emigrating from the United

States unless it (1) has received and verified to the extent it may find necessary – (A) the material described in subsection (a)(2) (including efforts to find prospective adoptive parents to adopt the child in the United States); and (B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and (2) has determined that the adoptive placement is in the best interests of the child.

The IAA is consistent with Article 4 of the Hague Adoption Convention, which requires that the competent authorities of the State of origin, among other things, “have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests.”

Paragraph 128 of the Explanatory Report on the Hague Abduction Convention commented as follows on this matter:

128. Notwithstanding the express acceptance of the subsidiarity principle, there was consensus that, in certain circumstances, the best interests of the child may require that he or she be placed for adoption abroad, even though there is a family available in the State of origin, for instance, in cases of adoption among relatives, or of a child with a special handicap and he or she cannot adequately be taken care of.

Committee Recommendation ¶ 33:

“33. The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party:

- (a) Define and prohibit child prostitution in accordance with articles 2 and 3 of the Optional Protocol both at federal and state levels;**
- (b) Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state levels;**
- (c) Ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Optional Protocol.”**

U.S Response to ¶ 33:

Section V. of the U.S. Periodic Report provides an extensive discussion of U.S. criminal law applicable to the offenses covered by the Optional Protocol at both the federal and state level addressing attempts, complicity and participation, and providing information on penalties for violations.

Child prostitution is clearly covered by these statutes consistent with Articles 2 and 3 of the Optional Protocol. As to the Committee’s concern that there is no federal law “defining or prohibiting child prostitution per se,” 18 U.S.C. § 1591 prohibits recruiting, enticing, harboring,

transporting, providing, obtaining, or maintaining a child knowing that the child would be caused to “engage in a commercial sex act.” “Commercial sex act” is defined to mean “any sex act, on account of which anything of value is given to or received by any person.” The fact that the term “child prostitution” is not used or defined as a matter of federal criminal law does not affect the fact that the statute clearly addresses the activities proscribed under the Optional Protocol.

Committee Recommendation ¶ 34:

“34. The Committee further recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further strengthen the framework for the protection of children’s rights.”

U.S. Response to ¶ 34:

The Optional Protocol does not require States Parties to be or become States Parties to the Convention on the Rights of the Child. The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

Committee Recommendation ¶ 36:

“36. The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Optional Protocol abroad – if it does not extradite him or her to another State party -- even if the country where the offence was committed is not a Party to the Optional Protocol or does not criminalize these acts in its legislation.”

U.S. Response to ¶ 36:

As discussed in Section V.L. of the U.S. Periodic Report, in addition to cases covered by special aircraft or special maritime and territorial jurisdiction, U.S. law extends jurisdiction under a number of statutes relevant to its implementation of the Optional Protocol. As noted in the U.S. Initial Report, the inclusion of jurisdiction by a State party over its nationals as perpetrators or victims outside the United States under Article 4.2 is not mandatory and the United States, unlike some other legal systems, does not routinely do so. Similarly, the requirement to establish jurisdiction over an alleged offender present in a State Party if the State

Party refuses to extradite the offender on the basis of nationality is inapplicable to the United States because U.S. nationality is not a grounds for denying extradition.

Nevertheless, in 2008, Public Law No. 110-457 added additional extra-territorial jurisdiction over

any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589 , 1590, or 1591 if—

(1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence. . .;or

(2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

18 U.S.C. § 1596. The referenced peonage, slavery, and trafficking offenses are discussed in Section V.L. of the U.S. Periodic Report.

Committee Recommendation ¶ 38:

“38. The Committee recommends that the State party:

(a) Ensure that all persons below the age of 18 victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized at federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country;

(b) Take all necessary measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Optional Protocol, the best interests of the child shall be a primary consideration;

(c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels. The State party should be also guided in this respect by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20).”

U.S. Response to ¶ 38:

The United States appreciates the Committee’s recognition of its efforts in protecting child victims of the offenses covered by the Optional Protocol in the criminal justice system, as

further elaborated in Section VI of the U.S. Periodic Report. These actions are, of course, consistent with U.S. obligations under Article 8, paragraph 1, of the Optional Protocol.

As an initial matter, prostitution is not a federal crime in the United States for either adults or children.

The Committee notes its concern that state laws in the United States have not yet uniformly exempted children used in prostitution from arrest and prosecution. Due to our federal system, the U.S. federal government cannot effect changes directly in state criminal laws although it can encourage such efforts. As discussed in ¶¶ 102-103 of the Periodic Report, the state of New York has taken major strides in recent years, including the adoption of the Safe Harbor for Sexually Exploited Youth Act in September 2008. The Children's Studies Center of the City University of New York convened the *Third Child Policy Forum of New York: Implementation and Monitoring of the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography* in February 2009. In an address to the forum, William A. Scarborough, Chairperson of the Standing Committee on Children and Families, New York State Assembly, described the legislation as follows:

[S]exually exploited youth should not be prosecuted under the penal law for acts of prostitution; instead, services should be created to meet the needs of these youths outside of the justice system. Sexually exploited youth deserve the protection and services of the family court, with processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long-term housing services. In a nutshell, this is what we've tried to do.

The Children's Studies Center published the Proceedings of the Third Child Policy Forum, including the text of the Optional Protocol and the Committee's Concluding Observations, available at <http://www.brooklyn.cuny.edu/pub/departments/childrenstudies/>.

Other states have created child ombudsmen or child advocates offices that are also engaged in these issues, as discussed in Section III.G. of the U.S. Periodic Report.

As to the Committee's reference to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the United States joined consensus when the UN Economic and Social Council adopted the Guidelines in Resolution 2005/20. The resolution states that the committee adopted the Guidelines "as a useful framework that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system" and "invite[d] Member States to draw, where appropriate, on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings." The United States joined consensus on Resolution 2005/20 on the basis of this non-binding language. The United States further notes that the Guidelines rely on the Convention on the Rights of Child, to which the United States is not party. Nevertheless, U.S. actions are fully consistent with the language of the resolution.

Committee Recommendation ¶ 40:

“Paragraph 40. The Committee recommends that the State party:

(a) Ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol;

(b) Ensure that foreign children victims of the offences covered by the Protocol are not deported but rather granted the necessary services aimed at their physical and psychological recovery. When return in the country of origin is considered to be the best option in the interests of the child, an adequate assessment concerning the situation in the countries of origin, including - if possible - the family environment, should be undertaken;

(c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Optional Protocol;

(d) Ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.”

U.S. Response to ¶ 40:

The United States continues to expand and refine benefits available to all child victims of the offenses covered by the Optional Protocol as explained in Section VI.G. of the U.S. Initial Report.

The Committee’s comments in ¶ 39 of its Observations indicate its concern that victims of domestic child sexual exploitation may not have the same services available as child trafficking victims from other countries. As the discussion in Section VI.G.3. indicates, the trafficking legislation took important steps to make benefits available to U.S. victims also be available to foreign victims. The United States recognizes that the resulting focus on benefits for foreign victims has in some cases resulted in greater awareness and delivery of services for those victims. The United States continues its efforts to meet the needs of domestic victims, as demonstrated in Section VI.G.1. and 3. of the U.S. Periodic Report.

The United States has taken significant steps to enable foreign victims of severe forms of trafficking to remain in the United States. The relevant immigration benefits are discussed in Section VI.G.2. of the U.S. Periodic Report.

Training for all persons who work with victims is discussed in Section VI.D. of the Periodic Report.

Criminal and civil remedies providing compensation for damages to victims are discussed in Section VI.G.4. of the U.S. Periodic Report.

Committee Recommendation ¶ 42:

“ Paragraph 42. The Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements,

giving due attention to the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, in accordance with the Optional Protocol. These arrangements should always be in the best interest of the child and respect international human rights standards.”

U.S. Response to ¶ 42:

Ongoing U.S. efforts to strengthen international cooperation, undertaken in a manner consistent with its international human rights obligations, are discussed in Section VII. of the U.S. Periodic Report.

Committee Recommendation ¶ 43:

“43. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, including interregional programmes, and non-governmental organizations, in the development, implementation and evaluation of measures aimed at an adequate application of the Optional Protocol.”

U.S. Response to ¶ 43:

The United States has a well-documented practice of working with the United Nations on important issues including the implementation of its obligations under the Optional Protocol and to assist other countries with implementation of their obligations under the Optional Protocol. The U.S. Periodic Report, particularly in Section VII.A. and these responses to recommendations are a significant part of that effort.

The United States also maintains ongoing contacts with non-governmental organizations, including through periodic meetings during the preparation of this and other human rights reports.

Committee Recommendation ¶ 44:

“44. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.”

U.S. Response to ¶ 44:

The discussion of U.S. international assistance and cooperation in Section VII. of the U.S. Periodic Report provides information on U.S. efforts to assist and cooperate with foreign governments in this regard. Section VII.B. specifically speaks to addressing root causes such as poverty, underdevelopment and weak institutional capacity.

Committee Recommendation ¶ 45:

“45. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government departments and agencies, the Congress, the Senate and to state authorities, for appropriate consideration and further action.”

Committee Recommendation ¶ 46:

“46. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.”

U.S. Response to ¶¶ 45 and 46:

As discussed in ¶ 124 of the Periodic Report, the U.S. National Security Council has recently distributed a memorandum from the Legal Adviser of the Department of State transmitted links to the U.S. Initial Report on the Optional Protocol, as well as the Committee’s Concluding Observations to all agencies of the federal government, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State’s Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body’s concluding observations, including those for the Optional Protocol, on its website at www.state.gov/g/drl/hr/treaties/index.htm. Additionally, the United States is taking further steps to ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports.