

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

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Signatories to the NGO Alternative Report to the Periodic Report of the United States of America to the UN Committee on the Rights of the Child Concerning the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

**Submitting Organizations**

## **Acronyms**

CBP: Customs and Border Protection  
CEOS: Child Exploitation and Obscenity Section  
CRC: Convention on the Rights of the Child  
CSEC: Commercial Sexual Exploitation of Children  
DHS: Department of Homeland Security  
DOJ: Department of Justice  
ED: Department of Education  
FSAP: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States  
GAO: General Accounting Office  
IACHR: InterAmerican Commission on Human Rights  
IOM: Institute of Medicine  
JVTA: Justice for Victims of Trafficking Act  
LGBTQ: Lesbian, Gay, Bi-sexual, Transgender and Questioning  
NCMEC: National Center on Missing and Exploited Children  
NIJ: National Institute of Justice  
NJI: National Justice Institute  
NCJFCJ: National Council of Juvenile and Family Court Judges  
OFO: Office of Field Operations  
OJJDP: Office of Juvenile Justice and Delinquency Prevention  
ORR: Office of Refugee Resettlement  
OPSC: Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography  
PSTSA: Preventing Sex Trafficking and Strengthening Families Act  
SECTT: Sexual Exploitation of Children in Travel and Tourism  
SETT: Stop Exploitation Through Trafficking Act  
TVPA: Trafficking Victims Protection and Reauthorization Act  
UNCRC: UN Committee on the Rights of the Child  
UNHCR: UN High Commissioner for Refugees  
USG: U.S. Government

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## **Introduction**

This NGO Alternative Report is our third response to the U.S. Government's (USG) periodic report to the UN Committee on the Rights of the Child (UNCRC) on its work to implement the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

Organized by ECPAT-USA, this report is a collaborative effort of NGOs, service providers, and advocates who are working on the ground with and for sexually exploited children in the United States. Our report draws on existing research, NGO work, detailed written submissions by other NGOs that contributed to this report, and also discussions with various NGOs, both on the phone and in person, that resulted in significant information.

The information in this report was compiled, edited and written by Sara Ann Friedman and Faiza Mathon-Mathieu in close consultation with ECPAT-USA and Shared Hope International. The authors include everyone who contributed to it, whether in person or in writing, with a special thanks to Demand Abolition, Coalition Against Trafficking in Women (CATW), Frederick Douglass Family Initiatives, James Marsh, Kids in Need of Defense (KIND), Polaris, The National Association to PROTECT Children, and Rights4Girls for their additional submissions. Thanks to Prof. Jonathan Todres for comments and edits.

This Alternative Report identifies gaps in the USG report regarding actions the federal government has taken to implement the OPSC. Acknowledging the inherent and daunting challenges of the task, NGOs comment and make recommendations on the most critical issues about which the federal government can and must do better to ensure that children are protected from the violations covered by the OPSC. NGOs have also expanded on areas of strength and successful USG efforts that could serve as models for replication. The USG has taken many strong actions since it ratified the OPSC, but must address outstanding implementation issues. We appreciate the opportunity to assemble this information and list of recommendations to help guide the UNCRC and ultimately U.S. policy makers toward next steps needed to protect children from having their rights violated through prostitution, pornography, trafficking, and related forms of exploitation.

NGOs have high praise for the continuing reauthorization of the Trafficking Victims Protection Act (TVPA), first passed in 2000, as it created a strong legal foundation for the federal government, motivated the passage of new laws, and sustained funding for task forces, coordinating bodies, working groups and programs that protect victims. We also understand the structural difficulties and complexities inherent in combatting the commercial sexual exploited children (CSEC). This Report reflects the belief that the USG can make better headway in tackling the CSEC.

## **How this Report is organized**

Divided into six sections, this Alternative Report addresses the issues that NGOs know best and have been working on the longest.<sup>1</sup> They not only represent the most pressing issues facing sexually exploited children but also highlight the key findings and experiences that NGOs contributing to this report consider most critical for the federal government to confront.

### **1. Ensuring that state laws and practices treat *all* sexually exploited children as victims, not as criminals.**

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<sup>1</sup> The NGOs were unable to comment on adoption or sale of organs. NGOs have noted that a bill was recently introduced in Congress to address the sale of organs. However, no known anti-trafficking organizations have been actively engaged in this work or have the expertise on this issue. For more information on child labor trafficking, please reference the submission from Loyola University Chicago Center for the Human Rights of Children.

2. **Providing adequate, supportive and accessible services to *all* sexually exploited minors, whether or not they have a trafficker/pimp.**
3. **Building a consistent, accurate and disaggregated system of data collection for *all* sexually exploited children and *all* perpetrators including traffickers and buyers.**
4. **Measuring and evaluating the results of training and awareness-raising efforts.**
5. **The need for primary and secondary prevention of child trafficking**
6. **Continuing to reduce the commercial sexual exploitation of children in travel and tourism (SECTT).**

In addition, an Appendix contains submissions by NGOs.

This Report points out several cross-cutting recommendations that are relevant to every section in the report and that need a critical response:

**Providing more guidance to the states:** NGOs have repeatedly noted the need for the federal government to provide more and better guidance to the states so that they comply with the newly passed laws and effectively implement new requirements. Much of the work that the federal government committed to when it ratified the OPSC takes place at the state level. State child welfare agencies in particular have to comply with a new host of laws that were part of the 2014 Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) and the 2015 Justice for Victims of Trafficking Act (JVTA). Evidence indicates that state child welfare agencies are struggling to address the specific needs of sex trafficked youth, promote and provide resources for effective services, and implement legally required reporting systems. It is essential that the federal government assist the states in giving life to the PSTSFA and JVTA especially in the areas of defining a child sex trafficking victim, providing screening tools, and funding assistance for both pieces of legislation which would thereby improve data collection and increase access to appropriate services.

**Separating child trafficking from human trafficking:** Throughout its report, the USG frequently refers to “human trafficking” a term that fails to distinguish adults from children or sex from labor trafficking. This Report addresses the consequences of this lack of distinction -- in data collection, law enforcement, training, prevention, and services. By conflating children and adults in this more generic phrase, child trafficking becomes a subset of human trafficking and children remain hidden and invisible. The federal government should do everything it can to change this mindset, intensify and clarify areas where it is already taking steps.

**Pressing for consistent use of TVPA definition of victim:** TVPA definitions need to be clarified for service providers, legislators, law enforcement and the general public, most of whom are still misinformed or ignorant about what constitutes child trafficking and who is a victim. According to the TVPA, sex trafficking of children is synonymous with commercial sexual exploitation of children. It applies to all persons under the age of 18 induced to engage in a commercial sex act. Issues of consent, physical maturity, and the child’s lack of acknowledgment of her/his victimhood are irrelevant. Neither force nor movement across countries, across state lines or even across the street is required for child trafficking to have occurred. The federal government needs to reinforce this in all its trainings and public campaigns. The USG should promulgate the TVPA definition in all communications with states. It should also continue to encourage states to replace child prostitution laws with Safe Harbor laws, ensuring victims are not treated as criminals. It also should train law enforcement on the U.S.-Mexican border to recognize and support child victims.

**Monitoring and evaluating training and awareness programs and legislation:** The USG report points to extensive training and awareness-raising of various stakeholders and federal agencies but it reports no content or impact of the trainings making it impossible to assess or evaluate the training. For example, it notes the impressive number of people trained by the DOJ Child Exploitation and Obscenity Section (CEOS), the

Department of Homeland Security (DHS), the Office of Refugee Resettlement (ORR) and many others. However, the report provides no details about the percentage of people who need to be trained or how efficacy of training was measured. In addition, because the federal government provides no information on the content of the training curriculum, we have no idea how many trainings specifically addressed child exploitation. There is also no report of evaluation for the trainings to determine what attendees learned. In awareness-raising as well, the USG report mentions several campaigns, but provides little or no indication of responses or impact. The same is true of the USG reporting on legislation. With the landmark new laws passed by the U.S. Congress, the USG has made no indication of how, or even if, these laws are being implemented. The federal government must significantly expand its monitoring and evaluation of training programs, awareness-raising campaigns, and legislation, if we are to ensure that these efforts actually help protect children.

**Ratification of the UN Convention on the Rights of the Child (CRC):** Although the United States ratified the OPSC, the OPSC was not intended to be implemented in isolation. The CRC addresses many of the root causes of children’s vulnerability to trafficking, prostitution, and other forms of exploitation. Ensuring children have access to health care, education, and an adequate standard of living helps strengthen protective factors and reduce vulnerability. Ratification of the CRC is important to advancing a comprehensive approach to children’s rights and child well-being. It is time for the US to become part of the international community by fully recognizing that children’s rights are human rights. We urge the President to submit the CRC to the U.S. Senate so that the United States can move forward with ratification of the CRC.

### **1. Ensuring that state laws and practices treat all sexually exploited children as victims, not criminals**

The federal government has made significant progress in passing strong new federal laws, increasing access to training, and reinforcing a growing consensus among experts<sup>2</sup> that trafficked and sexually exploited children should never be subjected to arrest for the abuse and victimization they experience. Yet, prostitution laws in 35 states still permit the arrest and detention of sexually exploited minors, and other states continue to arrest them under varied statutes and precedents.<sup>3</sup>

According to the Department of Justice (DOJ) 1,000 children under the age of 18 were arrested in 2011 for prostitution.<sup>4</sup> Moreover, this number of reported instances may be only a fraction of the trafficked children criminalized in the juvenile justice system because many are not reported as prostitution. In fact, young trafficking victims may enter the system under other charges or status offenses. Even in states that have implemented non-criminalization laws, trafficked children may still be arrested on “masking” charges, or charges used by law enforcement to provide safety by removing them from their pimps. While these efforts to ensure children’s safety may be well intentioned, criminalizing child victims of trafficking has significant adverse consequence.

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<sup>2</sup> Institute of Medicine and National Research Council of the National Academies, “*Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*.” (2013) available at <http://www.ojjdp.gov/pubs/243838.pdf>

<sup>3</sup> In re Aarica S., 223 Cal. App. 4th 1480 (Cal. App. 2d Dist. 2014) available at <http://caselaw.findlaw.com/ca-court-of-appeal/1658133.html>; see also In re M.V., 225 Cal. App. 4th 1495 (Cal. App. 1st Dist. 2014) (finding that a “until the Legislature acts to clarify its intent with respect to these vulnerable youth, however, we are compelled to conclude under existing statutes and precedent that M.V. [15 years old] was legally able to form the requisite intent to engage in an act of prostitution.”)

<sup>4</sup> Puzzanhera, C., “Juvenile Arrests 2011” U.S. Department of Justice, Office of Justice Programs. (December 2013) available at <http://www.ojjdp.gov/pubs/244476.pdf>

We cannot ignore the inherent harm and long-term negative consequences associated with juvenile arrest and adjudication records. The inability of youth with a criminal record to access public housing, jobs, education, and sometimes suffering life-long social exclusion have been well documented.<sup>5</sup> Even though juvenile justice was initially established to “protect the rights of the accused and even promote rehabilitation,” advocacy groups cite much evidence that “its processes are adversarial and risk re-traumatizing juvenile sex trafficking victims.”<sup>6</sup> In 2015 human rights groups petitioned the InterAmerican Commission on Human Rights (IACHR) to address the human rights violations in the U.S. of arresting and incarcerating child sex trafficking victims for offenses such as prostitution.<sup>7</sup>

Twenty-eight states have passed laws that recognize child victims of trafficking as victims and not as criminals. For the most part, these “Safe Harbor” laws are well-intended, yet many fall short of reaching the ultimate goal of protecting all sexually exploited children in their state from being punished for crimes that are actually committed against them. There is neither uniformity in state laws nor in their meeting minimum standards for child protection. Furthermore, inadequate resources and training keep states from successfully implementing Safe Harbor laws.

Passage of the Stop Exploitation Through Trafficking Act (SETT), as part of the federal 2015 Justice for Victims of Trafficking Act (JVTA) was a big step forward as it provides states with incentives to pass Safe Harbor laws. The federal government, however, needs to provide comprehensive guidance to help the states pass laws that effectively protect children. Establishing a Safe Harbor law can be a complicated process; Safe Harbor can cover a wide range of provisions<sup>8</sup> and technical assistance is necessary. At a minimum, however, a Safe Harbor law should: grant immunity from prosecution for prostitution to all children under 18 years old; classify CSEC as a form of child abuse; create training programs for law enforcement and other professionals who work with children; and fund services for sexually exploited children from a reliable and ongoing funding source.

#### **Recommendations:**

- U.S. Congress should amend the SETT Act to require Safe Harbor laws to include a protective response not only for any child victim of trafficking who comes into contact with the criminal justice system under prostitution charges but also for any child that is identified through screening upon their entry into any child welfare agency, health care agency, as well as the juvenile justice system.
- The USG should strengthen the current incentive structure under the SETT Act so that it can appropriate funds to states that are necessary to pass and implement Safe Harbor laws.

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<sup>5</sup> Vafa, Yasmin Z. and Santiago A. Canton, “Letter to Emilio Álvarez Icaza Executive Secretary Inter-American Commission on Human Rights”. 5 March 2015 available at <http://rights4girls.org/wp-content/uploads/r4g/2015/03/2015.05.03.-Submission-IACHR-re-hearing-on-situation-children-victims-of-sex-trafficking-in-the-U.S.-.pdf> (citing Shah, Esq., Riya Saha, Fine, Esq., Lauren Fine, and Gullen, Esq., Jamie, *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing, and Expungement*, Juvenile Law Center, 2014, pp. 12, available at <http://juvenilerecords.jlc.org/juvenilerecords/#!/map>; See also Smith, Linda A., Healy Vardaman, Samantha, and Snow, Melissa A., *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, Shared Hope International, (2009), available at [http://sharedhope.org/wp-content/uploads/2012/09/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf)).

<sup>6</sup> Shared Hope International, “Non-Criminalization of Juvenile Sex Trafficking Victims. Just Response Policy Paper,” (2016), pp 2, available at <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf>.

<sup>7</sup> Vafa, Yasmin Z. and Santiago A. Canton. “Letter to Emilio Álvarez Icaza Executive Secretary Inter-American Commission on Human Rights”. 5 March 2015. <http://rights4girls.org/wp-content/uploads/r4g/2015/03/2015.05.03.-Submission-IACHR-re-hearing-on-situation-children-victims-of-sex-trafficking-in-the-U.S.-.pdf>.

<sup>8</sup> Weiss, Karen. “Steps to Safety: A Guide to Drafting Safe Harbor Legislation to Protect Sex-Trafficked Children” ECPAT-USA (2015).



- USG should provide guidance to the states to develop strong protective measures and screening, enabling them to remove children from the juvenile justice system and connect them to services.
- USG should provide adequate resources to state child welfare agencies thereby enabling them to implement non-criminalization laws that hinge on youth having access to an array of comprehensive, trauma-informed services as opposed to detention.

**2. Providing adequate, supportive and accessible services to all sexually exploited minors, whether or not they have a trafficker/pimp.**

In its section on “protecting the rights of child victims,” the USG report refers almost entirely to “human trafficking” and fails to mention child victims. It is difficult to understand what efforts are aimed at helping children as compared to efforts that benefit all victims of trafficking. It is important to take a closer look at the Federal Strategic Action Plan on Services for Victims of Human Trafficking (FSAP)<sup>9</sup> to better understand what, if any, distinctions are made at the federal level regarding service provision to minors.

The FSAP, which will end in 2017, serves as a good blueprint for the government to address the service needs of victims of human trafficking. With the goal of the FSAP to address all forms of human trafficking, not all goals or objectives relate to children. According to the most recent review of the FSAP’s objectives, many remain in progress/ongoing or delayed.<sup>10</sup> Nowhere does the FSAP fund, plan for, or even address the provision of services for children vulnerable to or victimized by sex trafficking, child prostitution and child pornography.

Insufficient funding remains a significant barrier to successful service provision. The Committee’s Observation in 2013 that States should increase allocations of funding to increase specialized services remains relevant. The TVPA authorizes HHS to provide \$10 million for services to domestic trafficking victims. Yet, the actual HHS funding through TVPA from fiscal years 2013 to 2016 was well below this. While we support the incremental increases, unfortunately, the demand for services continues to outpace available resources.

Advocates and service providers who work with this population of children believe that specialized shelters and services make up one of the most critical and under-resourced needs.<sup>11</sup> This lack of support often results in poor case management where victimized and at-risk children are ordered to inappropriate placements, including ill-equipped foster care, group homes and detention facilities, or are returned to unsafe home environments. Ideally any program working with vulnerable youth should be equipped with the resources and tools to provide a trauma-informed response tailored to the specialized and gender-responsive needs of sexually exploited and trafficked children. They will empower youth to avoid re-exploitation.

Many NGOs are currently providing services to sexually exploited children and youth. Although there are frequent claims of success, in reality we don’t know what is working and what is not because there have been no evaluation of these programs. The federal government should take the lead in coordinating and supporting

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<sup>9</sup> Departments of Justice, Health and Human Services, and Homeland Security, *Federal Strategic Action Plan on Services to Victims of Human Trafficking 2013-2017*, (2014) available at <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

<sup>10</sup> Departments of Justice, Health and Human Services, and Homeland Security, *Federal Strategic Action Plan on Services to Victims of Human Trafficking 2013-2017 Status Report*, (2015) available at [http://www.ovc.gov/pubs/FY\\_13\\_14\\_Status\\_Report.pdf](http://www.ovc.gov/pubs/FY_13_14_Status_Report.pdf).

<sup>11</sup> ECPAT-USA, Shared Hope International, and Johns Hopkins Protection Project. “*National Colloquium 2012 Final Report: An Inventory and Evaluation of the Current Shelter and Services Response to Domestic Minor Sex Trafficking*” (2013), ECPAT-USA, Shared Hope International, and Johns Hopkins Protection Project available at <http://www.ecpatusa.org/wp-content/uploads/2016/02/National-Colloquium-2012-Final-Report-An-Inventory-and-Evaluation-of-the-Current-Shelter-and-Services-Response-to-Domestic-Minor-Sex-Trafficking.pdf>.

evaluations of services, so that we can develop and disseminate best practices for assisting child survivors of the harms covered by the OPSC and funding can be directed to such programs.

Moreover, in some states, where sexually exploited children are exchanging sex for money without a pimp, they are denied services both by state laws and child welfare systems because these state laws criminalize sexually exploited children without a pimp as “child prostitutes.” Under these child welfare systems, only children with pimps are eligible to receive services. All sexually exploited children, with or without a trafficker, should have access to services for trafficked children.

### **Recommendations:**

- The USG should allocate appropriate resources to serve child victims of trafficking and that at a minimum all authorized funds be appropriated. We recommend that at least \$10 million be appropriated to the Department of Health and Human Services for domestic victims of trafficking, as authorized by the Trafficking Victim Protection Act.
- Funding authorized by the Trafficking Victims Protection Act must be less restrictive to allow service providers that serve only child victims of trafficking to apply for grants; requirements that grantees serve all victims of human trafficking disadvantages those with specialized programs designed to help child sex trafficking victims heal.
- The USG should fund and support independent evaluations of existing services to child victims of trafficking to identify best practices, and to ensure that programs for child victims and survivors are trauma informed, gender responsive, and evidence based.

### **3. Building a consistent, accurate and disaggregated system of data collection for all sexually exploited children and all perpetrators including traffickers and buyers.**

The critical need to collect accurate and consistent numbers of children who are sold, prostituted and used in pornography is recognized as a continuing challenge. We are nearing a decade since the first USG report to the UNCRC on the OPSC, yet there is little evidence that data collection has improved significantly.

The USG reports good progress in collecting data since its last report to the UNCRC. It provides an inventory of the agencies and methods it has used, listing no fewer than six federal agencies currently gathering data as well as “agencies within the 50 states and several territories doing so. “ It also relies on two federally funded NGOs, Polaris Project and The National Center on Missing and Exploited Children (NCMEC). The federal government deserves credit for these efforts, but it has not yet led us closer to overcoming the ongoing problems of poorly coordinated measuring systems, of technology deficits or definitional inconsistencies.

In 2013, the Institute of Medicine (IOM) and National Research Council (NRC) of the National Academies of Sciences, Engineering and Medicine published a report “Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States,” that was funded by the DOJ. In its thorough analysis of the many and varied attempts to estimate those numbers, the IOM and NRC concluded that “no reliable national estimate exists of the incidence or prevalence of commercial sexual exploitation and sex trafficking of minors in the United States.” None of the existing methods is adequate to provide a reliable number of children sold, prostituted and used in pornography, the report continues.

In 2014, the U.S. Congress passed the Preventing Sex Trafficking and Strengthening Families Act, (PSTSFA) which requires that state child welfare agencies begin to collect data on the number of children in their jurisdiction

who are being sex trafficked and to develop a plan for the children at risk. The states must also report missing children to NCMEC as well as law enforcement. The quality of the data remains to be seen as states have yet to fully implement these provisions.

In addition, states and local jurisdictions vary widely in their understanding of child sex trafficking and its intersection with the child welfare system. Sexually exploited children are deeply hidden behind the curtain of all the systems of juvenile justice, child welfare, and runaway and homeless youth present in 50 states. Mandates associated with the PSTSFA need to be accompanied by clear guidance of what specific agencies should be reporting, the format of information expected, and common definition. Successful implementation has been set back due to lack of resources, confusion about data collection protocols, and ultimately a lack of federal guidance that advocates worry will result in a law enforcement heavy response.

A major barrier to developing accurate numbers of both sexually exploited children and perpetrators, is a lack of consensus on definition between the federal government and the states and among and between the states. According to the IOM/NRC report cited above, “the lack of consensus on clear definitions of commercial sexual exploitation and sex trafficking of minors in the United States contributes directly to the difficulty of measuring and estimating the extent and nature of the problems.”<sup>12</sup>

#### Who is a sexually exploited child?

Under the TVPA, the federal government has a clear legal definition of a victim. Sex trafficking of children is simply another name for CSEC. No proof of force, fraud or coercion is required, consent is irrelevant when it comes to anyone under the age of 18 and thus, under federal law, the crime of child prostitution does not exist.

Without a clear understanding of the definition of CSEC/child sex trafficking, some states also interpret the child sex trafficking as only applying to youth who have a trafficker, thus excluding runaway and homeless youth or any youth induced to engage in a commercial sex act to survive. In order to collect accurate data, the federal agencies must provide guidance to the states, including a comprehensive and clear definition of sex trafficking.

Similarly, there is a failure to identify child abuse imagery victims according to the NGO, National Association to PROTECT Children. The National Association to PROTECT Children asserts that the USG is not properly monitoring cases of child pornography and more effort needs to be made to “track a case of child sexual exploitation as soon as it comes into the system and further track the criminal justice response as the case moves *through and across* each agency with jurisdiction from social services, police and the courts.”<sup>13</sup>

#### How do we track the traffickers and buyers?

“Any serious attempt to combat sexual violence should begin with an honest effort to report and measure it. In the United States, crime reporting practices make transparency and fact-based policy nearly impossible.”<sup>14</sup> Consider for instance when a perpetrator is arrested and charged under TVPA – because the charge of trafficking includes such varied means as transporting, facilitating, buying, and others there is no information for what action a perpetrator undertook. In order to better understand the federal government’s response to trafficking and ensure

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<sup>12</sup> Institute of Medicine and National Research Council of the National Academies, “*Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States.*” Washington, DC: National Academies Press, 2013 at. P 49.

<sup>13</sup> The National Association to PROTECT Children submission to Alternative Report at 2.4 in Appendix.

<sup>14</sup> *Id.* at 2.1

that we are not taking a lopsided approach by arresting only third-party controllers and not arresting buyers who fuel the market we need to have disaggregated data. Furthermore, in light of many criminal justice reform conversations, which have rightly identified the over-criminalization of minority populations, it is critical that the data be disaggregated by race. We need additional data about race to understand if arresting traffickers disproportionately targets minorities, as opposed to a focus on arresting buyers where it is expected there may be a broader demographic of perpetrator.<sup>15</sup>

This issue of under-reporting of perpetrators is not unique to sex trafficking. As The National Association to PROTECT Children points out that “the USG is not tracking sexual violence in any serious way” due in part to requirements under the Uniform Federal Crime Reporting Act of 1988.<sup>16</sup> Depending on the status of the sex offense, some publicly reported data will include “detailed data about victim and offender such as race and age,” whereas others will “only include arrest data...At the public policy level, this type of incomplete and haphazard reporting has the effect of underreporting actual victimization.”<sup>17</sup>

#### USG must invest in technology and data sharing

Beyond the issues of data collection exists a practical issue regarding the technology used to share data within the federal government and at the state and local level. Sexual exploitation of children impacts many different agencies, from child welfare to law enforcement. Abused children often come into contact with more than one system, however due to ineffective data collection systems, they remain unidentified. Having better technology would have local and state law enforcement keep pace with ever evolving technology and will facilitate data sharing.

#### **THE CASE FOR UNIVERSAL TRACKING<sup>18</sup>**

The critical need for a universal tracking capability for children and adult victims became especially clear when the Commonwealth of Virginia partnered with The National Association to Protect Children on the Virginia Child Protection and Accountability System.<sup>19</sup> This system requires multiple state agencies to track, measure and report data and includes reporting on the type of abuse by locality, sentencing and protective order data from local courts across the Commonwealth.

Once the data was collected and released to the public, it became abundantly clear to all stakeholders in Virginia that there was no way to measure a locality’s response to these crimes because diverse data systems—both civil and criminal—did not share or track these crimes in a consistent manner, and were typically incapable of talking with one another. The inevitable result of this dysfunction is that victims are lost, bad outcomes result from lack of coordination and system accountability becomes impossible.

The Virginia experiment shows the need for statistical data tracking to measure outcomes for children

<sup>15</sup> According to the *International Journal of Offender Therapy and Comparative Criminology (IJO)* habitual, online buyers tend to be white, well educated, earning over \$120K a year, and have never been arrested <http://www.ncbi.nlm.nih.gov/pubmed/23525181>. Compare this Bureau of Justice Statistics: Characteristics of Suspected Human Trafficking Incidents, 2008-2010 Table 6 on page 6 of <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf> Human trafficking suspects 224 Black, 119 Hispanic, 24 White.

<sup>16</sup> PROTECT, *supra*.

<sup>17</sup> PROTECT, *supra*.

<sup>18</sup> PROTECT, *supra*. at 2.4

<sup>19</sup> <https://www.dss.virginia.gov/geninfo/reports/children/cps/accountability.cgi>

is a unified “Fed Ex” style tracking system. If we can track a package from its origins and follow it onto a plane straight to its destination and pick up, then we should be able to track a child’s case as soon as it comes into the system and we should be able to track the criminal justice response as the case moves through and across each agency with jurisdiction from social services, police, and the courts.

This would require a single case tracking number assigned at the point of entry or initial report stage. Engineering or rebuilding large public computer systems to communicate with one another might be too ambitious for success anytime soon. However, requiring diverse public agencies to utilize and share a single unique tracking number should be within our grasp.

### **Recommendations:**

- The USG should encourage the states to use the same definition of a child victim of sexual exploitation that is in the TVPA: sex trafficking of children is a form of CSEC, and does not require a trafficker to be identified for a child engaged in a commercial sex act to be considered a victim.
- The USG should provide guidance and assistance to the states to implement the data-collection requirements under the PSTSFA.
- The USG should disaggregate data on victims and offenders.
- The U.S. Congress should invest in technology infrastructure for every state, to enable all local and state law enforcement partners to keep pace with emerging technology and participate in these information-sharing systems.
- Data collection and information sharing must be done in a way that protects the confidentiality and vulnerability of child victims and survivors.

### **4. Measuring and evaluating results of training and awareness-raising**

The USG report refers to its prioritization of training and awareness-raising in all areas of the OPSC, citing an array of groups it has trained, e.g. judges, prosecutors, police, immigration officials, members of the military, social welfare officers, medical personnel, and educators. It also details a number of awareness-raising campaigns ranging from the Department of Homeland Security (DHS) Blue Campaign Public Service Announcements to the Department of Education’s (ED) #WhatIWouldMiss social media campaign aimed at students.

According to the USG Report, more than 60,000 persons have been trained since 2010 by the social media campaigns of ED and the HHS reaching out to schools to raise awareness among teenagers about human trafficking. However, with thousands trained, the USG has not indicated either a baseline or total number of individuals and institutions that require training, thus making it impossible to determine if this training activity is significant or only a small percentage of the population that requires training in a country the size of the United States. The report is also missing any reference to the training content or curriculum and makes no indication of whether or not the federal government has provided monitoring or evaluation of said programs.

It is also unclear whether the training is specific to child sex trafficking or if it is rather generic training on adults and children, sex and labor. Similarly, it does not indicate if it is basic instruction on human trafficking or if it provides tangible tools for identifying vulnerable children. Child victims often present with different risk factors and come into the system in different ways from adults. Trainings and awareness-raising from the USG must be child-focused and train relevant individuals to intervene sensitively and effectively. It should be noted that USG

has developed child centered awareness campaigns on issues such as trafficking in schools and trafficking in the child welfare system.<sup>20</sup> However there remains room for improvement and the USG should consider updating the films to reflect more realistic trafficking examples.

#### Consulting with key stakeholders on training development

Furthermore, trainings must employ a children's rights perspective for both immigrant and refugee children as well as for domestic and legal permanent resident children. The USG could benefit from consulting child-focused NGOs who have developed their own awareness and training curricula.

When it does initiate, participate in, or support such collaborative programs, the federal government should be commended. Such is the case with the National Judicial Institute (NJI), a partnership between the National Council of Juvenile and Family Court Judges (NCJFCJ) and Rights4Girls. This collaborative, funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Department of Justice, has trained hundreds of judges across the U.S. on how to identify child trafficking victims in courtrooms and how to promote approaches that will connect them with services and treatment instead of detention. As a direct result of the NJI, judges have remarked that they are now able to recognize instances of child trafficking in their courtrooms. Several of the judges trained have gone on to develop gender-specific courts, issue-specific courts (i.e. CSEC court).<sup>21</sup> While these success stories are important, much more is needed to ensure they become the norm.

#### Gaps in training: understanding and implementing new legislation

The USG Report presents an overview of the impressive number of recent new laws, reflecting the Congressional commitment to combatting child trafficking. Civil society must now pay close attention to determine whether the federal government is properly implementing these new laws. For example, both the PSTSFA and the JVTA amended child welfare laws to require states to address the growing population of child trafficking victims involved in the child welfare systems. But states and counties/jurisdictions across the country are at different levels of understanding child sex trafficking and how it intersects with the child welfare system. State officials have requested federal assistance in areas such as defining the bill, providing simple screening tools, model protocols and informing them on how to effectively administer appropriate services and generally to implement the laws.

#### Customs and Border Patrol screening/training

It has been well documented that the US Customs and Border Patrol (CBP), by failing to screen unaccompanied children from Mexico for protection, has also failed its obligation under the TVPRA of 2008. In a July 2015 report, the General Accounting Office (GAO) found that CBP agents and Office of Field Operations (OFO) officers who screen unaccompanied children "have not consistently applied the required screening criteria or documented the rationales for decisions resulting from screening;"<sup>22</sup> The GAO also found that agents made inconsistent screening decisions, had varying levels of awareness about how to assess certain screening criteria, and only inconsistently documented the reasoning for their decisions

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<sup>20</sup> Department of Homeland Security, *Blue Campaign Media* at <https://www.dhs.gov/blue-campaign/school-recruitment-human-trafficking-video>.

<sup>21</sup> Rights4Girls submission to the Alternative Report.

<sup>22</sup> Submission from KIND (Kids in Need of Defense) to the Alternative Report.

By law, unaccompanied children from Mexico however, can be summarily returned to their home country unless upon screening the CBP finds that the child is a victim of trafficking, is determined by the officer to be at risk of trafficking upon return to their home country; expresses a fear of return; and appears unable to make an independent decision. The UN High Commissioner for Refugees (UNHCR) conducted fact-finding missions along the U.S.-Mexico border and also found significant failures of CBP's screening of unaccompanied children from Central America and South America. UNHCR found that while the law is clear regarding the DHS burden to establish that each unaccompanied child does not have an international protection need, CBP's operational practices continue to reinforce the presumption that children do not have protection needs.<sup>23</sup>

#### **USE OF STREAMLINED RELEASE PROCEDURES BY HHS<sup>24</sup>**

Around the time that the child migration crisis peaked in 2014, ORR began implementing streamlined release procedures. As documented by the Associated Press, the Washington Post, and a January 28, 2016 HSGAC PSI investigative report,<sup>25</sup> these procedures included the discontinuation of fingerprinting of most adults seeking to sponsor and house the children after release. In April 2014, the agency stopped requiring original copies of birth certificates to prove most sponsors' identities. It also discontinued the completion of forms that document sponsors' personal and identifying information before sending many of the children to sponsors' homes. It also eliminated criminal history checks for many sponsors.

The results have been tragic for many children. Six young people were released to a trafficker in Ohio and forced into abusive labor conditions. Others were released to sponsors who sexually abused them, denied them education, and locked them in homes where they were forced to work. Still others disappeared entirely, their whereabouts unknown.

In KIND's own work providing pro bono legal services to unaccompanied children, we have witnessed children placed in precarious circumstances that have sometimes resulted in children being sexually abused, forced to work, charged money by the sponsor to support the costs of their care, or expelled from the home. It must be noted that the vast majority of sponsors who step forward to care for the children are responsible, caring family members. However, processes that have historically been in

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Associated Press, Garance, Burke. "Feds' Failures Imperil Migrant Children," *Associated Press*. 25 January 25, 2016,. (<http://bigstory.ap.org/article/cc07b82ec58145cca37d6ff952f334c1/ap-investigation-feds-failures-imperil-migrant-children>; The Washington Post,]; VanSickle, Abbie. "Overwhelmed Federal Officials Released Immigrant Teens to Traffickers in 2014," *The Washington Post*. 26 January 26, 2016, ([https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405\\_story.html](https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405_story.html)]; HSGAC PSI, *Majority and Minority Staff Report - Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, (<https://www.hsgac.senate.gov/subcommittees/investigations/reports>) United States Congress Senate. Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs Majority and minority Staff Report. *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*. PDF ([file:///C:/Users/Owner/Downloads/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-28%20\(1\).pdf](file:///C:/Users/Owner/Downloads/Majority%20&%20Minority%20Staff%20Report%20-%20Protecting%20Unaccompanied%20Alien%20Children%20from%20Trafficking%20and%20Other%20Abuses%202016-01-28%20(1).pdf))

place to ensure that releases are in the best interest of the child must be restored and services put in place to ensure the safety of all released children.

The deeply disturbing cases of trafficking and other abuse of children released from ORR custody underscores the dire need for post-release services for these children to ensure their safety and well-being while they are awaiting the outcome of their immigration proceedings. Only a very small number of children receive post-release services—those who are survivors of severe trauma, for example—and the rest are left without access to assistance. If more children received or had access to social services after release from ORR custody, they would have someone to turn to if they found themselves in dangerous situations and somewhere to go if they felt unsafe. The provision of attorneys would also help, as the attorney would be another adult from whom the child could seek assistance, and the attorney would likely be able to tell if something seemed amiss in the child's life.

### **Recommendations:**

- The USG should measure and report on the impact of its training and awareness raising activities, as it requires its NGO partners to do.
- The USG should adopt as a best practice consultation with NGOs and survivors in the development and creation of training programs to ensure that the materials are culturally appropriate, survivor centered, and trauma informed.
- The USG should consult and collaborate more closely and more frequently with NGOs who have developed their own curricula for awareness raising and training in order to avoid duplicating efforts.
- The USG should undertake meaningful training and substantive guidance to support states in effectively implementing the PSTSFA and JVTA child welfare provisions; State officials have specifically requested federal assistance in areas such as defining these bills, providing simple screening tools, model protocols and informing them on how to effectively administer appropriate services and generally to implement the laws.
- The USG should use the best interests of the child as the standard against which to measure all decision-making about unaccompanied children by appropriately trained officials; in this assessment, the official should consider the child's expressed interests, safety and well-being.
- DHS should use qualified child welfare professionals with expertise in trauma-informed interviewing and knowledge of TVPA screening requirements in an appropriate child-friendly setting when screening Mexican unaccompanied children.
- The USG should train CBP personnel about their legal obligations under the TVPA, such as how to practice a victim-centered approach, how to assess the best interests of the child, when to refer a child for a screening by a child welfare professional, and when referrals of unaccompanied children to ORR are obligatory.

### **5. The need for primary and secondary prevention of child trafficking**

Prevention is defined in three stages: primary, secondary or tertiary. In human trafficking, tertiary prevention is the effort to restore those who were exploited for sex or labor, generally the most costly process and least effective and the form that is prioritized by the federal government.



Primary prevention initiatives attempt to keep people from ever being victimized. Primary prevention is the most cost effective.<sup>26</sup> Primary and secondary intervention aim to prevent exploitation before it occurs or catch it at an early stage; they are the least costly and the most effective, and also the forms of prevention that the federal government efforts fail largely to address. The USG report claims that the federal government is prioritizing prevention, yet what is described in the report is mostly tertiary prevention initiatives.

Current efforts fail to sufficiently address two critical aspects of primary and secondary prevention: taking steps that hold buyers accountable for their crimes; and more strenuously encouraging the states to educate children at risk both in the classroom and out-of-school, teachers, parents, first responders, and a host of others. NGOs urge the federal government to move beyond tertiary prevention efforts that are reactive and focus on a prevention strategy that aims to minimize the harm before it happens.

### Reducing demand

Demand reduction is a part of both federal and international law ratified by the U.S. The USG report claims that the federal government has prioritized demand reduction and points to significant steps it has taken--the DOJ-funded research to support grassroots efforts and most especially the passage of the landmark JVTA which requires that demand reduction be embedded in the federal response:

- Amending the TVPA and adding “patronizes or solicits” to the definition of sex trafficking, the JVTA makes it clear that the criminal code applies to buyers. While this change did not essentially change the law, as the TVPA had successfully been used to prosecute buyers, the new language signals to judges, juries, prosecutors, and law enforcement officials that criminals who purchase sex from minors (under age 18) to arrest, prosecute and convict buyers as sex trafficking offenders. The JVTA also includes new demand reduction provisions, directing anti-trafficking task forces to scale up state and local response toward apprehending child sex buyers, as well as calling on the Attorney General (AG) to involve all federal officers in efforts to investigate and prosecute sex buyers as traffickers.
- The importance of demand reduction is widely-recognized, as noted in the comprehensive report by the IOM which recommended “the need to confront demand.”
- In 2008, the NIJ funded a project designed to develop a descriptive overview of anti-demand tactics employed throughout the United States and to provide practitioners with actionable information to assist them in starting, improving, or sustaining initiatives.<sup>27</sup> According to DOJ-funded research, states are *independently* engaged in demand reduction activities at the local level such as auto seizure, John School, license suspension, neighborhood action, public education, reverse stings, shaming, and web stings.<sup>28</sup> 1000 cities have gained momentum and undertaken grassroots efforts to confront demand for paid sex.<sup>29</sup>

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<sup>26</sup> There is very little research about the cost-benefit of early prevention in human trafficking. One study, however, by the Minnesota Indian Women’s Resource Center calculated a 34-1 cost savings for early intervention with female victims of sex trafficking. The study found that for every \$1 spent on services for victims rescued early, \$34 of cost was saved by the community in services or lost revenues: <http://www.miwrc.org/wp-content/uploads/2013/12/Benefit-Cost-Study-Full.pdf> Frederick Douglass Family Initiatives Submission to the Alternative Report.

<sup>27</sup> Shively, M., “A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, Final Report.” *The U.S. Department of Justice*, (2014), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.

<sup>28</sup> <http://www.demandforum.net/tactics/>

<sup>29</sup> Citing demandforum.net, a comprehensive online resource for people interested in preventing sex trafficking and prostitution. This website was developed under a grant from the National Institute of Justice (NIJ), U.S. Department of Justice. Much of the content posted

- The 2005 reauthorization of the TVPA included an entire title on the Prevention of Domestic Trafficking in Persons, which authorized funding for a Program to Reduce Trafficking in Persons and Demand for Commercial Sex Acts in the United States. Yet, this provision has never been fully appropriated.

Despite these clear directives of the new law and the actions it promises, to date the federal government has not yet shown any leadership in either implementing a national strategy or assisting the states to charge and prosecute buyers. The AG has not yet issued such a national directive to guide prosecutors across the country and according to some researchers, the USG has only invested \$1,000,000 in research on the issue since 2008; currently, less than five per cent of cities and towns in the U.S. have moved forward with any type of demand reduction work.

There still remains a lack of understanding by the federal government of its authority to prosecute buyers originally granted under TVPA and clarified by JVTA. Certain jurisdictions have failed to pursue trafficking charges for individuals claiming that prostitution of children is *not* a ‘federal issue’ but a ‘state and local one’ which is contrary to the intent of the original TVPA and made even more clear with the demand reduction provisions passed into law in 2015.<sup>30</sup>

According to a recent study from the University of Illinois, an alarmingly low percentage of these crimes against children, even the sex offenses, are followed up with law-enforcement investigation.<sup>31</sup> Overall a little more than 20 per cent of child protective service investigations had concurrent criminal investigations. Even cases of sexual and physical abuse are investigated at a very low rate, which means that few cases against perpetrators are prosecuted. Such a trend to ignore buyers by the federal government has effectively decriminalized many of the most heinous crimes against children.

Nor do nationwide stings systematically reduce demand: The FBI runs Operation Cross Country to rescue minors who are victims of human trafficking. Yet, by not pursuing or prosecuting buyers, they let buyers walk away with impunity.<sup>32</sup> If the USG is committed to reducing the demand that fuels sex markets, it would arrest these buyers as part of every operation.

Overall buyers are still very rarely charged with or convicted of the crime of trafficking and often evade penalties altogether. Shared Hope International’s Demanding Justice Project (SHI) assessed more than 500 cases of adults purchasing or attempting to purchase sex with a minor. The in-depth analysis of SHI’s report representing 134 cases in four target cities found that of the 113 guilty verdicts, 26 per cent of the perpetrators received no jail time and 69 per cent of the sentences were suspended.<sup>33</sup>

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on this site was gathered through a study by Abt Associates for NIJ, “A National Assessment of Efforts to Combat Prostitution and Sex Trafficking in the United States.”

<sup>30</sup> Rights4Girls, *supra*.

<sup>31</sup> Jared Fogle was arrested and charged with paying for sex acts with a minor and distributing child pornography, but not the crime of sex trafficking of a minor even though he not only paid for sex with children but also attempted to recruit young children into sex trafficking. When questioned by the Washington Post, the federal attorneys said “There is no federal statute for rape in this situation that would have applied,” which fails to consider the TVPA that holds buyers of children for sex accountable for their crimes.

([https://www.washingtonpost.com/news/morning-mix/wp/2015/08/25/jared-fogle-admitted-to-sex-crimes-against-minors-why-wasnt-he-charged-with-rape/?tid=a\\_inl](https://www.washingtonpost.com/news/morning-mix/wp/2015/08/25/jared-fogle-admitted-to-sex-crimes-against-minors-why-wasnt-he-charged-with-rape/?tid=a_inl)). This case demonstrates the need for training about demand and how the TVPA provisions are applicable to perpetrators who seek to pay for sex with children

<sup>32</sup> Website article. “The FBI”. *Operation Cross Country. Recovering Victims of Child Sex Trafficking*. 13 October 2015, available at <https://www.fbi.gov/news/stories/2015/october/operation-cross-country>.

<sup>33</sup> Fact Sheet. *The Demanding Justice Project, Shared Hope International* (2014) available at <http://sharedhope.org/wp-content/uploads/2014/08/Demanding-Justice-Fact-Sheet1.pdf> Shared Hope International. *The Demand Justice Project Fact Sheet*, (2014) available at <http://sharedhope.org/wp-content/uploads/2014/08/Demanding-Justice-Fact-Sheet1.pdf>.

### Investing in education as a means of primary prevention

With a few exceptions, the USG has barely focused on what happens *before* a minor is victimized. It still tiptoes around educating children both in school and out of school about the risks of trafficking. This hesitancy is perhaps due to a federal reluctance to interfere with the states' control over their own education policies and practices (although all 50 states have anti-trafficking laws and thus have recognized the problem of child trafficking). Furthermore, the ED currently operates with no dedicated funding to address this issue. Without strong programs that focus not only on educating children about trafficking but also on healthy relationships, we will never accomplish lasting and generational change.

Age-appropriate lessons about the methods and motivations of traffickers can help empower youth and help them recognize the signs of child trafficking and exploitation, according to the Frederick Douglass Family Initiatives. "In the classroom knowledge will help children who have never experienced grooming by a pimp or any form of exploitation to avoid *ever* becoming a victim. As a form of secondary prevention, classroom lessons may help children who have been trafficked to recognize it themselves and self-report. Children may also recognize the signs of exploitation in their peers or family members and report it."<sup>34</sup>

This kind of education can play an important role in reducing the demand. When a boy or young man learns about the dynamics of sex trafficking, he is less likely to ever buy sex and more likely to help convince his friends to follow suit. It becomes difficult for an educated boy to convince himself later in life that commercial sex involves an innocuous transaction between buyer and seller. Primary prevention would be an effective method of reducing demand.

Influencing the states to see the value of such programs may be difficult, but can be done in various ways, for example, by introducing new curriculum, meeting with school boards and other means. There is no current indication that the federal government is likely to take this path.

### Educating teachers

Before students can receive lessons about human trafficking in the classroom, teachers must understand the subject themselves. Teacher training can be seen as a form of secondary prevention. It means knowing how to identify the signs of potential trafficking in and around their schools; knowing how to sensitively receive disclosures from children, and knowing exactly what to do in potential trafficking cases. Teachers, administrators, school nurses and other school staff who receive training can become a powerful front line of defense against the growing threat of child trafficking.

Out-of-school children: Many of the most vulnerable children and youth, including neglected, migrant, homeless, abused and LGBTQ children are also most likely to be out of school. These populations may in some ways be more hidden, scattered and harder to reach.

### **Recommendations**

- The federal government must implement a national strategy to reduce demand; provide incentives and leadership for states to implement, with federal funding, evidence based demand reduction techniques, and fully implement the recent major Congressional legislative initiatives that passed as part of the JVTAs which requires embedding demand reduction in the federal response, training prosecutors and judges on this issue.
- The USG should fund the Program to Reduce Trafficking in Persons and Demand for Commercial Sex Acts in the United States that was authorized in the 2005 TVPA so that states may implement evidence based programs that reduce the demand for commercial sex acts.

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<sup>34</sup> Frederick Douglass Family Initiatives submission to Alternative Report available in Appendix.

- The ED requires funding to help states create programs that are designed to educate and train teachers, school resource officers, staff and students on trafficking.

## **6. Continuing to reduce the commercial sexual exploitation of children in travel and tourism**

A report about the sexual exploitation in travel and tourism in North America was recently published as part of the Global Study on Sexual Exploitation of Children in Travel and Tourism (SECTT). The Study defines sex tourism as “acts of sexual exploitation of children embedded in the context of travel, tourism or both,”<sup>35</sup> thus making it a crime that can occur within a single country. The North America report describes the problem of sex tourism both internationally and within the borders of the U.S. The extensive travel and tourism infrastructure in North America (hotels, motels, rest areas, transportation hubs, etc.) provides an environment that can contribute to the sexual exploitation of children. One of the areas of weakness identified in North America is the lack of educational efforts aimed at exploiters. It is these offenders who create the demand and stimulate supply of vulnerable children. This includes not just traveling sex offenders but also business travelers who are “situational” sex exploiters. A number of European countries have implemented a public awareness campaign which the U.S. State Department mentions approvingly throughout the 2015 Trafficking in Persons report. But unlike those other countries the U.S. has not initiated a campaign to educate travelers about the laws against sexual exploitation of children.

Law enforcement is one of the areas where the U.S. has succeeded in efforts against sexual exploitation of children in travel and tourism. Thanks to the passage of strong legislation especially the 2003 PROTECT Act, the U.S. has strong tools to investigate and prosecute cases of child sexual exploitation by Americans traveling abroad. In 2013 there were 57 arrests and 32 convictions. Between 2003 and 2013, 205 Americans were convicted as travelling sex offenders. In January 2016 the federal International Megan’s Law was signed into law. The statute facilitates communication between U.S. authorities and those in destinations where sex exploiters are traveling.<sup>36</sup>

### **Recommendations:**

- The USG should address demand for sexually exploited children by creating an education campaign aimed at travelers.
- The USG should encourage the private sector to educate its staff members who travel by adopting child protection policies and incorporating it into staff training.
- The USG should promote the Child Protection Tourism Code of Conduct for U.S. companies.

### **Full Alternative Report Recommendations**

1. U.S. Congress should amend the SETT Act to require Safe Harbor laws to include a protective response not only for any child victim of trafficking who comes into contact with the criminal justice system under prostitution charges but also for any child that is identified through screening upon their entry into any child welfare agency, health care agency, as well as the juvenile justice system.
2. The USG should strengthen the current incentive structure under SETT Act so that it can appropriate funds to states that are necessary to pass and implement Safe Harbor laws.

<sup>35</sup> Hawke, Angela and Raphael, Allison, “*Offenders on the Move. Global Study on Sexual Exploitation of Children in Travel and Tourism*,” ECPAT International and Defense for Children-ECPAT Netherlands (2016) P. 2020

<sup>36</sup> Beaulieu, Catherine, *Global Study on Sexual Exploitation of Children in Travel and Tourism Regional Report North America*, ECPAT International and Defense for Children-ECPAT Netherlands (2016).

3. USG should provide guidance to the states to develop strong protective measures and screening, enabling them to remove children from the juvenile justice system and connect them to services.
4. USG should provide adequate resources to the state child welfare agencies thereby enabling states to implement non-criminalization laws that hinge on youth having access to an array of comprehensive, trauma-informed services as opposed to detention.
5. The USG should allocate appropriate resources to serve child victims of trafficking and that at a minimum, all authorized funds be appropriated. We recommend that at least \$10 million be appropriated to the Department of Health and Human Services for domestic victims of trafficking, as authorized by the Trafficking Victim Protection Act.
6. Funding authorized by the Trafficking Victims Protection Act must be less restrictive to allow service providers that serve only child victims of trafficking to apply for grants; requirements that grantees serve all victims of human trafficking disadvantages those with specialized programs designed to help child sex trafficking victims heal
7. The USG should fund and support independent evaluations of existing services to child victims of trafficking to identify best practices, and to ensure that programs for child victims and survivors are trauma informed, gender responsive, and evidence based.
8. The USG should encourage the states to use the same definition of a child victim of sexual exploitation that is in the TVPA: sex trafficking of children is a form of CSEC, and does not require trafficker to be identified for a child engaged in a commercial sex act to be considered a victim.
9. The USG should provide guidance and assistance to the states to implement the data-collection requirements under the PSTSFA.
10. The USG should disaggregate data on victims and offenders.
11. The U.S. Congress should invest in technology infrastructure for *every state*, to enable all local and state law enforcement partners to keep pace with emerging technology and participate in these information-sharing systems.
12. Data collection and information sharing must be done in a way that protects the confidentiality and vulnerability of child victims and survivors.
13. The federal government must implement a national strategy to reduce demand; provide incentives and leadership for states to implement, with federal funding, evidence based demand reduction techniques, and fully implement the recent major Congressional legislative initiatives that passed as part of the JVTa which requires embedding demand reduction in the federal response, training prosecutors and judges on this issue.
14. The USG should fund the Program to Reduce Trafficking in Persons and Demand for Commercial Sex Acts in the United States that was authorized in the 2005 TVPA so that states may implement evidence based programs the reduce the demand for commercial sex acts.
15. The ED requires funding to help states create programs that are designed to educate and train teachers, school resource officers, staff and students on trafficking.
16. The USG should address demand for sexually exploited children by creating an education campaign aimed at buyers.
17. The USG should encourage the private sector to educate its staff members who travel by adopting child protection policies and incorporating it into staff training.
18. The USG should promote the Child Protection Tourism Code of Conduct for U.S. companies.

## **Appendix**

Below are individual submissions from (A) The National Association to Protect Children; (B) Marsh Law Firm PLC; (C) Kids in Need of Defense (KIND) and (D) Frederick Douglass Family Initiatives

### **(A) Submission by the National Association to Protect Children**

#### 1. Child Sexual Exploitation

##### 1.1. Introduction: Failure to Protect

1.2 U.S. law enforcement can detect, track and interdict child sexual exploitation

1.3. A growing body of research shows action would result in child rescues

1.4 Investments in technology and data-sharing are desperately needed

1.5 Advancements from The Department of Homeland Security Immigration and Customs Enforcement refer to: (The National Strategy for child exploitation Prevention and Interdiction; Pages 24, sub section B to page 31) <https://www.justice.gov/psc/file/842411/download>

#### 2. Transparency and Reporting

2.1 The U.S. is not tracking sexual violence in any serious way

2.2 Sexual violence against children is being under-reported and often decriminalized

2.3 Civil child abuse is deeply flawed, rewarding under-reporting

2.4 Universal tracking technology for child abuse and trafficking victims is a critical priority

## **1. Child Sexual Exploitation**

### **1.1 Introduction: Failure to Protect**

The United States government's commitment of resources to the crisis of sexual exploitation—including black markets for child abuse imagery and human trafficking—continues to be grossly inadequate, despite detailed knowledge by the Administration and Congress of the magnitude of these problems and of how to combat them.

The failure, or refusal, of two consecutive administrations to take action against child sexual exploitation suspects—even when those suspects are geo-located and logged into U.S. Justice Department sponsored databases and Congress calls for action—should be considered a public policy choice. The inevitable result of this policy choice is that hundreds of thousands of women, children and other victims (in the U.S. alone) will be sexually assaulted and exploited in crimes that could be prevented through reasonable action.

### **1.2. U.S. law enforcement can detect, track and interdict child sexual exploitation**

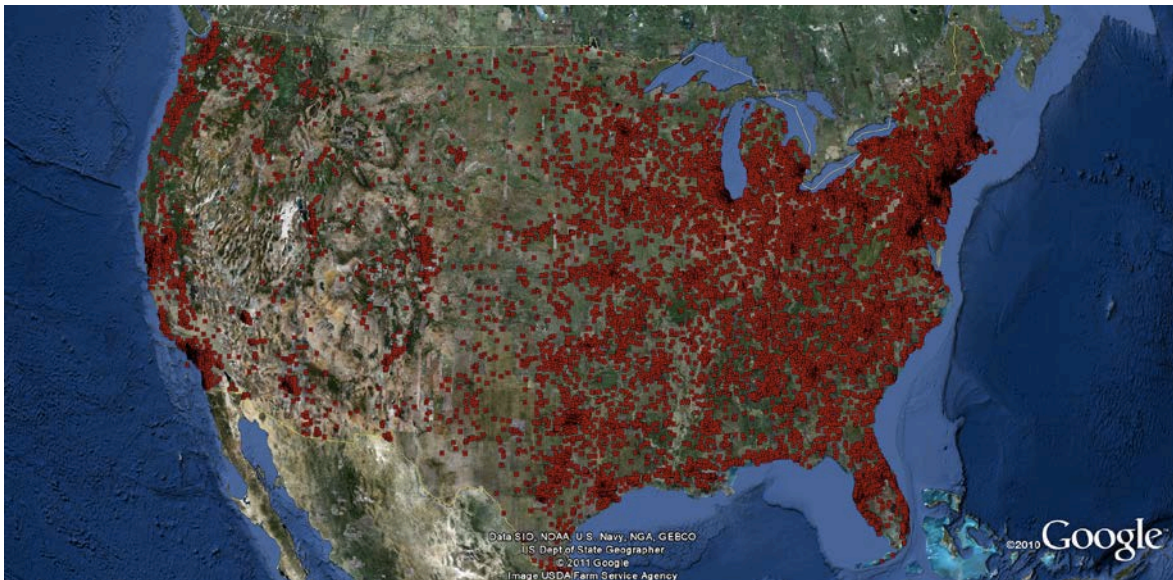
The shocking magnitude of child sexual exploitation first became a matter of public record in 2006-2008, when a series of U.S. Congressional hearings was held on child sexual exploitation and the Internet.<sup>37</sup>

In April 2006, the U.S. House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations heard law enforcement testimony that revealed the full magnitude of child exploitation for the first time. For many lawmakers, it was also an introduction to the true nature of child abuse imagery. Experts were unanimous in explaining that "child pornography" images are crime scene images, increasingly sadistic. An estimated 80% of possessors collect images of children being sexually penetrated and 21% collect images of children being bound, gagged and tortured. Eighty-three percent collect imagery of prepubescent children and thirty nine percent collect imagery of children 3-5 years old. Many victims are infants or toddlers.<sup>38</sup>

<sup>37</sup> U.S. House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, April 2006.

<sup>38</sup> Child pornography possessors arrested in internet-related crimes," University of New Hampshire, U.S. Department of Justice, 2005.

Most significant was the revelation by Wyoming Special Agent Flint Waters that a national law enforcement system had identified 300-500,000 unique computers in the U.S. actively engaged in peer-to-peer trading of the most graphic and brutal child abuse recordings.<sup>39</sup> Waters was the lead designer and database administrator for the ICAC Data Network,<sup>40</sup> a U.S. Department of Justice-sponsored online platform used by law enforcement task forces, comprising nearly 3,000 law enforcement agencies. Waters' testimony revealed that the system was *logging the suspects into a database and even mapping their approximate locations.*



*Evidence introduced before House and Senate Congressional committees showing clusters of over 300,000 unique computers seen by law enforcement trafficking in child abuse imagery in 2008. Source: ICAC Data Network.*

The  
2006

Congressional hearings were followed by a House Judiciary Committee hearing on child sexual exploitation (2007) and Senate Judiciary Committee hearing (2008). In both of these hearings, Wyoming Special Agent and ICAC Data System administrator Flint Waters introduced into evidence the maps showing locations of suspects in the U.S. trafficking in child rape imagery. Grier Weeks of PROTECT testified that less than two percent of these known cases were being investigated, due to lack of law enforcement resources.

Waters ended his testimony with another direct appeal (emphasis ours):

I am here today to testify about what many of my law enforcement colleagues are not free to come here and tell you. We are overwhelmed, we are underfunded, and **we are drowning in a tidal wave of tragedy. We don't have the resources we need to save these children.** Law enforcement's efforts, to

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<sup>39</sup> Computers were identified by GUIDs, or global unique identifiers (a serial number created upon installation of peer-to-peer software), not the more transient IP addresses. This estimate only covered 1 of 13 peer-to-peer networks and did not include other venues for trafficking, such as websites, chat, email, etc.

<sup>40</sup> Internet Crimes Against Children (ICAC) is a DOJ-funded network now encompassing over 3,000 law enforcement agencies in 61 federal-state-local task forces.



include the ICAC program, the FBI's Innocent Images National Initiative, ICE's Cyber Crimes Center, and U.S. Postal Inspection Service are all desperately underfunded.

**From where I stand, these are human rights workers who need and deserve our support.** The price we pay for coming up short will be measured in children lost.

There are times in our line of work when you find yourself staring into the eyes of the children in these movies and apologizing. We apologize because we can't find them. We can't rescue them. There is just not enough people or resources to help.<sup>41</sup>

In the decade since Congressional hearings on the issue began *progress has been anemic, while the crisis has claimed untold thousands of children*. Neither the Bush nor Obama administrations have made combatting child sexual exploitation a spending priority.

Since the 2006-2008 hearings, **only modest progress in law enforcement funding has occurred**, driven almost solely by the legislative branch.

In 2007-2008, the National Association to Protect Children (PROTECT) worked with then-Senator Joseph Biden, Senator Orrin Hatch, Rep. Debbie Wasserman Schultz and Rep. Joe Barton (and other sponsors) to win passage of the PROTECT Our Children Act of 2008. The PROTECT Act authorized an increase in funding for the ICAC Task Force network from \$14.5 million to \$60 million. Corresponding appropriations have not followed.

As a result of annual advocacy by PROTECT and its legislative allies, ICAC funding climbed to \$55 million as a result of the American Recovery and Reinvestment Act (ARRA), but following ARRA Congress dropped funding levels to \$30 million, where it stalled and has remained mainly stagnant since.<sup>42</sup>

PROTECT met with Attorney General Eric Holder in 2009, briefing him on both the magnitude of child sexual exploitation and the ease with which U.S. law enforcement could interdict this activity and rescue children. PROTECT's request was that the Obama administration simply request funding increases for the ICAC Task Force network, which both Republicans and Democrats in Congress had urged. The following year, the administration requested reduced funding in its budget for ICACs.

As a result of federal inaction, PROTECT has focused much of its efforts on securing state funding for ICAC task forces, through its "Alicia's Law" initiative. To date, this law has been passed in a dozen states. However, state-by-state appropriations are a slow and arduous endeavor, far outpaced by human rights atrocities committed against children.

### **1.3 A growing body of research shows action would result in child rescues**

U.S. failure to take action on known traffickers of child abuse imagery doesn't only leave exploitation victims without justice. It also ensures that hundreds of thousands of American children—and many more throughout the world—will continue to suffer unthinkable abuse that could be easily prevented.

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<sup>41</sup> Testimony of Wyoming Special Agent Flint Waters, U.S. House Judiciary Committee, October 17, 2007.

<sup>42</sup> At the initiative of Sen. Barbara Mikulski, \$50 million in two-year Recovery Act stimulus funding was appropriated to the ICAC network in 2009 and 2010. Congress added an additional \$1 million in federal ICAC funds in 2015.



A growing body of research makes clear that more than half of individuals arrested for possession of child abuse material are also contact offenders, committing sexual assaults on children. That makes interdiction of trafficking in child abuse imagery the first proactive tool ever for detecting, interdicting and preventing child sexual abuse.

A 2012 study by the U.S. Sentencing Commission examined the presentencing reports of federal offenders convicted of “non-production” offenses (possession and distribution of child abuse imagery). It found that “one in three offenders had engaged in one or more types of [criminally sexually dangerous behavior] predating their prosecutions.”<sup>43</sup> This is surely the most conservative indicator of dual offending, since it measures only detected criminal data.

A 2014 study, “The Use of Tactical Polygraph with Sex Offenders,” shed more light on the actual rate of contact offenses by individuals possession child abuse material. Federal agents conducted polygraph examinations on 127 suspects with no known history of offending. While just 4.7% of the individuals admitted to contact offenses when asked, over 57% admitted to contact offenses after taking a polygraph.<sup>44</sup>

A range of academic studies also confirm the findings of the 2014 polygraph study. A 2011 meta-analysis of studies, conducted by Canadian researcher Michael Seto, found that “Approximately one in two (55%) online offenders admitted to a contact sexual offense in the six studies that had self-report data ( $N = 523$ ).”

The data make clear that interdiction of child abuse imagery trafficking will lead to the disruption of ongoing child sexual abuse, and the possible rescue of victims, more than half the time. And failure to commit the resources necessary for this interdiction is tantamount to a decision to allow sexually dangerous adults to continue preying on children.

#### **1.4 Investments in technology and data-sharing are desperately needed**

The global black market for images of the rape and torture of children and the sheer magnitude of this problem requires aggressive triage for law enforcement. Internet crimes against children cross all geographic boundaries by virtue of the fact that these crime scene recordings (child pornography) are traded across the web. That requires real time information sharing of case leads between law enforcement in the states and around the globe.

The PROTECT our Children Act of 2008 mandated the creation of a law enforcement controlled case management and deconfliction system for cases involving internet crimes against children called the “The National Internet Crimes Against Children Data System” (NIDS).<sup>45</sup>

The U.S. Department of Justice established a very basic, pointer system called “IDS” to comply with The PROTECT Our Children Act of 2008 mandate, but has failed to build a dynamic system that incorporates all the existing technologies enabling law enforcement to collaborate and effectively rescue children.

Due to DOJ’s sluggish approach to this mandate, other law enforcement platforms for investigations and deconfliction have developed, without substantial government support or coordination. These include the Roundup, or ICAC Cops, system (developed by two ICACs with university programmers) and the Child Protection System, or CPS (owned and managed by an NGO).

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<sup>43</sup> Report to Congress: Federal Child Pornography Offenses,” 2012

<sup>44</sup> “The Use of Tactical Polygraph with Sex Offenders,” Bourke, Fragomelli, et al Journal of Sexual Aggression, 2014.

<sup>45</sup> Sec 105 of The PROTECT Our Children Act of 2008 <https://www.govtrack.us/congress/bills/110/s1738/text>

Local, state and federal law enforcement have also collaborated on an emerging international initiative which has become the leading system to store, communicate and integrate case specific data in attempts to focus efforts on locating and rescuing children and interdicting the most dangerous offenders against children. This system is under a collaborative umbrella called Project VIC<sup>46</sup> and includes multiple software systems, which can be integrated and deployed to suit each investigator's needs.

As architects of the federal mandate for a de-confliction and investigative platform at DOJ, The National Association to Protect Children supports this developing Project VIC open data approach and encourages both US DOJ, and the Internet Crimes Against Children Task Forces to participate. The efforts to identify the thousands of unidentified children depicted in crime scene images of rape will be as successful as the number of agencies collaborating and sharing information.

The United States Congress should invest in *technology infrastructure for every state*, which would enable all local and state law enforcement partners in the fight against child exploitation to keep pace with emerging technology and participate in these information-sharing systems.

## 1.5 Homeland Security Investigations/ Project VIC/ HERO Corps

Please refer to pages 24 sub section B to page 31 of DOJ National Strategy  
<https://www.justice.gov/psc/file/842411/download>

## 2. Transparency and Reporting

### 2.1 The U.S. is not tracking sexual violence in any serious way

Any serious attempt to combat sexual violence should begin with an honest effort to report and measure it. In the United States, crime reporting practices make transparency and fact-based policy nearly impossible.

The Uniform Federal Crime Reporting Act of 1988 required local and state law enforcement to report their arrest data under specific crime types to the FBI, who is then required to report the data publicly.<sup>47</sup> Crime types are delineated into Status I and Status II offenses. Status I types include detailed data about victim and offender such as race and age, but Status II offenses only include arrest data.

For example, the crime of “forcible rape” is a Status I type, but it excludes boys from the data. Other crimes such as “indecent liberties”, “aggravated sexual battery” and other crimes are *not charged as forcible rape at all*:

***Forcible rape**—The carnal knowledge of a female forcibly and against her will. Rapes by force and attempts or assaults to rape, regardless of the age of the victim, are included. Statutory offenses (no force used—victim under age of consent) are excluded.<sup>48</sup>*

Other sex offense types are classified under Status II offenses, which only include arrest data and are further separated into sex offenses generally, including everything from indecent exposure to incest and “offenses against the family and children.”

<sup>46</sup> page 29 of The US Department of Justice National Strategy For Child Exploitation Prevention and Interdiction, A Report To Congress - 2016; <https://www.justice.gov/psc/file/842411/download>

<sup>47</sup> <https://www.fbi.gov/about-us/cjis/ucr/ucr-programsummary-of-authorities>

<sup>48</sup> <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offense-definitions>

At the public policy level, this type of incomplete and haphazard reporting has the effect of underreporting actual victimization. Both the incidence and the nature of many sex crimes are hidden, impossible to separate out from broad crime groups or excluded entirely from reported index crimes. In the case of many crimes against children, failure to report familial relationship of victim and offender and failure to report sex offenses regarded as more minor than “rape” leave a grossly incomplete picture of actual sex crime rates.

## **2.2 Sexual violence against children is being under-reported and often decriminalized**

One obvious problem with this type of classification system is that reports of sex offenses against children by a family member (the largest portion of all child sexual crimes) are triaged at the report level to a non-criminal investigative agency or Social Services.

According to a recent study from the University of Illinois, an alarmingly low percentage of these crimes against children, even the sex offenses, receive a concurrent law enforcement investigative response:

*Overall a little more than a fifth of CPS investigations also had concurrent criminal investigations (24% in NSCAW I and 21% in NSCAW II). Sexual abuse was the most likely to be criminally investigated by far (47%) and followed distantly by physical abuse (28% and 25%), and neglect (18% and 11%).<sup>49</sup>*

This government-based discrimination has effectively decriminalized many of the most heinous crimes against children. Those cases, due to lack of arrest, never make it into the FBI UCR data.

## **2.3 Civil child abuse is deeply flawed, rewarding under-reporting**

A second system of statistical data, the National Child Abuse and Neglect Data System, was mandated under a 1988 amendment to The Child Abuse Prevention and Treatment Act (CAPTA).<sup>50</sup> This data includes local and state information on the number of child abuse reports and substantiated cases of abuse.

This deeply flawed system rewards departments with “lower abuse rates” calculated on the basis of the percentage of findings. If a local department makes fewer findings, their locality looks like they have lower rates of abuse.

Because these two systems of justice exist—one for children not related or under the care of their offenders and a second rate system for victims related to their offender—a very under-represented statistical accounting has emerged. Intra-familial or circle of trust cases often will not even receive an aggressive law enforcement investigative response (interview, evidence collection, polygraph, surveillance etc.). This state of affairs misinforms policy and budget decisions at every level on the real magnitude of crimes against children.

## **2.4 Universal tracking technology for child abuse and trafficking victims is a critical priority**

When something is of financial value, it is handled carefully, measured and accounted for. Large retailers track the location and status of a pair of shoes from the factory to point of sale, often across continents, because they value that merchandise. We do not do the same for children or trafficking victims who are in state custody or enmeshed in the social services and criminal justice systems.

The critical need for a universal tracking capability for children and adult victims became especially clear when the Commonwealth of Virginia partnered with The National Association to Protect Children on the Virginia Child

<sup>49</sup>[http://cfrc.illinois.edu/pubs/bf\\_20120701\\_ConcurrentCriminalAndChildProtectiveServicesInvestigations.pdf](http://cfrc.illinois.edu/pubs/bf_20120701_ConcurrentCriminalAndChildProtectiveServicesInvestigations.pdf)

<sup>50</sup> <http://www.acf.hhs.gov/programs/cb/resource/about-ncands>

Protection and Accountability System.<sup>51</sup> This system requires multiple state agencies to track, measure and report data and includes reporting on the type of abuse by locality, sentencing and protective order data from local courts across the Commonwealth.

Once the data was collected and released to the public, it became abundantly clear to all stakeholders in Virginia that there was no way to measure a locality's response to these crimes because diverse data systems—both civil and criminal—did not share or track these crimes in a consistent manner, and were typically incapable of talking with one another.

The inevitable result of this dysfunction is that victims are lost, bad outcomes result from lack of coordination and system accountability becomes impossible.

The Virginia experiment shows the need for statistical data tracking to measure outcomes for children is a unified “Fed Ex” style tracking system. If we can track a package from its origins and follow it onto a plane straight to its destination and pick up, then we should be able to track a child's case as soon as it comes into the system and we should be able to track the criminal justice response as the case moves *through and across* each agency with jurisdiction from social services, police, and the courts.

This would require a single case tracking number assigned at the point of entry or initial report stage. Engineering or rebuilding large public computer systems to communicate with one another might be too ambitious for success anytime soon. However, requiring diverse public agencies to utilize and share a single unique tracking number should be within our grasp.

## (B) Marsh Law Firm PLLC

### **Concerning B.1.e Independent Monitoring**

Even though there is not a national human right institution per se in the United States, there should be a Child Advocate Office at the federal level. As more and more children are victims in federal crimes, including children in armed conflict, child trafficking, and child pornography, there needs to be a child advocate monitoring and ensuring their rights in both the judicial and executive branches.

### **Concerning C.4.c Child Pornography p. 35**

C-44 While HHS includes information about ‘pornography and sexting’ on its website, there is no government or NGO website or even a webpage, dealing specifically with child pornography, and nothing targeted specifically at child pornography victims. While the number of child trafficking NGOs and website proliferate, there are little resources if any for child pornography victims.

C-45 Although law enforcement in the United States tries hard to identify child pornography victims, it does a much better job at prosecuting and incarcerating offenders at the federal level than delivering meaningful victim services. Unfortunately, there is a huge gap in the way cases are handled at the federal versus the state level. Almost 2/3 of the child pornography cases are handled by the states which often impose much shorter sentences and provide almost no victim restitution or rehabilitation. Although Section 101 of the JVTVA increases funding for services to child pornography victims from basically \$0 to \$2 million per year, these funds can only be utilized

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<sup>51</sup> <https://www.dss.virginia.gov/geninfo/reports/children/cps/accountability.cgi>

“if such amounts are available in the Fund during the relevant fiscal year.” There are no appropriated funds or guaranteed assistance or services to victims of child pornography and the \$2 million dollars, if it ever becomes available, is hardly enough to serve the hundreds of newly identified victims each year in addition to the thousands of victims already identified. In fact, the government—both state and federal—has almost exclusive control over child victims and does almost nothing to refer them to legal services other than advise them that they might want to consult an attorney. Almost no child pornography victims are represented by an attorney. Very few victims are seeking restitution or compensation. And almost no services are available specifically for victims of child pornography at either the state or federal level.

C-68 Is misleading because while all the agencies cited, including so-called “civil society groups,” provide services to children, there is no federal department or agency, nor any state or local authority, or even any civil society group which provides the unique and specialized services required by child pornography victims. And while the federal government is devoting “attention” to strengthening and improving victim services, they have only appropriated \$12.5 million for ALL federal victims nationwide. None of these funds, which are directed at the entire federal victim services apparatus, are devoted specifically to child pornography victims.

In fact, the report they cite, *Vision 21: Transforming Victim Services*, only makes this one brief reference to child pornography victims:

"We can't be sure how to treat child victims of online pornography, for example, because we know so little about the impact of this crime on its victims. The combination of research with innovative practice may eventually lead to a tested and proven treatment." p. 6

This is hardly “substantial attention” or meaningful support and rehabilitation for this specialized group of child victims.

In terms of victim compensation, the *Vision 21* report offers few tangible solutions for child pornography victims beyond this bleak restatement of the problem:

“The online possession and distribution of pornographic child images presents daunting challenges for law enforcement, prosecutors, and victim service providers. Victims may be “violated” in cyberspace thousands of times and in perpetuity. We know very little about the harm that accrues to these victims. Complex and sometimes conflicting federal case law makes it difficult for courts to apply the laws that govern restitution in child pornography possession and distribution cases. This legal complexity, coupled with the research gap regarding the impact of this crime on its victims, means that victims do not always receive adequate orders of restitution. Even if courts do order restitution, victims experience great difficulty in getting payments from multiple defendants in jurisdictions across the country. Furthermore, most state crime victim compensation funds do not have specific policies regarding the eligibility of child victims of pornography to receive reimbursement for victimization-related expenses. OVC informally polled states during 2011 and 2012 and found that most reported having not received claims from victims of child pornography related to the crime of possession and distribution of their images online, even though these victims would be eligible in most states.” p. 21

According to Professor Warren Binford, whose excellent law review article *Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad* addresses many of these issues: As of 2014, the United States has created a comprehensive legal framework to prosecute offenders, with guidelines for longer prison sentences. However, most victims still receive no restitution or access to the resources they need to achieve the full physical and psychological recovery and social reintegration to which they are entitled. Despite the efforts of the United States to combat child pornography through a legal framework focused primarily on prosecution, the United States has failed to ensure that child pornography victims experience full physical and psychological recovery and social reintegration.

For example, victims of child pornography possession do not have access to victims’ funds in many states because the funds are limited to violent crimes. As another example, prosecutors in many cases do not seek

restitution, even though it is mandatory under 18 U.S.C. § 2259. A further example is that civil remedies cases are expensive and difficult for victims to prosecute, especially when they do not have control of their own sex abuse images. Even when a child pornography victim is able to access a resource due to her victimization, she almost never receives the full amount of her losses.

*Beyond Paroline* p. 133.

Crime victims' funds are able to offer victims a limited amount of funding for a variety of expenses ranging from medical expenses to lost wages attributable to a physical injury resulting from a compensable crime. These funds provide some relief to a limited number of victims by distributing almost five hundred million dollars annually to more than two hundred thousand victims across the country. Considering that there were nearly seven million victims of violent crime who were twelve years of age or older in 2012, it becomes clear that crime victim funds are vastly underutilized. Indeed, there is currently a balance approaching eleven billion dollars in the Crime Victims Fund established by VOCA. The funds appear to be underutilized and have administrative complexities that make it difficult for victims to receive compensation.

Access to crime victims' funds is especially challenging for victims of child pornography possession and distribution because they are not classified as "violent" crimes. Additionally, while a number of funds agree to provide funding for the expenses incurred as a result of the possession or distribution of their sexual abuse images, many states have not amended their statutory language, which limits fund eligibility to victims who suffer physical harm; thus, claims by victims of child pornography possession or distribution are often denied. Victims' funds in their current form also fail to account for foreign victims of child pornography as well as U.S. citizens or residents who are victimized outside of the country or by foreign perpetrators.

Even when child pornography victims meet the eligibility requirements and overcome the administrative obstacles to receive compensation from one of these funds, the amounts often are insufficient to fully restore a victim. For example, the average state cap on these benefits is approximately twenty-five thousand dollars, and the victim must agree to reimburse the crime victim's fund if she receives damages or restitution from the offender. Accordingly, even after the enactment of VOCA, child pornography victims still are not obtaining meaningful recovery as a result of crime victims' funds.

The Federal Crime Victim Assistance Fund ("FVAF") is also available to aid crime victims in need of immediate assistance. This fund is intended as a last resort for victims and is used to cover costs such as transportation to criminal proceedings, emergency shelter, and crisis intervention. Although the proceeds of this fund provide emergency care for sexual assault victims, it does not provide funds for child pornography victims to receive long-term care. The FVAF is extremely limited and cannot be used to pay restitution to victims such as that of lost wages or health care. As a result, it does not effectively aid child pornography victims in obtaining the care and assistance that they require.

*Beyond Paroline* pp. 134-135.

In 2006, Masha's Law, part of the Adam Walsh Child Protection and Safety Act of 2006, amended the civil recovery statute in the Child Abuse Victims' Rights Act (CAVRA). Masha's Law raised the minimum damages a victim would receive to \$150,000, rather than only \$50,000. Masha's Law also extended the previous law to allow adults, who were victims of sexual abuse as minors, to sue not only their original abusers, but also distributors and possessors of their sexual abuse images.

In order for victims to recover under Masha's Law, the victim must first meet the statute of limitations. Once the action accrues, there is a ten-year general statute of limitations. However, if the person is under a legal disability, such as minority status, the statute of limitations is three years after the disability ends. The victim must then

show that he or she was personally injured as a result of the defendant's violation of a federal child pornography statute.

*Ferber* established many years ago that the act of child pornography causes personal injury to victims; accordingly, victims are usually able to meet the personal injury requirement. The plaintiff also must successfully prove, by a preponderance of the evidence, that the defendant violated a federal statute covered by the CAVRA. Since this is a civil remedy, a criminal conviction is not necessary. However, proving a violation may still be an extremely difficult task for some victims. Especially challenged are victims who (1) lack resources; (2) are unable to meet certain statutory requirements, such as proving that a defendant had knowledge that the victim was underage at the time of the act or proving that the photography depicts "sexually explicit conduct"; or (3) must prove that they were aware of the defendant's photographs and, as a result, suffered damages from the specific defendant's possession of these images. Even if the perpetrator has been criminally convicted, that does not necessarily have a preclusive effect on the civil claim since the conviction likely would not specify who the victims were portrayed in the sexual abuse images. This element is especially challenging for the vast majority of victims who do not have access to or control over their own sexual abuse images and who consequently would be unable to offer crucial evidence.

Additionally, Masha's Law does not provide an avenue for foreign plaintiffs to sue domestic defendants in federal district courts when the conduct occurred abroad. Accordingly, while some victims may utilize this statute, recovery is neither certain nor comprehensive. Although it is clear that child pornography is illegal in the United States, the rights and remedies available to victims fail to ensure full psychological and physical recovery and social reintegration. Victims of child pornography are often unable to pay for the psychological care they need and are left with few if any options to address their harms and achieve full restoration from the indefinite cycle of revictimization witnessed in the digital age, especially when one considers the globalization of this crime and its myriad of consequences.

*Beyond Paroline* pp. 137-138

C-85 Concerning the appointment of guardians ad litem, this almost never happens in the federal system for victim of child pornography. Even for victims of the most serious crime of child pornography production, guardians ad litem are rarely appointed because there is no funding and no trained advocates for these child victims.

According to Professor Binford in *Beyond Paroline*:

Federal law allows courts to appoint guardians ad litem to represent child victims and witnesses in federal criminal cases. However, an informal survey recently conducted by a law firm representing Amy suggests that courts almost never exercise this discretion in federal child pornography cases. Of approximately 263 child pornography cases filed between 2000 and 2013, only three had a guardian ad litem appointed to represent the victim. In a fourth case, a Victim Witness Coordinator was noted on the record but did not appear to actively represent the victim. The complexity of the Supreme Court's decision in *Paroline* makes it more critical than ever for victims of child pornography to have sound legal advice and effective advocacy.

*Beyond Paroline* pp. 155-156.



**(C) Alternative report to the Periodic Report of the United States of America to the UN Committee on the Rights of the Child Concerning the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**

**May 2016**

**Unaccompanied Children, Asylum Seekers, Refugees, and Migrants (pp 46-52)**

KIND is concerned that the Obama Administration has failed to adopt a comprehensive protection-oriented approach to unaccompanied children, which was particularly evident during the child migration crisis of 2014. Instead, it largely gravitated toward ineffective, expensive, and ill-conceived law enforcement measures.

The number of unaccompanied children arriving from Central America began to noticeably increase in the fall of 2011. Every year from then forward, the numbers of children arriving at the border doubled until the height of the crisis in 2014 when more than 68,000 unaccompanied children were apprehended. This represented a nearly tenfold increase from the historical norm of 7,000-8,000 children from 2004-2011.<sup>52</sup>

In the last two years, more than 100,000 children have arrived in the U.S. alone. After a reduction in the number of child arrivals in Fiscal Year 2015 due to increased interdiction and deportation of unaccompanied children by Mexico, which was supported by the U.S. government, the numbers began to rise again in August 2015 to levels that are significantly higher compared to the corresponding months of the previous fiscal year. During the first six months of Fiscal Year 2016, arrivals of unaccompanied children were 77 percent higher than they were during the first six months of Fiscal Year 2015. It is estimated that in Fiscal Year 2016 the number of unaccompanied children arriving in the U.S. will equal or surpass those who came in FY 2014. A difference is that, unlike 2014, instead of huge numbers massing at the border in the peak spring months, the increase will be slower, but steady throughout the year.

This is not surprising. The root causes of these children's flight have not been addressed. Children from Central America continue to face unprecedented violence and unrest in their home countries. El Salvador, Honduras, and Guatemala are among the top five most violent countries in the world. Honduras remains the most violent; Casa Alianza has reported that 80 children are murdered in the country each month. Violence in El Salvador reached levels not seen since the civil war in the early 1990s and by some estimates has unseated Honduras as the murder capital of the world. El Salvador, Guatemala, and Honduras rank first, third, and seventh, respectively, for rates of female homicides globally. Children suffer violence by gangs, narco-traffickers, and other criminal elements that the governments are unable or unwilling to control.

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<sup>52</sup> U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Children's Program, *ACF Fact Sheet*, (updated January 2016), [https://www.acf.hhs.gov/sites/default/files/orr/orr\\_uc\\_updated\\_fact\\_sheet\\_1416.pdf](https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf)



UNHCR found in 2014 that 58 percent of the unaccompanied children interviewed for its report *Children on the Run* would have valid claims to international protection, meriting further evaluation of their cases because their primary motivation for coming to the United States was to escape violence in their home countries.<sup>53</sup> This assessment has been confirmed by the high grant rate for children who apply for asylum in the U.S.<sup>54</sup> In 2014, President Obama rightly declared the situation to be a humanitarian one; however, it is also a refugee crisis. The majority of these children likely qualify for asylum, and others for complementary forms of protection; when they do not qualify, they are still children on their own, needing a safety net to ensure their protection and well-being.

### **Central American Minors Program**

We commend the Obama Administration for recognizing, at least in part, that the historic child migration of recent years must be addressed through a refugee protection framework. As such, we welcome the continuing implementation of the Central American Minor In-Country Processing (CAM) program. CAM, as well as the Administration's new efforts to develop third-country refugee processing in the region, are only limited responses, however, and can only help a small number of children in need of protection. Both programs must be reinforced through a parallel enhancement of the U.S. asylum system and other forms of protection grounded in due process and fundamental fairness, and can in no way be seen as a substitute for it.

As of February 29, 2016, the U.S. government received 7,161 applications for CAM. As of March 1, 2016, 53 parolees and 32 refugees had been admitted to the United States, falling short of achieving its goals to provide a safe, legal alternative for Central American children in need of international protection to embarking on the dangerous journey to the United States and reducing the number of unaccompanied children arriving along our southern border. Children who come to the U.S. as parolees have no access to social services and are not a path to permanency. They can apply for immigration relief once they are in the U.S., depending on their circumstances, but they must do so without assistance (i.e., a lawyer) unless they can find one themselves.

Restricting CAM to children with parents in current lawful status in the U.S. significantly limits the number of children who can access the program and prioritizes parents' legal status over children's protection needs. Resettlement should be grounded in a protection focus first and foremost. CAM should be expanded to children with a parent in the U.S., regardless of that parent's immigration status, as well as to children with a close adult relative in the U.S., such as a grandparent, aunt, uncle, or adult sibling. At a minimum, CAM should be expanded to protect children who have a parent with a pending asylum application in the U.S. Asylum-seeking parents may well have children facing danger in their country of origin, and yet because of immigration court backlogs, these children often have no legal means to enter the U.S. during the years it may take for the parent's case to be resolved.

Another safety concern is the fact that International Organization for Migration (IOM) and the U.S. Department of Homeland Security (DHS) interviews of children occur in the capital cities only. For some children, traveling to the capital places them in danger because their movements are under surveillance, and because, given the distance between their communities and the capital city, they may need to leave home very early in the morning or may arrive home late at night in order to make their interview with IOM or DHS. Just as the asylum office does in areas in the U.S. where it does not have offices, officers should travel to several locations in the country to do interviews.

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<sup>53</sup> UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, 2014, [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)

<sup>54</sup> Written testimony of Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, House Judiciary Subcommittee on Immigration and Border Security hearing, "Oversight of U.S. Citizenship and Immigration Services" December 9, 2015. <https://www.uscis.gov/tools/resources/hearing-oversight-us-citizenship-and-immigration-services-house-judiciary-subcommittee-immigration-and-border-security-december-9-2015-uscis-director-leon-rodriguez>

All efforts should be made to process CAM claims more quickly so that qualifying children can gain safety as quickly as possible. Increasing the number of DHS circuit rides to the region and decreasing the time between circuit rides would speed the process. Conducting circuit rides every 1-2 months would speed processing for the pending 7,700 claims, as well as for newly filed claims.

#### Asylum and need for training of CAM adjudicators

Adjudicators of CAM cases should consider that under well-established precedent, many different types of claims involving threats or harm by gangs and other organized criminal syndicates can form the basis of a claim for refugee status., particularly given the particular vulnerabilities of children in this context (i.e., children, on their own, experiencing incredibly high levels of violence, and a total failure of state protection). In addition, more needs to be done to ensure that adjudicators have the range of skills necessary to successfully interview Central American children, and that children are given the time they need to feel comfortable sharing their experiences. Adjudicators should receive extensive training on interview techniques by those with experience working with Central American children, as well as training by experts on conditions on the ground in each of the Northern Triangle countries.

Sexual and gender-based violence (SGBV) is also prevalent among these children; survivors have a range a unique protection needs and need particular medical attention and social services. The cases frequently involve human trafficking; harms based on LGBT status; forced and early marriages of girls; gender-based violence in the home; severe discrimination (depriving girls of education and requiring girls to work from a young age), and girls forced to be the girlfriends of gang members. An SGBV module focused on interview techniques for child SGBV survivors should be included as part of the training for adjudicators.

Pro bono support services are critical for children going through the CAM process. These children face a similarly complex system as those applying for protection in the U.S. and need the help of pro bono attorneys. As such a similar pro bono model could be helpful. U.S. law firms with expertise in representing unaccompanied children pro bono could work with Central American law firms—whose attorneys will work directly with children to help them gather any relevant evidence, prepare for the refugee interview, and understand the CAM process. Civil society organizations in the Northern Triangle countries can work with the law firms and the children to refer children for needed social and other services when available and to identify children in need of emergency shelter. U.S.- based law firms can then represent children entering the U.S. on humanitarian parole to explore potential paths to permanency.

The U.S. should incorporate experienced child protection officers from international refugee organizations to focus on the best interests of the child throughout refugee processing. Many children with pending claims have significant social service needs. The U.S. government should partner with international social services agencies to provide social services to children with pending claims.

Targeted outreach in countries of origin can also increase CAM's reach. Civil society organizations that work with children, internally displaced individuals, and migrants can serve as a filter to identify those who could benefit from CAM.

#### **Customs and Border Patrol screening/training**

It has been well documented that U.S. Customs and Border Patrol (CBP) has failed to screen unaccompanied children from Mexico for protection concerns and therefore its obligation under the Trafficking Victims Protection Reauthorization Act of 2008.<sup>55</sup>

The General Accounting Office (GAO) found in a July 2015 report<sup>56</sup> that (1) CBP's Border Patrol agents and Office of Field Operations (OFO) officers who screen unaccompanied children “have not consistently applied the required screening criteria or documented the rationales for decisions resulting from screening;” and (2) that agents made inconsistent screening decisions, had varying levels of awareness about how they were to assess certain screening criteria, and did not consistently document the reasoning for their decisions.

UNHCR conducted fact-finding missions along the U.S.-Mexico border and also found significant failures regarding CBP's screening of unaccompanied Mexican children.<sup>57</sup> UNHCR found that while the law is clear regarding DHS's burden to establish that each Mexican unaccompanied child does not have an international protection need, CBP's operational practices continue to reinforce the presumption of an absence of protection needs among Mexican children.

The best interests of the child as assessed by an appropriately trained official should be the primary consideration in all decision-making regarding all unaccompanied children. In assessing best interests it is critical to consider the child's expressed interests and safety and well-being. DHS should ensure that all Mexican unaccompanied children are screened by qualified child welfare professionals with expertise in trauma-informed interviewing skills and knowledge of TVPRA screening requirements in an appropriate, child-friendly setting. CBP should be trained on their legal obligations under the TVPRA, how to practice a victim-centered approach, how to assess the best interests of the child, when to refer a child for a screening by a child welfare professional, and when referrals of unaccompanied Mexican children to ORR are obligatory.

### **Adjudication in the U.S.**

Whether asylum claims are adjudicated through a refugee status determination procedure in-country or are presented after arrival in the U.S., it is essential that the U.S. interpretation of the refugee definition that is reflected in both international and U.S. domestic law be appropriately interpreted to ensure protection of individuals fleeing gang or other criminal violence that their governments are unable or unwilling to protect them against. UNHCR has issued guidelines for the consideration of gang-related claims that solidly lay out how such claims should be considered and accepted. These should be issued by U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice Executive Office of Immigration Review (EOIR) to guide development of U.S. jurisprudence to embrace such claims. Moreover, there are children with special needs—children under 12, pregnant and parenting teens, and children with disabilities—who would require specialized attention and should be placed if possible in community care settings.

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<sup>55</sup> Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law No: 110-457, unaccompanied children must be transferred to the custody of U.S. Department of Health and Human Services Office of Refugee Resettlement Custody with 72 hours of apprehension by U.S. Customs and Border Protection. Unaccompanied children from contiguous countries, i.e., Mexico, however, can be summarily returned to Mexico by U.S. Customs and Border Patrol unless CBP finds upon screening the child that the child is a victim of trafficking, is determined by the officer to be at risk of trafficking upon return to Mexico; expresses a fear of return; and the child appears unable to make an independent decision, Sec. 235(a)(2)(A).

<sup>56</sup>Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, July 2015, <http://www.gao.gov/assets/680/671393.pdf>

<sup>57</sup> UNHCR, *Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border*, June 2014, [http://americanimmigrationcouncil.org/sites/default/files/UNHCR\\_UAC\\_Monitoring\\_Report\\_Final\\_June\\_2014.pdf](http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf)

Furthermore, both the immigration courts and the asylum office must be resourced to keep pace with the number of new cases appearing before them. We fully support the additional funding that was allocated in the 2016 omnibus appropriations legislation to hire 55 additional immigration judge teams. This will assist greatly in the ability of the courts to address the significant case backlog they are facing. Immigration judges should be brought on board rapidly to address the current crisis; to achieve this, hiring procedures utilized by the Department of Justice must be streamlined. Similarly, additional resources should be dedicated to expanding the capacity of the asylum office, which is also facing significant case backlogs. Resources should also be enhanced to support ongoing training of both immigration judges and asylum officers on how to apply child-sensitive techniques in hearings and interviews and how children's asylum claims fit within the refugee definition. Finally, efforts should be made to educate state court systems on their unique role in the adjudication of Special Immigrant Juvenile Status (SIJS) cases.

### **Legal services**

**KIND is pleased by the Administration's increasing support for legal representation of unaccompanied children as envisioned under the Trafficking Victims Protection Reauthorization Act of 2008.** Current support, however, remains modest in the face of the historic numbers of children in need of these services. Half of unaccompanied children—tens of thousands of children—still do not have representation in their deportation proceedings<sup>58</sup>.

The figures are stark. Children without attorneys in their immigration are five times more likely to be successful in their claim for U.S. protection than those without.<sup>59</sup> Only one in 10 children without attorneys gains U.S. protection.<sup>60</sup> It is fundamentally unfair to expect children to present a defense against removal from the United States without representation. Children are simply unable to navigate our complex immigration system without an attorney or raise a defense against a government attorney who is arguing for the child to be deported. Without the provision of representation we risk sending large numbers of children back to grave harm, and even death. This egregious gap in representation violates due process and contradicts the U.S. principle of due process and respect for the rule of law.

**The provision of counsel to unaccompanied children not only leads to greater justice and but also creates efficiencies in the adjudication process. Among the efficiencies created by representation is the overwhelming appearance rate for children who have counsel. In FY15, 99.25 percent of children who were represented by counsel appeared in court.<sup>61</sup> Counsel is able to advise their child clients of their rights and responsibilities in the immigration system and the fact that if represented, they have a very strong likelihood of being granted asylum or some other form of relief. It should be noted that most unaccompanied children do not qualify for Deferred Action for Child Arrivals (DACA) because of the residency requirement.**

To expand the reach of government-funded attorneys, the Administration should allow these attorneys the flexibility to provide a mix of private sector pro bono facilitation and direct representation. Currently, positions are restricted to do one or the other.

### Handling of Children's Cases by the Immigration Courts

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<sup>58</sup> Syracuse University Transactional Records Access Clearinghouse (TRAC), <http://trac.syr.edu/phptools/immigration/juvenile/>

<sup>59</sup> Syracuse University TRAC Report, *Representation for Unaccompanied Children in Immigration Court*, November 2014, <http://trac.syr.edu/immigration/reports/371/>

<sup>60</sup> Ibid.

<sup>61</sup> Syracuse University (TRAC), <http://trac.syr.edu/phptools/immigration/juvenile/>

In July 2014, the Department of Justice announced that it would prioritize the scheduling of unaccompanied children's master calendar hearings and place them at the top of the dockets. Immigration judges were further instructed to conduct these initial hearings within 21 days of the issuance of the Notice to Appear (NTA) to the child. This prioritization jeopardized due process and fundamental fairness for unaccompanied children and ignored the unique vulnerabilities that such children face in their proceedings.

Further exacerbating the fast tracking of cases was the failure by federal agencies to adequately record children's addresses after release, which resulted in numerous children receiving no or delayed notice of their court hearings. This undercut the child's ability to obtain legal counsel, prepare their case, or in many instances, to even appear in court because the child remained unaware that his or her hearing was scheduled. This in turn resulted in numerous in absentia notices being issued, placing the child at risk of deportation back to their home countries with no opportunity to explore their possible eligibility for asylum protection or other forms of relief. In most in absentia cases, the child was unrepresented by counsel. While nearly all children with attorneys attend their court hearings, those without counsel are less likely to appear as they remain uninformed about their rights and responsibilities in the immigration system.

Moreover, some immigration judges interpreted the directive to prioritize the scheduling of master calendar hearings far beyond the initial proceeding. They failed to allow children sufficient time to obtain counsel and required them to appear for a merits hearing within weeks.

In some cases, they denied the child the necessary time to pursue asylum before USCIS or Special Immigrant Juvenile Status before a state court.

This lack of orientation, weaknesses in the case referral system, sped-up hearings, lack of legal resources, and bureaucratic errors has resulted in thousands of children being ordered removed *in absentia*.<sup>62</sup>

As of February 8, 2016, EOIR began docketing the initial master calendar hearing for DHS-designated unaccompanied children no earlier than 30 days and no more than 90 days from the immigration court's receipt of the NTA, a change from the initial 10-to-21-day guideline.<sup>63</sup> While this extended timeline is welcome, the continued prioritization of these cases remains problematic. Most of these children are wholly reliant on nongovernmental organizations (NGOs) to either provide representation or find pro bono representation for them. NGOs still face serious resource challenges meeting the needs of very large numbers of children, particularly in a limited time period. Adequate time is particularly needed for NGOs working to find private pro bono representation for children. Once the child has an attorney, it also takes time for children to develop trust in the attorney and be able to share painful experiences that perhaps they have not shared with anyone. Unaccompanied children's cases should no longer be prioritized in the immigration courts. The administration should revert to prioritizing cases based on date the Notice to Appear is filed with the court.

### **Use of Streamlined Release Procedures by HHS**

Around the time that the child migration crisis peaked in 2014, ORR began implementing streamlined release procedures. As documented by the Associated Press, the Washington Post, and a January 28, 2016 HSGAC PSI

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<sup>62</sup> Los Angeles Times, "7,000 Immigrant Children Deported Without Going to Immigration Court," by Kate Linthicum, March 6, 2015. <http://www.latimes.com/local/california/la-me-children-deported-20150306-story.html>

<sup>63</sup> EOIR, Notice, Thursday, February 4, 2016, "EOIR to Revise Docketing Practices Relating to Certain Priority Cases." <https://www.justice.gov/eoir/RevisedDocketingPractices02042016>

investigative report,<sup>64</sup> these procedures included the discontinuation of fingerprinting of most adults seeking to sponsor and house the children after release. In April 2014, the agency stopped requiring original copies of birth certificates to prove most sponsors' identities. It also discontinued the completion of forms that document sponsors' personal and identifying information before sending many of the children to sponsors' homes. It also eliminated criminal history checks for many sponsors.

The results have been tragic for many children. Six young people were released to a trafficker in Ohio and forced into abusive labor conditions. Others were released to sponsors who sexually abused them, denied them education, and locked them in homes where they were forced to work. Still others disappeared entirely, their whereabouts unknown.<sup>65</sup>

In KIND's own work providing pro bono legal services to unaccompanied children, we have witnessed children placed in precarious circumstances that have sometimes resulted in children being sexually abused, forced to work, charged money by the sponsor to support the costs of their care, or expelled from the home. It must be noted that the vast majority of sponsors who step forward to care for the children are responsible, caring family members. However, processes that have historically been in place to ensure that releases are in the best interest of the child must be restored and services put in place to ensure the safety of all released children.

The deeply disturbing cases of trafficking and other abuse of children released from ORR custody underscores the dire need for post-release services for these children to ensure their safety and well-being while they are awaiting the outcome of their immigration proceedings. Only a very small number of children receive post-release services—those who are survivors of severe trauma, for example—and the rest are left without access to assistance. If more children received or had access to social services after release from ORR custody, they would have someone to turn to if they found themselves in dangerous situations and somewhere to go if they felt unsafe. The provision of attorneys would also help, as the attorney would be another adult from whom the child could seek assistance, and the attorney would likely be able to tell if something seemed amiss in the child's life.

### **Raids and Deportations Targeting Children and Families**

**The ongoing raids that were initiated at the start of the year and that target both families and unaccompanied children from Central America who arrived in the U.S. after January 1, 2014 are deeply troubling. It has been well documented that many of these families and unaccompanied children are fleeing severe and growing violence in Central America and are potentially eligible for U.S. protection.**

**The Administration has repeatedly said that it is conducting these raids to deter others from coming to the United States. This policy clearly has not worked, as the number of families and children alone has risen significantly again despite more elaborate border controls in the U.S., Mexico, and in sending countries. When mothers are desperate to save their children's lives and children see only violence in their future, deportation will not deter them.**

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<sup>64</sup> Associated Press, "Feds' Failures Imperil Migrant Children," January 25, 2016, <http://bigstory.ap.org/article/cc07b82ec58145cca37d6ff952f334c1/ap-investigation-feds-failures-imperil-migrant-children>; The Washington Post, "Overwhelmed Federal Officials Released Immigrant Teens to Traffickers in 2014," by Abbie VanSickle, January 26, 2016, [https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405\\_story.html](https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405_story.html); HSGAC PSI, *Majority and Minority Staff Report - Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, <https://www.hsgac.senate.gov/subcommittees/investigations/reports>

<sup>65</sup> Ibid.



There have been numerous reports of children being harmed and even killed within days or weeks of their deportation.<sup>66</sup> Moreover, targeting families and unaccompanied children contradicts the Administration's repeated commitment to focus its enforcement resources on removing felons rather than families.

The use of harsh law enforcement tactics, often in the early hours of the morning, is indefensible. The raids have generated widespread fear in immigrant communities around the country, and not just among those Central Americans who are in the targeted categories Department of Homeland Secretary Jeh Johnson mentioned in his January 2016 statement.<sup>67</sup> There have been numerous reports of children not attending school and canceling critical medical appointments out of fear of going out in public. KIND itself has seen children canceling intake appointments with our staff and sponsors failing to bring children to immigration court.

The focus of the raids on families and children with final orders of removal does not make them any more acceptable. As outlined above, the fast-tracking of cases presented by families and unaccompanied children from Central America creates insurmountable barriers to due process.

This is particularly true for children or those with little education, who do not speak English and have suffered extreme trauma. Even the Board of Immigration Appeals has taken the extraordinary step of granting emergency stays of removal for many of the targeted families, notwithstanding final administrative removal orders.

No removals should take place, even for those with final orders, without confirming that those affected had fair and timely proceedings, which includes ensuring that the individual had legal representation during their proceedings, adequate time to prepare their case for protection, notice of their hearing, and a full and objective hearing. Without legal representation, families and unaccompanied children face a complex and unfair legal process, which is nearly impossible for them to navigate.

The U.S. must be steadfast in our commitment to protecting vulnerable migrants and remember that unaccompanied children are children first and foremost. KIND looks forward to working with the Administration to continue to improve the responses of our immigration, asylum, and refugee systems to the protection of unaccompanied children.



## FREDERICK DOUGLASS FAMILY INITIATIVES

### **(D) Re: US Report to the UN Committee on the Rights of the Child**

#### **New Terminology**

#### **“Prevention of the Sale of Children, Child Prostitution, and Child Pornography”**

Before addressing the content of this section, I propose modifying the title (and similar references within the document). I believe that giving credence of any kind to unlawful practices, intent on exploiting children through

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<sup>66</sup> The Guardian, “US deporting Central American migrants to their deaths,” by [Sibylla Brodzinsky](#) and [Ed Pilkington](#), October 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>; UNHCR, “Deported children face deadly new dangers on return to Honduras,” January 29, 2015. <http://www.unhcr.org/54ca32d89.html>; The Los Angeles Times, “In Honduras, U.S. deportees seek to journey north again,” by Cindy Carcamo, August 16, 2014; <http://www.latimes.com/world/mexico-americas/la-fg-honduras-deported-youths-20140816-story.html>

<sup>67</sup> Department of Homeland Security Secretary Jeh C. Johnson Statement on Southwest Border Security, January 4, 2016. <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>

prostitution or pornography, may serve to negate the remedial objectives of this document. We know that, by law, there is no such thing as a “child prostitute” - there are only children exploited in prostitution. It should follow that there is no such thing as “child prostitution” or “child pornography.” Since words are instrumental in shaping our thoughts and beliefs, their accuracy is essential -- even more so, in this case, as we strive to insure the safety and well-being of those that would be implicated by such designations.

Might a better title be: *Prevention of the Sale of Children in Prostitution, Pornography or By Other Means?* That way we place no stock in negative terminology and imply no agency on the part of children exploited in these rackets.

### **New Perspective**

Aside from ED’s, *Human Trafficking of Children* and NCMEC’s excellent and underutilized Netsmartz program, there has been precious little focus on what happens before someone is victimized. Without a critical analysis of causation, how do we identify our priorities? Imagine, for a moment, what might have happened had British Petroleum not placed a camera on the sea floor - during the 2010 Gulf oil spill - allowing everyone to clearly identify the priority during this tragic incident? We may have helplessly raged at the consequences of that broken well (blackened beaches, polluted waters, dead animal life) for years to come while the devastation continued unabated.

The *Federal Strategic Action Plan on Services for Victims of Human Trafficking* is concerned, by definition, with the consequences of human trafficking. The absence of early-stage prevention in the SAP may even give the appearance of a cynical acceptance of modern slavery. This compounds the sense of hopelessness surrounding the issue. An SAP built essentially around services for victims is one that should give comfort to current victims, but it’s quite discouraging for those who envision the possibility of ending or at least reducing human trafficking. If this SAP must stand as it is, then we’ll need another SAP that outlines strategies for avoiding the first. Better yet, a strategic action plan that incorporates designs for both early-stage prevention and victim interventions may provide advocates and the public new hope along with a new perspective for ending human trafficking once and for all.

### **The Need for Primary and Secondary Prevention**

Prevention is defined by the stage at which an intervention is applied: primary, secondary or tertiary. In human trafficking, attempting to rescue and restore people that have been exploited for sex or labor is tertiary prevention. This is typically a long and costly process especially if the degree of trauma suffered by a victim is high. Initiatives aimed at early intervention are called secondary prevention. They tend to be less costly and more successful because they reach victims at an earlier stage when, in theory, less emotional, mental or physical damage has occurred. Primary prevention initiatives attempt to keep people from ever being victimized. Primary prevention is the most cost effective.<sup>68</sup> The question is: just how far “upstream” must we go to reach groups that have not experienced grooming or trafficking?

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<sup>68</sup> There is very little research about the cost-benefit of early prevention in human trafficking. One study, however, by the Minnesota Indian Women’s Resource Center calculated a 34-1 cost savings for early intervention with female victims of sex trafficking. The study found that for every \$1 spent on services for victims rescued early, \$34 of cost was saved by the community in services or lost revenues: <http://www.miwrc.org/wp-content/uploads/2013/12/Benefit-Cost-Study-Full.pdf>



Whatever statistical data you believe or don't believe, one thing is certain – children are being groomed and trafficked. We also know that vulnerability to sex trafficking has a lot to do with adverse childhood experiences whether that's due to abuse, neglect, poverty or other factors. Strategies geared toward keeping children safer in schools and in their communities are helpful and needed. But building a stronger vault in hopes of protecting the innocence of children is a losing battle. Those who profit from exploitation are better equipped than those trying to stop them and, driven by money, they have an insatiable motivation to succeed. That's why safeguards to protect children should be developed in unison with efforts to build stronger children through primary prevention.

## **Education**

“Knowledge makes a man unfit to be a slave.” Frederick Douglass

Age-appropriate lessons about the methods and motivations of traffickers can help reduce the vulnerability of children to exploitation. Purveyors of historical slavery mostly used force to capture and enslave humans. Today, trickery is the more common method for exploiting someone in modern slavery. When we first started using electronic mail, we all had to learn a lesson about SPAM emails that helps demonstrate how easy it is for children to overcome much of their vulnerability to traffickers.

When email was new, we were all somewhat vulnerable to the “Nigerian prince” scam that asked for our banking information in exchange for an incredible sum of money. Now, though some scams are trickier than others, each one of us is an expert in identifying the common indicators of SPAM. Children can become equally proficient at identifying the common indicators and methods of traffickers or others that seek to exploit them.

It seems like a simple and logical idea, but one thing that could keep practical lessons that reduce the vulnerability of children out of the classroom is a long tradition of avoiding the discussion of difficult subjects. In fact, for 150 years, we've only discussed the most superficial aspects of slavery in the classroom. It could be argued that our relative ignorance on the subject of human exploitation may be the reason we're addressing it now. We must understand, however, that new technology is making an adherence to traditions of silence very dangerous for children.

Classroom education can accomplish several purposes simultaneously. As a form of primary prevention, classroom lessons will help children that have never experienced grooming or any form of exploitation avoid ever becoming a victim through the knowledge they gain about this crime. As a form of secondary prevention, classroom lessons may help children that have experienced these issues to recognize it themselves and self-report. Children may also recognize the signs of exploitation in their peers or family members and report it.

## **Demand**

It's reasonable to believe that, when children understand how people are exploited through sex and labor trafficking, they will play an important role in reducing the demand for such products. When a boy or young man learns about the dynamics of sex trafficking, he is less likely to ever buy sex and more likely to help convince his friends to follow suite. It becomes difficult for an educated boy to convince himself later in life that commercial sex involves an innocuous transaction between buyer and seller; a simple case of supply and demand. Primary prevention would seem to be a more effective method of reducing demand than penalizing and attempting to re-educate men that are arrested for soliciting a prostituted person. (Frederick Douglass said, “It's easier to build strong children than it is to repair broken men.”) Also, when students learn about fair labor and labor exploitation, they can become more discriminating consumers. They ask questions that may help determine a corporation's future business practices. Education is where a new perspective about ending human trafficking can be made possible.

As noted in C-30 and in the beginning of this document - New Terminology, it's important to make adjustments in the language that may help perpetuate false stereotypes or negative cultural images. Classroom lessons are just a faster and more direct means of effecting change.

## **Educators**

Before students can receive lessons about human trafficking in the classroom, teachers must understand the subject themselves. Teacher training is a form of secondary prevention that is essential for several reasons including: 1) Knowing how to identify the signs of potential trafficking in and around their schools, 2) Knowing how to sensitively receive disclosures from children and 3) Knowing exactly what to do in potential trafficking cases. Teachers, administrators and other school staff that receive training become a powerful front line of defense against the growing threat of child trafficking.

## **Protocol**

The final piece of the early prevention matrix in schools is having a response protocol developed in collaboration with community stakeholders. The process of developing a protocol can help eliminate the siloed nature of various agencies, NGOs and community institutions. The collaborative process makes stakeholders aware of what's happening in schools to address human trafficking and helps them understand the roles of each stakeholder organization. Just as traffickers depend on the ignorance of their potential victims (and the public as a whole), the business of exploitation thrives on a disorganized or disconnected community. A response protocol provides the framework for organization and communication.

## **Outside of Schools**

While the largest numbers of young people that may benefit from primary prevention initiatives are in schools, the largest numbers of the most vulnerable children are likely outside the public school system. Delivering early prevention education to this population would be more difficult from a logistical standpoint, but, as long as there is an instructor and an audience, the methodology would be the same. That's not to say that details within the training or the classroom lessons would be the same as they are in public schools.

For vulnerable populations, which would include: LGBTQ, abused, neglected, migrant, homeless and runaway youth, there would be more of a focus on secondary prevention and finding appropriate services for those that have been exploited. While it would be more difficult to deliver, prevention education is needed within vulnerable populations as well.

Robert J. Benz

Founder & Executive Vice-President