



**Convention on the Rights
of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD
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**WRITTEN REPLIES BY THE GOVERNMENT OF THE UNITED STATES OF
AMERICA TO THE LIST OF ISSUES (CRC/C/OPSC/USA/Q/1) TO BE TAKEN
UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL
REPORT OF THE UNITED STATES OF AMERICA SUBMITTED UNDER
ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY
(CRC/C/OPSC/USA/1)**

[Replies received on 13 May 2008]

**List of issues to be taken up in connection with the consideration
of the initial report of the United States of America
(CRC/C/OPSC/USA/1)**

Question 1. Please provide statistical data (including by sex, age group, urban/rural area) for the years 2005, 2006 and 2007 on:

(a) The number of reported cases of sale of children, child prostitution and child pornography, with additional information on type of follow-up provided on the outcome of the cases, including prosecution, withdrawals and sanctions for perpetrators;

1. Investigations and prosecutions of child exploitation crimes in the United States are carried out at several levels – federal, state, and local. Given the decentralized nature of law enforcement in the United States, it is difficult to provide conclusive statistical data concerning all investigations and prosecutions of these crimes conducted at all levels in the United States.

2. In Fiscal Year (FY) 2007 (1 October 2006 to 30 September 2007), federal prosecutors charged 2,118 cases involving child pornography, coercion, and enticement offenses against 2,218 defendants. This is a 27.8 per cent increase over FY 2006. From 2006 through the end of September 2007, there have been 3,775 child exploitation cases charged in federal court, 3,125 defendants convicted, and 3,015 defendants sentenced to prison, with approximately 56 per cent receiving sentences greater than five years.

3. The National Center for Missing and Exploited Children has worked with law enforcement at all levels to identify 1,247 children depicted in sexually explicit images since the inception of the programme through 31 December 2007. In the calendar year 2007, 361 of the victims were found.

4. The Innocence Lost Initiative, which seeks to identify and rescue prostituted children, involves federal, state, and local investigators and prosecutors in dozens of areas around the country. In FY 2005, 71 cases were opened, with 382 arrests and 45 convictions in the federal and state systems; in FY 2006, 103 cases were opened, with 157 arrests and 43 convictions in the federal and state systems. In FY 2007, there were 125 cases opened, with 308 arrests and 106 convictions in the federal and state systems. Most importantly, 32 children were located in FY 2005, 44 in FY 2006, and 181 in FY 2007.

5. Although the Federal Government does not maintain statistics with respect to parallel actions by state and local law enforcement officials, it does help fund state and local efforts to investigate and prosecute child exploitation offenses. Based on figures from the federally funded Internet Crimes Against Children (ICAC) Task Forces, among state, federal, and local authorities, there were 245 documented complaints of child prostitution and 12,080 documented complaints for the manufacture, distribution, and possession of child pornography in 2007. Task force law enforcement officers made

2,365 arrests for cyber enticement, obscenity, and child pornography offenses in 2007, which led to 902 guilty pleas and 191 trials.

6. As described in the answer to part (c) of this question, the Department of Justice is funding a study to determine the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in severe forms of trafficking in persons, including commercially sexually exploited children under the age of 18, by the 50 US states and their political subdivisions, as well as the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by the states and their political subdivisions.

(b) The number of children trafficked to and from the United States, as well as trafficked within the country;

7. Because human trafficking is a crime that traffickers go to great lengths to conceal, precise estimates of the scope of the problem are difficult to formulate. Therefore, the US Government does not have firm figures for the number of children trafficked internationally or domestically. While various estimates have been made over the years, the US Government does not believe that any of them are scientifically reliable. We do know, however, from evidence gathered in trafficking investigations and prosecutions that for every victim rescued there are scores more who were victimized. Accordingly, while the Government continues to conduct studies to assess more accurately the scope of the problem, the primary focus of US efforts is on finding and protecting actual victims and prosecuting cases against identified traffickers. The United States has also funded research studies focused on “promising practices” in locating, identifying, and providing services to victims and prosecuting trafficking cases (see also response to Question 2).

(c) The number of child victims provided with recovery assistance and compensation as indicated in article 9, paragraphs 3 and 4 of the Optional Protocol.

8. Foreign victims of severe forms of trafficking are eligible to receive benefits and services to the same extent as refugees. Some of the programmes for which victims may be eligible include Refugee Cash Assistance and Refugee Medical Assistance, Temporary Assistance for Needy Families (TANF), Medicaid and Job Corp/One Stop Career Centers. US citizen victims are eligible to receive benefits under general crime victim funds and social service programs that are not specific to trafficking victims.

9. HHS issues a “Letter of Eligibility” for a child who meets the definition of a victim of human trafficking under the Trafficking Victims Protection Act. The child or the child’s advocate can then present the letter to a social service provider as proof of eligibility for assistance. Since the programme began in 2001, HHS has sent Letters of Eligibility to 148 minors who were identified as victims of human trafficking. The data below covers the period 2005-2007.

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Male	1	3	3
Female	33	17	30
Total	34	20	33

10. Through the HHS Per Capita Services Contract with the US Conference of Catholic Bishops (USCCB), now entering its third year, 21 minors who were possible victims of severe forms of trafficking have received services. These comprehensive case management services assist clients with obtaining shelter, clothing, food, health care, and other vital and emergency services. While US citizen trafficking victims and those with lawful permanent residence status are eligible to receive an array of state and federal benefits under various general crime victim and social service programmes, these programmes are not specifically tailored to trafficking victims, and are less likely to include the type of comprehensive case management services referenced above.

Question 2. Please provide more information on measures taken to establish an effective system of data collection on the issues covered by the Optional Protocol.

11. The Bureau of Justice Statistics (BJS) and the National Institute of Justice (NIJ) at the Department of Justice (DOJ) are funding and coordinating the completion of several studies that will constitute two required reports to Congress.

12. BJS is focusing on developing a data collection instrument using the existing task forces. The NIJ study is extracting similar information and is sampling from 60 areas where task forces are not active.

13. The BJS study will address: (a) the estimated number and demographic characteristics of persons engaged in acts of severe forms of trafficking in persons; (b) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in severe forms of trafficking in persons, by states and their political subdivisions; and (c) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by states and their political subdivisions.

14. As part of this study, BJS has funded research to develop and implement a data collection protocol for state and local criminal justice information on trafficking in persons. The project will assist law enforcement and other agencies in developing standard definitions of human trafficking cases and methods to collect and report data on cases involving human trafficking offenders. It will also develop a protocol for transmitting standardized data to the Bureau of Justice Statistics for analysis and dissemination.

15. NIJ has funded two studies. The first examines all available research literature, resulting in an analysis of what we know and do not know about trafficking in persons. The second is unique in that it examines 60 sites in an exploratory study of the prevalence, context, and characteristics of human trafficking cases and victims in areas

without task forces. It also provides a more in-depth analysis by conducting four site visits to review cases that may constitute trafficking but were not prosecuted as such. This method will result in (a) the estimated number and demographic characteristics of persons engaged in sex and labour trafficking as well as estimates relating to commercial sex acts, including purchasers of commercial sex acts; (b) the estimated value in dollars of the commercial sex economy; and (c) a description of the difference in the enforcement of laws related to unlawful commercial sex acts across the United States.

16. These studies, from both BJS and NIJ, are scheduled to be released together in fall 2008 to fulfil the Congressional reporting request. These studies include adult and child victims.

Question 3. Please clarify whether sale of children, in all its forms covered by article 3 (1) (a) of the Protocol, is a separate offence from trafficking of children.

17. It is not clear what the relationship of this question is to the obligation of State parties under the Optional Protocol, as article 3 does not refer to an offense designated as “trafficking” of children. As described in the US initial report, laws in force in the United States prohibit all of the offenses set forth in article 3(1)(a) of the Optional Protocol. That said, in the United States there are laws concerning the sale of children that are a separate offence from trafficking in children. For example, 18 U.S.C. § 2251A prohibits the sale of children for the purpose of using the children to produce images of sexually explicit conduct. Other laws that prohibit the sale of children also overlap with laws that prohibit trafficking of children, such as 18 U.S.C. § 1584, which prohibits holding any person in involuntary servitude, and 18 U.S.C. § 1589, which prohibits compelling or coercing a person’s labour or services.

Question 4. Please update the Committee on any development concerning the reservation entered by the State party on article 4 (1) of the Protocol.

18. There have been no developments in US law pertaining to offences committed on board a ship or aircraft registered in the United States. Thus, the US reservation concerning article 4(1) of the Optional Protocol continues to be necessary. We emphasize, however, the technical nature of the US reservation and note that as a practical matter, it is unlikely that any case would arise which could not be prosecuted due to the lack of maritime or aircraft jurisdiction. We refer the Committee to paragraphs 49 and 50 of the US initial report.

Question 5. With reference the State party’s understanding entered on the terms “applicable international legal instruments” and “improperly inducing consent”, please update the Committee on any development following the recent State party’s ratification of Hague Convention No. 33 on Inter-Country Adoption.

19. As the United States stated at the time of its ratification, it understands that the term “applicable international legal instruments” in articles 3(1)(a)(ii) and 3(5) of the Optional Protocol refers to the Hague Convention on Protection of Children and

Cooperation in Respect of Intercountry Adoption. Because the United States was not a party to the Hague Convention at the time of its ratification, it took on no obligation with respect to the above-mentioned provisions of article 3 at that time.

20. As the Committee notes, the United States is now a State party to the Hague Convention. Accordingly, the United States now has an obligation to criminalize conduct proscribed by article 3(1)(a)(ii) of the Optional Protocol and to take all appropriate legal and administrative measures required by article 3(5) of the Optional Protocol.

21. In preparation for becoming a State party to the Hague Convention, the United States enacted into law the Intercountry Adoption Act (IAA, Public Law 106-279) and a wide range of administrative regulations. These enactments further US implementation of articles 3(1)(a)(ii) and 3(5) of the Optional Protocol.

Question 6. With respect to the understanding entered to clarify the term “transfer of organs for profit”, please inform the Committee on which would be the cases where a child could donate an organ pursuant to lawful consent. Is this consent meant to be expressed by the child or rather by the parents/guardians?

22. There is no controlling federal statute on the transplantation or use of the organs or tissue of a minor. Accordingly, the parameters for obtaining informed medical consent of a minor is a matter handled by each of the 50 states. In most cases involving minors, informed consent is usually required from the parent, although a *parens patriae* order may apply (allowing the court to dispense with parental consent).

Question 7. With reference to paragraph 84 of the State party’s report, please briefly summarize the main findings of the report on the mid-term review for the Third World Congress taking stock of the State party’s efforts in combating child sexual exploitation.

23. The US Mid-Term Review brought together over 120 individuals, including government agency representatives, local law enforcement officials, academics, private industry representatives, and non-governmental organizations (NGOs) to discuss the trafficking of children for sexual purposes/prostitution of children, child pornography, child sex tourism, and supply and demand. The US Departments of Justice (DOJ), Health and Human Services, and Homeland Security also completed questionnaires and reported on their efforts. For example, the Innocence Lost Initiative was created in 2003 by the Federal Bureau of Investigation and DOJ’s Child Exploitation and Obscenity Section in partnership with the National Center for Missing and Exploited Children. At the time of the Mid-Term Review, the FBI and DOJ developed task forces in 16 cities. As of May 2006, this initiative had identified over 300 victims, and made 547 arrests with 105 indictments and 80 convictions. The passage of the PROTECT (“Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today”) Act in 2003 provided law enforcement with greater tools to prevent child sex tourism and prosecute offenders, even for crimes committed outside of US territory (Public Law 108-21, 30

April 2003). At the time of the Mid-term Review, there had been over 50 indictments and 29 convictions of US citizens involved in child sex tourism.

24. The report from the US Mid-Term Review on the Commercial Sexual Exploitation of Children in America highlighted five key findings where additional attention is needed:

(a) Demand for children for purposes of sexual exploitation has led to the increased victimization of children in the United States. There is a need for more effective public awareness programs, treatment options and incarceration alternatives for the perpetrators of commercial child sexual exploitation.

(b) The proliferation of child pornography, facilitated by the emergence of new technologies, has contributed to the increased level of violence perpetrated against children and has led to the increased victimization of children for other forms of sexual exploitation.

(c) There is an urgent need for more resources to provide effective and safe services, including secure shelter, for child victims of commercial sexual exploitation. Current funding is targeted primarily to the foster care system, which is unable to adequately assist and protect child victims.

(d) Although there has been greater collaboration between local law enforcement, Federal Government, and NGOs, there remains a need for closer communication and partnership among the three actors.

(e) Additional legislative improvements are needed, for example, to decriminalize exploited youth by not arresting them for engaging in prostitution, not detaining them in juvenile detention facilities, or using juvenile delinquency courts.

25. Other legislative reforms at the state level are recommended to make age-of-consent laws consistent with federal anti-trafficking and commercial sexual exploitation of children laws, thereby raising the upper age for protection for child victims.

Question 8. Please elaborate on the information that there is a memorandum of understanding among the Department of Health and Human Services (DHHS), the Department of Homeland Security (DHS) and the Department of Justice (DOJ) which would prevent the DHHS from certifying a child victim of international trafficking without an authorization from the federal law enforcement system.

26. The Trafficking Victims Protection Act (TVPA) authorizes victims of severe forms of human trafficking to receive certain federally funded or federally administered benefits and services, such as cash assistance, medical care, food stamps, and housing. By statute (Section 107(b)(1)(E) of the TVPA), HHS may certify adults as victims of severe forms of trafficking after consultation with the Attorney General.

27. The law exempts minors from the certification process. In place of certification letters, HHS issues letters of eligibility that help connect foreign minor victims of trafficking to Federal benefits and services. As an element of this practice, DOJ or DHS make a recommendation to HHS that a child meets the definition of a victim of human trafficking. As provided under the TVPA, DOJ and DHS do not require children to assist law enforcement in order to receive a recommendation, and HHS requires no further evidence than the recommendation that the child meets the victim definition prior to issuing an eligibility letter. (In 2007, Federal law enforcement referred 33 minors identified as trafficking victims to HHS, out of the total of 303 victims overall who were authorized to receive refugee benefits through certification or letters of eligibility.)

28. All three federal agencies have crucial roles to fulfill in finding, rescuing, and protecting these child victims. Law enforcement involvement helps protect the safety of victims, victims' families, and service providers; to locate and rescue additional victims; and to apprehend and punish traffickers before the traffickers have an opportunity to flee, destroy evidence, intimidate witnesses, or victimize others. Furthermore, law enforcement involvement is crucial to prevent persons who are perpetrators of trafficking or other crimes or who are otherwise subject to deportation from having themselves been wrongly labeled as "victims." This would pose a threat to bona fide victims and other parties and frustrate the task of bringing the traffickers to justice.

29. At the same time, HHS exercises its expertise and capacity to provide benefits and services to the child victims. Indeed, HHS, through its implementing partners, plays a critical role in stabilizing the victim/survivor and seeing to his or her basic human needs so that effective cooperation with law enforcement can take place. Furthermore, HHS has the expertise and capacity to address the very special needs of children who have been traumatized by human trafficking.

Question 9. Please elaborate on the information received by the Committee that, while sexually exploited children are considered as victims according to Federal legislation, in some states these children may be actually prosecuted and punished as offenders.

30. Each of the 50 states and the District of Columbia has its own, unique laws and procedures concerning the prosecution of juveniles for a variety of crimes, including prostitution. The Federal Government has no authority to enact or enforce state laws.

31. In the federal system generally, prosecution of juveniles is extremely rare, and there is an extensive review process that must be completed before the case can proceed. Furthermore, while federal laws prohibit coercing someone into prostitution or obtaining someone to engage in prostitution, there are no federal laws that prohibit someone from engaging in prostitution. Therefore, there are no federal laws that could reach a child engaged in prostitution.

32. That a state may arrest children engaged in prostitution does not necessarily indicate a failure of the victim-centered approach. A frequent challenge in cases involving prostituted children is establishing the age and identity of the victims. They

often provide false information about their name and age, or provide fraudulent identification. As such, an officer may not be aware at the time of arrest that the individual is in fact a juvenile.

33. State and federal prosecutors in the United States exercise prosecutorial discretion, which means they have the authority to decline prosecution in a case if it is warranted. The exercise of prosecutorial discretion to decline prosecution of a case is subject to very little, if any, review by an outside authority. Although the federal Trafficking Victims Protection Act is not binding on the states, the guidance in that law that trafficking victims not be prosecuted for crimes committed in connection with trafficking may influence a state prosecutor's decision whether to proceed with a case. Finally, there are occasions, for lack of other more appropriate resources, where arresting a child for prostitution may serve as a last resort to place her or him in a secure environment away from the exploiters. This can allow time for the victim to be stabilized and be provided with treatment and services through the detention facility. In such cases, the arrest would almost certainly be under the relevant state's juvenile system and thus would provide appropriate protections given the arrestee's juvenile status.

34. The Federal Government encourages federal, state, and local law enforcement and service providers to adopt the victim-centred approach and to view prostituted children as victims and not criminals. This is done through numerous trainings that take place each year. For the last several years, there have been four trainings a year as part of the Innocence Lost Initiative, a programme dedicated to the rescue of domestic victims of child prostitution, which is sponsored by the National Center for Missing and Exploited Children, the FBI, and the Department of Justice Child Exploitation and Obscenity Section (CEOS). Over 800 personnel have been trained as part of that program so far. In addition, there is an annual Crimes Against Children conference, as well as training on child sex trafficking and sex tourism sponsored by CEOS.

35. The Department of Justice's Civil Rights Division also teaches the victim-centered approach through numerous trainings and conferences held in connection with the human trafficking task force programme. Specifically, Civil Rights Division attorneys and victim-witness staff have conducted over sixty training programs for federal and local law enforcement agencies, DOJ-funded task forces, non-governmental and health-care organizations, business leaders, academia and legal practitioners.

36. The Civil Rights Division staff played an instrumental role in the curriculum design at the 2007 DOJ Conference on Human Trafficking. At the Conference, Division staff facilitated interactive task force planning meetings aimed at identifying and addressing operational challenges and actions to enhance task force effectiveness.

37. Division attorneys also served as speakers and panelists at numerous human trafficking conferences, including the Pittsburgh Conference on Human Trafficking, the Florida Human Trafficking Coalition Conference in Ft. Walton Beach, FL; the Asian Gang Investigators' Association of California International Terrorism and Organized

Crime Conference in Anaheim, CA and the Mountain State Victim Assistance Symposium in Charleston, West Virginia.

Question 10. Please provide the Committee with updated information on the social reintegration assistance as well as physical and psychosocial recovery measures available for victims of offences covered by the Protocol, and notably for children trafficked domestically for the purpose of sexual exploitation.

38. Child victims of trafficking who are foreign nationals are eligible to receive federal benefits and services to the same extent as refugees. Some of the federal programmes for which child victims may be eligible include Refugee Cash Assistance, Refugee Medical Assistance, Temporary Assistance for Needy Families (TANF), Medicaid and Job Corp/One Stop Career Centers. Federal services and refugee benefits for eligible individuals are overseen by the state Refugee Coordinator's office in each US state. Victims of trafficking who are US citizens may apply for these benefits directly, regardless of whether they are victims of human trafficking, provided they meet basic program eligibility criteria (e.g., income, age, parental status), and victims of trafficking who are Lawful Permanent Residents are also permitted to receive many of the same benefits and services. The US Government is endeavouring to help US citizen victims of human trafficking access comprehensive case management services to help them obtain benefits to which they have rights.

39. A child victim of trafficking who is a foreign national and who does not have a parent or legal custodian in the United States able to provide care for that child is eligible for the Unaccompanied Refugee Minors (URM) Program in the Office of Refugee Resettlement at the US Department of Health and Human Services. The URM Program establishes legal responsibility, under state law, to ensure that unaccompanied child refugees and entrants receive the full range of assistance, care, and services that are available to all foster children in the state; a legal authority is designated to act in place of the child's unavailable parent(s). Reunification of children with their parents or other appropriate adult relatives is encouraged, through family tracing and coordination with local refugee resettlement agencies. The URM Program provides child victims of trafficking with specialized, culturally-appropriate foster care homes, or other licensed care settings, according to children's individual needs. Additional services provided include the following: indirect financial support for housing, food, clothing, medical care, and other necessities; intensive case management by social workers; independent living skills training; educational supports; English language training; career/college counselling and training; mental health services; assistance adjusting immigration status; cultural activities; recreational opportunities; support for social integration; and cultural and religious preservation. Through its network of caretakers, the Unaccompanied Refugee Minors Program helps child victims of trafficking develop appropriate skills to enter adulthood and to achieve social self-sufficiency.
