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## 2012 CHRC/Young Center for Immigrant Children's Rights Alternative Report

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Center for the Human Rights of Children

# 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**

**Submitted April 2012**

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

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## INTRODUCTION

This NGO Alternative Report is a 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). This NGO Alternative report is also a supplemental report to the Alternative Report submitted by ECPAT-USA.

The purpose of this report is to augment information provided in the alternative report submitted by ECPAT-USA, in order to emphasize the issue of the sale of children for the purpose of forced labor as defined under Articles 2-3 of the OPSC and labor trafficking under the U.S. Trafficking Victims Protection Act. Both the Center for the Human Rights of Children at Loyola University Chicago (CHRC) and the Young Center for Immigrant Children's Rights at the University of Chicago (the Young Center), the authors of this report, collaborated with ECPAT-USA in developing their alternative report, and we are both signatories to the ECPAT-USA alternative report. The ECPAT-USA alternative report has provided excellent recommendations to improve the USG response to address commercial sexual exploitation of children. In authoring this report, we emphasize the importance of improving efforts to address both labor and sexual exploitation of children.

Organized by CHRC and the Young Center, this report is a collaborative effort of NGOs, academic centers, service providers, and advocates who work with or on behalf of children who are victims of sale for the purpose of forced labor or labor trafficking as defined by the UN Palermo Protocol, the UN CRC OPSC, and the Trafficking Victims Protection Act of the United States. We have used the following sources for the development of the report: The 2010 United States Government (USG) Report on the Implementation of the Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Prostitution, Child Pornography (OPSC); published materials of the CHRC and the Young Center, NGO published reports, published academic reports and research, government reports, feedback presented during the *National Conference on Child Trafficking and Exploitation in the United States* hosted at Loyola University Chicago in September, 2010<sup>1</sup>, and a working group meeting of NGOs working with trafficked and exploited youth in Chicago, Illinois in October 2011.

The Alternative Report confines itself to critiquing those issues that its contributors feel are most critical and about which we are most knowledgeable. It briefly addresses areas that we believe the U.S. is performing adequately.

This Alternative Report identifies gaps both in the U.S. government report and in actions the U.S. has taken to implement the OPSC, as related to the sale of children for the purpose of forced labor. We acknowledge that in contrast to children sold into prostitution, children sold for labor are often invisible—they may appear to be legally employed teenagers working part-

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<sup>1</sup> Over 200 participants, representing public, private, academic, and NGO sectors from across the country attended the conference.

time jobs to earn some spending money. Recognizing the inherent challenges of identifying forced child labor, this report points out the obstacles faced by the USG, and offers comments on areas in which the U.S. government can do better to ensure that children are protected from the violations covered by the OPSC. We also want to note that two years have passed since the U.S. submitted its periodic report and that more progress has been made since its publishing.

At times, this Alternative Report uses the phrase “sale of children for the purpose of forced labor” interchangeably with “labor trafficking” and “forced labor or services.” The U.S. government law, the Trafficking Victims Protection Act, and its subsequent reauthorizations (referred to as the TVPA throughout this report) does not distinguish the trafficking of children for labor or services from the definition of sale of children for the purpose of forced labor under Articles 2 and 3 of the OPSC. The U.S. government states that the TVPA meets U.S. obligations under the Optional Protocol, as the labor trafficking statute does not require the element of “remuneration or any other consideration” included in the definition of “sale” in the Optional Protocol. As a result, the U.S. government states its implementation goes beyond the requirements of the Optional Protocol in many instances.

As a result, we recognize that sometimes the definitions of “labor trafficking,” “human trafficking,” and “sale of children for the purpose of forced labor” may overlap and that children can be trafficked without any element of sale occurring through the entire process, or can be sold at each stage of the trafficking process. In the absence of specific U.S. legislation which prohibits the sale of children and not only trafficking in children, we have made an effort to highlight examples of research, data, protection and prevention efforts that specifically address the definition of the sale of children for the purpose of forced labor as defined under the OPSC, including cases involving work or services that a child is forced to provide under threat or coercion and any slavery-like practices. However, the terms “human trafficking,” “labor trafficking,” and “sale of children for the purpose of forced labor” may be used interchangeably in cited material, excerpts from governmental and non-governmental reports, and research used to support our assertions.

This Alternative report uses the term “victim,” a legal term used to describe a wronged party. We recognize and respect the resiliency and perseverance of child survivors of human trafficking and exploitation.

This Alternative report describes many cases involving children from Fujian Province in China. It should be noted that children from all over the world are vulnerable to being sold for labor. We have worked with children sold for labor from Europe, Asia, Africa and Central America. The debt of \$70-80,000 for Chinese children is clearly exorbitant, yet a debt of \$3,000 is just as daunting for a child from Central America.

This Alternative Report includes several case examples to demonstrate our points. The names of survivors, as well as some cities or other identifying information, have been changed to protect the identity of survivors.

## I. DATA

The USG report shows a notable lack of empirically-based research addressing sale of children for labor or labor trafficking of children within the United States. Furthermore, the statistical methods used and the cited number of victims in reports emphasize only victims involved in successful prosecutions or who have received visas as foreign national victims. This provides a very limited assessment of the scope of the potential population of survivors of trafficking and sale of children as defined under the OPSC, and indicators on the characteristics of the sale of children.

In a relatively recent report studying the data and research available on the topic of human trafficking in the United States, it was found that less than twenty percent of published journal articles on human trafficking were empirically-based.<sup>2</sup> Information on the needs of trafficking victims and the services provided to them is limited to federal reports, non-peer-reviewed journals, manuals, fact sheets, published materials by advocacy organizations, and personal communications with direct service providers and trafficking survivors.<sup>3</sup> Often, data on both the scope of the problem and the needs of survivors are “recycled” and taken as fact, without any analysis of the methodology used for the original study or investigation into the accuracy of the statistics or information provided.

As few methodologically rigorous, empirically-based research studies exist with respect to human trafficking in the U.S., even fewer studies relate to children specifically. This is due to a number of factors, including the lack of consistent data collection and tracking mechanisms across NGOs, government agencies (both state and federal), misconceptions about what human trafficking of children is, varying applications of legal definitions between law enforcement and non-governmental organizations, ideologically driven research, limited access to human trafficking survivors, and the inherent hidden nature of the crime.<sup>4</sup>

Existing research on the subject of human trafficking or sale of children, while limited, is overwhelmingly focused on trafficking for sexual exploitation, and often excludes labor trafficking. For example, the report the USG cites - *Biennial Comprehensive Research and Statistical Review and Analysis of Severe Forms of Trafficking, Sex Trafficking and Unlawful Commercial Sex Acts in the United States*, prepared by the National Institute of Justice in the U.S. Department of Justice Bureau of Justice Statistics - focuses primarily on sexual exploitation. Additionally, studies often focus only on women and girls. They rarely distinguish between the two groups to address the distinct needs of children, nor the unique issues affecting boys who are sold for the purpose of forced labor or services. The USG report also refers to a 2008 report entitled, *U.S. Law Enforcement and Forced Child Labor*, under the “Coordination” section. However, this single USG report addressing forced child labor remains classified, and is not

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<sup>2</sup> E. M. Godziak, and M.N. Bump . *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*. Institute for the Study of International Migration. (Washington, D.C., 2008)

<sup>3</sup> Id.

<sup>4</sup> K. Kaufka Walts, “Understanding Child Trafficking in the United States: A Review of Current Policies, Research, and Issues Facing Survivors”, *Victims of Crime*, 4<sup>th</sup> Edition, Sage Publications. (2012)

available for public review. Preliminary research indicates that foreign national children tend to be trafficked for labor more than sex trafficking.<sup>5</sup>

Additionally, existing research addressing child trafficking and exploitation is being sponsored primarily by criminal justice and law enforcement agencies, including the Department of Justice and its various departments and programs addressing victims of crime. More research should be conducted from a child development, public health, and health and human services lens to provide a more comprehensive understanding of the phenomena.

Similarly, the USG report also fails to provide adequate information on data or research addressing victim services, including best practices for children as distinguished from adults. Additionally, there is little data or research exploring whether services for victims of labor trafficking should be distinguished from services for children who are victimized by sexual forms of exploitation. There is also a need for an expanded discussion on what mechanisms exist to ensure that children are not re-victimized throughout the protection system.

Concern for the scarcity of valid data is echoed by both scholars and practitioners in the field, who call for systematic, empirical, and methodologically rigorous research addressing all forms of child exploitation, including sale of children for forced labor, child prostitution, and child pornography and human trafficking in the United States.<sup>6</sup>

## **II. IMPLEMENTATION**

### **A. Law Enforcement and Laws**

#### **1. Labor Laws**

As compared to child sexual exploitation, child labor is rarely discussed or addressed by law enforcement in the United States, particularly by local and state agencies. While several child labor trafficking cases have been successfully prosecuted by government officials, these cases are often facilitated by federal law enforcement agencies or units. Unlike sex trafficking, labor trafficking is often tied to formal economies and industries, which makes it more difficult to distinguish from “legitimate” work, particularly for local and state authorities. As a result, children forced to work as domestic servants, in factories, restaurants, and farms are often invisible. A 14 year-old boy working in a meatpacking factory may not automatically elicit suspicion to an outside observer. He may be working part-time or as part of a seasonal work force. A 14 year-old girl providing sexual services for money, however, is much more likely to be noticed, triggering an immediate intervention. Although it is more difficult for the USG to identify instances of the sale of children for labor, there are steps that should be taken to better

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<sup>5</sup> Godziak, E.M., & Collett, E.A. (2005). *Research on Human Trafficking in North America: A Review of Literature*. International Migration, 43(1/2), 99-128

<sup>6</sup> Elzbieta Gozdziaak & Micah N. Bump, *Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States*, 5 (March 2008); Outcome Document: Human Trafficking and Exploitation of Children and Youth in the United States, 2011, p. 15. Available at [http://www.luc.edu/media/lucedu/chrc/pdfs/Conference\\_Outcome\\_Document\\_2011.pdf](http://www.luc.edu/media/lucedu/chrc/pdfs/Conference_Outcome_Document_2011.pdf)



investigate those industries and businesses that traditionally hire children and provide a way for children to seek assistance.

Certain labor sectors, particularly agriculture, should improve standards as applied to child labor to prevent egregious forms of child labor, including sale of children for the purpose of forced labor and labor trafficking. However, the agriculture industry lobbies against many necessary reforms to protect children, especially migrant children engaged in agricultural labor who comprise a significant population of children subject to forced labor in the United States.

Protecting child farmworkers from dangerous and exploitative work is the responsibility of law makers as well as the agencies charged with implementing the law, including the US Department of Labor and the Environmental Protection Agency (EPA). By providing children working in agriculture less protection than children working in other industries, and by poorly enforcing the protections they do have, the government is failing in its responsibility to safeguard the health, education and safety of child farmworkers.<sup>7</sup> Some examples of this include:

- Outside of agriculture, the standard minimum age for work is 16. There are no similar restrictions protecting children working in agriculture. In agriculture, employers may hire children ages 14 and 15 to work unlimited hours outside of school. There is no parental consent requirement.<sup>8</sup>
- The DOL Wage and Hour Division has too few investigators and therefore too little attention is devoted to child labor. Of those resources devoted to child labor, too little focus is placed on agriculture. As a result, growers have no reason to fear using children illegally.<sup>9</sup>

## **2. Immigration Laws – Lack of Clarity and Application for Labor Trafficking or Sale of Children for the Purpose of Forced Labor**

Currently, the U.S. government narrowly interprets the pertinent law relating to the sale of children, the Trafficking Victims Protection Act (“TVPA”).<sup>10</sup> It is very difficult to establish eligibility for protection for a migrant child who has been sold (as defined by the OPSC), who is apprehended at a border, before the child has been delivered to the work site (See “Protection Section” of this report, page 14). In addition, U.S. immigration law does not consider children different from adults. A 14-year-old child must submit evidence and prove eligibility for protection the same as a 32-year-old adult. There are no special standards for children in immigration removal proceedings, and unlike all other legal arenas in which children are subjects of a legal proceeding, there is no statutory best interests standard. Lack of developmentally appropriate standards or procedures in immigration proceedings impact

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<sup>7</sup> Human Rights Watch, *Fields of Peril, Child Labor in US Agriculture*, (2010). Available at [http://www.hrw.org/sites/default/files/reports/crd0510webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/crd0510webwcover_1.pdf)

<sup>8</sup> *Id.* At 72.

<sup>9</sup> *Id.*

<sup>10</sup> Trafficking Victims Protection Act of 2000, 18 U.S.C. §§ 1589-1594, 22 U.S.C. §§ 7101-7110, 2152(d) (2005). The TVPA was reauthorized in 2003 and in January of 2006, the United States passed into law the TVPRA of 2005, which provided increased funding and new social service programs for the victims of human trafficking. Congress enacted the TVPRA of 2005 to amend the previously written Trafficking Victims Protection Act of 2000 (“TVPA”)<sup>10</sup>, which in turn was a part of the larger Victims in Trafficking and Violence Protection Act of 2000.

protections for all unaccompanied, non-US citizen children sold for the purpose of labor or sexual exploitation.

The 2000 TVPA was enacted to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are primarily women and children, to ensure just and effective punishment of traffickers, and to provide assistance for victims.”<sup>11</sup> The TVPA applies only to severe forms of trafficking in persons,<sup>12</sup> considered to be either (a) sex trafficking or (b) the “recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion *for the purpose of* subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>13</sup> The statute explicitly provides that coercion includes threats of harm, physical restraint, perceived threats, or the abuse of the legal system, and that at minimum, there is intent and purpose to subject an individual to various forms of forced labor. Perceived threats include using the victims’ lack of knowledge of the U.S. legal system to frighten them into submission.<sup>14</sup>

When invoked, the TVPA provides several protections under the law. These protections include eligibility for short term immigration relief, including parole and continued presence, and longer term immigration relief, including a T-nonimmigrant ("T Visa")<sup>15</sup> which allows trafficking victims to stay in the United States if they would suffer "extreme hardship involving unusual and severe harm" if returned to their home country.<sup>16</sup> They then may apply for lawful permanent resident status after three years, and U.S. citizenship five years after that.<sup>17</sup> Eligibility for a T visa includes the following provisions<sup>18</sup>:

(b) Eligibility. Under section 101(a)(15)(T)(i) of the Act, and subject to section 214(n) of the Act, the Service may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien demonstrates that he or she: (1) Is or has been a victim of a severe form of trafficking in persons; (2) Is physically present in the United States, American Samoa, *or at a port-of-entry* thereto, on account of such trafficking in persons; [emphasis added]

One issue that is extremely problematic is that the U.S. definition of labor trafficking does not distinguish children from adults.<sup>19</sup> In order to qualify as a victim of a severe form of trafficking other than sex trafficking, a child must prove force, fraud or coercion. Prominent officials in the

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<sup>11</sup> TVPA § 7101(a).

<sup>12</sup> TVPA § 7102(8)(a)-(b).

<sup>13</sup> Angela D. Giampolo, *The Trafficking Victims Reauthorization Act of 2005: The Latest Weapon in the Fight against Human Trafficking*, 16 Temp. Pol. & Civ. Rts. L. Rev. 195, 198 (2006) *citing* TVPA § 7102(8)(a)-(b) [emphasis added].

<sup>14</sup> *Id* at 199.

<sup>15</sup> TVPA 8 U.S.C. § 1101(a)(15)(T).

<sup>16</sup> TVPA 8 U.S.C. § 1101(a)(15)(T)(i)(IV).

<sup>17</sup> TVPA 8 U.S.C. § 1101(a)(15)(T)(i). Child trafficking victims also are entitled to various benefits, including TANF, SSI, food stamps, Medicaid, and federal foster care. They also can bring a civil action against their traffickers. 18 U.S.C. § 1595.

<sup>18</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386.

<sup>19</sup> It should be noted, however, that children under the age of 18 are not required to assist law enforcement agencies to obtain the protective visa.

U.S. Department of State<sup>20</sup> have asserted that: “it’s severe trafficking if it involves a minor, because under our law a minor can’t give consent;”<sup>21</sup> the issue isn’t whether or not the child consented to being sold, because “for a child it’s per se trafficking.”<sup>22</sup> Though these comments “do not necessarily reflect Administration views,”<sup>23</sup> they indicate that even within domestic law, there is a strong understanding that a child cannot consent to being sold in order to negate the act of the sale of children for labor.

In comparison to adults, children are generally recognized by law to be less mature and more susceptible to external pressures, and “[t]his is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.”<sup>24</sup> Also, juveniles are presumed likely to have less ability to identify and evaluate their options.<sup>25</sup> For example, a child may only be able to identify one option in a situation where an adult would be able to identify multiple options.<sup>26</sup> Also, “because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face.”<sup>27</sup>

For children, a consideration of the child’s background and circumstance is particularly relevant in determining whether the element of coercion is present. In most cases involving unaccompanied children transported to the United States for the purpose of labor, it is the parents, the primary authority figures, who make the agreement with the smugglers and who instruct—not ask—their children to comply with the arrangement.

## **B. Inter-Agency Coordination**

The US government noted many high level coordination activities amongst various federal agencies in its report. While these efforts are commendable, there continues to be confusion between local, state, and federal law enforcement and child protection agencies regarding who has jurisdiction in many labor trafficking cases.

### Case Example: “Irena”

*“Irena” is 16 years old and from the Ukraine. She wanted the opportunity to earn extra money and travel, so she applied for a J-visa to allow her to work at a resort in northern Wisconsin for the summer. She arrived with approximately 10 other students from the Ukraine and other parts of Eastern Europe. Each student, including Irena, had to pay an upfront placement and travel fee*

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<sup>20</sup> John R. Miller, former Ambassador-at-Large on International Slavery and director to the State Department’s Office to Monitor and Combat Trafficking in Persons, and Laura Lederer, then State Department’s Senior Advisor on Human Trafficking

<sup>21</sup> Presentation of Lilya 4-Ever at the Secretary’s Open Forum on June 27, 2003, U.S. Department of State, <http://www.state.gov/s/p/of/proc/22337.htm>.

<sup>22</sup> *Id.*

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

<sup>24</sup> *Roper v. Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183, 1195, 161 L. Ed. 2d 1 (2005)

<sup>25</sup> Criminal Justice, *Immaturity, Culpability & Competency in Juveniles: A Study of L17 Cases*, SUMMER 2000, at 27,

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<sup>26</sup> *Id.*

<sup>27</sup> STATE OF CONNECTICUT, Appellee, v. Gabriel P. HEINEMANN, Appellant., 2007 WL 4868300 (Conn.), 7

*of \$2000 in exchange for their placement for their jobs. Irena was told she would be able to pay back the fee through summer employment, in addition to making an extra \$2500 – 3000 (total \$5000). When they arrived in Wisconsin, their documents, including their passports, were taken away by the resort staff. Irena and other students were taken to a hotel, and were told to clean the rooms, do the laundry, and do occasional cooking and wait staff work. They were working 10-12 hours a day, 7 days a week, with no breaks, and no opportunities to use a telephone or computer or leave the resort. The female students were constantly sexually harassed by their supervisors. The students were only paid \$50-75 each week, which was automatically deducted from their earnings to repay their placement “fee.”*

*When Irena and other students complained about their working conditions, they were told that if they left, they would lose their legal status and be deported. After two months, Irena ran away, and through the help of a local social service agency, took a bus to New York, where she reunited with a cousin who had emigrated to the U.S. several years ago. Irena’s cousin contacted local law enforcement authorities in New York about the situation. They suggested that she contact authorities in Wisconsin. When she contacted authorities in Wisconsin, they told her that because Irena was in New York, child protection authorities in New York had jurisdiction. When she contacted a different child protection office in New York, they told her to contact immigration authorities, whereby Irena gave up due to fear of deportation and punishment.*

Federal agencies seeking to coordinate their actions are often hindered by incompatible procedures, processes, data and computer systems.<sup>28</sup> Even if agencies agree to work together within a single mission statement, they are often still subject to organizational differences which can only be overcome through measured, strategic training and joint initiatives.

The USG report notes several training opportunities, conferences, task forces, and meetings to support its efforts to promote interagency coordination and capacity building. However, little mention is made of how these efforts translate to effective, meaningful policies and procedures for agencies. For example, are first responder agencies amending existing intake procedures and referral policies to reflect best practices gleaned at these trainings? Is follow-up being conducted to determine how interagency coordination is improved? Both public and private agencies, particularly first responders for children, can better work together to identify children who are being exploited and improve recovery services and protections.

### **C. Identification**

While the USG has made notable changes and improved efforts to identify human trafficking victims, improvements still need to be made to better identify child victims. While both U.S. government and international organizations estimate that women and children comprise the largest percentage of human trafficking victims, children and youth currently represent the smallest victim class of human trafficking victims identified in the U.S. According to the U.S. Department of Justice (2010), between 2001 and 2010, only 304 foreign minors were successfully recognized by U.S. authorities as victims of trafficking, with 62% of these cases representing labor trafficking.

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<sup>28</sup> U.S. Government Accountability Office, “Managing for Results: Barriers to Interagency Coordination”, 12 (Mar. 29, 2000) (available at <http://www.gao.gov/products/GGD-00-106>).

While research is still limited, we do know that child trafficking victims often encounter at least one, if not several, systems that often fail to identify them as victims of child trafficking.<sup>29</sup> These systems include local, state, and federal law enforcement, child welfare and child protection, education, and social service providers. In a study conducted by the International Organization for Adolescents analyzing pre- and post-training questionnaires from training sessions conducted with child protection officers between 2005-2007, affirmative responses to the question, “Do you think you have ever come across a victim of human trafficking?” *increased over 200%* after a single training was conducted.<sup>30</sup> This indicates that child trafficking victims are encountering the child protection system, and that they are either not identified as such or misidentified.

While much more attention and training regarding child trafficking has been made available to first responders, there has been little effort to assess the quality and effectiveness of the training programs. Similar to the current gaps in research mentioned above, few training programs address the specific issues and needs of children.

### **III. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY**

#### **A. Reducing Demand**

The USG report cites the enactment of statutes that prohibit the offenses covered by the OPSC. In addition, active efforts to enforce those prohibitions reduce demand for child labor and are further supported by efforts to reduce demand abroad. However, more can be done to address demand for child labor.

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) created a requirement that the Department of Labor’s (DOL) Bureau of International Labor Affairs (ILAB) “develop and make available to the public a list of goods from countries that [ILAB] has reason to believe are produced by forced labor or child labor in violation of international standards.”<sup>31</sup> However, this list does not include products that are domestically produced, nor does it include goods that are produced by American companies producing goods in other countries. For example, there were recent allegations that Foxconn, one of Apple’s primary suppliers in China, hid underage employees in its factory prior to inspection by the Fair Labor Association.<sup>32</sup>

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<sup>29</sup> K. Kaufka Walts, “Understanding Child Trafficking in the United States: A Review of Current Policies, Research, and Issues Facing Survivors”, *Victims of Crime*, 4<sup>th</sup> Edition, Sage Publications. (2012),

<sup>30</sup> K. Kaufka Walts, and S. French, “Building Child Welfare Response to Child Trafficking” handbook. (2011),p. 103. Available at <http://www.luc.edu/media/lucedu/chrc/pdfs/BCWRHandbook2011.pdf>.

<sup>31</sup> U.S. Department of Labor, “*The Department of Labor’s List of Goods Produced By Child Labor or Forced Labor*”, 8 (Sept. 2009).

<sup>32</sup> Devindra Hardawar, “Apple supplier Foxconn hid underage workers before FLA inspection, says labor rights NGO”, THE WASHINGTON POST, (Feb. 22, 2012)(*available at* [http://www.washingtonpost.com/business/technology/apple-supplier-foxconn-hid-underage-workers-before-fla-inspection-says-labor-rights-ngo/2012/02/22/gIQA3Y4YTR\\_story.html](http://www.washingtonpost.com/business/technology/apple-supplier-foxconn-hid-underage-workers-before-fla-inspection-says-labor-rights-ngo/2012/02/22/gIQA3Y4YTR_story.html)).

We recommend that the U.S. amend its current policies to provide greater accountability and standards applicable to domestic companies to ensure they are not supporting forced labor or child labor.

## **B. Improving Screening Efforts**

The USDOL's Wage and Hour Division is tasked with enforcing the child labor provisions of the Fair Labor Standards Act. In 2008, WHD:<sup>33</sup>

- found 4,734 minors were illegally employed
- identified that 41% of child labor violation cases involved children working under hazardous conditions/environments or using prohibited equipment
- assessed \$4.2 million in civil penalties against employers for child labor law violations
- cited five agricultural employers for hiring underage minors in North Carolina

While these efforts are notable, there is no mention of any protocols or procedures by the WHD to screen for child labor trafficking or sale of children for forced labor cases. For example, as a result of violating child labor laws, the Iowa attorney general's office brought criminal action against kosher meat packing plant, Agriprocessors Inc.<sup>34</sup> While it was known that minors were working in the meat packing plant, there were no known efforts to screen for child labor trafficking.

Additionally, while WHD cites that its "regional and local offices plan and undertake child labor compliance initiatives in a variety of industries," there is no express disclosure of what these initiatives are or if these initiatives include compliance with the TVPA or OPSC.

## **IV. PROHIBITION OF THE SALE OF CHILDREN AND VICTIM ASSISTANCE AT STATE LEVEL**

While the TVPA and its subsequent reauthorizations provide for federal prohibition of labor trafficking (and in some cases, the prohibition of the sale of children for the purpose of forced labor), efforts to prohibit these crimes by local governments and states are still deficient. Currently, there are three states that have failed to enact any laws against human trafficking or laws related to the sale of children: Massachusetts, West Virginia, and Wyoming. In addition, less than twenty states currently include victim assistance as part of their anti-trafficking statutes.

State-level advocacy to amend the definition of child abuse to include child trafficking has shown promise to improve identification and recovery services. For example, the Illinois Safe Children Act amends the definition of an abused child for child protection purposes, and includes all household members as possible perpetrators of abuse, not just a parent or qualified caretaker. The Illinois Department of Children and Family Services is currently working to create a new allegation of abuse entitled, "human trafficking." Connecticut has created a "human

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<sup>33</sup> *Id.* at 32

<sup>34</sup> Karl Plume, "Iowa meat packer faces child labor law charges," REUTERS, (Sep. 9, 2008) (*available at* <http://www.reuters.com/article/2008/09/09/us-food-agriprocessors-lawsuit-idUSN0932352620080909>).

trafficking” allegation for child protection hotline professionals, and requires consultation with a specialist in child trafficking. A new Florida child welfare policy specifies how child abuse hotline staff and investigators handle alleged child trafficking cases. Both New York and Illinois laws specifically state that local child welfare and protection agencies are required to serve referred child trafficking victims.

## **V. PROTECTION OF RIGHTS OF VICTIMS OF LABOR TRAFFICKING AND/OR SALE OF CHILDREN FOR PURPOSE OF FORCED LABOR**

### **A. Unaccompanied Immigrant Children—Identifying Children Sold for Forced Labor**

In fiscal year 2010, 8,207 unaccompanied immigrant children were taken into federal custody after being apprehended by federal immigration authorities. For FY 2012, the USG projects the number will double, to 16,000 children, most from Central America: Guatemala, Honduras and El Salvador.<sup>35</sup> In addition, an unknown number of unaccompanied children enter the United States without ever being apprehended. There are no statistics on the percentages or the number of unaccompanied immigrant children sold for labor.<sup>36</sup> During the period of time the child is in federal custody, it is often difficult to identify those children who are being sold for labor particularly because the children themselves may not know why they are here, or may have been instructed not to disclose information. In some cases, however, particularly for children from certain parts of the world, it is known that they are destined for labor trafficking, even if the children are not aware of all the details.

The current language in the USG human trafficking criminal statute and its supporting regulations requires that there be evidence that that the child was being trafficked, at minimum, *for the purpose* of subjection to labor or sex trafficking (emphasis added). Because such evidence is incredibly difficult for trafficked children to prove, many are denied the protections that would prevent them from being resold or otherwise harmed.

#### Sale of the Child for Labor—Unrelated Entities Acting in Concert to Benefit From Transfer of Children

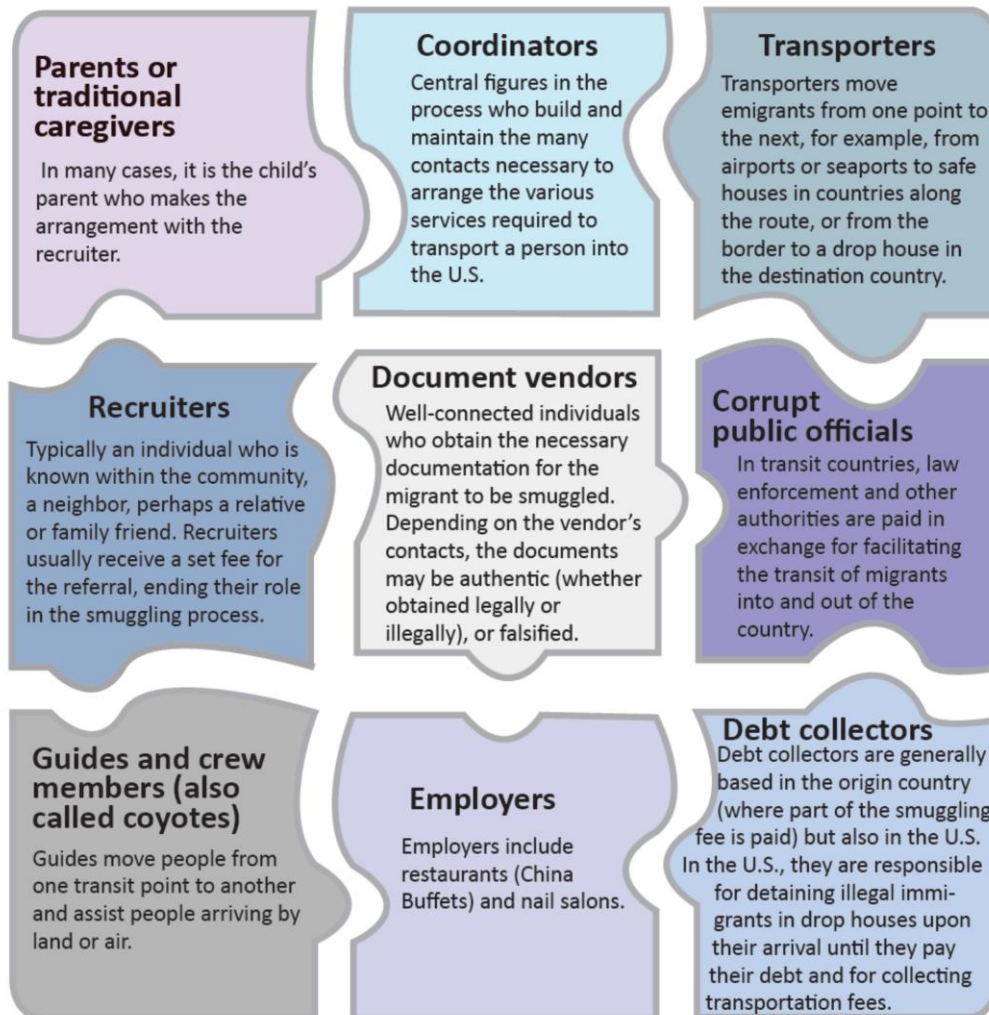
In our experience, we have found that for incoming unaccompanied minors from China, it is most often parents who arrange for the sale of the child. The reasons vary and bad intention should not be presumed—the family may need the child’s earnings because a parent is ill or deceased. In some cases, the parents may believe they are providing an avenue to a better life for the child.

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<sup>35</sup> At the time of the writing of this report, the cause/causes for the dramatic increase in Central American children coming into the U.S. is unknown, though there is much speculation: better screening by border patrol agents, increased violence in Central America, new humanitarian law in Mexico that allows unaccompanied children to avoid deportation, two successive droughts in Central America, knowledge that US immigration officials will release children to family. See also Vera Institute of Justice, *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*, March 2012, p. 10.

<sup>36</sup> Elzbieta Gozdzia and Micah N. Bump, *Victims No Longer, Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States*, (2008).

The system by which children are sold is comprised of many components—individual actors who are unrelated, who sometimes never communicate, but without whom it would not be possible to place the child in the stream of commerce—if the restaurant did not hire undocumented children, the recruiter could not find families to send their children, and the transporter would have no one to ferry across borders. If the family did not receive remittances after the debt was paid, there would be no incentive to place the child in this situation—especially because first she must work to repay an exorbitant debt—after which she will continue to work and send money to the family. Following is a diagram of the components of the system—in some cases, entities handle more than one responsibility—this is a fluid model.





## Protection—Just out of Reach

While the US government criminalizes the attempt to traffic, it does not offer parallel protections to children brought to US *for the purpose* of labor. These children are systematically placed in immigration removal proceedings where they are treated as offenders, and must defend themselves in adversarial removal proceedings. They are not provided with legal representation at government expense. If deported, some face the risk of being re-trafficked. Others are responsible for paying the debt owed to the transporters. Yet many of these children continue to be treated by government officials as children who are merely smuggled, and accused of being complicit in the arrangement. This is contrary to international principles as well as the children’s actual experience, yet these children continue to be treated as offenders instead of victims, violating their rights under the TVPA and OSPAC.

The Young Center has worked with a number of unaccompanied children who are destined for forced labor. Most of the cases in this report involve children from China. It is important to point out, however, that children from all over the world are vulnerable to being sold for labor. The Young Center has worked with children from India who carry substantial debt. We have also worked with children from Central America whose debt may be lower—in the range of \$3,000-\$4,000—but the family has mortgaged a parcel of land and the child fears retribution if he cannot work to pay down the debt owed to a loan shark.

Most children who arrive in the U.S. from Fujian Province in China are encumbered by a significant debt, often between \$70,000 - \$80,000 USD. In many of these cases, the child is clearly being recruited, moved, transported, or provided, through the use of force, fraud, or coercion (including remuneration), *for the purpose* of debt bondage or peonage. However, protections for these children are systematically denied because the actual act of involuntary servitude, peonage, debt bondage or slavery has not yet occurred, because the children were apprehended at a border or point of entry and *before* they have begun to do any work. The regulations require the applicant to describe the victimization.<sup>37</sup> For children apprehended at the border, however, there may be little, if any, information known by the child about the victimization she is destined for.

### Case Example: LiLi, a 17 year old girl

*LiLi did not choose to come to the United States. Her family needed to pay off an outstanding debt, and arranged with the snakeheads to transport her to the United States to work. LiLi did not want to leave her family. LiLi was saddled with the existing family debt plus the cost of her passage to the United States: more than \$80,000. LiLi experienced a harrowing journey to the United States which took more than three months; she was moved through numerous countries—China, Hong Kong, to France, Columbia, Ecuador, Guatemala, Mexico—and transferred from drop-house to drop-house by armed men. Her traffickers confiscated her travel documents and cell phone, and controlled outgoing calls. She was transported across much of Mexico hidden for days under the sleeping compartment of a vehicle.*

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<sup>37</sup> 8 C.F.R. § 214.11(f) and (f)(3).

*When LiLi reached the Mexico-U.S. border and was instructed to cross, she was not provided adequate provisions or supplies, nor was she prepared for the risks and rigors of the journey. LiLi ultimately collapsed near a railroad track, where she was discovered by U.S. immigration authorities. She was seen by a doctor, and was subsequently transferred to federal custody.*

*LiLi is terrified of being sent back to China. When she talked about the experience, LiLi was very emotional and scared, especially when she talked about being turned over to the snakeheads, the journey from China to the U.S., and what might happen to her if she is sent back to China. LiLi was told by the snakeheads that if she is returned to China, the snakeheads will send her back to the U.S. again to repay the debt her parents incurred. LiLi believes that upon return to China, the snakeheads will quickly locate her and re-traffic her in order to recoup their fees. LiLi is also afraid that if she is sent back to China, she will be jailed and beaten by the Chinese police.*

Children such as LiLi should be eligible for protection. They are targeted because of their age and vulnerability—in the eyes of the various actors involved in these transactions, their youth allows them to work hard for many years. Given the strong tradition of filial piety in China, these children do not have the choice to disregard their parents’ instructions. The snakeheads and their cohorts in Central America use threats, weapons and isolation to coerce the children across continents and multiple borders. They confiscate travel documents and money and the children feel helpless and trapped. In each and every case, these children state an explicit fear of return to China. The families also financially benefit from the transaction—once the debt is paid, the child is like the Golden Goose, she will continue to send money back home even after the debt is paid.

The debt owed to the snakeheads constitutes financial coercion which compels the child to remain in debt bondage or involuntary servitude. If the child fails to comply with the arrangement whereby she is to work 14-hour days, 6 day weeks to repay the debt of \$80,000, she may be threatened by the snakeheads, or by her own family. In most cases, the child doesn’t fully comprehend what she has been committed to. Particularly for children for whom filial piety is part of their culture, it is inconceivable to say no, or to reject the plan proposed by the parent. The primary issue of contention in providing protections to children sold for labor or child trafficking is often consent—can a child consent to being sold into labor in exchange for which a debt will be paid and in the long-term, once the debt is paid off, the parent (adult caregiver) will receive continuing support in the form of remittances from the child?

The United Nation’s Toolkit to Combat Trafficking provides that “even if a child is not threatened, no force is used against him or her, or he or she is not coerced, abducted or deceived, *the child cannot give consent to the act of trafficking for the purpose of exploitation.* Moreover, even the custodian of the child cannot give consent to the trafficking act for the purpose of exploitation.”<sup>38</sup> In its “Guidelines on the Protection of Child Victims of Trafficking,” the United Nations distinguishes the definition for trafficking as applied to children versus

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<sup>38</sup> *Emphasis added.* United Nations Office on Drugs and Crime, Toolkit to Combat Trafficking in Persons, Sales No. E.06.V.11 (2006).

adults. For example, in the case of children, there is a broad list<sup>39</sup> of what constitutes exploitation for the purposes of trafficking, including forced labor. The Guidelines reiterate that a child's consent is irrelevant even if such consent was not obtained illicitly.<sup>40</sup> The consent of a child is "irrelevant for legal purposes" and "the child's consent cannot remove the child's status as a victim."<sup>41</sup>

### What Happens to Children Who Must Work Years to Pay the Debt - Harm to the Child over Time

In an article for the *New York Times Magazine*, author Alex Kotlowitz tells the story of Deng Chen, who was 14 years-old when his family sent him to the United States.<sup>42</sup> Until he arrived in the U.S., Deng Chen didn't fully comprehend the arrangement. He was smuggled from China, transported into the U.S., and placed in a drop house until his mother arranged to pay the debt through loan sharks in China. When Chen was released from the drop house, the first thing he did was call his mother: "In that conversation with his mother in October 1997, Chen learned of the debt his family now carried. His mother, he recalled, cried, telling him that he had to send money home or their lives would be in danger. It was a message she delivered to Chen repeatedly over the next four years."

*Deng Chen did what was expected of him—he worked a variety of jobs. He first worked for a garment factory, but needed more money so he dropped out of school and went to work at a buffet restaurant in Wildwood, N.J., where he could make \$800 monthly. His first job was as dishwasher, but because of his small stature, he needed a crate to stand on. . . . There was nothing dramatic about this time, but rather a slow, grinding-away of the senses, of the soul, like dripping water that erodes the contours of a mountain. He was just a boy – the other workers called him "little brother" – who knew that if he didn't send money home, his parents might be assaulted or, worse yet, killed. That is what he lived for – or rather against: to avoid such a calamity. So he worked 12- to-13-hour days with one day off each week. At each restaurant, the owner housed the employees, most of whom were undocumented, in crowded apartments, often five or six to a room. Initially, he didn't complain. "You didn't have much time to think" while working in the restaurants, Chen told me.*

\* \* \*

*Chen found more permanent lodging at the Franciscan Center, a shelter for runaways, where he would live for a little more than a year. A few weeks into Chen's stay, at 9:30 one night, Maureen Armstrong (the case manager) received a call at home from a staff member on duty. Chen, she was told, had unraveled. Armstrong rushed to the shelter and found Chen curled up in a fetal position on the floor of his room by his dresser. He was wailing like a wounded animal. The other*

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<sup>39</sup> Drawing from Article 3 of the Palermo Protocol, an annex to the Convention Against Transnational Organized Crime, the Guidelines include the following as forms of exploitation "prostitution. . . sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other forms of exploitation." See United Nations Children's Fund, Guidelines of the Protection of Child Victims of Trafficking, Section 1, "Definitions" (September 2006), available at [http://www.unicef.org/ceecis/0610-Unicef\\_Victims\\_Guidelines\\_en.pdf](http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf).

<sup>40</sup> Id.

<sup>41</sup> Guidelines, Section 5.3.

<sup>42</sup> Alex Kotlowitz, *The Smuggler's Due*, *New York Times Magazine*, June 11, 2006 (a copy of this article is attached as Appendix A).

boys were standing in the hallway, frozen, trying to assure Chen that it would be O.K. She could hear him, through the sobs, telling the others they were wrong, that it wasn't going to be all right. Armstrong got on the floor and held Chen, rocking him, urging him to take slow, deep breaths. "I've been a good son – I've been a good son," Chen sputtered, his nose running, his chest heaving. "Why did they do this to me? My family, why'd they turn their back to me?" It took Armstrong well past midnight to calm him.

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*At the Door, a refuge for wayward teenagers in New York City, the staff has in the last few years seen an increasing number of teenagers from China who, like Chen, came to the U.S. on their own. Hsin-Ping Wang, a Door counselor, says that some have come in because of suicidal thoughts or because they are completely lost and have nowhere to turn. Most, she told me, are under such pressure because of the debt that they have completely withdrawn; they remind her of autistic kids. One 17-year-old boy came to see her and said nothing other than that he had come to the U.S. with his older sister. Wang tried to coax his story out of him, but he remained silent, and after the session, he told Wang that he felt better. She has had others who have spent the time crying. "I think sometimes they just need someone to witness what's happened to them," she said. Most, she told me, come to see her once and then never return, mostly because of their frenzied work schedule but also because in the end there is little she can do for them. They have a financial bargain to maintain, and they know the consequences if they don't.*<sup>43</sup>

### Child Labor Law

*The Young Center received a call from a woman in a small town in Illinois. She was very worried about a girl her daughter had befriended, Fei Yan,<sup>44</sup> a 16-year-old Chinese girl working at the local Chinese restaurant. The girl was working long hours—12-hour shifts, six days a week. She was living in an apartment with other restaurant workers, sharing a bedroom with two adults. Fei Yan was paid in tips only. She said she was responsible for paying her father's debts as well as her own smuggling debt of \$70,000. When the woman met Fei Yan, she was in school and working after school and on weekends. Fei Yan reported that she wanted to drop out of school and go to New York to work so that she could earn more money to pay her father's debt and her own debt.*<sup>45</sup>

Children like Fei Yan are largely invisible. They work in small restaurants, and there is no system in place to identify them, or offer protection. There are a myriad of laws intended to protect children from exploitation, yet significant gaps remain. Often aid is only provided when a Good Samaritan takes note of an unusual situation and tries to find assistance for the child.

Child workers in the U.S. are protected by two federal laws which are enforced by the Department of Labor: The Fair Labor Standards Act (FLSA) and the Occupational Safety and Health (OSH) Act.<sup>46</sup> FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local

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<sup>43</sup> *Id.*

<sup>44</sup> Pseudonyms are used throughout.

<sup>45</sup> Call from suburban mother regarding Chinese girl.

<sup>46</sup> 29 U.S.C. § 202(a) (2006); 29 U.S.C. § 651 (2004).

government agencies.<sup>47</sup> The FLSA and its associated regulations and child labor provisions are designed to protect the educational opportunities of youth and prohibit their employment in jobs under conditions detrimental to their health or safety.<sup>48</sup> FLSA applies to all employees of enterprises “engaged in commerce or in the production of goods for commerce.”<sup>49</sup> Specifically, this refers to businesses that make over \$500,000, and have more employees than just the immediate family of the owner.<sup>50</sup>

In order to pay off exorbitant smuggling debts, these children face years of work. FLSA and state laws in the U.S. generally restrict children from working for more than a certain amount of hours, when school is in and out of session. Combining limited working hours with minimum wages, it would take nearly 10 years for some children to pay off their debts. A 15-year-old child in Illinois would need to work for nearly 7.5 years, full-time, to pay off a \$75,000 USD debt, a calculation which does not take taxes into account.<sup>51</sup> This calculation assumes that the child will be lawfully employed by an employer who abides by state child labor laws, which is not the case for many children.

The following tables list the minimum wages in California, Florida, Illinois, and New York and the relevant hour limitations on child labor in these states:

| State                    | Minimum Wage |
|--------------------------|--------------|
| California <sup>52</sup> | \$8.00       |
| Florida <sup>53</sup>    | \$7.25       |
| Illinois <sup>54</sup>   | \$8.00       |
| New York <sup>55</sup>   | \$7.25       |

| 14/15 year olds          |   |                              |
|--------------------------|---|------------------------------|
| State                    | School in session   | School out of session        |
| California <sup>56</sup> | 3 hours/school day<br>8 hours/non-school day<br>18 hours/week | 8 hours/day<br>40 hours/week |
| Florida <sup>57</sup>    | 3 hours/school day<br>8 hours/non-school day<br>15 hours/week | 8 hours/day<br>40 hours/week |
| Illinois <sup>58</sup>   | 3 hours/school day – cannot be in school                      | 8 hours/day                  |

<sup>47</sup> 29 U.S.C. §§ 201-216 (2006).

<sup>48</sup> 29 U.S.C. § 212; 29 C.F.R. § 570.2

<sup>49</sup> 29 U.S.C. §203 (s)(1) (2006).

<sup>50</sup> 29 U.S.C. §203 (s) (1) and (2)

<sup>51</sup> A constant minimum wage is used for calculation purposes.

<sup>52</sup> CAL. LABOR CODE §1182.12 (Deering 2009)

<sup>53</sup> FLA. STAT. §448.110 (2009)

<sup>54</sup> 820 ILL. COMP. STAT. 105/4 (2009)

<sup>55</sup> N.Y. LAB. LAW §652 (Consol. 2009)

<sup>56</sup> CAL. LABOR CODE §1391 (Deering 2009)

<sup>57</sup> FLA. STAT. §450.081 (2009)

|                        |   |                              |
|------------------------|---|------------------------------|
|                        | and work for more than 8 hours<br>No limit on non-school day<br>24 hours/week | 40 hours/week<br>6 days/week |
| New York <sup>59</sup> | 3 hours/school day<br>8 hours/non-school day<br>18 hours/week                 | 8 hours/day<br>40 hours/week |

| 16/17 year olds          |   |                              |
|--------------------------|---|------------------------------|
| State                    | School in session   | School out of session        |
| California <sup>60</sup> | 4 hours/school day<br>8 hours/non-school day<br>48 hours/week       | 8 hours/day<br>48 hours/week |
| Florida <sup>61</sup>    | 8 hours/school day<br>No limit/non-school day<br>30 hours/week      | Unlimited                    |
| Illinois <sup>62</sup>   | Persons aged 16+ are not minors for the purposes of child labor law |                              |
| New York <sup>63</sup>   | 4 hours/school day<br>8 hours/non-school day<br>28 hours/week       | 8 hours/day<br>48 hours/week |

Taking these laws into account, it becomes apparent that children with debts of \$70-80,000 will spend the rest of their childhood, into young adulthood, working off the transportation debt agreed to by their parents, as well as continued payments to the family once the debt is paid.

Children who are forced to work during adolescence miss out on school and learning, impacting their lives beyond childhood. Research has linked part-time employment during adolescence to negative effects: psychological distress, lower academic achievement, higher rates of drug and alcohol use, and perhaps most important, lower academic achievement.<sup>64</sup> The study relates the detrimental effects to *how much* the teenager works, not whether they work.<sup>65</sup> The ultimate effect of the situation faced by these children—long hours of work, neglect to education and learning—is detrimental to the individual’s development.

<sup>58</sup> 820 ILL. COMP. STAT. 205/3 (2009)

<sup>59</sup> N.Y. LAB. LAW §142 (Consol. 2009)

<sup>60</sup> CAL. LABOR CODE §1391 (Deering 2009)

<sup>61</sup> FLA. STAT. §450.081 (2009)

<sup>62</sup> 820 ILL. COMP. STAT. 205/1 (2009)

<sup>63</sup> N.Y. LAB. LAW §143 (2009)

<sup>64</sup> Laurence Steinberg, Suzanne Fegley, and Sanford M. Dornbusch, *Negative Impact of Part-Time Work on Adolescent Adjustment: Evidence from a Longitudinal Study*, 29 *Dev. Psych.* 171, 171 (1993).

<sup>65</sup> *Id.*

## Improving Inadequate Legal Protections for Children and Youth

The U.S. has some excellent laws designed to protect youth who are (1) trafficked, (2) subject to usurious debt, (3) subjected to involuntary servitude, or (4) working under illegal labor conditions. The U.S. should be commended for enacting and implementing these laws. This section will focus on one form of relief, Special Immigrant Juvenile Status (SIJS), a form of relief for children who have been abused, abandoned or neglected.<sup>66</sup>

The process for obtaining SIJS is complex and requires state and federal involvement:

- 1) The child has to be declared dependent by a state court;
- 2) The child takes the state court "predicate" order to the U.S. Citizenship and Immigration Services (USCIS);
- 3) The child applies for lawful permanent residency with either USCIS or to the immigration court through an adjustment of status application.

The required substantive determinations that need to be reached are:

- 1) The child was abused, abandoned or neglected;<sup>67</sup>
- 2) Reunification with one or both parents is not viable due to this abuse, abandonment or neglect;<sup>68</sup> and
- 3) It is not in the child's best interest to return to his or her home country.<sup>69</sup>

Many children sent by their parents and sold for labor meet this three-part test. Some children have been abused, neglected or abandoned in the traditional sense. More often, however, the abuse, neglect or abandonment comes from the acts of the parents in the very plan and process of turning their child over to the snakeheads. For children from China, the parents' actions set their children off on a very dangerous journey and years of exploitation—as shown above.

The second factor—no viable reunification with a parent is present as well. The Chinese parents who send their children to the U.S. to earn money do not expect or intend that the child will return home while still a minor. Children fear deportation largely because they believe they will be re-trafficked to the U.S. or elsewhere. In other cases, the children fear the humiliation and anger of parents and family because of the failed labor arrangement.

At present, there is no system of protection or re-integration available to children or youth returned to China, particularly when they have left without government permission, and so we would argue that it is not in the child's best interests to be returned to China.

Despite the obvious applicability of SIJS to children trafficked from China, there are many challenges and road blocks to obtaining this particular form of protection. In many jurisdictions, it is difficult to get the state court determination. Finding evidence to prove the substantive

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<sup>66</sup> 8 U.S.C. §1101(a)(27)(J)(i); INA §101(a)(27)(J)(i).

<sup>67</sup> 8 U.S.C. §1101(a)(27)(J)(i)/ INA §101(a)(27)(J)(i).

<sup>68</sup> 8 U.S.C. §1101(a)(27)(J)(i)/ INA §101(a)(27)(J)(i).

<sup>69</sup> 8 U.S.C. §1101(a)(27)(J)(ii)/ §INA 101(a)(27)(J)(ii).

requirements is very difficult for children in this situation—they often have no documentation, know little about what happened in their home countries or who the primary snakeheads are, and don't know the whereabouts of any of those persons.

### Protection from Unscrupulous Attorneys

A loophole in government agency procedures may allow (and in our experience, has allowed) attorneys representing the interest of traffickers or smugglers to represent children who are otherwise in the protective custody of the USG. These lawyers attempt contact soon after the children have been apprehended by immigration or criminal justice authorities, and claim to represent the children's interests.<sup>70</sup> The government agency charged with care and custody of unaccompanied immigrant children has stringent protections in place to prevent access to children by traffickers. These attorneys often show up in court and submit papers on the child's behalf. These attorneys have been known to then notify the smugglers and traffickers that the child has been released, thereby triggering the debt collection and in some cases, threats against the family and child.

Once released, these children often go unrepresented because the attorney has achieved the trafficker or smuggler's objective, namely to secure the child's release. Tragically, some of these children receive *in absentia* orders of removal because the attorneys abandon the case. The following examples illustrate the insidiousness of the trafficker/smuggler attorney relationship for unaccompanied children.

*Case example 1: In a case involving a girl from India, after the government denied the sponsorship application of an unrelated single man, the man hired a private attorney to appear on the girl's behalf in Immigration Court. When the attorney showed up in Immigration Court and announced his intention to represent the girl, the Immigration Judge asked the Young Center Child Advocate to investigate the situation. The Child Advocate contacted the man and learned that in fact, he had applied to sponsor a number of unaccompanied children from India. The attorney, unwitting though he claimed to be, acknowledged that he had not been hired by the girl's family, and offered to withdraw. The child advocate then coordinated with the legal services NGO to arrange pro bono legal representation.*

*Case Example 2: When he arrived at the shelter, it was clear to his case manager that Xie Min, a 16-year-old boy from China, had a mental disability. When a Young Center Child Advocate was assigned, she learned that while living in foster care, Xie had participated in his asylum hearing pro se and without any adult to accompany him. The Child Advocate obtained a transcript of the immigration proceeding in which the boy had given nonsensical answers to the government attorney's questions; relief was denied. The Child Advocate contacted the attorney of record who had filed a notice of appeal. The attorney told her that his only goal had been to get the boy released from custody and that he had no plans to prepare an appellate brief, which was due the next day. The*

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<sup>70</sup> Since 2004, the Lutheran Immigration and Refugee Services has partnered nationally with the Office of Refugee Resettlement to make best interest recommendations on reunification and release to sponsors. In cases in which there are concerns about the child's safety or well being with a prospective sponsor, the assigned LIRS child welfare specialist makes recommendations regarding further assessments of the sponsor, alternative placement and/or safety plans.



*Child Advocate contacted the local legal services provider which found pro bono counsel to prepare and file pleadings to reopen the case, which motion was granted.*

It is a clear conflict of interest for an attorney retained by a smuggler or trafficker to represent an unaccompanied immigrant child, since the trafficker/smuggler has a vested interest in securing the child's release and conveyance to the pre-destined labor site. This practice has been most common in cases involving children from China and India.<sup>71</sup> We urge the government to improve procedures specific to minors, and to prevent disclosure of information to an attorney whom the child and/or family have not hired.

## VI. CONCLUSION AND RECOMMENDATIONS

As noted in the ECPAT-USA Alternative Report, we commend the enactment of strong laws and actions to protect the rights of child victims and prosecute offenders of the OPSC and TVPA. These efforts include the following:

1. **William Wilberforce Trafficking Reauthorization Act (2008 TVPRA).** In 2008, the President of the United States signed into law the William Wilberforce Reauthorization Act, providing increased protections for children at risk of being trafficked.
  - a. **Affirmative Asylum.** The 2008 TVPRA provides an avenue for unaccompanied immigrant children to apply for asylum through an affirmative process (an interview with an asylum officer) instead of first being required to apply through an adversarial court hearing.
  - b. **Repatriation Pilot.** The 2008 TVPRA provides for development of a safe repatriation pilot program through which USG agencies and NGOs will develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality.
  - c. **Child Advocates.** The 2008 TVPRA provides for the appointment of Child Advocates (guardians) for vulnerable unaccompanied immigrant children. The USG has implemented one program and pending legislation would allow Child Advocates to be appointed for unaccompanied immigrant children throughout the country.
2. **School Attendance.** In his State of the Union address, on January U.S. President Obama called for every state to require students to stay in school until they turn 18. Some states currently allow students to drop out of school and go to work when they are 16.

Recognizing this progress as well as the inherent challenges in the continuing task, this report has highlighted several areas where more attention and effort are required.

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<sup>71</sup> A 2001 Office of Inspector General's Report to the Department of Justice stated that although non-Chinese minors were not represented by attorneys, most of the Chinese children were represented by attorneys. <http://www.usdoj.gov/oig/reports/INS/e0109/chapter4.htm> (last viewed on Sept. 26, 2008)

## Recommendations

1. **Ratify the Convention on the Rights of the Child (CRC).** The United States Government should take prompt action to ratify the Convention on the Rights of the Child as one of the main instruments for creating a protective environment for all children. Many of the tenets of the CRC came from U.S. law and fit with existing state child protection principles.
2. **Improve quality and scope of data collection and research.** Conduct more research and program monitoring utilizing child development, public health, and health and human services lens to provide more comprehensive indicators on the extent and characteristics of the sale of children, child prostitution and child pornography, indicators addressing prevention measures, and indicators on assistance to victims. Ensure research priorities include *both* the sale of children for the purpose of forced labor and sexual exploitation and that one not be prioritized over the other.
3. **Improve labor standards as applied to child labor to prevent egregious forms of child labor, including sale of children for the purpose of forced labor and labor trafficking.** Conduct investigations of work sites that traditionally hire children: restaurants, child care, nail salons, landscaping companies, child care and farms/agriculture.
4. **Improve protections for children entering the United States *for the purpose of labor trafficking and provide clarity as to how these cases should be treated under the OPSC and TVPA.*** For children arriving from parts of the world known for debt-labor exploitation (for example, Fujian Province, in China), offer children the opportunity to apply for protection. Provide all unaccompanied children with access to attorneys paid for by the government, as well as guardians (Child Advocates) whose role is to advocate for the child's best interests.
5. **Incorporate a best interests standard into the Immigration and Nationality Act.** For children under the age of 18, U.S. law should incorporate the best interests standard, requiring that all decision makers, including immigration judges, asylum officers and immigration authorities consider the child's best interests in rendering decisions.
6. **Improve Inter-Agency Coordination among local, state, and federal agencies, emphasizing those that work with children, including child protection/child welfare, education, and juvenile justice systems.** Improve training programs addressing the specific issues and needs of children, including interviewing techniques, service requirements, policies regarding custody, guardianship, and family reunification, and rights of children.
7. **Ensure prevention and protection efforts to address both labor and sexual exploitation of children.** Establish a hot-line that can accept collect calls and text messages from children who want help.

8. **Apply a “systemic” approach addressing child exploitation versus creating prevention and protection programs addressing each as a distinct issue.** Improve the capacity of existing systems serving children and families, including child welfare/child protection, education, and juvenile justice, to create prevention initiatives, and improve identification and recovery services for children impacted by both labor or sexual exploitation.

We strive for a world in which no child, whether in the United States or abroad, is commercially exploited for labor or sex. As members of civil society in the United States and as critical stakeholders in this enormous endeavor, we look forward to further progress and to help guide the UNCRC and ultimately U.S. policy makers toward the next steps needed to protect children from exploitation of all forms.