

Child Policy Forum of New York

Publication of the Children's Studies Center

Summer 2009

Implementation and Monitoring of the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography



BROOKLYN
CUNY
The City University of New York

Proceedings of the Third Child Policy Forum of New York
Convened at the Church Center for the United Nations
New York City
February 6, 2009

Child Policy Forum of New York
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Gertrud Lenzer, Editor



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The Children's Studies Center held its *Third Child Policy Forum of New York* on the subject of the *Implementation and Monitoring of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)* on February 6, 2009 at the Church Center for the United Nations, 777 UN Plaza, Meeting Room 212, New York, NY. The main purpose of this meeting was to review the degree to which the statutes, regulations and programs of New York State serve to protect children and adolescents from sexual exploitation. This review with its focus upon law reform and other mechanisms required to implement and monitor the articles of the OPSC will, we hope, lead to New York becoming a model for other states. In fact, the obligations entailed by the ratification of this signal international human rights treaty, which the United States has taken upon itself to fulfill, apply equally to the State of New York and other states. Since the United States is obligated to submit a second Report on the compliance with the OPSC to the U.N. Committee on the Rights of the Child in January 2010, officials from the federal government, charged with preparing the report, attended the *Child Policy Forum of New York* on February 6, 2009 and have since welcomed the submission of a New York State Report to be added to the federal report.

In collaboration with the American Bar Association Center on Children and the Law, the Campaign for U.S. Ratification of the Convention on the Rights of the Child, Covenant House Nineline, the CUNY School of Law, End Child

Prostitution, Pornography, and Trafficking (ECPAT-USA), Girls Educational and Mentoring Services (GEMS), and the New York State Bar Association Committee on Children and the Law, the Children's Studies Center brought together at this *Third Child Policy Forum of New York* a roster of distinguished experts and speakers. With over 150 attendees from a variety of federal, state and local government agencies, from academic institutions and local, national as well as international NGOs, the *Forum* event was a great success. On behalf of the goals of the Optional Protocol and the exploited children it is serving, we wish to thank, not only our speakers and collaborating partner organizations, but all those agencies and NGOs for participating in our efforts, sending representatives and participating in the concluding discussion session of the *Forum*.

One important purpose of this first consultation was realized immediately on the day of the *Forum* with the establishment of an effective OPSC ChildRights Working Group of New York (CRWGNY), which will ultimately issue a New York State Party Report in 2010 in collaboration with the federal report of the United States, A.M. William A. Scarborough, Chair of the Committee on Children and Families in the New York State Assembly and Kathryn Grant Madigan, Esq., Immediate Past President of the New York State Bar Association, along with the Children's Studies Center, have undertaken to form the CRWGNY and are currently working with New York State and federal officials.

In preparation of the OPSC Report of New York State, we have prepared an inventory of



all the existing New York State statutes and regulations pertaining to the OPSC. Moreover, we have compared the existing body of legislation with the provisions of the *U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and identified those areas where additional legislation will be needed to fully implement the OPSC. We are particularly pleased to report that at the time of publishing these *Proceedings*, legislation is being drafted in Albany to close these gaps.

In this connection, we are delighted to express our deep gratitude and warm acknowledgments to the Oak Foundation, which has provided the Children's Studies Center with a grant to enable us to pursue this important human rights project in New York State as well as the publication of these *Proceedings*. We also wish to thank our distinguished speakers, members of our Advisory Board, all our funders, and

the faculty, students and staff of the Children's Studies Center for having made this event possible.

Our *Third Child Policy Forum of New York* not only focuses on the treaty obligations of the OPSC but also on the wider human rights framework of the U.N. Convention on the Rights of the Child to which it is an Optional Protocol. Even though the United States, as one of two remaining countries, has not yet ratified this Convention—193 countries are state parties to it—this international human rights treaty provides a major framework for the interdisciplinary field of Children's Studies. By concentrating on this Optional Protocol, we also hope to contribute directly to the Convention. There are many signs at the present which indicate that President Obama appears to be in favor of the United States of America ratifying this treaty on behalf of children and young people.

Gertrud Lenzer

Director

*Children's Studies Program and Center
Brooklyn College, CUNY*

In addition to members of our collaborating partner organizations, the following is a partial list of organizations with representatives attending the Third Child Policy Forum of New York:

Key: City and State Agencies - Colleges and Universities - Organizations

CUNY School of Law, U.S. Fund for UNICEF, Parents In Action for Leadership and Human Rights, Children's Defense Fund, Child Abuse Prevention Center, US Dept. of State Office -State Dept. Office to Monitor & Combat Trafficking Persons, Kings County District Attorney's Office, Perhaps Kids Meeting Kids Can Make Difference, Criminal Justice at the United Nations, Graduate Center/CUNY, Office of the Mayor/New York City, Lawyers for Children, SOS Children's Villages USA, New York State Unified Court System, Columbia University, Hunter College, The Campaign for U.S. Ratification of the U.N. Convention on the Rights of the Child, Save the Children Alliance, Empire State Coalition of Youth and Family Services, YWCA/Brooklyn, NY Coalition of Religious Congregations to Stop Trafficking Of Persons, Pace University, Childwatch International Research Network, Catholic Charities/USA, St. Lukes Crime Victims Treatment Center, NYS Office of Children and Family Services, Juvenile Justice Coalition/Correctional Association, The Connelly Foundation, State University of New York at Stony Brook, John Jay College of Criminal Justice, Working Group on Trafficked Children/Sisters of Notre Dame, Administration for Children's Services/NY



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THIRD CHILD POLICY

INTRODUCTION

Christoph M. Kimmich

President,
Brooklyn College, CUNY



William A. Tramontano

Provost,
Vice President for
Academic Affairs,
Brooklyn College, CUNY



Kathryn Grant Madigan, Esq.

Immediate Past
President,
New York State Bar
Association



Gertrud Lenzer

Professor,
Brooklyn College, CUNY
Graduate Center, CUNY
Director,
Children's Studies Program
and Center, CUNY



PANEL ONE

Legislative Initiatives in New York State Pertaining to the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

The Honorable William A. Scarborough

Chairperson of the
Standing Committee
on Children and Families,
New York State Assembly



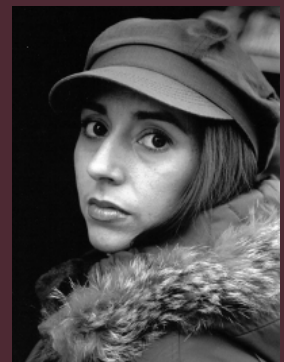
The Honorable Jeffrey Dinowitz

New York State
Assembly



Rachel Lloyd

Executive Director,
Girls Educational and
Mentoring Services
(GEMS)



FORUM OF NEW YORK

Friday, February 6, 2009

1 – 5 p.m.

Church Center for the United Nations

Meeting Room 212

777 UN Plaza

New York, NY 10017

PANEL TWO

A National and International Perspective Pertaining to the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

Howard Davidson, J.D.

Executive Director,
The American Bar
Association Center on
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Director,
UNICEF Innocenti
Research Centre



Carol Smolenski

Executive Director,
End Child Prostitution,
Pornography, and Traf-
ficking (ECPAT – USA)



Angela O. Burton, Esq.

Associate Professor,
CUNY School of Law







Gertrud Lenzer
Professor, Brooklyn College, CUNY
Professor, the Graduate Center, CUNY
Director, Brooklyn College Children's
Studies Program and Center, CUNY

Distinguished Guests,
 Dear Colleagues and Friends,
 Ladies and Gentlemen,

On behalf of the Children's Studies Center of Brooklyn College and The City University of New York and on behalf of all the distinguished experts and organizations collaborating in today's proceedings, I have the honor of welcoming you to this, the *Third Child Policy Forum of New York*. In particular, we extend our welcome to our distinguished panel of speakers, who will bring their extensive expertise to the discussion today. We have been fortunate to bring together here this extraordinary group of experts on the issues under discussion this afternoon. They come from the realms of the legislature, state and national law associations, representatives of human rights institutions, from schools of law, and from local, national, and international child advocacy organizations. We look forward with optimism to the probability that the collective wisdom, energies, and commitment of those here assembled will in major ways help to promote and protect the human rights of children in the State of New York. We would like to note that we are very pleased to be able to hold this *Forum* here in the Church Center of the United Nations with the windows of this venue overlooking the buildings of the United Nations and the flags representing all nations. This is a most appropriate venue for our deliberations on the human rights of children in general and for those children in particular, who are the victims of violence against children and of sexual exploitation.

To bring together a *Forum* such as this requires a great deal of effort, and I offer my deep gratitude to the Children's Studies Center staff and faculty. To Loretta Chin, the Children's Studies Research Coordinator; Elise Goldberg,

Gertrud Lenzer is the founder and Director of Children's Studies, as well as a Professor of Sociology at both Brooklyn College and the CUNY Graduate Center. In 1991, she led Brooklyn College's efforts to become the first academic institution to develop an interdisciplinary liberal arts Children's Studies Program. Under her leadership, a minor in Children's Studies was established in 1994 for all liberal arts majors. In 2001, a 30-credit interdisciplinary children's studies concentration for majors in early childhood education teacher and childhood education teacher programs was introduced in cooperation with the Brooklyn College School of Education.



Professor Lenzer also founded the Sociology of Children as a new field and Section of the American Sociological Association in 1991 and was designated its Founding Chairperson. She received the national 1997 Lewis Hine Award in Honor of Outstanding Service on Behalf of Children and Youth of the National Child Labor Committee, founded by an Act of Congress in 1904. Professor Lenzer has received a number of distinguished fellowships during her career, among them the American Council of Learned Societies Fellowship, a Rockefeller Foundation Fellowship in the Humanities with a residency at the Institute for Advanced Study, Princeton, a fellowship at the National Humanities Center, and a Research Fellowship at the Rockefeller Bellagio Center, Italy. In addition she was selected as the first American scholar and the first woman to deliver the Auguste Comte Memorial Lecture at the London School of Economics. Most recently, she has worked closely with legislators to spearhead legislation for an independent Office of the Child Advocate for New York.

Coordinator of the Children's Studies Program; Jane Muller, our College Assistant, and to our faculty members Aida Izadpanah Jahromi, Heidi Bjorgan, Joe Grochowalski, and a number of our dedicated students. The real demonstration of today's effort, however, will lie in its future outcomes and results. As a call to action, our first goal is to bring together a ChildRights Working Group of New York to chart a long-range plan of action on the New York State level and work toward its realization.

Again, I wish all of you welcome and let us proceed in the spirit of Nobel Prize-winner Amartya Sen: "Making human rights real."¹

¹ "The Power of a Declaration," *The New Republic*, February 4, 2009, p. 30.

Welcoming Remarks

I now have the pleasure and honor to introduce our distinguished guests who will bring welcoming greetings to you.

In particular, we welcome Dr. Christoph M. Kimmich, President of Brooklyn College of The City University of New York. It was under his watch and with his support of our fledgling interdisciplinary Children's Studies Program that the new field began to grow and develop. There was no other academic institution to look to for models, and it clearly was an act of faith on his part to support us as we moved out into unknown waters. Today, we are happy to say, you will find numerous academic institutions in this country, Canada, Europe, and on other continents that have Children's Studies or Childhood Studies Programs.

It is also a special honor to greet our new Provost and Vice-President for Academic Affairs

at Brooklyn College, Dr. William Tramontano, to participate in today's proceedings and discussions. He has provided our program with support, and we thank him for providing words of welcome today.

Last but not least, we are delighted to greet and present to you Dr. Kathryn Grant Madigan, the immediate past president of the New York State Bar Association, a lawyer with many recognitions and awards, to provide us with welcoming remarks on this occasion. It was just a year ago that she dedicated her Presidential Summit at meetings of the NYSBA in January 2008 to "Youth at Risk" with a special emphasis on the CRC and in support of the ratification by the U.S. of the UN CRC. Her leadership in pursuit of the rights and welfare of children is exemplary.



Christoph M. Kimmich
President
Brooklyn College, CUNY

Thank you very much Professor Lenzer and good afternoon everyone. I am pleased to join Dr. Madigan and my colleague Provost Tramontano in extending a warm welcome to you at the opening of the *Third Child Policy Forum of New York*. The *Forum* would not have been possible without the support of many helpful collaborators and generous friends, without the contributions of all of you gathered here today representing the law, public service, public agencies, and the economy. And sure enough, without the imagination and determination of Professor Gertrud Lenzer, who never met a challenge she didn't like, we are much in your debt.

Brooklyn College is the home of the Children's Studies Center that is the driving force behind today's *Forum*. In 1991, nearly twenty years ago, Brooklyn College was the first academic institution to develop an interdisciplinary liberal arts Children's Studies Program and since then it has gone from strength to strength. The program cuts across disciplines and brings together knowledge about children and youth, from infancy to the age of legal majority, taking into

Christoph M. Kimmich returned to Brooklyn College in February 2000 as its eighth President, after having served as Interim Chancellor of The City University of New York. President Kimmich first came to Brooklyn College in 1973, after eight years of teaching at Columbia University. At Brooklyn College, he has served as Chairperson of the Department of History, Associate Provost, Provost and Vice President for Academic Affairs.

President Kimmich holds a B.A. from Haverford College and a D. Phil. from Oxford University. A historian of modern European history, he has written several books on German foreign policy in the period between the two World Wars, as well as many articles on German history, and has lectured here and abroad. President Kimmich has received many distinguished honors throughout his career, including a Fulbright scholarship, an International Affairs Fellowship, and a Guggenheim Fellowship. He is a member of the Department of History at Brooklyn College and at the CUNY Graduate Center.



account the insights and the perspectives of the arts, humanities, social sciences, natural sciences, medicine, and law. The program has established itself, as you may imagine, as a signifi-



cant component of the College offerings and it has been, as you have just heard, emulated by other colleges and universities where similar programs have now been established. Now that's a real tribute to its quality and to its timeliness, but the Children's Studies Center at Brooklyn College is innovative not only in developing curriculum and pedagogy; it has also established paradigms for research in areas relating to children and youth and families—areas that had barely been touched, let alone studied, before the innovation that the Children's Studies Center brought to them. By escaping the confines of single scholarly disciplines and by taking advantage of the synergies of a multidisciplinary approach, it set a new standard in what can be done in this field.

Not least however, the Center distinguished itself by going beyond what can be learned or studied to what can be applied—by going beyond what happens in the classroom to work with the broader community and to become

engaged in community involvement. It's this particular aspect, which introduces national and international dimensions, as you know, that draws attention to the day-to-day realities of children trapped in the hopelessness of economic or sexual exploitation and that opens the possibilities of legislative action that is demonstrated by what we do here this afternoon. What can be demonstrated can also be turned into action. The Optional Protocol and its recommendations serve as a framework for our endeavors. So it is our hope, and I say that very profoundly and sincerely, that it is our hope that as we explore, as we are enlightened about the degree to which we in New York protect children and adolescents through our statutes and regulations, we can develop the kind of momentum that leads to an agenda, and that in turn leads to concrete solutions. With that hope I extend on behalf of Brooklyn College best wishes for a fruitful and productive afternoon.



William A. Tramontano
Provost
Vice-President for Academic Affairs
Brooklyn College, CUNY

I think everyone sees why following the President of Brooklyn College is always difficult because President Kimmich really hit it on the nose with many of the things that I wanted to say, but let me just add a few others. I represent the academic community at Brooklyn College, and it is my pleasure and privilege to welcome you to the *Third Child Policy Forum of New York*. As our President said, since the early 1990s, the field of Children's Studies has played a major role at Brooklyn College; especially through its interdisciplinary nature of arts, humanities, natural and social sciences, law, and medicine. It has given us a very particular, different perspective. Students of many diverse academic interests from pre-medicine to education majors are attracted to our programs in Children's Studies either as a formal minor in their studies or as a concentration. The particularly impressive record of policy research and public

William A. Tramontano was appointed to the position of Provost and Vice-President for Academic Affairs at Brooklyn College in July 2008. He came from Lehman College, where he was Dean of Natural and Social Sciences and where, in 2006-2007, he served as Acting Provost and Vice-President for Academic Affairs. For many years he was Chairperson of the Department of Biology at Manhattan College, where he also headed important governance committees. A cell biologist, he is the recipient of grants from NSF (National Science Foundation), NIH (National Institute of Health), and the HHMI (Howard Hughes Medical Institute) and has authored numerous scientific publications.

Dr. Tramontano holds a B.S. in biology from Manhattan College, an M.S. in biology from New York University, and a Ph.D. from New York University with a major in physiology. He is currently serving the City University of New York on the Research Deans Committee and the Louis Stokes Alliance for Minority Participation in Science (NSF).



Welcoming Remarks

service that our Center has provided on behalf of children and youth is a hallmark of this program and we can only say that symposiums and policy forums such as this event bring the field even more into public awareness and stimulate the very needed discussion and reflection that are so essential for this vital area.

We are especially proud to participate in this event as a key public institution of higher education in New York State and also in our wonderful city. We want our state and our city to become a beacon for the advocacy and the rights of

children. I am grateful to our host, grateful to our elected officials for their dedication and service, and to the members of the legal community for their efforts on behalf of children. I am especially grateful to the magnificent faculty and staff of the Children's Studies Program at Brooklyn College, in particular to our wonderful Director, Gertrud Lenzer because it is through their efforts that events like this and the advocacy of children can move forward. I wish you all a wonderful, productive afternoon, and it is my pleasure to be with you. Thank you.



Kathryn Grant Madigan, Esq.
Immediate Past President
New York State Bar Association

President Kimmich, Provost Tramon-
tano, distinguished speakers, elected
officials, colleagues, and guests, I am
so honored to have the opportunity to
speak briefly with you this afternoon
and I am most grateful to Professor Gertrud Len-
zer for having extended that invitation to me.
And I really speak on behalf of our 76,000-
member New York State Bar Association. A wise
woman once said, "If we don't stand up for chil-
dren, then we don't stand for much." Now many
of you will recognize the words of that wise
woman, Marian Wright Edelman, a national
treasure, and as we know, a tireless advocate
and champion for the children of our country. As
President of the New York State Bar Association,
I was privileged to participate in a number of pro-
grams designed to draw attention to the impor-
tance of the U.S. Ratification of the U.N. Conven-
tion on the Rights of the Child to secure for the
children in our country the human rights protec-
tions extended to most children throughout the
world.

As we all know, the U.S. stands alone
with Somalia as the only two nations, a party to
the U.N., that have failed to ratify the treaty.
Unlike Somalia, we have a functioning central
government, one that we now have tremendous

Kathryn Grant Madigan, Esq.

is Immediate Past President of the New York State Bar Association (NYSBA). Kate Madigan was the fourth woman President in the Association's history. With 76,000 members, the New York State Bar Association is the largest voluntary state bar in the United States. A partner in the Binghamton law firm of Levene Gouldin & Thompson, LLP, Madigan concentrates her law practice in Trusts and Estates and Elder Law. She is a 1975 *cum laude* graduate of the University of Colorado at Boulder where she was elected to Phi Beta Kappa. She received her Juris Doctorate from the Albany Law School of Union University in 1978.

Madigan is a member of the American Bar Association House of Delegates and the Executive Council of the National Conference of Bar Presidents. She is also a Fellow of the American Bar Foundation and a Life Fellow of the New York Bar Foundation and is recognized as one of *America's Best Lawyers*.

During her year as President of the NYSBA, she hosted a Presidential summit on "Youth at Risk", where she advocated for the ratification of the U.N. Convention on the Rights of the Child. She continues to be a staunch advocate for international children's rights and in April 2008 she received a Special Recognition Award from the NYSBA Committee on Children and the Law for her leadership and support of the rights and welfare of children.



hope will bring significant change to U.S. policy in this vital area in the years ahead. Our continuing failure to ratify the treaty puts our nation's standing in the international community as well as our children and our families at risk.

As Gertrud noted, at my 2008 Presidential Summit we focused on breaking the cycle for youth at risk and we brought a standing room only crowd of judges, lawyers, and advocates to address a number of juvenile justice issues along with the ratification of the Convention. The session was moderated by then New York Chief Judge Judith Kaye and our panel included former American Bar Association President Karen Mathis, whose national "Youth at Risk" initiative has been dedicated to improving the odds of our youth, enabling them to realize their potential. We were joined by Geoffrey Canada, yet another inspiring voice for inner-city youth, and the Honorable Michael Corriero who is with us today. We explored strategies for reducing Family Court and Criminal Justice involvement and the continuing role of the legal community in addressing those very critical issues. We also examined the most recent research on adolescent brain development

and the very real differences between the ways that juveniles and adults process information and make judgments, warranting more developmentally appropriate standards for both competence and treatment. It was at that event that I met Gertrud and was captured by her energy and passion for the rights of children. This *Forum* on the Optional Protocols is a result of her vision and extraordinary efforts, and Gertrud, we are indeed, as the President said, in your debt.

Like so many of us here today, I believe that a society is measured by the way in which it cares for its elderly, its poor, and, of course, its children. And to quote Marian Wright Edelman once again, "The question is not whether we can afford to invest in every child; it is whether we can afford not to." So in closing, at a time when our country's moral standing in the international community has been tainted, the implementation and monitoring of the Optional Protocols, as well as the full ratification of the Convention can only enhance our status as an international leader in human rights. Our children and our families deserve nothing less. Thank you so much for this opportunity.



From Advocacy to Legality to Legitimacy



Gertrud Lenzer
Professor, Brooklyn College, CUNY
Professor, the Graduate Center, CUNY
Director, Brooklyn College Children's
Studies Program and Center, CUNY

This introductory presentation will address five major issues to be discussed in our *Child Policy Forum of New York* today:

1. The Human Rights of Children.
2. The U.N. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC).
3. Recent important New York State legislation that addresses issues relevant to the articles in the OPSC.
4. The initial report of the United States of America to the U.N. Committee on the Rights of the Child and "Concluding Observations" of the Committee, May and June 2008.
5. Important issues for New York State arising from these "Concluding Observations" of the U.N. Committee on the Rights of the Child.

The title of my presentation—"From Advocacy to Legality to Legitimacy: New York and the Evolving Jurisprudence of the Rights of Children and Adolescents"—focuses on new and strategic opportunities for the advancement of the human rights of children which arise from the ratification of the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution

and Child Pornography (OPSC) by the United States of America.

1. Human Rights and the Human Rights of Children

Let me preface my remarks by pointing to the wider historical human rights context and mission of this *Forum* today. It has been the guiding framework for our interdisciplinary Children's Studies Program since 1991, when Brooklyn College was the first academic institution to support this new field. Our commitment to promote, protect, and realize the human rights of all children informs our discussions today. Our deliberations today also take place against the backdrop of the sixtieth anniversary of the *Universal Declaration of Human Rights* adopted by the United Nations General Assembly on December 10, 1948. This document articulates and asserts the universal, inalienable, and indivisible human rights and freedoms of all human beings in the civil, political, economic, social, and cultural spheres. "Article 1. All human beings are born free and equal in dignity and rights." These same human rights and freedoms are reaffirmed in the *U.N. Convention on the Rights of the Child* (CRC), a human rights treaty on behalf of children, which was adopted by the U.N. General Assembly twenty years ago on November 20. It is in the spirit of making such imprescriptible¹ human rights real for all children as human beings that we have convened this *Forum*. In this connection, it is also salient to notice that this year in the history of the United States marks the 55th anniversary of *Brown v. Board of Education* (S.Ct. 1954), and that it has been forty-two years since the Court held in *re Gault* (S. Ct. 1967) "that children are persons under the Fourteenth Amendment."² Among other things, "*Brown* vindicated children's substantive

¹In Article 2 of The *Declaration of the Rights of Man and Citizen*, August 27, 1789. "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression." (Something that cannot rightfully be taken away, revoked, inviolable. Or law not subject to prescription.)

²Sarah H. Ramsey and Douglas E. Abrams, *Children and the Law*. St. Paul, MN: West Group, 2001, p.20.

constitutional rights [in the United States], and *Gault* vindicated their procedural rights.”³ To fill in the historical canvas, I should also mention that the *Declaration of the Rights of Man and Citizen* was proclaimed in France in 1789—220 years ago. Today, our attention will focus more specifically on all those children who experience forms of the utmost degradation at the hands of adults, upon whom they are dependent in the most vital ways. These are the children and adolescents, who from birth to the age of eighteen, are trafficked and sold into the servitude of forced labor or sexual exploitation, who make up, in unknown numbers, the cadres of child prostitutes not only abroad but also in our country, state, and city. They also include children who are used in the production of child pornography on the Internet and by child predators. Such practices violate the fundamental principles of human rights, which “are based on the ‘inherent dignity’ of every human being. This dignity and the rights to freedom and equality which derive therefrom, are inalienable and imprescriptible. They have precedence over all powers, including that of the state, which may regulate but may not abrogate them.”⁴

2. Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)

Child and adolescent victims are at the center of the *Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)*⁵, the discussion of which constitutes today’s agenda. As many of you know, the United States has signed but not ratified the U.N. Convention on the Rights of the Child. All other countries, with the further exception of Somalia are states parties to this major human rights treaty.⁶ However, the United States has ratified the human rights treaty of the OPSC and is a state party to it. Although largely unknown in this country, even to legislators and experts in the legal profession as well as in the child welfare and juvenile justice systems, the ratification of this *Protocol* represents a historic human rights milestone for the United States⁷ It does so in a number of important ways. For one, the United States has recognized the human rights of children in the areas relevant to this *Protocol*.⁸ Second, by ratifying this multilateral treaty, it has confirmed its determination to be bound by that treaty to “prohibit the sale of children, child prostitution, and child pornography as provided for by the present *Protocol*” and has accepted the legal obligations to implement the treaty by “the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments.”⁹

The existence of this *Optional Protocol*, in

³Sarah H. Ramsey and Douglas E. Abrams, *Children and the Law*. St. Paul, MN: West Group, 2001, p.21.

⁴*The United Nations and Human Rights. 1945 -1995*. New York: United Nations, p. 24.

⁵This was possible, since the U.S. had signed the U. N. Convention on the Rights of the Child.

URL for OPSC: <http://www2.ohchr.org/english/law/crc-sale.htm>

URL for OPAC: <http://www2.ohchr.org/english/law/crc-conflict.htm>

The OPSC was adopted by the United Nations General Assembly on May 25, 2000, and entered into force on 18 January 2002. It was signed on behalf of the United States on July 5, 2000. By a resolution of June 18, 2002, the Senate of the United States of America gave its advice and consent to the ratification of the Optional Protocol. On September 14, 2002, President George W. Bush signed the “U.S. Instrument of Ratification” “to ratify and confirm the Optional Protocol” to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC). (See U.S. Instrument of Ratification, Annex I to the *Initial 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*, pp. 29-31.) The official date of ratification of the OPSC is listed December 23, 2002.

⁶<http://www.unhcr.ch/html/menu2/6/crc/treaties/crc.htm>

HUMAN RIGHTS: These are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the design of social arrangements. Human rights are universal, inalienable and indivisible. The idea of human rights as inalienable means that it is impossible for anyone to abdicate their human rights, even if he or she wanted to, since every person is accorded those rights by virtue of being human. It also means that no person or group of persons can deprive another individual of her or his human rights. The indivisibility of human rights means that none of the rights considered to be fundamental human rights are more important than any other; they are inter-related. These rights express our deepest commitments to ensuring that all persons are secure in their enjoyment of the goods and freedoms that are necessary for dignified living.



fact, provides us with an unprecedented opportunity and vehicle to explore what legislation, procedures, protocols, and services are required to implement and monitor its provisions. More specifically and as a result of our federal constitutional structure, it provides us with such an opportunity not only for the United States as a whole but also at the New York State and New York City levels as well. This treaty, which has now become a legal reality for us, converges upon the concrete promotion and protection of the human rights of children and provides the actual rationale both for today's *Forum* and for the agenda of our planned *ChildRights Working Group of New York*. In taking this action, we are concentrating on the treaty obligations undertaken by the U.S. upon ratification and on the legal frameworks and enforcement that are to be sought on the state and local levels.

3. New York State Acts Against Child Trafficking and Safe Harbor for Exploited Youth Act: Powerful Advocacy Endeavors

Over the years, nonprofit organizations in New York have indefatigably advocated for the protection and improvement of the conditions of children and adolescents through lobbying for and introducing legislation on their behalf. The relevant legislation on the Anti-Human Trafficking Act and the Safe Harbor for Sexually Exploited Youth Act—the former having been introduced by Assembly Member Jeffrey Dinowitz and the latter by Assembly Member William A. Scarborough in the New York State Assembly and by Senator Volker in the New York State Senate—passed unanimously on June 19, 2008, in the New York State Assembly, and on June 23, 2008, in the New York State Senate; and were signed into law by Governor Paterson on September 26, 2008. The Honorable William A. Scarborough, who is Chair of the Committee on Children and Families in the New York State Assembly, will be our first

speaker. The Anti-Human Trafficking Act, introduced by the Honorable Jeffrey Dinowitz and signed into law in 2007 will be discussed by Honorable Assembly Member Dinowitz. Our third speaker is Rachel Lloyd, Executive Director of GEMS, Girls Educational and Mentoring Services, a major advocacy organization, who will address child prostitution and exploitation.

As mentioned earlier, both acts are the long overdue accomplishments of years of advocacy activities and lobbying. The arguments in favor of such legislation had to be pursued almost entirely on ethical and humanitarian grounds. As it turns out, however, these newly enacted laws against the trafficking and sexual exploitation of children and adolescents fall directly within the purview of the legal treaty provisions of the OPSC, which was ratified on September 14, 2002. In other words, it should be emphasized that in future it will and should be possible to draft laws within the parameters of the OPSC in the State of New York with specific reference to the legal frameworks and enforcement provisions of domestic and international human rights provisions. It is to be hoped that this movement from advocacy to legality will eventually also lead to the general acceptance of these norms and standards among the public community at large. It is not sufficient, as we all know, for laws simply and exclusively to prescribe procedures, policies, and practices; to ensure their actual implementation, it is vitally important for such laws, procedures, policies, and practices to be viewed widely and increasingly by the public as existing by right, and not only legally. It is such legitimacy that we have to work towards in order to truly implement the principles embodied in the OPSC.

4. The Initial Report of the United States of America to the U.N. Committee on the Rights of the Child Concerning the OPSC

In compliance with article 12 of OPSC [and with

⁷ In recent conversations with attorneys in the New York Court Administration, the circumstance that the United States had ratified both Protocols was unknown.

⁸ OPSC Article 1.

⁹ Senate's reservations and understandings, (6), "Annex I – U.S. Instrument of Ratification," *Initial 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*, p. 29.

Gertrud Lenzer

article 8 of OPAC], the United States submitted its initial report to the U.N. Committee on the Rights of the Child in Geneva.¹⁰ The U.N. Committee considered it in May 2008. On June 6, 2008, the Committee adopted the report and offered its “Concluding Observations: United States of America” to this Report¹¹ with its recommendations for consideration by the United States of America for its submission of the subsequent report, due next year. At the same time, ECPAT–USA submitted a separate NGO report to the U.N. Committee. Key experts on our second panel—Marta Santos Pais, Howard Davidson, Carol Smolenski, and Angela Burton—will provide important information on the OPSC and both reports.

Relevant for the future mission of the planned ChildRights Working Group of New York, however, are the following major points from the U.N. Committee’s “Concluding Observations,” which, in addition to comments of appreciation, emphasize consideration of the following points among others:

1. “that the state party considers developing and implementing a comprehensive and systematic mechanism of data collection, analysis, and monitoring on all the issues covered by the Protocol.”
2. At this point, we have for New York State and City two pieces of research—one commissioned by OCFS, by Westat, and the other performed by a John Jay College Research Team and the Center for Court Innovation. Clearly, the lack of disaggregated and systematic data collections in New York needs to be addressed.
3. “that the state party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography, and child sex tourism.”

4. “The Committee recommends that, since criminal law is mainly the responsibility of each state, the state party [i.e., the U. S.] ensure that all the offenses covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the OP throughout the country.”
5. It also recommends that the state party “ensure that all persons below the age of 18 who are victims of any of the offenses under the OP are as such neither criminalized nor penalized at federal or state level.”
6. That the state party “ensure that adequate services are available for all child victims of the offenses covered by the OP, boys and girls, including services for their full social integration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the OP.”
7. “While the Committee recognizes the difficulty in creating an independent agency at the federal level to monitor the implementation of the Optional Protocol, because most of the laws and services required are state responsibilities, the Committee is concerned that there is no agency, such as an Ombudsman, at the federal or state level to monitor the implementation of the Optional Protocol.” (18)

5. Important Issues for New York State Arising from the “Concluding Observations” of the U.N. Committee on the Rights of the Child

These are only a portion of the central recommendations from the U.N. Committee on the Rights of the Child to the United States. We hope that they convey to you some of the reasons that led us to convene this *Forum* today with its emphasis on exploring these issues on the state level in New York. Much needs to be done not merely toward implementing the provisions of the OPSC, but especially toward actually promoting and protecting those young human beings whose

¹⁰ *Initial 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*. 31 pages.

¹¹ #The Committee considered the initial report of the United States of America CRC/C/OPSC/USA/1) at its 1320th meeting (see CRC/C/SR.1320), held on 22 May 2008, and adopted at its 1342nd meeting, held on 6 June 2008, the following concluding observations.”

<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.USA.Q1.Add1.doc>



dignity and well-being have been so compromised.

Indeed, we have scarcely any reliable information about the actual numbers of our children who live under such degraded conditions. 1) Data and research are much needed. 2) We must no longer criminalize these children, but instead provide them with the necessary services to undo the damage that has been done to them. 3) We must institute preventive services and especially address 4) the “root causes” that lead to violence against and the sexual exploitation of children, particularly those causes that regularly accompany poverty and marginalization. 5) Last, but not least, the recommendation of the establishment of a child rights institution such as that of a Child Ombudsman or Advocate on the state level is of great importance. The New York State Assembly under the leadership of Assembly Member Roger Green, Assembly Member Barbara Clark, and Assembly Member William A. Scarborough, introduced legislation for an independent Office of the Child Advocate in 2005—

legislation that has passed the Assembly during the last three legislative sessions. We hope that this might be the year to bring legislation to establish the Office of the Child Ombudsman/Advocate in both the New York State Assembly and the Senate.

Let me conclude by expressing my hope on behalf of all who are assembled here that our explorations today will promote the benefits of justice and human welfare that arise from implementing in domestic law the universal ethical norms expressed in the first and second generations of human rights and in the major human rights treaties such as the U.N. Convention on the Rights of the Child and the Optional Protocols on the Sale of Children, Child Prostitution, and Child Pornography—the OPSC we have been discussing today—as well as the the Optional Protocol on the Rights of the Child on Children in Armed Conflict (OPAC). In other words, let us make the human rights of children real in the State of New York.



Legislative Initiatives in New York State



**The Honorable
William A. Scarborough
Chairperson of the Standing Committee
on Children and Families,
New York State Assembly**

Thank you Professor Lenzer, Mr. Davidson, ladies and gentlemen. As our moderator indicated, I am William Scarborough, Assemblyman from the 29th Assembly District in Queens and the Chair of the Standing Committee on Children and Families. My participation here today represents a continuation of an education and evolution on my part and in my thinking. As I mentioned, I represent the Southeast area of Queens. I grew up in the area, and like any urban area, we had a section that was populated by prostitutes. And I well recall many times riding past that area, which in our area was a street called South Road, and seeing many young ladies, including many who were clearly underage, seeing them on the corner with their fishnet stockings, and overly made up and so on—obviously engaged in prostitution. I remember thinking many times, kind of clucking my tongue and wondering why they didn't just pull up their boot straps, get off the corner, and make something of their lives.

And that was an attitude that I carried until I happened to be appointed as the Chair of the Assembly's Committee on Children and Families. Shortly after that appointment, I was approached by three dynamic young ladies, one of whom you're about to hear from, Rachel Lloyd, the Executive Director of the Girls Educational and Mentoring Services. Another was Kate Mullen, with the Legal Aid Society, and the third was Mishi Faruqui, who at that time was with the Correctional Association. These ladies began to inform me of the reality of the lives of children who were engaged in prostitution. They showed me how these children were induced into this life

William A. Scarborough represents the 29th District in Queens County. He is a graduate of Queens College of the City University of New York, earning a Bachelor of Arts in Psychology and Political Science. Elected to office in 1994, during his tenure, Mr. Scarborough has focused his efforts in the areas of health care, education, and youth services. He has funded and sponsored many education and youth programs. Among them is the Julius Erving Center for Physical Culture in St. Albans, an extended-day youth program modeled after the nationally recognized Jackie Robinson Center in Brooklyn.

Assemblyman Scarborough chairs the Assembly Committee on Children and Families, that has jurisdiction over all legislation affecting: 1) child welfare, including foster care and preventive services, child abuse and neglect, runaways, day care, and adoption; 2) juvenile justice, including youth development and delinquency prevention programs; and 3) other services and programs for children and their families, including Family Court processes.

He is the sponsor of the Safe Harbor Act (Bill A5258), legislation to make New York the first state in the nation to provide specialized services and safe housing for children who have been sexually exploited. Along with his co-sponsor in the Senate, Dale Volker, this legislation (S3175) was signed into law by Governor Paterson in 2008.



well before they became teenagers, how many of them came from dysfunctional homes, how many of them were runaways, how many of them were lured into it looking for what they were not finding at home, which was security and love and protection, and falling into the hands of some predator who convinced them that they would give them these things, but who put them out onto the streets.

I became aware of the beatings, the psychological humiliation, and the literal psychological and physical torture that these young people went

through. Perhaps, most important, I met the girls, the young ladies that are under Rachel's program, the young ladies of GEMS. I listened as young children of twelve, and thirteen, and fourteen years old, who matter-of-factly told me of the gross activities that they were subjected to and just the horror that was the truth of their lives. And so that introduction and that education changed my thinking, and it also changed my focus in the Assembly.

A large part of that focus became the effort to correct the legislative initiatives, to correct the way the law in New York State treats these children.

There was some information in an article that came out last summer, July 28, 2008, "Child Prostitution in New York City." It talks about New York City, but it can certainly be extrapolated to the whole

state and indeed across the country. It points out that children are being employed in the sex trade in New York, and in other major cities around the world. Child prostitution has been a global issue in New York for years. The article states that the majority of the sexually exploited youth—runaways, castaways from dysfunctional homes, where they suffered physical, psychological, and sexual abuse—these runaways often come from immigrant families also whose traditional practices clash with those regarding the child in American culture. There are as many as 400,000 prostituted youth in the United States, and often 45,000 to 50,000 are smuggled in to work in prostitution. It is estimated that in New York City, there are roughly 5,000 youth and children in prostitution, and as the numbers of prostituted youth increase, the ages of the child prostitutes decrease.

The article goes on to quote one of my copanelists here, Carol Smolenski, Executive Director of End Child Prostitution, Pornography and Trafficking (ECPAT-USA), and among the

points that she makes is that if a girl wants to leave her pimp on a particular night, she has virtually nowhere to go. The sexually exploited youth are prosecuted even though they are being forced to prostitute. There is no way out for the masses. When asked if the public needs to do more, Ms. Smolenski said that even though things have changed in the past few years a push for more legislation on this issue was required, especially in New York. And I

can certainly tell you that after learning from Rachel and seeing what I've seen, I wholeheartedly agreed that more legislation was needed. I, therefore, wholeheartedly and enthusiastically became the sponsor of the Safe Harbor Act for Sexually Exploited Youth legislation, which seeks to change the way child prostitutes are treated legally in the state of New York. By changing the way they are treated

"Sexually exploited youth deserve the protection and services of the family court, with processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long term housing services. In a nutshell, this is what we've tried to do."

legally, it is hoped that we can begin to change the way they are treated in the culture.

I would say the best of our legislation, the Safe Harbor legislation, was largely crafted and researched and put together by the advocates Rachel and Kate and Mishi, and that's as it should be because they are on the ground. They know what works, and they know what should be done. I was happy to become the sponsor in the Assembly, and we became a partnership that worked for four hard years to get this passed. Professor Lenzer spoke about this being the third year for the Office of Child Advocate legislation, but don't despair; it's how the legislature works. We were finally able to get it through and the Safe Harbor Act, in essence, seeks to stop treating child prostitutes as criminals and instead treat them as victims, providing them with the services that they need. And let me just briefly read you the justification that we put into the legislature because it pretty much lays out the environment. "It has been reported that the number of youth victimized by the sex trade is on the rise and that



youth as young as eleven and twelve years old are becoming involved. The overwhelming majority of these sexually exploited youth have a history of psychological, physical, or sexual abuse as younger children, and many have been raised amidst stark poverty and family dysfunction. Currently, the state's response to this issue has been to prosecute sexually exploited youth as criminals. This response is ineffective as arresting, prosecuting, and incarcerating victimized youth serves to retraumatize them and to increase their feelings of low self esteem. This only makes the process of recovery more difficult. Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both the federal and the international law recognize that sexually exploited youth are the victims of crime and should be treated as such."

Therefore, sexually exploited youth should not be prosecuted under the penal law for acts of prostitution; instead, services should be created to meet the needs of these youths outside of the justice system. Sexually exploited youth deserve the protection and services of the family court, with processes in place for persons in need of supervision, including diversion, crisis intervention, counseling, and emergency and long-term housing services. In a nutshell, this is what we've tried to do. The legislation decriminalizes the act of prostitution for a child under the age of seventeen, and we find for the victim. It provides for the services for them to continue their education, to receive counseling, and to go into a safe house or program where they can receive the services that they need. It provides for, if necessary, short-term housing. Oftentimes, we ask them to testify against their pimp, but it was not realized that sometimes the pimp was also their landlord. He owns the home or apartment where they are staying, so if they turn against him, they're homeless. Thus, there's a need for short-

term housing.

The legislation also stipulates the development of a report that determines where long-term housing and long-term programs should be placed in the state of New York. Some of these young people come from dysfunctional homes where they have been beaten, raped, or abused. Even if you get them off the streets, you can't send them back home, and so they need somewhere else to go. We began the battle to move this legislation along. In each year, we held a roundtable session in which these young people described their experiences. I can tell you that my colleagues will never ever not be moved by listening to the reality of what these young ladies are going through.

I can recall that one of the most conservative Republicans in the Assembly from a district far removed from New York City, or any urban area, was sitting with tears in his eyes after what he heard that these young women were going through and he became one of their strongest advocates. He recruited about thirty Republicans and supporters, lobbied the Senate, and helped move this along. We went through four years of receiving opposition from the District Attorney's office because they believed that decriminalization would make it difficult to obtain the cooperation of the young people. So we put into the legislation a requirement that these children had to follow the court mandates, and that, if necessary, they would cooperate with the court. We ran into opposition from judges, who felt that the legislation took away their discretion to decide whether or not these children would be considered victims.

But the judges and prosecutors had this discretion for years and seldom ever used it, and so that is why we wanted to put it in that there would be a presumption that these children were victims. So we came in 2007 to the point where the difference between the Assembly and the Senate versions was one

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The Honorable William A. Scarborough

word. On the very last day, there was one word. We could not agree on that one word until another year was lost, and the legislation would not go through. Finally, this past year we agreed upon language that passed, as Professor Lenzer said, in the Assembly and in the Senate. It went

to the governor. The governor had some concerns so we had some new negotiations to meet his concerns, and finally on September 26, 2008, New York State became the first state of this country to begin to treat child prostitutes as victims rather than as criminals.





**The Honorable
Jeffrey Dinowitz
New York State Assembly**

I am Assembly Member Jeffrey Dinowitz and I represent the 81st District in the Northwest Bronx. Assemblyman Scarborough and I worked on what you could call companion pieces of legislation for several years. His was the Safe Harbor Act, and mine was the Anti-Human Trafficking Act. While they passed in separate years, the two bills really in many ways complement each other, and you think well, "Trying to stop human trafficking and trying to protect kids, that should be something that should be passed just like that," but it doesn't quite work that way and it's not because of this alleged dysfunction but partially because when you are dealing with really important subjects like this, you need to get a lot of people involved and that's what both of us did.

I can't say that I was really familiar with the issue of human trafficking, which mostly applies to women, but especially young women, probably until the end of 2004. At that point, what I had decided to do was to reach out to as many organizations as possible—Rachel Lloyd's being one of them—but a number of organizations, people who advocate for children, for women, for domestic violence victims, for immigrant rights, and many others, to try to craft a piece of legislation—because we worked originally from a model piece of legislation on the federal level. The federal government had passed the Anti-Human Trafficking legislation in 2000. It was signed into law by President Clinton, and it was a very good piece of legislation but unfortunately it didn't really do the job. It became clear that we had to engage the states in the process in order to get local and state law enforcement involved. The federal government just did not have the ability or the resources to put any real teeth into the legislation in terms of enforcement, so it became clear that we had to pass legislation on the New York State level.

Now human trafficking, most people wonder what is that all about? Well, the traffick-

Jeffrey Dinowitz was first elected to the New York State Assembly in 1994. He has been re-elected every year since and is currently in his sixteenth Legislative Session. One of his landmark pieces of legislation was the Anti-Human Trafficking act of 2007 (Ch. 74 of the Laws of 2007), which created new crimes of sex and labor trafficking, as well as an outlaw of the facilitation of sex tourism, and increased penalties for prostitution in the state. This comprehensive state statute also mandates the provision of essential services for trafficking victims, including legal assistance, occupational and emotional therapy, and immigration assistance.



ing of arms, of illegal drugs, and of people are the three biggest and most lucrative illegal activities on the planet. You would think in the twenty-first century, we are talking about slavery, that it wouldn't exist, but, in fact, it exists in very large numbers. So I thought that in New York State we had to pass strong legislation because it's an important issue and New York is a point of entry for many people. There is just lots of everything here, and the victims of human trafficking are largely people from other countries but not necessarily. Many of them are not here illegally but the majority of them are here illegally. If people are brought here under false pretenses, their legal status may lapse; their passports or their visas may be confiscated by the people who are victimizing them. It's hard to know how many victims there actually are in New York, but we think it is in the many, many thousands.

And so we started to work on legislation in 2005, and continued to work on it. In 2006, we had a lot of support; I had a lot of cosponsors on the legislation. We got a Republican Senate—of course, the Senate in those days was run by the Republicans. We got a Republican Senator, Senator Padavan to sponsor a similar bill in the Senate. And in 2006 we passed the bill in the Assembly only, so more work had to be done. It's just a long negotiating process because differ-

“I think virtually every member of the Assembly cosponsored this legislation because everybody saw the importance.”

ent interest groups had different opinions and it wasn't just advocates for children, for women, and immigrants who weighed in; law enforcement weighed in, D.A.'s weighed in, labor, among many others. So there were a lot of parts to the legislation that different groups had different interests in. The question is, how do you bring everybody together? The advocates didn't always agree with each other. Some organizations felt that we had to have tougher penalties against those who patronize prostitutes in order to try to diminish the demand for prostitutes. Others felt that is the exact wrong way to go and to try to bring those various groups together was not always easy but ultimately we did exactly that. Now something happened in 2007 that made a very big difference, and that is we had a new governor. Governor Eliot Spitzer was very important in getting this legislation passed. Ironically, one of the provisions of the bill raised the penalty for patronizing prostitutes to the same level as the penalty for prostitution, which is a Class A misdemeanor. So, some people are lucky that they did whatever they did in a state other than New York. He didn't do it in New York. If it was in New York, he may have been prosecuted for a Class A misdemeanor. In any case, we're not here to talk about the governor.

The bill created a penalty up to a Class B felony, which involved heavy-duty jail time for those who engage in sex trafficking; the bill also created a Class D felony for those who engage in labor trafficking—those are new crimes, and the bill dealt with the issue of sex tourism, which couldn't be prosecuted under the old law. In addition and very importantly, a whole section of the bill set up services to human trafficking victims, such as case management, housing, nutritional assistance, provision of personal care items, health care, and mental health, counseling, job placement assistance, transportation, translation help if necessary, and also helping people dealing with immigration issues.

So, the services pieced to this bill were very important because we not only wanted to establish a crime in order to go after the bad guys—and they were usually guys—but also to make sure that the people who are victims are not only treated as noncriminal, but also treated as victims and are given help. Without question, this was the toughest law in the country and a law that would serve as a model presumably for many other states around the country. By 2007, we were finally able to really focus on this, partially because Governor Spitzer got involved. Governor Pataki was not really interested in doing that. Until that point, there were basic differences between the Assembly and the Senate. The Senate was more focused on the criminal aspects, which was very important of course, but less focused on providing services and aid to the victims of human trafficking. By 2007 we were able to move everybody much closer together to the point where we did have ultimately an agreed-upon bill. During this whole process, I was able to get—not because I was so wonderful as I think that most people are wonderful—Democrats and Republicans alike, in the Assembly, who were strongly supportive of this. It wasn't a situation where we had only Democrats on the bill. I think virtually every member of the Assembly cosponsored this legislation because everybody saw the importance. And we also held roundtables and hearings.

One day in the Assembly, sometime in spring 2007, we brought to the Assembly one of the victims of human trafficking who has become a spokesperson; she talked about her plight and it was amazing. You don't often get the entire Assembly giving standing ovations and loud applause to somebody. People really started to understand the gravity of the problem because it is the type of problem that you don't always read about. You don't always see the victims, or if you do see the victims you don't necessarily know that they are the victims. You know, human traf-



ficking victims, you can see them on the street. It's not like they are always locked up, but they are out there; both victims of sex trafficking and labor trafficking. They are out there. Sometimes you can go into a restaurant and some of the people there could very well— I'm not saying they are, but they could very well be trafficking victims.

The law was signed by the governor in June 2007 and took effect in November 2007. We now can prosecute people for these heinous crimes. I'm about to reach my fifteenth anniversary as a member of the Assembly and I believe that this legislation will be the one that I will always be most proud of because I believe that ultimately it will save lives or certainly turn around the lives of many people. This is the type of stuff that really has an impact on people who need help and that's why I am so happy that both of

our bills have become law. When we talk about trafficking victims, we're talking mostly about women but not exclusively, we are talking about young people because those are the people who are trafficked with the greatest frequency from all over the world and it is not only here in the United States but it's a problem basically in the entire western world, industrial world, of the Arab world, in the wealthier countries of the Far East, so it is all over the world and it is shameful. I think we can all agree that here in the United States of America that slavery is taking place in the twenty-first century. So the two bills together are going to protect people, going to help people, mostly kids, and provide services. A lot of good things do happen in Albany, you just don't always see that on the front page. I think I will end it there. I want to thank you very much for inviting me.



Rachel Lloyd
Executive Director
Girls Educational and Mentoring Services
(GEMS)

Good afternoon. Thank you very much, Professor Lenzer, for having me. And thank you to both Assemblyman Scarborough and Assemblyman Dinowitz. I am going to speak from an advocacy standpoint and maybe have some different perspectives on how things have played out and of how it's going to look over the next couple of years. The implementation of the legislation that you talked about, is really important. For those of you who don't know, and I just need to say that there's a lot of people in the room that I recognize, which is great. On the other hand, challenging because it often tends to be the same group of people who go to these types of events, right? There is definitely a crew in New York City that is supportive of these issues. I would encourage you that if there is another event coming up about trafficking, about sexual exploitation, that you try to invite two or three people who have never been to an event like this, and get them to come out, too. I want to give a quick shout out to Carol Smolenski, the Executive Director of ECPAT-USA, who I met eleven-and-a-half years ago when I first came to New York working with women coming out of the sex industry. Carol was just an amazing mentor and support as I was starting GEMS. And there's Detective Frasse, from the Anti-Trafficking Unit, with whom we work closely. It's like we're on speed dial all the time with each other. I'm going to say some other stuff about law enforcement in a minute, so I just want to make sure that I say something nice first. He's really used to it by now, so it's not problematic.

So, for those of you that don't know me, I am Rachel Lloyd. I am the Executive Director and Founder of Girls Educational and Mentoring Services (GEMS). GEMS is the only nonprofit in New York State that works specifically with commercially sexually exploited and trafficked girls and young women. I started the organization in January 1999. We just had our tenth anniversary,

Rachel Lloyd is the founder and Executive Director of Girls Educational and Mentoring Services (GEMS), the only non-profit in New York State serving domestically trafficked youth and commercially sexually exploited girls and young women. Under Ms. Lloyd's leadership, GEMS annually serves 250 girls through its direct services and

1,000 youth through education and outreach. Ms. Lloyd is a nationally recognized advocate and expert on the issue of commercial sexual exploitation of children and actively involved in the effort to pass legislation to protect this population in addition to speaking at events and conferences across the nation. Ms. Lloyd has been honored with the Reebok Human Rights Award and the Frederick Douglas Award from the North Star Fund, among others. Ms. Lloyd received her Bachelors in Psychology from Marymount Manhattan College and her Masters in Applied Urban Anthropology from the City College of New York.



which is pretty exciting. At this point last year we served 250 girls and young women throughout New York and from around the country who had been sexually exploited and trafficked. In those days, Carol and I would discuss this over coffee in Times Square and we would be saying, "Oh, I wish people would pay attention to this issue," and nobody really was and it often felt like you were a little salmon swimming upstream at that point, in the face of a whole tidal wave of a lack of public empathy, support, political support, and funding. It was just kind of a dire situation. At that time, there was far more work being done internationally, so the U.S. was looking pretty bad in comparison when it came to things like the Convention on the Rights of the Child, the World Congress, and things that were happening around sexual exploitation. The international community was saying this is a crime against children, this isn't a crime that children commit.

One of the first things that GEMS worked to do was change language. We've talked for ten years about beginning to change the language around this issue and internationally that has



“I’ve done judges’ trainings and said, ‘You know, under seventeen you can’t give consent but you can be charged with an act of prostitution?’ And you’d see people’s faces and even the judge would say, ‘Hmm, I’ve dealt with both of these same types of issues in my courtroom and I have never made the connection that one is a complete contradiction of the other.’”

happened but we talk about commercially sexual exploitation of children. We don’t really talk about child prostitutes because we recognize that that is such a misnomer. Just the word “prostitute” creates such a stigma in our minds that even throwing the word child in there doesn’t erase that. And yet, when we talk about children who are sexually exploited and trafficked, it’s very clear that there is a perpetrator who must be doing that to them. So exploitation is something that happens to you, as opposed to being a prostitute, which kind of denotes who you are, right? Changing the language and changing that perception of young people and children, particularly in the U.S. as victims, was really critical. We found especially with the enactment of the 2000 Trafficking Victims Protection Act that there was a dichotomy in the field where some were seen as real victims—international victims, victims of trafficking—and then there were child and teen prostitutes who needed to go to jail.

That was pretty frustrating to somebody who worked day in and day out with girls who were reporting beatings and having their ID being taken and their families being threatened. The trafficker would be saying, “I know where your family is, I’ll kill your grandmother if you try to leave me, I know that your child is in foster care at this address, I’ll kill your children.” The same kind of stories, and the same kind of abuse, the same kind of trauma, the same kind of slavery that we were hearing from the international community, we were seeing on a daily basis at GEMS and yet these young people were being arrested. These young people were being scorned. These were the young people who everybody drove by, right? And I appreciate that frankness. You

know, for many people if you haven’t given it some thought, you may walk by and think, “Why doesn’t that young person just get their life together?” Or, “They probably had a hard life but I’m sure they can do better.”

And so there really wasn’t an understanding of this issue as trafficking, as a violation of human rights, of children’s rights, so we worked many years to raise awareness and provide direct services. We were frustrated over and over again to be in the family court system and to be in the criminal court system and advocating for a twelve-year-old or thirteen-year-old or fourteen-year-old charged with an act of prostitution. I have to give a huge amount of credit to Katherine Mullen who is the Legal Aid juvenile rights attorney. She wrote a brief on behalf of a thirteen-year-old girl that said, “I don’t think you can actually charge her with an act of prostitution when she legally can’t give consent.” In New York State the age of consent is seventeen. I’ve done judges’ trainings and said, “You know, under seventeen you can’t give consent but you can be charged with an act of prostitution?” And you’d see people’s faces and even the judge would say, “Hmm, I’ve dealt with both of these same types of issues in my courtroom and I have never made the connection that one is a complete contradiction of the other.” And so why would it be that a young person who is thirteen, fourteen, fifteen, sixteen years old, who has sex with an adult man is considered a victim and yet if that adult man pays her \$30, \$40, \$50, she is considered the prostitute and he kind of goes free; generally, to be quite frank, and she is the one that goes to juvenile detention? We saw girls going to juvenile detention and being told, “You need to learn

proper moral principles,” at thirteen, when you have been bought and sold. Kate really got this whole ball rolling. It went up the chain and they said, “This is an issue for the legislature; we are not going to address this as a legal issue.” We tried to figure it out with the Juvenile Justice Coalition and Margo Hirsch, who is a big part of the coalition. We would sit around and there would be three or four of us in this little room trying to brainstorm, as advocates do. We met Assembly Member Scarborough and he really got on board with this issue. So we began to track this. You know, we were young ladies at the time. We started the advocacy those days past as the years kind of went on and on. And so, I could remember the first time going up to Albany and beginning to meet with people and we’ve actually got some video footage of it because we were filming some of that stuff at the time. You would see these legislators just totally turned off, totally not interested, totally kind of apathetic about what was happening to children in our state; yet slowly, month by month, over the years, we began to see a larger and larger turnout each time we went.

One of the most critical things for us and GEMS—as a survivor and a survivor in that organization, it was really critical for me to make sure that not only were girls telling a sad story, but that they had leadership on this issue, that they were the experts, that they got to speak to legislators, and hear their voices mattered. So we did a lot of advocacy organizing at GEMS and taught girls about the legislative process. We would go up to Albany armed with packets. That was really critical and again that’s an area where I think that in the U.S., we do not do a good job. Having been involved in a lot of international work back when I was considered a youth delegate many moons ago, and having seen the commitment of the international communities to having young people not just in token roles, but in leadership roles and to making sure that youth participation is valid and real was really critical to us.

I have to give a tremendous amount of respect and gratitude to the young women and girls of GEMS, many of whom went to Albany for four years in a row. Many girls who over the years would go up to the big advocacy day, would go for individual meetings, who spoke with

the press, who spoke at City Council hearings, who were really brave and spoke out. And so it was really tough to continually tell the girls, “Yeah, it didn’t happen again this year.”

We had to have lots of conversations with the young people about the issues of race and class and power. Of the girls we serve, 95 percent are young women of color, of low income backgrounds. Seventy percent of the girls we serve have been in the foster care system, in the child welfare system, and so these are often the kids that people already see as marginalized. There was a memo from the New York State Association of Counties, and we managed to get a copy of it. It said, “These young adults are on a life path that is likely leading to incarceration anyway, so we should just lock them up now.” That kind of attitude was what we were facing, and it was really pervasive.

I remember doing several legislative briefings. The girls gave really powerful testimonies, “I was eleven and I was recruited to a strip club.” For many of the girls that was their introduction into the commercial sex industry. At the end of these really horrendous stories of torment, abuse, and trafficking, the legislator would raise a hand and say, “I’m sorry, which strip club was that?” and you would be like, “Are you trying to figure out if you went to that strip club?” And that was the reality but it was an important educational experience for the girls to be a part of that and to recognize the different facets of power and how that looks.

Last year, we did a legislative briefing and we were about to drive back to New York. Assemblyman Scarborough’s legislative aide came running out, waving a copy of the paperwork and saying we got an agreement. That was an amazing experience for the young people that we were with; especially as it finally gets signed by the Governor. It was an important moment for the girls to recognize that survivors do have a real voice and need to be at the forefront. Programs and services really made a difference.

The New York State Anti-Trafficking Coalition was in full support of the trafficking legislation, but I will say it was tough to see the trafficking legislation pass in 2007 and the Safe Harbor Act not pass until 2008. It was tough to hear



Governor Spitzer, at that time who was our ally right?, get up and say, “You know, this sends a message to trafficking victims throughout New York State that you are not being ignored, we care about you, services are available for you,” and yet at the same time we were seeing our children, New York City children, being arrested over and over again. We wondered, “What message are you really sending?”

Unfortunately, Governor Paterson who wasn’t governor at that time said lots and lots of things about how bad trafficking was and how no one should ever have to go through this. It was reasonably helpful to use some of those statements when he objected a little bit to the Safe Harbor Act this year and also because he talked about how Governor Spitzer probably shouldn’t be prosecuted. If we are in a state where we

don’t believe an adult male with power and privilege who purchases sex shouldn’t be prosecuted, but a twelve-year-old who has been kidnapped, who has been raped, who is under the control of an adult man, who is being sold by adults to adults, should be—that is not a good state to live in.

We have had some challenges with the implementation, but we have been very fortunate with the Anti-Trafficking Unit to have a handful of law enforcement people who really get it and are willing to put in the hours, and the energy, and the time and empathy to help girls feel safe and to treat girls as victims first. Our primary concern should be to make sure that children are protected.



A National and International Perspective



Howard Davidson, J.D.
Executive Director
American Bar Association Center on
Children and the Law

I think that I was last in this building about a year ago for a memorial service for Cynthia Price Cohen. Cynthia Price Cohen was one of our foremost international child advocates based in New York City. She and I collaborated on the first U.S. book on the Convention on the Rights of the Child. I want to mention that Cynthia believed very much in the importance of the U.S. ratifying the Convention on the Rights of the Child, and to let everybody in the room know that there is a U.S. Campaign for the Ratification of the Convention on the Rights of the Child. That campaign is represented here by a number of us, including myself and Marty Scherr. We would like those of you interested in helping the United States finally ratify the Convention on the Rights of the Child to give Marty your card before you leave because there is much that you can do to help. We are poised, with a new administration in Washington, with a more sympathetic U.S. Senate, and particularly with leaders like our new Secretary of State, to be able to ratify the Convention on the Rights of the Child. But there is a substantial push that is needed, so we need all the foot soldiers that we can get.

I'm going to focus these remarks on Article 8 of the Optional Protocol. Article 8 in essence starts with: State parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present protocol at all stages of the criminal justice process. What should we be doing for the child victims who find themselves, simply because they are victims, involved in the criminal justice process?

The Protocol goes on to cover eight different areas. The first is the needs of these chil-

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juvenile (dependency) courts, and programs that provide legal representation in these cases. He served as chairperson of the U.S. Advisory Board on Child Abuse and Neglect and is a founding board member of the National Center for Missing and Exploited Children. He has authored many legal articles on child maltreatment and in the 1970's spent five years as a legal services attorney exclusively representing children in juvenile court and created the Children's Law Project at Greater Boston Legal Services, one of the country's first children's law centers.

dren who may be witnesses in the criminal or juvenile justice system. The second is giving these children rights within the justice process. The third is soliciting the views of these children and of what they need, what their concerns are, about the process. So again: a focus on children's needs as witnesses, rights within the process, and soliciting and hearing their voices. The fourth area is providing support services to them in the process. The fifth is protecting their privacy. The sixth is protecting their safety. The seventh is always treating child victims using "best interest of the child" principles (and you should be very proud that New York State, in its new Safe Harbor Act, became the first state I know of to recognize this concept in child victim legislation. What the Safe Harbor Act provides for shouldn't be just a state standard for New York children; it is and should continue to be a U.S.-wide and international standard. Treating children who have been victimized by commercial sexual exploitation using

“best interest of the child” principles is something that is a real challenge when authorities are charging a youth with a crime and they are facing penal sanctions. The Safe Harbor Act is an effort to see how we can put an important international principle into place with young people who have traditionally been dealt with as offenders. The eighth and final area of concern in Article 8 is proper training, the essential task of training all who work with children to make sure their rights as victims are protected.

Now, what have other countries done to implement Article 8 provisions? I had a student from Columbia Law School do some work for me and look at the reports that have been submitted to the Committee on the Rights of the Child on their implementation of the Optional Protocol. What she found from looking at those reports, including the U.S. report, is in fact that a lot of countries report doing good work on training their professionals to aid child victims or on providing services for child victim recovery and social reintegration. Many, however, are paying attention to getting child victim voices heard in court. Less commonly, countries are struggling to change their practices so that they are not charging child victims as criminals. Of course that means that we shouldn't be placing these children in detention facilities operated for juveniles charged with a crime; and it should require that we find safe placements for them that are not operated within a penal system.

Countries are also looking at how they can better protect victimized children in repatriation decision making, using more caution about simply sending them back to their countries of origin. This is a big issue for a lot of nations in Europe because the tendency is, of course, to identify a child trafficking victim from another

country and then simply send the child back to their country of origin. We have this issue especially with our “border” children and in fact there is a new amendment to the federal Trafficking Victims Protection Act that just went into effect that calls for development of a U.S./Mexico border agreement that will better help us address the issue of children who are trafficked across the U.S./Mexico border. We need to make certain that we are doing the right thing when we repatriate victimized children, and that we are not putting them back in a situation where they are going to be abused, neglected, or abandoned, and then have them seek to flee from this by crossing the border again.

Also, some countries claim in their reports to the U.N. that there are mechanisms for victims' financial compensation, but while the mechanisms may be there, whether they are actively utilized to pursue economic justice for children who have been wronged is another story. The Committee on the Rights of the Child has expressed its concerns, in reacting to

“The role that a Children's Ombudsman plays in addressing these problems is also something that the Committee on the Rights of the Child wants to see more reported. Of course, in the U.S., we don't have a national Children's Ombudsman, but we do have some state ombudsmen who address problems and issues in the child welfare system, and we hope to have a Child Advocate or Children's Ombudsman this year in New York State.”

country reports that we have to give special attention to family reunification issues. When you have kids involved in the commercial sex trade, and we say our goal is to reunify them with their families, we must recognize that they are often coming from very dysfunctional families, and safe and stable family reunification will be a challenge in these cases, particularly with teenagers who are coming from families where they were not given enough attention or supervision.

There are also concerns that some countries are differentiating between help that is provided to child victim citizens and those who are not citizens. Those of us who are concerned about domestic victims of trafficking recognize that, ironically, more protection and more money



are available to provide services to non-U.S. citizen children involved in trafficking than U.S. citizen children involved in trafficking. That is a concern not just in the United States. The Committee on the Rights of the Child also points out the need to address some other forms of sexual exploitation of children that countries have not been giving much attention to in their reports. They include the delivery of children to religious leaders for sexual services, child sexual slavery, solicitation by teachers of sexual favors from students, and sexual exploitation of child domestic workers. They also say what Carol Smolenski of ECPAT-USA talked about in her remarks: about the U.S. need, also true across the world, to collect, maintain, and analyze good data on how many child victims there are and on the different categories of sexual exploitation there are. That data is generally lacking on identification of child victims by police, child welfare agencies, and courts.

The role that a Children's Ombudsman plays in addressing these problems is also something that the Committee on the Rights of the Child wants to see more reported. Of course, in the U.S., we don't have a national Children's Ombudsman, but we do have some state ombudsmen who address problems and issues in the child welfare system, and we hope to have a Child Advocate or Children's Ombudsman this year in New York State. An ombudsman has a critical role to play, and particularly in public institutions, to identify and address how children may be falling through the cracks and how public institutions can do a better job. It's not the role of the ombudsman to deliver services. The role of the ombudsman is to identify where the gaps are and to suggest to agencies how those gaps can be filled.

The Committee on the Rights of the Child also wants to see more information on the training of lawyers who are involved in child victim cases and training for psychologists and health professionals who are working with child victims. Finally, the Committee wants country reports to describe their efforts to implement the "Guidelines for Justice" in matters involving child victims and witnesses of crimes. This is a document I'm proud to say I had something to do with.

It is now officially approved by the United Nations, by the Office of Drugs and Crime, and the formal title is "U.N. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime." It is a really important set of international standards on how countries should deal with children who are involved in the criminal justice system as witnesses or victims. This came out of work done by the International Bureau of Children's Rights in Montreal. They put a panel together to develop these guidelines, and I was very proud and privileged to be a part of that group. This is something the Committee on the Rights of the Child feels is very important, that we follow a uniform set of guidelines when these child victims come into our systems of intervention.

After this presentation, I can give you a website where you can download both the free copy of the guidelines and something called the "child-friendly" version of the guidelines. The guidelines talk about the right of children to be treated fairly and equally, free from all types of discrimination; the right to express their views freely and be heard; the right to protection from abuse, exploitation, and violence; the right to be treated with dignity and compassion in the system; respect for legal guarantees and safeguards; prevention of conflict with the law as a critical element of juvenile justice policy (that means not getting these children involved in the juvenile justice system at all); and deprivation of liberty of these children only being used as a measure of last resort and for the shortest and most appropriate period of time.

That document has been followed by a newer document called the "U.N. Common Approach to Justice for Children." This is a document that was developed in March 2008 and became an official guidance note of the Secretary General of the United Nations in September 2008. It reiterates a lot of the things I have already mentioned: number one, the best interest of the child is supposed to be given primary consideration and that in all actions by courts or other authorities that the child's best interest must be applied in decisions for an individual child or for children as a group. It should be used to guide the whole process of intervention. Again, I can provide you with a web address for these docu-

ments. Number two: we should guarantee fair and equal treatment of children; advance their rights to express their views and be heard; protect them from abuse, violence and exploitation; treat them with dignity and compassion; respect legal guarantees and safeguards; prevent conflict with the law; deprivation of liberty as a last resort; and mainstream children in all rule-of-law efforts. We, therefore, have a number of international documents that we can further use to move the implementation of the Optional Protocol, in particular, Article 8 of the Optional Protocol.

I also want to mention that the World Congress III on the Commercial Sexual Exploitation of Children was just held in Rio. There was a final document that came out of Rio and I've seen two drafts of it, and there were some things that I did not see in the document that I wanted to mention. Number one is that we need to call upon countries to extensively use child-sensitive victim and witness procedures within the courts and any court-related process. Second, government basically shouldn't file criminal or delinquency charges against children who are victims or inappropriately label or stigmatize them. It is critical that we prevent these children from being given a sex offender label throughout their adolescence and as they transition into adulthood.

Handling cases of children and youth who are in trouble and who are not behaving according to the way we would like them to behave is really something better handled under juvenile status offense laws or children in need of services statutes (CHINS or PINS) than it is under criminal law. We have a book from the ABA called Families in Need of Critical Assistance: Legislation and Policy: Aiding Youth Who Engage in Noncriminal Misbehavior, and the purpose of that book is to indicate that there are different approaches that can be used to avoid bringing these youth into court and that court involvement should be the last resort for interven-

tions involving these youth.

Additionally, we must focus on how child victims, especially trafficked children, will be better identified. We are not doing a good job in the U.S. in identifying immigrant child-trafficking victims and getting them special resident visas to which they should be entitled. Services for rescuing children from exploiters and placing them in safe havens, use of witness protection programs for children, safe long-term residential care, child victim legal support, and reintegration into safe and appropriate family settings are all severe gaps, for both domestic and internationally trafficked youth. We also need to make sure that we apply the guidelines on justice for all child victims and witnesses of crime.

Finally, we need to address the key problem of the too widespread impunity of police officers who condone, or worse, profit from the child sex trade. It couldn't flourish for all these years without police looking the other way, or worse. And this should become a priority issue for police commissioners throughout the world and for those who monitor the work of police, including Children's Ombudsmen.

I want to close and mention some ABA resources. We have a set of ABA guidelines on aid to child victims and witnesses in court. We also have a publication that's available on that topic, and we are also going to our ABA House of Delegates with a new policy resolution on child victims of crime that's cosponsored by the ABA Criminal Justice Section and our Commission on Youth at Risk. Finally, there is a new publication that was produced for an association conference last fall. It is called "Meeting the Legal Needs of Child Trafficking Victims." It focuses on, in particular, pursuing civil remedies for child victims of trafficking. This is a free publication you can download, and later I will give you that website.

Thank you so much for your time and attention.





Marta Santos Pais, Esq.
Director
UNICEF Innocenti Research Centre

Thank you so much. I'm very pleased to join you today. Like all of you, I am amongst the group of the converted, but also I'm learning so much and I feel so excited and encouraged by your efforts to lay the foundation for an effective system of realization of children's rights that we all anticipate for the near future in this country. I am very pleased that the meeting takes place at a time when I am in New York and am therefore able to join you. And I am very touched by the fact that the memory of the very good friend of so many of us, Cynthia Price Cohen, has reminded us that she was really the soul in the drafting of the Convention on the Rights of the Child and its implementation, and will always keep us pushing this process forward. Her presence will always be felt very near to all of us.

I am very excited that you decided to hold this discussion on the rights of the child by using the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography as an entry point because by coincidence, or not so much, what we promote with the implementation of the Optional Protocol has a lot to do with the process of ratification of the Convention on the Rights of the Child. I think it's very interesting to recall that when a proposal was put forward in the U.N. for a new treaty that would address the sale of children, child prostitution, and child pornography by the delegation of Cuba, we were all very worried that this initiative could give an indication that sale of children, child prostitution, child pornography was something different, or separated, from the promotion of the rights of the child. Our concern was to ensure that the charter of children's rights provided by the Convention on the Rights of the Child, could influence the way the anticipation of any agreement on the protection of children from sexual exploitation could also be considered.

So, it's very interesting that the United States has ratified the two Optional Protocols to

*In May of 2009 **Marta Santos Pais, Esq.**, was appointed by the Secretary-General of the United Nations as Special Representative on Violence against Children in New York at the level of Assistant Secretary-General. Prior to her appointment, she was the Director of the UNICEF Innocenti Research Centre since July 2001. She has almost thirty years of experi-*



ence in human rights law, including her role in the drafting of the 1989 Convention on the Rights of the Child and, more recently, its two Optional Protocols. Santos Pais has helped to draft a number of other international human rights standards, including:

- *The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;*
- *The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;*
- *Protocol calling for the abolition of the death penalty;*
- *Declaration on the Protection of All Persons from Enforced Disappearances;*
- *Statute of the International Criminal Court*
- *She was a Special Adviser to the Machel Study on the Impact of Armed Conflict on Children.*

Prior to joining UNICEF IRC, Marta Santos Pais was Rapporteur of the United Nations Committee on the Rights of the Child and, from 1997, Director of UNICEF's Division of Evaluation, Policy, and Planning.

the Convention, but not yet the Convention itself. At the same time, it is also very encouraging to note that, amongst the recommendations put forward by the Committee on the Rights of the Child when it examined the U.S. report on the implementation of the Protocol on the Sale of Children, there is a call on the United States to consider the ratification of the Convention as a way of consolidating the protection of children's rights. In the follow up process to this recent review by the Committee, and we have heard in detail so many important aspects of this review, it's very good to build upon the call by the Committee in the promotion of the Campaign in the United States for the Ratification of the Convention on the Rights of the Child. This is a recommendation we need to take advantage of. It is also interesting that this year, as Gertrud Lenzer reminded us, is the twen-

tieth anniversary of the Convention on the Rights of the Child. Anniversaries are always very symbolic, so we hope that the symbolism of this anniversary will also be taken as a way of pressing the timely ratification of this important treaty that will also help move forward the implementation of the Optional Protocol.

I'm probably not going to say anything new, but will try to link the different pieces that have been so eloquently presented. One important element I would like to stress is that the recent Congress against Sexual Exploitation of Children and Adolescents, held in Rio, and the process that preceded it, made us realize definitely that we cannot address the protection of children from sexual exploitation out of the context within which they live. We cannot move this agenda forward while running the risk of stigmatizing the groups of children we are addressing. We need to address the root causes that place them in the situation of vulnerability that facilitates their victimization and exploitation. We need to ensure, systematically, respect for the best interest of the child and for the human dignity of the child that is so seriously at stake. For that reason, I think it is very good to remind ourselves that all the outcome documents of the Congresses or other agreements like the ones reached at the United Nations Special Session on Children, for instance, will be an important contribution to this process; but the child needs to be and remain at the center of our considerations. We need to link the different policies and legal measures that we promote, not losing sight of the child.

The World Congress in Rio, which was held as a follow up to the United Nations Study on Violence against Children, was presented to the General Assembly in 2006. It identified very important overarching recommendations of relevance to our discussions—for instance, as it considers how countries need to have a national

strategy to prevent the occurrence of all forms of violence and to protect those who are victimized by any form of violence—those forms that are visible in society, in school, in the community, and those that are very hidden, for instance, within the home, or within institutions. Those that are not captured by statistical data, as we have heard, need to be addressed in a very systematic manner. So what I am going to try to address is what we have been systematically calling for, a human rights approach to preventing and addressing the sexual exploitation of children, in any intervention at the national, regional, or international levels.

One critical conclusion we draw is that we have adopted over the years very good international human rights standards. The U.N. Guidelines on child victims and witnesses, mentioned earlier, are just one important indication. The Convention on the Rights of the Child and the Protocol, important treaties adopted by the International Labour organization, or the Statute of the International Criminal Court are important instruments for the con-

sideration of this topic. So we have many good standards in a wide range of areas but, what we see is that twenty years after the adoption of the Convention, the big challenge remains implementation and enforcement. Translating those beautiful values into concrete decisions can make a real difference for children in ways that children can fully understand.

Thus, it is important to have child friendly versions of these international standards, like the one that was shown of the United Nations Guidelines on child victims and witnesses, which I am very happy to acknowledge, was developed with the very close involvement of the Innocenti Research Centre. There are challenges in implementation in the North and in the South. This is an important conclusion that we draw from our research. Indeed, there are also very positive experiences in all parts of the world, including in

“What we see is that twenty years after the adoption of the Convention, the big challenge remains implementation and enforcement. Translating those beautiful values into concrete decisions can make a real difference for children in ways that children can fully understand.”



poor and small communities in the South. So there is a huge source of reflection from the implementation process. But the Convention itself has many interesting elements that I continue to believe can give us insights into the process of implementation of the Optional Protocol.

For instance, in Article 34 of the Convention, the goal highlighted by the Convention is that states parties adopt all necessary measures to protect the child from any form of sexual exploitation—any form. This is very important since the world is changing rapidly and today even the use of mobile phones can in fact create risks of children being sexually victimized. And so, there are always new challenges that we may have not anticipated, but implementation implies that states have a very comprehensive approach that seizes the challenges of today and also is keen to anticipate the challenges of tomorrow. For this reason, legislation sometimes needs to be ahead of current developments.

The second thing that the Convention emphasizes is the need to invest in prevention. The Optional Protocol takes that idea very strongly forward, as we heard a moment ago. So the challenge is not simply to react when a child has been sexually exploited, but to lay the foundation for the family, the community, state services, and independent institutions for the rights of the child, such as Ombuds for Children, to be joining hands and creating the most effective protective environment for all children, particularly those who may be at the greatest risk.

Another aspect that the Convention addresses and the Optional Protocol follows on is that the phenomena we are addressing are important within the borders of the state but are also relevant across the border, either into neighboring countries, or in another region, even when it is very far. The research that we have conducted at the Innocenti Research Centre on child trafficking confirms that children may leave a country in West Africa and end up in the Gulf States, or across the Atlantic Ocean in the United States. We realize, as a result, that the question is not so much that we are not worried about these phenomena. This simply affects children in other countries or children who arrive from other countries and end up within our borders and all of a

sudden we need to do something about it; indeed, it is “about our children” every time and there is as much risk in external as internal trafficking and as much responsibility for the protection of children’s rights; and the only way of addressing this phenomenon is to have a strong system that can prevent and react in the most effective manner.

The emphasis is also placed by the Convention on the need to protect the child from exploitation whatever the purpose of the activity may be. This is also important in the case of the implementation of the Optional Protocol.

Why do I say this? Because very often we tend to believe that sexual exploitation is inherently or solely connected with prostitution and pornography, but the truth is that it can also happen in other contexts. We are now trying to give greater visibility, for instance, to the question of children who are victims of sexual exploitation within the context of sports activities, by the coach, by the environment where the sports activities are being performed. The exploitation of children can also take place in the context of illegal adoption, or the use of children in criminal activities.

All of these areas and also those phenomena that are addressed by the Optional Protocol need to be addressed taking into account the general principles of the Convention on the Rights of the Child. The first is the protection from discrimination. What we realize is that children who are at the greatest risk are also those who live in vulnerable areas, who have been abandoned, placed in institutions, who are stigmatized by the society, and who are socially excluded. Frequently, a combination of vulnerabilities makes it easier for those children to become victims of sexual exploitation.

Secondly, we need to be guided by the “best interests of the child.” This is a challenge for professionals, including lawyers. In many countries, good legislation has been adopted to criminalize the offense of sexual exploitation, addressing all groups in the population, adults and children together. But when we think about the child specific situation, vulnerability, and needs, we are forced to realize that their reality is very different, and the provisions of the law also need to consider what is distinct for children. But the truth is

Marta Santos Pais, Esq.

that it is less frequent to have national laws that address child trafficking per se, and in most cases the trafficking in children is considered broadly in the context of trafficking human beings.

The third principle concerns the respect for the views of the child. We just heard a moment ago, a very important reference to it. It is so interesting that when we listen to children who have been victims of sexual exploitation and hear how they see the effectiveness of services that have been set up to protect them and take care of them, we learn about new and important dimensions that we might miss otherwise. We discover situations of the corruption of officials. We realize that children are not listened to at all, not even supported in understanding the language, the proceedings, the options, or even the legal safeguards that may be in place for their protection. There is no attempt to understand what the young person believes can work to help him or her recover and feel reintegrated, accepted back in society, to be given a second chance, to have a future that is not stigmatized by the society as a whole. So listening to the views of the child is really not simply a nice slogan; it makes a difference in the promotion of more effective policy solutions, and also more effective legal provisions that can take into account children's experiences, perspectives, hopes, and expectations.

Another general dimension from the Convention that is important in the implementation of the Optional Protocol is what the Committee on the Rights of the Child has identified as "general measures of implementation." These are cross-cutting and structural interventions that are relevant in whatever topic you are addressing—legal reform is one such example. As we have realized over the years, legislation is critical, including laws to criminalize all forms of sexual exploitation of children. But it is also important that legal provisions go beyond the criminal aspect if we want to be effective in preventing these phenomena. This may not be relevant in the United States or in the State of New York, but, for instance, the birth registration of a child makes a very decisive contribution to protecting the child, acknowledging legal existence of the child, and recognizing that the child is entitled to the protection of the law. In some European countries for

instance, amongst the migrant population many children have no identification—So if they want to come to a public service to seek protection, they are not necessarily taken seriously and in some cases may even be put at risk for being undocumented. Legislation can make a registration system mandatory and one hopes, free of charge. Thus, preventive measures may make a difference in the way we address these issues and safeguard children's rights.

Another aspect that is mentioned in connection with the U.S. review by the Committee on the Rights of the Child is the need for a coordinating mechanism that brings together all relevant departments, including within each state, as in the case of New York, to promote effective coordination of activities and avoid the fragmentation of interventions and the compartmentalization of the child. We cannot afford to work in silos, separating action according to disciplines or structures. The child needs to be at the center of all policy considerations. Economically, this will help save money and avoid ineffective duplication of efforts. So these are very general remarks that I thought would be important to highlight. But, because the focus of your discussion is the linkages between the international and the national aspect, I also want to highlight three additional aspects that may be important to consider in insuring an effective implementation of the Optional Protocol within the United States, and particularly within the State of New York.

The first concerns the need to promote a holistic and child-centered approach. The second concerns the development of a strong national system of protection of children's rights as a whole. And the third one is the promotion of an evidence-based policy and legal approach.

Promoting a holistic and child-centered approach means making sure that every country, every state, has a clear and well-perceived vision for what is required for the protection of the child. There is a clear strategy to acknowledge where each state is at present, what are the baseline data used to assess it, but also to anticipate where we want to be and by when. It is critical to make this strategy transparent so that everybody will feel connected to it and also excited to be supporting it. This concerns not only government-



tal officials, but also the civil society, academia, policy institutions, and the private sector, all can actively lend support to this process.

One natural implication of this process is the development of a national plan of action. But also at the state level, a plan of action is important and a monitoring system for its implementation is equally required. In this process, it is necessary to look into the root causes that lead to placing children at risk. Services are critical in this context and so is the allocation of resources for the implementation of the plan. This is another very relevant recommendation from the Committee on the Rights of the Child. We may have the best ideals, but without the resources they will not be pursued. But not less importantly, there is a need to promote a process of social change in the mindset of people, to avoid the stigmatization of children, particularly when we address child prostitution and child pornography. There is a temptation to label the child victim and “moralize” the debate; and the risk is to categorize children who have been victimized within a special group different from the “normal children.” That’s why it is so important that professionals have the right training, but that is also why children need to be given information and education about their rights so they are the first line of defense and they do not become trapped in the system that was designed to protect them.

Promoting a systematic and holistic approach is essential to avoid fragmented or simply vertical interventions. Although they make an important contribution, they need to be connected and integrated together. We also need a very strong legal framework. We have heard many, many important elements in this regard. To achieve the enforcement of a strong legal framework, one important aspect is the establishment of an Ombuds for Children. Only by having a legal mandate, can such an institution make a difference. It cannot be a question of life service or good will. The Ombuds is an important watchdog of implementation and a strong spokesperson of children’s best interests. It is relevant for authorities at the local level, state level, and beyond. There are very encouraging developments in this regard in many countries and we very much hope that within a year we will be celebrat-

ing the establishment of such an institution within the State of New York.

The third aspect I would like to address concerns the role of evidence. I know I do not need to convince you of this, but in so many other fora it is so poorly acknowledged. We are so eager to act quickly to introduce solutions to protect children who are being victimized that we often fail to precede decisions with the needed preparatory work to adopt the best solution for the child. Children deserve that we do what is best for them; not to delay the interventions, but to try to find the best solutions, and that implies analysis of things that work best. What are the ingredients of success? What can we learn from failure in other countries, in other situations, so that we do not try to reinvent solutions but at the same time don’t repeat errors committed elsewhere. There have been situations where we have been so eager to protect the child that we have unintentionally added harm to the child we wanted to safeguard.

The final point is connected with all of this: the need to continue to monitor how well we are doing. The Committee on the Rights of the Child has called for recommendations, the U.S. report and the recommendations of the Committee to be made widely known to everyone within the country, including to state authorities, the Senate, and the Congress. I think this meeting is a very good contribution to that process but we need to distribute this information more widely so that everybody feels encouraged to contribute as a teacher, as a mother, as a lawyer, as a judge, as a social worker. And we can also help ourselves, by ensuring that when you start preparing the next report to the Committee everyone will be clear about the areas where there has been progress, the challenges that have been overcome, and also those that remain. This transparent monitoring process is a very important and indispensable dimension of the implementation process. Addressing the protection of children from sexual exploitation is nothing more and nothing less than being accountable for children, and this is something that touches us all, not only governmental officials. That’s why I am so happy to be with you. Thank you.



Carol Smolenski
Executive Director
End Child Prostitution, Pornography, and
Trafficking (ECPAT – USA)

Thank you for coming to this historic event to link up the International Convention on the Rights of the Child and the Optional Protocols with on-the-ground work in a specific locale. It is thrilling for those of us who work at the nexus of those two areas of children's rights initiatives around the world. That was a great panel this morning about policy and the description of on-the-ground work from Rachel. This panel is more broadly about the national and the international perspectives on the work. I am with the U.S. branch of the ECPAT [End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes] International organization. It's based in Thailand and it works now in 75 countries around the world. ECPAT supports the Convention on the Rights of the Child.

In the United States we do research, training, policy development, and awareness raising around the issues of children trafficked into the U.S., American kids trafficked for sexual exploitation, and child sex tourism. We straddle the national, international, and local areas of work. When the U.S. ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, it was a great moment for our work. It doesn't make up for the U.S. not ratifying the Convention on the Rights of the Child, but the ratification of this Optional Protocol is a great step forward.

We do a lot of education of legislators, policy makers, and people who work in the government agencies. It's always helpful to be able to say to them that the U.S. has signed a specific document that puts the government on record as agreeing that this is the standard for the proper treatment for children. Children should not be arrested for prostitution but rather they should be protected.

Today I will describe the process of interacting with the U.N. Committee on the Rights of the Child. When the U.S. ratified the Optional Pro-

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York City Community Response to Trafficking Project in New York, a multi-faceted ground breaking project to inform communities at risk for human trafficking about the federal anti-trafficking law and help obtain better protections for victims. The Project specialized in working with grassroots community groups and in facilitating relationships between community organizations and criminal justice agents. She is on the Advisory Committee for the National Commercial Sexual Exploitation of Children Community Intervention Project, the Health and Human Services/United States Conference of Catholic Bishops (HHS/USCCB) Contract Advisory Board, and the International Human Trafficking Leadership and Training Project Advisory Committee with the ABA Commission on Domestic Violence. She developed the Protect Children in Tourism Project in Mexico and Belize. She has spoken at numerous conferences and has presented testimony in venues ranging from the New York City Council to the United States Congress to the United Nations. Carol has a Bachelors degree from Rutgers University and a Masters Degree in Urban Planning from Hunter College.

tol, it took on the obligation to report to the U.N. Committee. In 2007 it submitted a report to the Committee on the Rights of the Child. Shortly afterwards, ECPAT-USA convened a meeting of NGOs in Washington D.C. that were interested in this topic, and wanted to support a report to the committee around the Optional Protocol and U.S. implementation of it. The meeting was hosted by the American Bar Association Office on Children and the Law in Washington D.C.

About twenty NGOs agreed to voluntarily write what was referred to as an "Alternative Report." The Alternative Report is in the packets that were handed out today. The Alternative Report analyzed the U.S. government report and then provided additional information to the Committee on the Rights of the Child to take into considera-



tion when they reviewed the U.S. government's report. Our analysis found that the U.S. government was doing more things for the protection of children from sexual exploitation than it was reporting to the Committee. The Alternative Report fills in the picture about what the U.S. is doing, but also points out things where the U.S. could do better.

There are a lot of ways that the U.S. has done good things, such as passage of legislation at the federal level, training at the federal level, and using a victim-centered approach for the protection of trafficking victims. There are also prevention projects and other things that we recorded in the report. But there were big gaps, things that the U.S. is not doing as well.

After we submitted the Alternative Report we had the privilege of meeting with the committee, and having a discussion with the committee members about our views on the U.S. Report and the Alternative Report. After we met with the committee, they sent a list of additional questions to the U.S. government about the implementation of the Optional Protocol. After the U.S. answered those questions, there was a meeting between the committee members and the government representatives. Finally, the committee issued Concluding Observations about what it thinks the U.S. could do better.

One of the big gaps in the U.S. is the lack of data. This was demonstrated both by the U.S. government report and our Alternative Report. We struggled for a few months to find any good data that could describe the problem. Data is necessary as a baseline for future reports to the committee because what the committee wants to see and what any advocate wants to see is progress being made. And if you don't have any beginning numbers it's hard to document that any progress was made. There was a consensus by the committee, the NGOs, and no doubt by the U.S. government, which I know is actually trying to put money into research to come up with these

numbers, that we have to do better on that front.

Training has been mentioned a few times and is absolutely necessary. New York State law enforcement officers, judges, child advocates, anyone who comes into contact with children should be trained about identifying kids who are at risk or are being sexually exploited and trafficked; again, this is one of the baseline recommendations that came out of the committee, and from the Alternative Report.

Prevention is an important area. There is not very much going on in the United States. A National Prevention Committee was created and is planning to do a national campaign around prevention of sexual exploitation of children. But on the policy level, prevention is a hard sell. It's easier so often for policy makers to change a law, make it a crime, and feel like they've solved the problem.

Sometimes it is easy for policy makers to say, we put money towards services for the kids, victims, or those people affected by this. But prevention often falls off the agenda because it's so hard to see it and measure its impact and to

prove that the dollars being spent are worthwhile. It is easier to see the impact if you rescue a child from sexual exploitation.

Another recommendation is for services for sexually exploited children. Rachel Lloyd always speaks most eloquently about that. New York City is blessed to have GEMS, which does that work. But most cities and most states don't have a service provider specifically helping sexually exploited kids. This is a huge gap.

On legislation, the U.S. does have good federal laws on trafficking, and now we have a good law in New York State. But, we really need forty-nine other states to follow the lead of New York, and in fact we have a lawyers committee working on a memo that might be able to demonstrate a way forward for the other forty-nine states, using New York State as a model.

The creation of a national plan of action is another recommendation that was in the Conclud-

"One of the big gaps in the U.S. is the lack of data. This was demonstrated both by the U.S. government report and our Alternative Report."

ing Observations of the Committee on the Rights of the Child. This is something that has been already agreed to at international meetings by the U.S. government. Over the years, three World Congresses against Sexual Exploitation of Children have taken place: the first in 1996, the second in 2001, and the third, just this past November in Brazil. These were gatherings of governments at meetings sponsored by ECPAT, UNICEF, a hosting government, most recently by Brazil, and the NGO group on the Convention on the Rights of the Child. Governments all convened at these World Congresses including the U.S. government. They all signed a concluding document in which they agreed to take serious steps to eliminate child sexual exploitation.

At each of these meetings, the U.S. attended and signed the concluding consensus

documents. One of those consensus items was that each government should create a national plan of action. In some ways, it has been hard for the U.S. to get there, but we are perfectly placed right now because we have done a lot, certainly at the federal level. There's a prevention committee. There's good federal legislation. There's good model legislation in the states. There are service providers in a number of states that provide services for sexually exploited kids. They are not everywhere but we have a lot of great pieces in place and we're just poised to make the next step to do that at the national level with a national plan.

As I said, the Alternative Reports are in the packets and I hope that you take a look at them. I will be happy to answer questions.





Angela O. Burton, Esq.
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Preliminary Remarks

I am honored to participate in this *Third Child Policy Forum of New York on the Implementation and Monitoring of the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography* (the “Optional Protocol”). I am especially humbled to share the platform with so many people who have long been involved in these issues. I am a relative newcomer to the issue of commercial sexual exploitation of children (CSEC), having become more aware of this problem through working with Professor Gertrud Lenzer as I’ve tried to incorporate the international perspective into the Children and the Law classes that I teach at The City University of New York. As I’ve become more familiar with international children’s rights laws, I’ve begun to think more about educating law students and lawyers who work with children and their families about how to integrate the various international sources and frameworks of law and policy into the day-to-day work on behalf of children in the courts and in other contexts. So I’d like to thank Professor Lenzer for her wise guidance and counsel, and, again, for inviting me to participate in today’s program.

Today’s *Forum* marks an important turning point in the ongoing work to eliminate commercial sexual exploitation of children, internationally, nationally, and in New York. We have heard earlier from New York Assemblyman William Scarborough and Assemblyman Jeffrey Dinowitz, as well as Rachel Lloyd, Executive Director of Girls Educational and Mentoring Services (GEMS), about some of the recent legislative initiatives in New York and some of the challenges with implementation and funding for those initiatives. It is due to the energetic efforts of people like Assemblymen Scarborough and Dinowitz, and folks “on the ground” like Rachel, and many more that make New York a leader in pursuing fresh and innovative ways to tackle this

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Professor Burton received her J.D. from NYU School of Law and her B.S. from Cornell School of Industrial and Labor Relations. She is a member of the National Association of Counsel for Children, and a Commissioner on the Permanent Judicial Commission on Justice for Children, chaired by the Hon. Judith S. Kaye, former Chief Justice of the New York State Court of Appeals. In addition to her teaching and committee work, Professor Burton has made many presentations on legal education and on issues involving children and families, and is currently completing a law review article analyzing the international restrictions on the administration of psychiatric medications to children in foster care and in juvenile detention facilities.

seemingly intractable problem. And, as others have noted, through this *Forum* and their daily work, Professor Lenzer and her able staff at the Brooklyn College Children’s Studies Program are raising public awareness about the issues, challenges, and opportunities facing those of us who are concerned about the well-being, not only of the particularly vulnerable population of children under consideration here today, but of all children.

As Assemblyman Dinowitz said earlier, this discussion is about changing lives and about saving lives, and I think that all of us will leave here today with more information and more energized to *do something* in whatever context we work. With that thought in mind, a central goal of this *Third Child Policy Forum of New York* is to identify fruitful areas of law reform in New York State that will increase protection and services for children who have fallen prey to those who would exploit them, and, just as importantly, to prevent children from being victimized in this way in the first place. In addressing the situations and con-

Angela O. Burton, Esq.

ditions of children who are at risk and who have been devastated by commercial sexual exploitation, we have the opportunity to reorient our thinking about how we protect, care for, and nurture all children, and to promote their well-being. As one would expect from Professor Lenzer, as she said, she is using this *Forum* to spark a working group that will actually get influential people together with the goal of getting things done. It is not enough for us to talk about and to learn about and to educate ourselves about the problem; we have to go out and do something with the information.

Context—Overarching Themes of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography

My charge today is to help us generate ideas, get our juices going to think about how New York can create a more holistic, coordinated, and balanced framework to further the major goals of the Optional Protocol. As others have mentioned, although law is only one tool, it is an important tool in this fight.

It is important to note that although the United States government has signed but not ratified the U.N. Convention on the Rights of the Child, which is the primary document underlying the Optional Protocol, it has both signed and ratified the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. The Optional Protocol embodies the principles and obligations regarding commercial sexual exploitation of children that have been agreed upon by countries across the world. By becoming a party to the Optional Protocol, the United States government has assumed obligations and duties under international law to respect the principles and implement the provisions of the document. The United States government has agreed to put into place domestic measures and legislation compatible with its

treaty obligations and duties under the protocol.

The Optional Protocol sets out mandates for states parties in four broad categories: prevention, identification, prosecution, and services. These four categories serve as the context for examining the existing statutory framework in New York and for sketching out briefly just a few potentially fruitful areas of reform. As we will see, New York has a very strong statutory foundation in the area of criminalization and prosecution, but much more can and should be done with respect to creating a comprehensive, coordinated, balanced, and holistic statutory scheme that emphasizes prevention, identification, and provision of services as well.

The specific provisions of the Optional Protocol in these four areas—prevention, identification, prosecution and services—manifest the protocol's underlying premises and aspirations. The preamble to the protocol makes clear that a primary aspiration of the protocol is to “further achieve the purposes of the Convention on the Rights of the Child¹ and the implementation of its provisions by extending the measures that states parties should undertake in order to guarantee protection of the child from the sale of children, child prostitution, and child pornography.” The preamble specifically references Articles 34 and 35 of the Convention on the Rights of the Child, which offer children broad protection against trafficking, sexual exploitation, and abuse.²

As stated in the preamble, the provisions of the protocol rest on the premise that “the elimination of the sale of children, child prostitution, and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behavior, harmful traditional practices, armed conflicts, and trafficking in children.” This concept of a holistic approach to

¹ As described by UNICEF, the U.N. Convention on the Rights of the Child is “a universally agreed set of non-negotiable standards and obligations, provides protection and support for the rights of children. In adopting the Convention, the international community recognized that people under 18 years of age often need special care and protection that adults do not.” See UNICEF website at http://www.unicef.org/crc/index_protocols.html

² Article 34 of the Convention on the Rights of the Child (the CRC) provides that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse,” and Article 35 provides that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”



the problem is a really important one for us to keep in mind as we contemplate future legislative and policy changes in New York. Rather than approaching the problem piecemeal, it would be useful to sit down and think about creating a comprehensive plan designed to holistically address the various contributing factors over time.

Another premise of the protocol is that what we are seeking to do here today—that is, raising public awareness, strengthening partnerships among interested actors, and improving law enforcement—are important aspects in the fight against commercial sexual exploitation of children. The preamble insists that “efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution, and child pornography” and stresses the importance of “strengthening global partnership among all actors and of improving law enforcement at the national level.”

So we see that the preamble sets out some very important aspirations and premises which undergird the protocol’s specific provisions and mandates. They may be summarized as: broad protection of children from all forms of abuse and exploitation, and in particular sexual abuse and exploitation; a holistic approach to CSEC that attacks the underlying economic, social, political, and civil factors that contribute to the problem; and heightened public awareness, strong partnerships, and enhanced law enforcement.

These overarching themes find specific expression in the provisions of the protocol. For example, in the area of enhanced law enforcement, Article 1 requires the criminalization of the sale of children, child prostitution, and child pornography and Article 2 defines those terms broadly. Article 3 criminalizes the acts of both buyers and sellers of children for the purpose of sexual exploitation and makes it a crime to offer, deliver, or accept a child for the purpose of sexual exploitation or to offer, obtain, procure, or provide a child for child prostitution, and makes it criminal to produce, distribute, import, export for sale, or possess child pornography. Article 3 emphasizes that the penalties for these crimes against children be consistent with the grave nature of the offenses. Article 7 provides for seizure

and confiscation of assets used to permit or facilitate child sexual exploitation and of the ill-gotten gains derived from these offenses.

In line with the focus on the type of balance and holistic approach spoken of in the preamble, the protocol goes beyond criminalization and punishment, emphasizing the need for fair and appropriate treatment of children and the provision of services to children within the context of criminal justice proceedings, as Mr. Davidson mentioned. Article 8 specifically recognizes the sexually exploited child as a vulnerable victim, and requires that child victims’ rights and interests be protected at all stages of the criminal process. It requires that legal procedures be adapted to recognize children’s special needs, including as witnesses; that child victims be informed of their rights; that they be given voice by allowing their views, needs, and concerns to be presented and considered in the proceedings; that appropriate support services be given to child victims throughout the legal process, protecting their privacy and their identity; and that child victims and their families and witnesses be protected from intimidation and retaliation. Echoing the Convention on the Rights of the Child, the protocol stresses that in the treatment by the criminal justice system of children who are victims of commercial sexual exploitation, “the best interest of the child” must be a primary consideration.

Article 9 of the protocol focuses on prevention, public awareness, and services to victimized children. As to prevention, States Parties are required to “adopt or strengthen, implement, and disseminate laws, administrative measures, social policies, and programmes to prevent” commercial sexual exploitation of children, with particular attention to children who are at risk (“especially vulnerable”) to CSEC. Article 9 requires States Parties to “promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offenses referred to in the present protocol,” and to “encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.”

Importantly for our purposes today, there is a requirement that parties to the protocol “take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offenses, including their full social reintegration and their full physical and psychological recovery,” and that they “ensure that all child victims of the offenses described in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

So that’s a brief overview of the some of the important, legally binding mandates set out in the protocol aimed at combating CSEC. These provisions identify approaches that national and local governments need to consider in creating a holistic, coordinated, and balanced plan of action that includes prevention, identification of vulnerable children, provision of services to at-risk and exploited children, and prosecution of perpetrators. And these aren’t just things we should do; they are things we are obligated to do because the United States government has signed on to this treaty, and those obligations trickle down to the states. So New York State has to take responsibility for ensuring that its legal and policy framework conforms to those international standards and obligations.

How’re We Doing? Overview of New York’s Laws Regarding CSEC

Federal law enforcement officials have identified New York City as one of the fourteen U.S. cities with the highest rates of child prostitution. As Rachel mentioned earlier, it is of note that in her work and the work of others that the overwhelming majority of children who are commercially sexually exploited in New York City are children of color with another large majority being immigrant children as well. But that is not to say that New York City is the only place in New York State where this goes on. According to a New York Office of Children and Family Services report issued in 2007, this is not just a New York City problem; it is a statewide problem.³ And so

people upstate and outside of New York City can’t just sit back with their eyes closed and think, well that’s their problem down there. It happens all over the state.

So, how’re we doing? In New York State, as one might expect, and in accordance with Article 3 of the Optional Protocol, there is a lot of focus on laws that criminalize and punish the acts and activities related to child prostitution and child pornography.⁴ New York has long been a leader among the states in recognizing the problem of sexual exploitation of children and enacting legislation to address the myriad dimensions of the problem. For example, in 1977, New York was one of the first states to criminalize, to enact a child pornography statute. As you have heard, most recently Governor Paterson signed into law the Safe Harbor Act last year to become effective in 2010, mandating that children who have been sexually exploited be treated as victims in the family court PINS proceedings (persons in need of supervision) rather than as criminals under the juvenile delinquent procedure or criminal court (some children, not all children).

With the signing of this new law, New York has taken a huge step in aligning its laws with the mandate of Article 8 of the Optional Protocol, that the “best interest of the child” should be a primary consideration in the treatment of our children in the justice system, and so, decriminalizing, not criminalizing, children who are actually victims. Even though it may not have been the framework that the sponsors were working under, it actually does align with the protocol in a very good way. In addition, we also heard about New York’s Anti-Trafficking Law which went into effect on November 1, 2007. Over the course of time, the legislature periodically takes steps to increase penalties for sexually motivated crimes against children. So there is already that impulse, there is a framework, and we can continue to build on those steps to create an environment of protection and caring for children by seeking to deter the commercial sexual exploitation of children, to prosecute those responsible, to treat children as vulnerable victims rather than as criminals, and to

³ Frances Gragg, Ian Petta, Haidee Bernstein, Karla Eisen, and Liz Quinn, “New York Prevalence Study of Commercially Sexually Exploited Children: Final Report,” April 17, 2007 (prepared by Westat for New York State Office of Children and Family Services).

⁴ A compendium of New York State laws relating to child abuse and neglect can be found at <http://nysmandatedreporter.org/laws.html#law0>.



provide them with appropriate and effective services.

In accordance with Articles 2 and 3 of the Optional Protocol, New York has extensive laws regarding child pornography. Child pornography laws are fairly recent; it was only in 1970 that the federal government first passed a law prohibiting child pornography, and some states still didn't have laws prohibiting its possession as late as 1977. Today, there is an extensive framework of federal law addressing child pornography and obscenity.⁵

New York's criminal laws relating to child pornography are covered under the state's Obscenity Law found in Article 235 of the Penal Law and in Article 263 covering sexual performance by a child. In 1977 New York became one of the first states to criminalize the use of children in the production of child pornography, passing laws penalizing the use of children in sexual performance and promoting sexual performance by a child. The legislature found that there had been a proliferation of exploitation of children as subjects in sexual performances and declared that "the care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children."

Generally, New York laws on child pornography seem to comport pretty well with international and national law, but there's a curious distinction in the law that discriminates among children based on age. Until February 2001, the cutoff for the criminalization of using children in a sexual performance was sixteen years of age, and that's already a problem because international law says protection has to be provided for children up to eighteen years old. So, up until February 2001, the cutoff for sexual performance crimes was sixteen years of age, but in February

2001 the age of the child for purposes of use or promotion was raised to seventeen, which provided another year of protection, but the cutoff for possession of child pornography remains at sixteen years of age. I'm not sure what the basis for that distinction is, but it is something that we need to look at.

That kind of distinction permeates the laws and someone earlier talked about the younger the children are the more serious the crime is. But I'm not sure that that's right. In our criminal law the younger the child victim, the stiffer the penalty is. I'm not sure that that is sending the right message—that we distinguish the value of children based on how old they are. If we're protecting children, we should be protecting children—period. That may be controversial, but

"Federal law enforcement officials have identified New York City as one of the fourteen U.S. cities with the highest rates of child prostitution. As Rachel mentioned earlier, it is of note that in her work and the work of others that the overwhelming majority of children who are commercially sexually exploited in New York City are children of color with another large majority being immigrant children as well."

it's something that puzzled me. Aside from that, the more fundamental flaw in all the penal laws relating to child sexual exploitation is that New York's law generally defines a minor as a child less than seventeen years old, whereas the internationally and federally

accepted definition of a child for these purposes is a person under the age of eighteen. So we are a little bit out of step with the law on that end.

We do have laws that criminalize the use of children, buying and selling children for hire, and, again, New York has a really good foundation of criminal laws. Two recent legislative actions show again that New York does have an impulse toward providing protection for children and providing a base for prosecution. In 2005 the legislature added the crime of compelling prostitution as a Class B Felony in Penal Law 230.33. The memorandum in support of the bill, notes that the acts covered under the "compelling prostitution" statute seem also to be covered under the "promoting prostitution" statute. So the question is, "Why do we need this other additional law?"

⁵See "Citizen's Guide to United States Federal Exploitation and Obscenity Laws", U.S. Department of Justice, Child Exploitation and Obscenity Section (CEOS), available at http://www.usdoj.gov/criminal/ceos/citizensguide_porn.html (child pornography).

The memorandum in support of the bill emphasized the need to highlight the problem of child prostitution. The memorandum stated that “it is perhaps the most important role in society to foster and protect its most innocent members, particularly its children,” and stressed that the bill would recognize this problem by creating new crime compelling prostitution which requires that the perpetrator be at least twenty-one years old or more and that the victim be less than sixteen. And it also increases the penalty for the existing Class C felony of promoting prostitution, when the person advancing prostitution is an adult and the victim of coercive conduct is a child.

In 2008, the crime of luring a child was added as Penal Law 120.70 in 2008. Prior to its enactment, there was no specific crime covering the act of luring a child and this makes it a crime to lure a child into a motor vehicle, a building, or an isolated area with the intent of committing a violent felony or a felony sex offense. So this is another step that the legislature has taken to impress upon us the gravity of the situation and to catch every part of it.

Some Recommendations for the Future

My time is running out, so let me just give you a very brief summary of some of the recommendations I’ve found interesting as I researched this issue. These recommendations are culled from a number of different jurisdictions, and none is original to me, so I don’t take any credit for them. The OCFS Report I mentioned earlier (New York Prevalence Study of Commercially Sexually Exploited Children), issued in 2007, recommended several changes in New York State law in connection with the Safe Harbor bill. They include: increased funding for residential programs, changes in definitions (both for PINS and juvenile delinquency), changes in statutes governing prostitution by sixteen- and seventeen-year olds, and implementation of annual counts of CSEC.⁶

The Prevalence Report also mentioned a number of policy and practice changes and recommendations. These include provision for men-

tal health counseling for victims of CSEC that factor in the multiple and overlapping economic and social problems the children face; implementation of strategies to prevent CSEC, improve services and community responses to CSEC, such as programs to help youth integrate into age-appropriate, positive social groups and expose them to positive adult role models; increase services, staff, and treatment slots; and provide training in CSEC for staff in courts.⁷

To increase our ability to identify children who are at risk or are victims of CSEC, we might think about changing our mandatory child abuse reporting law to more clearly indicate that professionals who come into contact with children on a daily basis—medical professional, mental health providers, social workers, teachers, etc.—should also report suspected victims of CSEC. Child Protective Services typically only responds to situations that involve intra-family abuse. We need a mechanism for people to report possible or suspected commercial sexual exploitation of children that is not related to noncommercial abuse or neglect, such as by a family member, a parent, or a legal guardian. Such a mechanism would facilitate greater identification and provision of services to such children and their families.

Providing appropriate services for child victims of CSEC and funding those services is of course another huge issue that deserves attention. Assessment centers, safe houses, education and outreach efforts, training of professionals in the signs of commercial sexual exploitation, multidisciplinary responses to child victims, residential treatment facilities, specialized nonresidential services for exploited children, and inter-county and interagency communication and cooperation are other nonlegal recommendations that New York should consider in developing its comprehensive, holistic approach to the problem of CSEC.⁸

I see that my time is up. I hope you have found my remarks useful, and I thank you for your attention and your willingness to learn and to act on this important problem facing our children.

⁶Prevalence Study, at p. 90.

⁷Id.

⁸See, e.g., *Commercial Sexual Exploitation of Children in Georgia: Service Delivery and Legislative Recommendations for state and local policy makers*, pp. 60-65, Barton Child Law and Policy Clinic, Emory University School of Law (January 2008), available at <http://www.childwelfare.net/activities/legislative2008/CSEC20080131.pdf>.



Optional Protocol and Concluding Observations

UNITED
NATIONS

A



General Assembly

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A/RES/54/263*
16 March 2001

Fifty-fourth session
Agenda item 116 (a)

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/54/L.84)]

54/263. Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography

The General Assembly,

Recalling all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,¹

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

* Reissued for technical reasons.

Note: UN Resolution 54/263 includes two optional protocols to the Convention on the Rights of the child, the first on the involvement of children in armed conflict, and the second on the sale of children, child prostitution and child pornography. The *Third Child Policy Forum of New York* deals exclusively with the second optional protocol and for the purposes of the proceedings only the text of the second optional protocol will follow.

1. *Adopts and opens for signature, ratification and accession* the two optional protocols to the Convention on the Rights of the Child¹ on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;
2. *Invites* all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;
3. *Decides* that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled *AWomen 2000: gender equality, development and peace for the twenty-first century*², to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled *AWorld Summit for Social Development and beyond: achieving social development for all in a globalizing world*³, to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;
4. *Requests* the Secretary-General to include information on the status of the two optional protocols in his report to the General Assembly on the status of the Convention on the Rights of the Child.

*97th plenary meeting
25 May 2000*



ANNEX II

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child¹ and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

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Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography³ and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996,⁴ and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
 - (i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

³ *Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A, resolution 1992/74, annex.*

⁴ A/51/385, annex.

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- a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
- (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

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1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.
2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
 - (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
 - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

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1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall

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encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

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3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

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Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.





**Convention on the
Rights of the Child**

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CRC/C/OPSC/USA/CO/1
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Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-eighth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 12, PARAGRAH 1, OF THE OPTIONAL PROTOCOL TO
THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

Concluding observations: United States of America

1. The Committee considered the initial report of the United States of America (CRC/C/OPSC/USA/1) at its 1320th meeting (see CRC/C/SR.1320), held on 22 May 2008, and adopted at its 1342nd meeting, held on 6 June 2008, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, though not written in compliance with the Committee's reporting guidelines, as well as the replies to the list of issues, which give substantive information on the legislative, administrative, judicial and other measures adopted for the implementation of the Optional Protocol. The Committee also welcomes the open and constructive dialogue held with a high-level and multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the same day on the State party's initial report under the Optional Protocol to the Convention on the involvement of children in armed conflict (CRC/C/OPAC/USA/CO/1).

GE.08-42720

I. General

Positive aspects

4. The Committee welcomes the wide range of activities of international assistance and cooperation, including technical cooperation, training, raising awareness and assistance to victims provided by the Trafficking in Persons (TIP) Office, with the aim of monitoring and combating trafficking in persons.

5. The Committee welcomes the Innocence Lost Initiative aimed at combating child prostitution in the country, through a partnership between the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, and the National Center for Missing and Exploited Children.

6. The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party's commitment in the fight against the commercial sexual exploitation of children, including:

(a) The Trafficking Victims Protection Act 2000 and its re-authorizations in 2003 and 2005, which strengthened state programmes to prosecute those responsible for child prostitution and enhanced assistance to victims of trafficking in the United States and in other countries;

(b) The PROTECT Act of 2003, which expanded extra-territorial jurisdiction to prosecute State party's citizens committing sex crimes against children abroad;

(c) The Adam Walsh Child Protection and Safety Act, passed in 2006, which increased penalties for child sex offenders and eliminated statutes of limitations for criminal offences against children.

7. The Committee also welcomes the ratification by the State party of:

(a) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 12 February 1999;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 23 December 2002;

(c) The Hague Convention No. 33 of 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, on 12 December 2007.

II. Data

Data collection

8. The Committee notes the State party's commitment and efforts to gather data and conduct studies on commercial sexual exploitation of children, but is concerned that there is insufficient information available on sale of children, child prostitution



and child pornography in the State party, due mainly to the lack of a functional data collection system on the issues covered by the Protocol. Furthermore, the Committee notes that the definition of trafficking is based on the Federal Victims of Trafficking and Violence Protection Act of 2000, which broadly interprets that contained in the Palermo Protocol on Trafficking supplementing the United Nations Convention on Transnational Organized Crime. In this respect, the Committee is concerned that defining a wide range of criminal activities against children as trafficking, without differentiating between them, may cause difficulties in the collection of disaggregated data and analytical information on the activities covered by the Protocol as well as in the identification of victims and of appropriate strategies to prevent and combat these crimes at national and international level.

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

III. General measures of implementation

National Plan of Action

10. The Committee notes that, while several plans and programmes have been adopted and implemented to combat trafficking, notably cross-border trafficking, an overall strategy for the implementation of the Optional Protocol and the elimination of sale of children, child prostitution and child pornography is lacking.

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

Coordination of the implementation of the Optional Protocol

12. The Committee notes that there are several governmental departments or agencies with responsibilities for the implementation of the Optional Protocol such as the Department of Justice, the Department of State and the Department of Health and Human Services, but is concerned at the insufficient level of coordination among them and between federal, state and local authorities. The Committee also notes with concern that coordination is often insufficient between government agencies and non-governmental organizations working in the areas covered by the Optional Protocol.

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

Dissemination and training

14. The Committee notes that the State party has generally high-quality training resources and facilities and it welcomes the training delivered by the National Center for Missing and Exploited Children to judges, prosecutors and law enforcement officials on investigation and prevention of child sexual exploitation. However, it is concerned that there is no systematic dissemination of and training on the Optional Protocol either at federal and state level and that the Optional Protocol and the problems surrounding the issues covered thereto are not very well known.

15. The Committee recommends that the State party:

(a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups, including law enforcement personnel, judges, lawyers, social and health-care workers, immigration and customs officers, religious and community leaders, civil society organizations, and organizations accredited for adoption;

(b) Strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material specifically for children;

(c) Promote, in cooperation with civil society and the media - in line with article 9, paragraph 2, of the Optional Protocol - awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of all the offences referred to in the Optional Protocol, including by translating into appropriate languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in accessing such information, education and training programmes.

Allocation of resources

16. The Committee notes that a significant amount of financial resources is allocated to the prevention of human trafficking, but is concerned that only a small proportion of it is specifically allocated to child victims of trafficking and to victims of other offences covered by the Optional Protocol.

17. The Committee recommends that the State party:

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



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

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

National human rights institutions

18. While the Committee recognizes the difficulty in creating an independent agency at the federal level to monitor the implementation of the Optional Protocol, because most of the laws and services required are a state responsibility, the Committee is concerned that there is no agency such as an Ombudsman at the federal or state level to monitor the implementation of the Optional Protocol.

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

IV. Prevention of the sale of children, child prostitution and child pornography

20. The Committee notes the State party's initiatives aimed at preventing child abuse and neglect, but is concerned that a focus on sale of children, child prostitution and child pornography is still lacking. It is also concerned that preventive efforts are mostly limited to specific areas of the country and do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, migrant children, indigenous children and children living in difficult family situations, who are particularly vulnerable to all the offences covered by the Optional Protocol.

21. The Committee is of the view that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach, addressing the contributing factors thereto, and recommends that the State party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism. Particular attention in the preventive efforts should be given to protect children throughout the State party who are especially vulnerable to such practices.

22. The Committee is concerned at the paucity of programmes focusing on reducing the demand for sexual services involving the exploitation of children, including awareness-raising campaigns.

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

Child prostitution

24. The Committee notes the State party's efforts in addressing child prostitution, with programmes focused on a victim-centred approach. However, the Committee is concerned at the information that prostitution of children is a widespread and increasing phenomenon in the State party. It is also concerned at the information that enforcement of child prostitution laws is quite low at the state level and that the resources allocated for protection programmes, training and education are not sufficient.

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

Child pornography

26. The Committee appreciates the State party's efforts in combating child pornography both internally and as a worldwide phenomenon, including the numerous investigations and prosecutions in this respect, but is concerned that the State party is one of the world's largest producers, distributors and consumers of child pornography and that the incidence of cyber-crimes involving children, facilitated by the emergence of new technologies, is on the rise.

27. The Committee recommends that the State party

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

Sex tourism

28. The Committee welcomes the launch in 2004 of the "Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism" as well as that the adoption of the PROTECT Act of 2003 has resulted in more than 50 indictments and 29 convictions of State party's nationals involved in child sex tourism abroad. It also



appreciates the funding of deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at United States child sex tourists. However, the Committee is concerned at the information that the State party remains among the main source countries for child sex tourism.

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

Illegal adoption

30. The Committee welcomes the recent ratification of the Hague Convention on Inter-Country Adoption and notes that the Department of State has been identified as the Central Authority. In this respect, the Committee is concerned about the fact that for-profit persons may be approved to perform Central Authority functions, though they must comply with the requirements and qualifications indicated in article 22, paragraphs 2 (a) and (b), of the Hague Convention, including integrity, professional competence and accountability. The Committee is also concerned at the information that, according to the current regulations, the payment of prenatal and other expenses to birth mothers abroad would still be possible.

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

- (a) Adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes;**
- (b) Ensure that not only the accredited agencies, but also the approved persons, pursue only non-profit objectives;**
- (c) Expressly prohibit all forms of possible active solicitation for children, including the payment of pre-natal and other expenses;**
- (d) Intensify its efforts to prevent and punish all the cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale;**
- (e) Seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention;**
- (f) Effectively apply the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to**

ensure that American children are primarily adopted in the United States.

V. Prohibition and related matters

Existing criminal or penal laws and regulations

32. The Committee welcomes the fact that the State party has generally developed adequate legislation at the federal level concerning child pornography, the transporting of children between states for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at state and at federal levels may result in certain lacunae in the definition and prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, *inter alia*, that:

- (a) There is no federal law defining or prohibiting child prostitution *per se*;
- (b) While activities related to child pornography are a felony at federal level, they may be only a misdemeanor in some states;
- (c) Attempts to commit, or all forms of participation in, the offences covered by the Optional Protocol are not always punished under federal and state legislation.

33. The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party:

- (a) Define and prohibit child prostitution in accordance with articles 2 and 3 of the Optional Protocol both at federal and state levels;
- (b) Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state levels;
- (c) Ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Optional Protocol.

34. The Committee further recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further strengthen the framework for the protection of children's rights.



Jurisdiction and extradition

35. The Committee, while welcoming the possibility for the State party to establish extraterritorial jurisdiction for sex tourism and child pornography offences committed outside the United States, is concerned that the State party's extraterritorial jurisdiction based on the nationality of the offender, while provided by some federal laws, such as 18 U.S.C., paragraphs 1585 and 1587, does not reach all offences covered by the Optional Protocol. The Committee also notes that federal law does not generally provide for the assertion of extraterritorial jurisdiction where the victim is a State party's national.

36. The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Optional Protocol abroad – if it does not extradite him or her to another State party - even if the country where the offence was committed is not a Party to the Optional Protocol or does not criminalize these acts in its legislation.

VI. Protection of the rights of child victims

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

37. The Committee welcomes the measures taken for the protection of child victims of the offences covered by the Optional Protocol in the criminal justice system, including the access to support persons, alternatives for live in-court testimony when it is determined that a child should not testify, the use in many states of closed-circuit television (CCTV) testimony of children, child interview specialists and developmentally appropriate questioning. However, the Committee is concerned at the information that there are instances where child victims, especially those who are victims of trafficking within the United States and those used in prostitution, may be penalized or criminalized, since state laws have not yet uniformly exempted children, notably those involved in prostitution, from arrest and prosecution.

38. The Committee recommends that the State party:

(a) Ensure that all persons below the age of 18 victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized at federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country;

(b) Take all necessary measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Optional Protocol, the best interests of the child shall be a primary consideration;

(c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels. The State party should be also guided in this respect by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20).

Recovery and reintegration of victims

39. The Committee notes with appreciation that, with the Trafficking Victims Protection Act, in the United States, non- citizens who are victims of severe forms of trafficking - which include a person under 18 years of age induced to perform a commercial sex act - are allowed to remain in the country and are eligible to receive certain kinds of public assistance to the same extent as refugees. However, the Committee is concerned that while there are certain services available for child victims of trafficking from other countries, children victim of internal commercial sexual exploitation often lack the adequate services, including transitional shelters, necessary for their physical and psychological recovery and social reintegration. The Committee is further concerned at the information that in some cases foreign victims of trafficking for sexual exploitation may face deportation as unidentified trafficked victims.

40. The Committee recommends that the State party:

(a) Ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol;

(b) Ensure that foreign children victims of the offences covered by the Protocol are not deported but rather granted the necessary services aimed at their physical and psychological recovery. When return in the country of origin is considered to be the best option in the interests of the child, an adequate assessment concerning the situation in the countries of origin, including - if possible - the family environment, should be undertaken;

(c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Optional Protocol;

(d) Ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.



VII. International assistance and cooperation

41. The Committee welcomes that the State party has substantially contributed to combating human trafficking internationally. It also welcomes the information provided during the dialogue concerning the cooperation between the state of New Mexico and the Mexican state of Chihuahua, which establishes a good practice in the fight against trafficking.

42. The Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements, giving due attention to the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, in accordance with the Optional Protocol. These arrangements should always be in the best interest of the child and respect international human rights standards.

43. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, including interregional programmes, and non-governmental organizations, in the development, implementation and evaluation of measures aimed at an adequate application of the Optional Protocol.

44. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

VIII. Follow-up and dissemination

(a) Follow-up

45. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government departments and agencies, the Congress, the Senate and to state authorities, for appropriate consideration and further action.

(b) Dissemination

46. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

47. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next report, due on 23 January 2010.



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