

## **Troubling Gaps in the U.S. Response to Human Trafficking under the International Covenant on Civil and Political Rights**

### ***I. Reporting Organization***

1. The International Human Rights Clinic (IHRC) at Santa Clara University School of Law respectfully submits this report to supplement the United States' response to the Committee's List of Issues. Over the past year, IHRC has investigated local responses to human trafficking in the California Bay Area. We interviewed dozens of federal, state, and local law enforcement officials, victim services providers, and legal aid providers who work with human trafficking victims. Their critiques and recommendations form the basis for our report.

### ***II. Introduction and Issue Summary***

2. As requested in Issue #21 of the Committee's List of Issues,<sup>1</sup> this report details violations of Articles 8 and 24 of the International Covenant on Civil and Political Rights (ICCPR), stemming from the failure of the United States government to address human trafficking in a comprehensive and coordinated manner. While we applaud the U.S. government for the great strides it has already taken, significant gaps leave many victims unprotected. This report identifies three troubling gaps in the U.S. response to human trafficking: U.S. failure to 1) adequately identify and investigate labor trafficking cases; 2) address the intersection between the child welfare system and human trafficking, and 3) provide coordination and promote collaboration between local, state, and federal agencies to combat human trafficking.

#### **A. Failure to Identify and Investigate Labor Trafficking Cases**

3. The U.S. government has failed to take sufficient measures to identify and investigate labor trafficking cases, in violation of its obligations under Articles 8 and 24 of the ICCPR. According to law enforcement officials and service providers in the California Bay Area, labor trafficking is under-investigated.<sup>2</sup> These actors observe that labor trafficking victims are typically identified by non-governmental service providers rather than by law enforcement agencies, and that law enforcement often does not pursue the investigation and prosecution of such cases.<sup>3</sup> The 2012 Trafficking in Persons Report ("2012 TIP Report") issued by the U.S. government recognizes that "federal and state human trafficking data indicate more investigations and prosecutions have taken place for sex trafficking than labor trafficking."<sup>4</sup> Our research indicates that causes of the under-investigation problem appear to include 1) a lack of sufficient resources and 2) the failure of federal law enforcement agencies and other agencies charged with labor law enforcement to take affirmative steps to identify and investigate labor trafficking cases.<sup>5</sup>

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<sup>1</sup> U.N. Human Rights Comm., *List of Issues in Relation to the fourth periodic report of the United States of America*, ¶ 21, U.N. Doc. CCPR/C/USA/Q/4 (Apr. 29, 2013).

<sup>2</sup> IHRC Interviews with Human Trafficking Actors from all Sectors, Names Redacted (2012-2013) (on file with author) [hereinafter IHRC Interviews]

<sup>3</sup> IHRC Interviews, *supra* note 2.

<sup>4</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, 360 (2012) [hereinafter TIP REPORT 2012], available at <http://www.state.gov/documents/organization/192598.pdf>; see also U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2011, 34, 65 (2013) [hereinafter ATTORNEY GENERAL'S REPORT 2011], available at <http://www.justice.gov/ag/annualreports/agreporthumantrafficking2011.pdf>.

<sup>5</sup> IHRC Interviews, *supra* note 2; see also TIP REPORT 2012 at 360-364, *supra* note 4.

4. According to local law enforcement officials in the California Bay Area, police departments with federal anti-trafficking funding lack sufficient resources to investigate labor trafficking cases, which they characterize as more time- and resource-intensive than sex trafficking investigations.<sup>6</sup> The 2012 TIP Report echoes this concern, noting that “federal and state worksite inspectors lacked sufficient resources and training to increase victim identification appreciably.”<sup>7</sup>

5. Federal agencies charged with the enforcement of labor laws do not yet regularly identify and investigate labor trafficking cases.<sup>8</sup> According to the 2012 TIP Report, despite the fact that they “are often the first government authorities to detect exploitative labor practices[,]” Department of Labor investigators “are not mandated to investigate human trafficking[,]” and do not receive “[s]ystematic trafficking-specific training[.]”<sup>9</sup>

6. Additionally, U.S. labor laws explicitly exclude certain categories of workers, such as farm workers and domestic workers from their protections, thereby rendering these populations uniquely vulnerable to human trafficking.<sup>10</sup> This lack of legal protection leaves women and children particularly exposed to exploitation; a study found that 98% of California domestic workers are female,<sup>11</sup> and the federal law regulating child labor includes an exemption to allow children as young as 12 years old to work in the agricultural industry.<sup>12</sup> Yet U.S. efforts to combat human trafficking do not specifically address these vulnerable groups.

## **B. Intersection between Human Trafficking and the Child Welfare System**

7. Recent data demonstrates that U.S. child trafficking victims are likely to have some interaction with the child welfare system, yet the U.S. government is not taking sufficient steps to address this connection.<sup>13</sup> As highlighted in General Comment 28, the U.S. has an obligation under Articles 8 and 24 of the ICCPR to provide special measures to protect children in particular from human trafficking and slavery.<sup>14</sup> Nevertheless, the U.S. government is failing: 1) to protect children already in the child welfare system who are particularly vulnerable to trafficking and 2) to meet the unique needs of trafficking survivors who are subsequently placed in the child welfare system following their rescue.

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<sup>6</sup> IHRC Local Law Enforcement Interviews, Names Redacted (2012) (on file with author).

<sup>7</sup> IHRC Interviews, *supra* note 2; TIP REPORT 2012 at 364, *supra* note 4.

<sup>8</sup> TIP REPORT 2012 at 360, *supra* note 4.

<sup>9</sup> TIP REPORT 2012 at 364, *supra* note 4.

<sup>10</sup> 29 U.S.C. §§ 213(a)(15); (b)(21) (Fair Labor Standards Act); 29 U.S.C. § 651(b) (Occupational Safety and Health Act); 29 C.F.R. § 1975.6 (Occupational Safety and Health Act regulations); 29 U.S.C. § 151-169 (National Labor Relations Act).

<sup>11</sup> Mujeres Unidas y Activas, *Behind Closed Doors: Working Conditions of California Household Workers*, 2 (March 2007), available at <http://www.datacenter.org/reports/behindcloseddoors.pdf>.

<sup>12</sup> 29 U.S.C. §§ 213(a)(15); (b)(21) (Fair Labor Standards Act); see also Polaris Project, *Labor Trafficking in Agriculture* (Aug. 15, 2013), available at <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us/agriculture-a-farms>.

<sup>13</sup> CALIFORNIA CHILD WELFARE COUNCIL, ENDING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A CALL FOR MULTI-SYSTEM COLLABORATION IN CALIFORNIA, iii, 3-4, 10-11 (February 2013) [hereinafter CA Child Welfare Council Report], available at [http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System\\_Collaboration-in-CA.pdf](http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf); see also NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, NEW YORK PREVALENCE STUDY OF COMMERCIAL SEXUALLY EXPLOITED CHILDREN, ii (April 18, 2007) [hereinafter NY CSEC Report], available at <http://ocfs.ny.gov/main/reports/csec-2007.pdf>.

<sup>14</sup> U.N. Human Rights Comm., *General Comment No. 28: Equality of Rights Between Men and Women (Article 3)*, ¶ 12, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

8. According to multiple studies, children involved in the U.S. child welfare system are highly vulnerable to trafficking and sexual exploitation.<sup>15</sup> “[T]he Department of Justice (DOJ) estimates that nearly 300,000 children are at risk of becoming victims of domestic sex trafficking each year, with foster youth being especially susceptible to coercion, manipulation and exploitation by traffickers.”<sup>16</sup> A recent California Child Welfare Council report characterizes “a history of child welfare agency involvement” as a “major risk factor” for child trafficking.<sup>17</sup> The same study warns that traffickers actively seek out the most vulnerable children in the child welfare system by targeting group homes and shelters.<sup>18</sup> Although state-level studies show a strong correlation, the U.S. government does not gather nationwide data on the linkage between child trafficking and the child welfare system, which further impedes efforts to understand and address this serious problem.<sup>19</sup>

9. The U.S. child welfare system also lacks the resources and training necessary to adequately meet the special needs of traumatized<sup>20</sup> child trafficking survivors<sup>21</sup> who are subsequently placed in the child welfare system. According to a 2011 Loyola University study, “[f]or the past decade, child protection agencies across the United States have been unprepared to address the problem [of child trafficking], despite laws requiring child welfare agencies to serve trafficked children.”<sup>22</sup> Because “most state child protection professionals do not have the training, protocols or procedures to identify and respond appropriately to child trafficking cases,” child “victims are often left without critical support, are subsequently re-trafficked, and remain vulnerable to further exploitation and abuse.”<sup>23</sup>

### **C. Lack of Adequate Local, State, and Federal Coordination, Funding, and Training**

10. The U.S. government is also violating its obligations under Articles 8 and 24 of the ICCPR by failing to coordinate anti-trafficking efforts among federal agencies and between federal, state, and local agencies, and by providing insufficient, inconsistent funding and training for local anti-trafficking efforts.

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<sup>15</sup> CA Child Welfare Council Report at iii, 3-4, 10-11, *supra* note 14; *see also* NY CSEC Report at ii, *supra* note 14; U.S. DEPT. OF HEALTH AND HUMAN SERVICES OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE (Aug. 2009), *available at* <http://aspe.hhs.gov/hsp/07/humantrafficking/litrev/>.

<sup>16</sup> Press Release, U.S. Representative Karen Bass, 37th Congressional District, Statement on Legislation to Combat Youth Trafficking (Apr. 26, 2013) (on file with author) [hereinafter Bass Press Release], *available at* <http://bass.house.gov/press-release/statement-legislation-combat-youth-street-trafficking> (citing U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, JUVENILE JUSTICE BULLETIN 1, (July 2010), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/228631.pdf>).

<sup>17</sup> CA Child Welfare Council Report at 18-19, *supra* note 14.

<sup>18</sup> CA Child Welfare Council Report at 1, 10-15, *supra* note 14.

<sup>19</sup> For further commentary on the lack of reliable human trafficking data in the U.S., *see* Maureen Q. McGough, *Ending Modern-Day Slavery: Using Research to Inform U.S. Anti-Trafficking Efforts*, National Institute of Justice Journal, Issue No. 271 (February 2013) [hereinafter NIJ Report], *available at* <http://www.nij.gov/journals/271/anti-human-trafficking.htm>.

<sup>20</sup> IHRC Victim Service Provider Interviews, Names Redacted (2012-2013) (on file with author) [hereinafter IHRC Victim Service Interviews]; CA Child Welfare Council Report at 29-32, *supra* note 14.

<sup>21</sup> IHRC Victim Service Interviews, *supra* note 21; ATTORNEY GENERAL’S REPORT 2011 at 36-37, *supra* note 4; CA Child Welfare Council Report at 29-30, *supra* note 14.

<sup>22</sup> LOYOLA UNIVERSITY CHICAGO, CENTER FOR THE HUMAN RIGHTS OF CHILDREN, BUILDING CHILD WELFARE RESPONSE TO CHILD TRAFFICKING, 12 (2011) [hereinafter Loyola Report], *available at* [http://www.luc.edu/chrc/pdfs/Building\\_Child\\_Welfare\\_Response\\_to\\_Child\\_Trafficking.pdf](http://www.luc.edu/chrc/pdfs/Building_Child_Welfare_Response_to_Child_Trafficking.pdf).

<sup>23</sup> Loyola Report at 13, *supra* note 23.

11. Although the U.S. government has acknowledged that Article 50 of the ICCPR requires it to “take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant[.]”<sup>24</sup> it has failed to coordinate anti-trafficking efforts between federal, state and local agencies. Local law enforcement officials in the California Bay Area report that this lack of coordination has reduced their effectiveness in responding to human trafficking,<sup>25</sup> and that traffickers take advantage of this phenomenon by moving trafficking victims into different jurisdictions to evade investigation.<sup>26</sup>

12. Local law enforcement agencies and non-profit organizations that serve victims also report that a lack of consistent, sufficient funding is a major barrier to eradicating trafficking and serving victims.<sup>27</sup> Currently, U.S. government grants fund only 39 local anti-trafficking task forces nationwide, or less than one task force per state.<sup>28</sup> For police departments, such grants are insufficient to enable the hiring of additional officers, forcing them to pull officers off patrol duty to focus on trafficking, thereby giving up one resource in exchange for another.<sup>29</sup>

13. Local law enforcement and service providers further agree that the U.S. government needs to take broad measures to provide standardized human trafficking training for all agencies that come into contact with potential trafficking victims, including immigration agencies, labor law enforcement agencies, and child welfare agencies.<sup>30</sup> As noted above, child welfare agencies lack “adequate tools or training to consistently and systematically identify” trafficking victims; a recent government study reveals that “law enforcement commonly lack[s] training on how to investigate human trafficking cases” as well.<sup>31</sup> The 2012 TIP Report likewise acknowledges that to combat trafficking more effectively, the U.S. government should “institute universal training on the detection of human trafficking for all relevant Department of Labor (DOL) investigators [and] increase victim identification training for immigration detention and removal officers and systematize screenings for trafficked persons in all immigration detention centers.”<sup>32</sup>

### ***III. Brief Summary and Critique of U.S. Response***

14. In its response to the Committee’s Issue 21(a), the U.S. describes how inter-agency partnerships “enabled . . . the initiation of complex, multi-jurisdictional, and international labor trafficking investigations,” as well as the “successful prosecution” of an unspecified number of domestic servitude cases.<sup>33</sup> While the U.S. should be commended for this progress, it has not

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<sup>24</sup> U.S. reservations, declarations, and understandings, *International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992).

<sup>25</sup> See generally, NIJ Report, *supra* note 20.

<sup>26</sup> IHRC Local and Federal Law Enforcement Agent Interviews, Names Redacted (2012-2013) (on file with author) [hereinafter IHRC Local/Federal Law Enforcement Interviews].

<sup>27</sup> IHRC Interviews, *supra* note 2.

<sup>28</sup> U.S. DEP’T OF STATE, FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE U.N. COMM. ON HUMAN RIGHTS CONCERNING THE INT’L COVENANT ON CIVIL AND POLITICAL RIGHTS, ¶ 202 (Dec. 30, 2011) [hereinafter U.S. Fourth Report].

<sup>29</sup> IHRC Local/Federal Law Enforcement Interviews, *supra* note 27; see also NIJ Report, *supra* note 20 (discussing a recent U.S. government study showing that local law enforcement agencies are unable to devote scarce resources to “labor-intensive” human trafficking investigations).

<sup>30</sup> IHRC Interviews, *supra* note 2.

<sup>31</sup> CA Child Welfare Council Report at 57, *supra* note 14; NIJ Report at 30, *supra* note 20.

<sup>32</sup> TIP REPORT 2012 at 360, *supra* note 4.

<sup>33</sup> U.S. DEP’T OF STATE, U.S. RESPONSES TO QUESTIONS FROM THE U.N. HUMAN RIGHTS COMM.

issued concrete measures to remedy the under-identification and investigation of labor trafficking cases.

15. The U.S. indicates that “[p]rotecting vulnerable workers from disparate pay, harassment, and other discriminatory policies is a priority for the EEOC [Equal Employment Opportunity Commission].”<sup>34</sup> Yet the U.S. makes no mention of steps taken to ensure that labor law enforcement agencies identify and investigate labor trafficking cases, nor does it refer to any efforts to reform labor laws that exclude vulnerable groups like agricultural and domestic workers from their protections.

16. The U.S. response also highlights Department of Education awareness-raising and outreach efforts “to state and local education agencies, schools, students, and parents.”<sup>35</sup> However, the U.S. has not extended or tailored such efforts to vulnerable populations that most need training, such as agricultural and domestic workers, or children in the child welfare system.

17. In its response, the U.S. notes important efforts made through the Department of Justice’s Child Exploitation and Obscenity Section to combat the sexual exploitation of children.<sup>36</sup> Yet despite the fact that a large percentage of child trafficking victims have some interaction with the child welfare system, the U.S. report and response does not acknowledge this intersection, nor does it provide any information on steps it is taking to protect these vulnerable children.

18. The U.S. also reports that multiple federal agencies work together to investigate and prosecute human trafficking cases.<sup>37</sup> While these important steps towards increased coordination should be recognized, the U.S. does not give specific information on any efforts to achieve coordination between federal and state or local agencies.

#### ***IV. Recommended Questions***

19. We respectfully request that the Committee consider addressing the concerns outlined in this report by raising the following questions during the U.S. government’s hearing:

- a. What has the U.S. government done to ensure labor trafficking cases are properly identified, investigated, and, where appropriate, prosecuted?
- b. What is the U.S. doing to mitigate the vulnerability of agricultural and domestic workers to trafficking and ensure they know their rights?
- c. What is the U.S. government doing to protect children in the child welfare system from becoming victims of human trafficking?
- d. What is the U.S. government doing to provide adequate services that meet the unique needs of trafficking victims that enter the child welfare system after rescue?
- e. What is the U.S. government doing to promote collaboration between local, state, and federal agencies and across jurisdictions to combat human trafficking?

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CONCERNING THE FOURTH PERIODIC REPORT OF THE U.S. ON THE INT’L COVENANT ON CIVIL AND POLITICAL RIGHTS, ¶ 111 (July 2013) [hereinafter U.S. RESPONSE].

<sup>34</sup> U.S. RESPONSE at ¶ 113, *supra* note 34.

<sup>35</sup> U.S. RESPONSE at ¶ 113, *supra* note 34.

<sup>36</sup> U.S. RESPONSE at ¶ 114, *supra* note 34.

<sup>37</sup> U.S. RESPONSE at ¶ 110-112, *supra* note 34.

- f. What measures has the U.S. government taken to mandate standardized human trafficking training across all agencies that are likely to encounter trafficking victims?

## ***V. Suggested Recommendations***

20. We respectfully suggest the Committee consider adoption of the following proposed Concluding Observations to the U.S. government's Fourth Periodic Report, with respect to its implementation of ICCPR Articles 8 and 24.

### **A. Labor Trafficking**

#### *Positive aspects*

21. The Committee welcomes the U.S. government's establishment of a President's Interagency Task Force to Monitor and Combat Trafficking (PITF) to better coordinate federal efforts to combat human trafficking, as well as the steps taken towards the adoption of a Federal Strategic Action Plan on Victim Services to improve cross-agency coordination in the identification, rescue, and rehabilitation of trafficking victims.<sup>38</sup>

#### *Principal subjects of concern and recommendations*

22. The Committee notes with concern reports that the U.S. government has failed to take sufficient measures to identify and investigate labor trafficking cases, in violation of its obligations under Articles 8 and 24 of the ICCPR. The Committee is also concerned that U.S. labor laws exclude certain categories of workers, such as farm workers and domestic workers from their protections, thereby rendering these populations vulnerable to human trafficking. The State party should ensure that law enforcement agencies, particularly those charged with the enforcement of labor laws, have sufficient resources and authority to identify and investigate labor trafficking cases. The State party should also review its laws and regulations to ensure full protection against forced labor for all categories of workers. The State party should also assess the extent to which such laws and regulations disproportionately impact on the rights of minority groups and provide the Committee with detailed information in this regard.

### **B. Child Welfare System**

#### *Positive Aspects*

23. The Committee welcomes the steps taken by the U.S. government to criminalize, investigate, and prosecute the exploitation of children through the Department of Justice's Child Exploitation and Obscenity Section (CEOS).

#### *Principal subjects of concern and recommendations*

24. The Committee notes with concern emerging data that highlights the vulnerability of children in the child welfare system to human trafficking. The Committee is also concerned that the Federal government is not taking adequate measures to protect this vulnerable group, in violation of the State party's obligations under Articles 8 and 24. The State party should develop

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<sup>38</sup> U.S. Fourth Report at ¶ 202, *supra* note 29; U.S. RESPONSE at ¶ 112, *supra* note 34.

and undertake immediate measures to ensure that the child welfare system has the necessary resources and training to protect vulnerable children from trafficking and provide appropriate services to trafficking victims. The State party should also adopt appropriate legislative measures like the Strengthening the Child Welfare Response to Trafficking Act of 2013 (H.R. 1732),<sup>39</sup> which aims to improve coordination between social services and law enforcement agencies to protect children in the child welfare system.

### C. Local, State, and Federal Coordination

#### *Positive Aspects*

25. The Committee welcomes the development of local anti-trafficking task forces and efforts to promote collaboration between Federal government agencies that investigate and prosecute human trafficking cases.

#### *Principal subjects of concern and recommendations*

26. The Committee is concerned that the Federal government has not fulfilled its obligations under Article 50 to facilitate state and local compliance with Articles 8 and 24, primarily by failing to take a leadership role in coordinating federal, state, and local anti-trafficking agencies and initiatives. The Committee is also concerned that Federal anti-trafficking funding programs do not appear to adequately meet the scope of the problem. The Committee also notes with concern that Federal anti-trafficking training does not extend to many agencies that encounter potential trafficking victims, such as labor and immigration law enforcement agencies. The State party should take affirmative measures to ensure that the Federal government takes a leading role to promote communication, cooperation, and coordination among Federal agencies and between Federal, state, and local agencies to combat human trafficking. The State party should also develop and implement trainings for all agencies that potentially interact with victims of human trafficking.

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<sup>39</sup> Strengthening the Child Welfare Response to Trafficking Act of 2013, H.R. Res. 1732, 113th Cong. (2013), *available at* <http://www.govtrack.us/congress/bills/113/hr1732/text> (directing the Department of Health and Human Services to produce guidelines to assist child welfare agencies in serving trafficking victims and requiring child welfare agencies to report missing children to law enforcement within 72 hours); *see also* Press Release, U.S. Representative Karen Bass, 37th Congressional District, Statement on Legislation to Combat Youth Trafficking (Apr. 26, 2013) (on file with author), *available at* <http://bass.house.gov/press-release/statement-legislation-combat-youth-street-trafficking>.