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RETURNING HOME: THE CHALLENGE OF REPATRIATING FOREIGN BORN CHILD VICTIMS OF FORCED LABOR FROM INDIA

Kathleen Kerr*

A little boy from Bangladesh found himself on the wrong side of the border between India and Bangladesh. As a result, he was sent to a shelter home in India. His father traveled to India to take him home. However, due to uncertain and slow-moving government procedures, his repatriation papers could not be completed. As he waited inside the shelter home for the documentation of his right to return home, he contracted meningitis and died. Paperwork to repatriate his dead body to his home country was then needed.¹

This little boy is not alone. In West Bengal alone, seventy Bangladeshi children sit in government shelter homes and an estimated fifteen additional Bangladeshi children live in NGO-run shelter homes.² Forgetting their culture, language, homes and even parents, these children face an uncertain future. Due to their lengthy stay in India, the children are sometimes rejected by their families or even home country:

If a child is abandoned here at a young age and has been here three or four years, she has learned cultural norms and language here. Maybe she touches the feet of adults. This is [a] learned [practice] here. Maybe the child only knows Indian festivals. [People from Bangladesh] may say that the child is not theirs because these cultural norms are not from Bangladesh.³

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¹ Interview with Manabendra Mandel, SLARTC, in Kolkata, India (Jan. 9-10, 2009).

² Interview with Ms. Roy, West Bengal Task Force Coordinator, Department of Women and Child Development, in Kolkata, India (Jan. 13, 2009).

³ Interview with K. P. Sinha, Director, Department of Women and Child Development, in Kolkata, India (Jan. 13, 2009).
To return home, these children must wait for the wheels of an undefined bureaucratic process to turn through various government ministries in India and Bangladesh before they can go home, a process that reportedly takes years.

Justice demands a safe and efficient return home for children traded and victimized by forced labor. Moreover, international law identifies the right of repatriation, and domestic policy recognizes the importance of a speedy repatriation. Historically, however, the process of return from India has not always been safe or efficient. A commonly known informal process of return consisted of the “push back” method. In the push back method, police or border security forces escorted foreign adults and children to an unmarked border point, from where they proceeded to run across the border. This method of return put “repatriated” women and children into positions of vulnerability and often led to re-exploitation, re-victimization and re-trafficking. Activists and government officials condemn this practice.

However, a more formal repatriation process involving the government has also been inefficient. Such a process sometimes takes years for three primary reasons: first, because of a lack of a government-approved

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6 P.M. NAIR, TRAFFICKING IN WOMEN AND CHILDREN IN INDIA, 657 (2005)

7 Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India (Jan. 6, 2009); see also Interview with Rishi Kant, Shakti Vahini, in Delhi, India (Sept. 18, 2008) (noting that push back often happened at night).

8 Telephone Interview with John Frederick, Consultant, UNICEF (Feb. 16, 2009).
standardized procedure for repatriation; second, because of legal delays for victims waiting to provide witness testimony in cases against employers; and finally, because of a lack of coordination among neighboring countries. The return of a child requires internal cooperation in the courts and among multiple agencies as well as bilateral cooperation between the sending and receiving states.

An unsafe and inefficient repatriation violates the right of children trafficked into India under international and domestic law and policy. Because the historic informal and formal repatriation processes have not been satisfactory, the government of India has recognized a need to develop a safe and efficient means to repatriate children. Despite obstacles that continue to challenge a streamlined approach, the federal governments of Bangladesh and India, along with the state governments of West Bengal and Maharashtra, are undertaking an initiative to develop an expedited process to repatriate Bangladeshi children rescued from prostitution in India. Upon implementation of the standard operating procedures, repatriation to Bangladesh should take six to eight months. The currently designed procedures focus on repatriating victims of commercial sexual exploitation to Bangladesh, but the procedures could provide a model for victims of forced labor and children waiting to return to other countries.

This article analyzes the right to a safe and speedy return home for foreign-born children, especially those rescued from forced labor. While current ad hoc efforts by various government entities in India are admirable, this article contends that India is under an obligation to further improve the process of repatriation for children. Section I defines forced labor, distinguishes trafficked from smuggled forced labor and identifies the laws prohibiting both. Section II reviews the legal right of repatriation, especially for victims of forced labor. Section III documents the currently ad hoc and NGO-facilitated process from rescue to repatriation. Section IV analyzes the specific challenges unique to repatriations to Nepal and Bangladesh as a guide to understand how the repatriation process can be improved. Section V highlights initiatives being adopted by various government ministries in India to expedite the process of repatriation. Finally, section VI offers recommendations aimed at advancing the initiatives already undertaken by the government and NGOs in India.

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9 Interview with Ministry of Women and Child Development, in Delhi, India (Feb. 9, 2009).
I. Defining, Identifying and Understanding the Prohibition of Forced Labor

A. Defining Forced Labor

Forced labor is illegal in India and is defined as any type of labor, work or service "exacted . . . under the menace of any penalty and for which the said person has not offered himself voluntarily." Forced labor occurs when two elements exist: first, the worker did not consent to providing his labor, and second, the worker does not feel he can terminate his employment. In practice, the International Labour Organization ("ILO") suggests that a lack of consent means being "forced" into labor through birth, abduction, physical confinement, psychological compulsion, deception or retention of identity papers. This "forced" can be either physical or psychological. The feeling of lack of freedom to terminate one's employment can result from fear of violence, sexual violence, threat of supernatural retaliation, imprisonment, financial penalty, deprivation of food or shelter, threat of exposure to authorities or loss of social status. Examples of forced labor include begging, factory work, mine work, domestic servitude, other forms of slavery and trafficked labor.

10 Forced Labour Convention (No. 29), art.2 adopted on June 28, 1930, [hereinafter ILO Convention No. 29]; see also Abolition of Forced Labour Convention (No. 105), art. 2, adopted on June 25, 1957 (stating that every member that ratifies the convention will take measures to eliminate forced labour). The Government of India ratified Convention Nos. 29 and 105. The ILO recently clarified that "[f]orced labour represents a severe violation of human rights and restriction of human freedom, as defined in the ILO Conventions on the subject and in other related international instruments on slavery, practices similar to slavery, debt bondage or serfdom.” ILO, A Global Alliance Against Forced Labour, 5 (2005) [hereinafter ILO Follow-up Report].

11 ILO Convention No. 29, supra note 10.


15 ILO Follow-up Report, supra note 10, at 48. A study in Germany of 42 cases of forced labour found that forced labour in Germany included “forced sex work, forced economic exploitation of domestic workers, seasonal work in agriculture, construction work, catering, the fun-fair trade and meat processing.” Id. While
Victims enter into forced labor through various channels. They may be sold, smuggled, born into or contracted into bonded labor. Victims may also be trafficked. The difference between trafficked and smuggled forced labor, while theoretically distinct, may “be difficult to distinguish in practice.” The common feature between trafficked and smuggled forced labor includes “the use of force, fraud, or coercion to exploit a person for profit.” According to international law, smuggling is defined as “the procurement, in order to obtain . . . a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” In contrast, trafficking of a person is considered as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The distinction between the two depends upon the facts surrounding the entry into such labor. The defining difference between trafficked and smuggled forced labor is the process by which the victim transitioned from the source to the destination. The definition of trafficking focuses on “exploitation, deception and coercion.” Thus, if a trafficker uses threat, force, coercion or fraud at any point during the “recruitment, transportation, transfer, harboring or receipt” of the laborer, that person has trafficked the

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Germany may define “forced sex work” as forced labour, not all countries agree. India does not recognize “forced sex work” as labour; see also, Convention for the Elimination of the Worst Forms of Child Labour (No. 182), adopted on June 17, 1999. ILO Convention No. 182 considers that the worst forms of child labour include, among others, “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour.” Id. at art. 3.

16 ILO Handbook to Combat Forced Labour, supra note 12. “Trafficking in persons, or human trafficking, can lead to forced labour.” Id.
17 ILO Follow-up Report, supra note 10, at 47.
20 Palermo Protocol, supra note 4, at art. 3(a). “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, FORCED LABOUR or services, slavery or practices similar to slavery, servitude or the removal of organs” [emphasis added]. Id.
laborer.\textsuperscript{22} If, upon arriving in the destination place, such individual is forced to labor and to remain in such labor, that individual becomes a victim of trafficked forced labor.\textsuperscript{23}

In contrast to trafficking, if in the source location, the potential victim consented to illegal entry into a destination country to undertake certain forms of labor without proper work visas, such individual entered the destination country as an illegal migrant. If the smuggled employee is then afterwards forced to labor and cannot leave his place of employment as a result of a threat to his physical safety, a threat to his family, coercion, deception or force, he is a victim of forced labor. Forced labor therefore can be a resulting circumstance from birth, sale, human trafficking or smuggling.\textsuperscript{24}

Under international law, forced labor and human trafficking are clearly defined. As noted above, at times forced labor is distinct from human trafficking, and at other times, it overlaps with human trafficking. The activity of labor remains the same, but the mode of entry into such labor determines whether the forced labor was trafficked or smuggled. Thus forced labor and human trafficking sometimes overlap:

\begin{center}
\begin{tikzpicture}
  \node (human) at (0,0) {Human Trafficking};
  \node (forced) at (2,0) {Forced Labor (smuggled, a birth, etc.)};
  \node (trafficked) at (0.5,0) {Trafficked Forced Labor};
  \end{tikzpicture}
\end{center}

International law attempts to differentiate between the definitions of trafficking, smuggling and other forms of forced labor, an important distinction because international law guarantees the right of a safe repatriation to victims of human trafficking.

However, the law in India does not attempt to distinguish between them, and the rights of victims of smuggled forced labor are less clear. A lack of distinction and definition between trafficked and smuggled forced labor in India makes the legal and political situation of the rights of victims uncertain.

India has not adopted a definition of human trafficking at the federal level. The United Nations Protocol to Prevent, Suppress and Punish

\textsuperscript{22} Palermo Protocol, \textit{supra} note 4, at art. 3.
\textsuperscript{23} Trafficking does not require the physical geographic movement from point A to point B. Trafficked forced labor could result from the transfer of a domestic servant from one house to a second house. In such a scenario, the first homeowner would be the trafficker.
\textsuperscript{24} ILO Handbook to Combat Forced Labour, \textit{supra} note 12.
Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the "Palermo Protocol") defines human trafficking. India has signed the Palermo Protocol but has not ratified the convention. Without ratification of the protocol, the government has not obligated itself to implement the convention into national law. To further complicate matters, India has ratified the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children For Prostitution (the "SAARC Convention"). The SAARC Convention defines trafficking but limits the definition of trafficking to woman and child victims of commercial sexual exploitation and excludes the concept of trafficked forced labor. India has not ratified an international convention with a clear definition of human trafficking that includes forced labor.

Furthermore, no national law in India currently defines trafficking, trafficked or smuggled forced labor. However, a couple of states and an Indian ministry seem to be developing definitions of trafficked forced labor. For instance, the Indian state of Goa defines child human trafficking. Although Goa’s law does not specifically identify child trafficking for purposes of forced labor, its definition of child human trafficking remains broad enough to capture trafficking for purposes of forced labor:

procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a person having control over another person, for monetary gain or otherwise.

Additionally, the State of West Bengal developed standard operating procedures for the rescue and repatriation of child victims of human trafficking. The protocol confirms that "victims are seen to be trafficked for commercial sexual exploitation (CSE) . . . and for forced labor (FL),

\[25\] Palermo Protocol, supra note 4, at art. 3(a).


\[27\] NAIR, supra note 6, at 116.
primarily domestic work.”

In fact, the working definition of human trafficking used in such protocols for the police in West Bengal incorporates forced labor as a form of human trafficking:

[Human Trafficking] is an act that is perpetrated against a person (victim), through fraud/deception, force/coercion, trading (including buying/selling/hiring) or blackmailing; for the purpose of prostitution (including in the name of customs, such as Devdasi or Jogini; or for sextourism); or for sexual exploitation in the garb of bar dancers or massage parlors or beauty parlors or escort or some such occupation; or for pornography; or for exploitation as forced/bonded labor; or for illicit organ transplant.

Moreover, the Ministry of Labor and Employment in India recognizes the existence of trafficking of children for purposes of labor in official policy papers. According to the Ministry’s Draft Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour, “[t]rafficking of children for labour touches on many other concomitant issues like child bonded labour or servitude, labour as well as sexual exploitation.”

B. Forced Labor in India

The law in Goa, the police standard operating procedures in West Bengal, and the Ministry of Labour and Employment’s protocol on forced labor suggest that a growing consensus of government bodies in India recognize a definition of trafficked forced labor similar to the Palermo Protocol. While a growing consensus helps victims assert their rights, a clearer position on trafficked and other forms of forced labor in India would better protect victims under law and help them assert their rights especially their right to repatriation. While the Indian government struggles to reach a consensus on the distinction between trafficked and smuggled forced labor, the government has clearly defined and prohibited forced labor as seen in Section C below.

28 ANJU GUPTA, MODEL STANDARD OPERATING PROCEDURES FOR INVESTIGATION OF HUMAN TRAFFICKING FOR WEST BENGAL 2 (Nomita Drall, ed., Impression Communications, 2007).

29 Id. at 14.

30 MOLE Draft Protocol on Child Labour, supra note 5, at 6-7.
The ILO estimates that 12.3 million people are engaged in forced labor around the world.\textsuperscript{31} Due to the clandestine nature of forced labor, most approximations do not have substantial supporting quantitative data. The ILO’s estimate, however, is a minimum based on a conservative underlying methodology and multiple sources.\textsuperscript{32} The ILO further approximates that of the victims who have been trafficked, 32% of forced labor victims are involved in purely economic exploitation such as domestic labor, debt bondage and other forms of slave labor, 43% in commercial sexual exploitation and 25% in mixed forms of exploitation.\textsuperscript{33} While 12.3 million people are subjected to forced labor globally, the ILO suggests that approximately 9.5 million of such victims remain captive in Asia and the Pacific.\textsuperscript{34} Almost 66% of total forced labor in Asia and the Pacific is believed to be privately-imposed for economic exploitation, mostly debt bondage in agriculture, sweatshops and domestic work.\textsuperscript{35} Children under the age of eighteen represent 40-50% of such forced labor population.\textsuperscript{36} Despite general estimates, the percentage of the child population involved in forced labor in India remains difficult to determine. India’s labor ministry stated that in India “12.6 million children aged between five and fourteen are working.”\textsuperscript{37}


\textsuperscript{32} \textit{Id.} at 13-16.

\textsuperscript{33} \textit{Id.} at 4.


\textsuperscript{35} ILO Background Paper, \textit{supra} note 34, at 3.

\textsuperscript{36} ILO Minimum Estimate, \textit{supra} note 31, at 6.

\textsuperscript{37} \textit{Education Must to End Child Labour}, \textit{ONeworld South Asia}, June 12, 2008, \textit{available at} http://southasia.oneworld.net/Article/education-must-to-end-child-labour.
Others estimate that India has somewhere between 15-60 million child workers.\textsuperscript{38}

The government of India permits children under the age of fourteen to work; however the law prohibits many types of occupations and processes for children of that age and younger. The number of such working children engaged in illegal or forced labor is even more difficult to determine. Anecdotal evidence only hints at the magnitude of the problem. In August 2009, Bachpan Bachao Andolan ("BBA"), an Indian NGO that combats child labor, rescued ninety-four child labourers from zari and bindi sweatshops; and in June 2009, BBA rescued fifty-two child laborers from zari sweatshops.\textsuperscript{39} In February 2009, the BBA with the help of magistrates, sub-divisional magistrates and the labor department, rescued "120 bonded child labourers . . . from Jharkhand [103] and New Delhi [17]."\textsuperscript{40} Additionally, a Supreme Court Case noted that in forty-two villages, 42% of the carpet weavers were children between the ages of six and eleven, meaning that 397 children were involved in prohibited labor.\textsuperscript{41} Other anecdotal evidence relies on missing children reports. The BBA reports that 2,265 cases of children reported to the National Crime Records Bureau in 2004 were kidnapped and abducted for purposes of trafficking and forced labor.\textsuperscript{42} Based on MOLE's estimate and anecdotal evidence, the problem of children engaged in forced labor may be in the millions.

Child victims of forced labor in India hail from within India as well as from other countries. No official records or statistics exist regarding the number of children brought to India from other countries for forced labor. However, most reports confirm that the numbers continue to grow. In India's country report at the World Congress III, India claimed that the "inci-


\textsuperscript{40} Press Release, Bachpan Bachao Andolan, Save the Childhood Movement, 120 Bonded Child Labourers Rescued From Delhi and Jharkhand, Feb. 17, 2009 (on file with author).


\textsuperscript{42} Press Release, Bachpan Bachao Andolan, Save the Childhood Movement, Delhi High Court Orders Probe into Child Trafficking, Jan. 22, 2009 (on file with author).
dents of cross-border trafficking, especially women and children trafficked between India-Bangladesh and India-Nepal have been growing in recent years." Additionally, the Ministry of Labour and Employment confirmed that occurrences of migration or trafficking of children for labor is increasing from neighboring countries like Nepal and Bangladesh.

Factors of vulnerability often lead to such exploitation of the child. Vulnerability most commonly stems from "unemployment, poverty, crime, discrimination, corruption, political conflict and cultural acceptance of the practice." If vulnerable, children more likely fall into the traps of trafficking. At times children or their parents are deceived by a legitimate-looking organization like a placement agency. In Delhi, placement agencies emerged as a significant trafficking channel. Such agencies travel to villages and offer to place young people in homes as domestic servants. Bearing names like "Mother Theresa's Placement Agency" or adopting various names of Saints or even Hindu gods, the placement agencies promise good salaries, nice homes and safe placement for young people. Sometimes these jobs become situations of forced labor. Far from family, speaking a different language or threatened with abuse, these children become trapped in a stranger's home. One shelter home representative told a harrowing tale of a little girl who was beaten and abused by her employers. The girl was underage but forced to live with the family who employed her as a domestic servant. Over a series of days and weeks, the employers beat, starved and cut the little girl 43 times on the face, lips, eyes and feet. She died.

Other times a friendly neighborhood face may lure a child or her family into jobs by deceit. A "didi," a familial term extended to neighbors or friends, offers to help find work for a young person. This didi brings the child to the city and sells the child to a begging ring, factory or mine and the friendly face pays the parents an advance on the child's future income.

Sometimes children fall prey to a stranger bearing sweets or gifts:

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43 MWCD UNODC India Country Report, supra note 5, at 18.
44 MOLE Draft Protocol on Child Labour, supra note 5, at 8.
45 2008 TIP Report, supra note 13, at 19.
46 Interview with Sr. Ranjita, Program Coordinator, Merici Home, in Delhi, India (Dec. 2, 2009).
47 Interview with Sr. Dungdung, In-Charge, Merici Home, in Delhi, India (Dec. 2, 2009).
48 Id.
49 People’s Union for Civil Liberties v. Union of India, 1998 8 SCC 485, 486. Parents were paid 500 to 1500 rupees as an advance to the procurement of children between 8 to 16 for an exploitive labour situation. Id.
When Aakesh was five years old, he was playing with friends in his village when some men drove into his village and asked the boys if they wanted to see a "video." The boys piled into the back of the vehicle and were driven 200 miles away. They were locked in a room for days without food and were beaten. The traffickers had abducted these vulnerable children so they could be forced to weave carpets. The boys were held captive for nine years. Two of Aakesh’s friends didn’t survive—one was shot while trying to escape and the other died from an untreated illness.50

At times children also become forced to labor to help pay off a family debt. If a parent, grandparent or even great grandparent obtained a loan from a local money lender, the parent becomes indebted and forced to work for such money lender.51 The practice of money lending becomes an inescapable trap because the employer adds debt to the owed principal amount when he provides medicine, shelter or food to the borrower or the borrower’s family. These advances begin a relentless cycle as children work with their parents, aunts, uncles, and cousins to pay off an ancestral debt that has collected more debt over time.52 Although the law prohibits this practice, it continues in India.53 Regardless of how a child enters a forced labor situation, reports suggest that the problem remains and is, in fact, growing.

52 Id.
53 Bandhua Mukti Morcha v. Union of India, 1998 10 SCC 549, 552-53. “The report of the committee discloses the enormity of the problem of exploitation to which the children are subjected. Children ranging from 5 to 12 years having been kidnapped . . . in 1984, . . . were taken . . . engaged in carpet-weaving centres. They are forced to work all day. Virtually they are being treated as slaves and are subjected to physical torture revealed by the presence of marks of violence on their person. The Commission/Committee visited 42 villages and found in all 884 looms engaging 42% of the work force with the children below the age of 14 years. The total number of children are 369; 95% of them are of tender age ranging from 6 to 11 years and most of them belong to the Scheduled Castes and Scheduled Tribes. . . . found that he children were taken against their wishes and are wrongfully forced to work as bonded labour in the carpet industries.” Id.
C. Forced Labor Is Illegal

Both international and domestic laws prohibit forced labor and demand that states take aggressive action to protect children from such labor and repatriate them to their homes. In the international sphere, the International Covenant on Civil and Political Rights rejects forced labor: “No one shall be required to perform forced or compulsory labour.”\(^{54}\) The ILO Convention 138 (Minimum Age) stipulates that no person under 18 years of age should be employed in work that could harm their health, safety or morals.\(^ {55}\) Additionally, international instruments require state governments to take decisive action to prohibit forced labor of children. The International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour requires all member states to immediately enact “measures” to eliminate the worst forms of child labor.\(^ {56}\) Finally, under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, member states must implement laws to end child involvement in any kind of forced labor.\(^ {57}\)

In fact, under international law children occupy a special sphere of protection due to their vulnerability; thus, the need for decisive action by the states is critical. The Universal Declaration of Human Rights states that children “are entitled to special care and assistance.”\(^ {58}\) The Declaration of the Rights of the Child recognizes that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.”\(^ {59}\) The Convention on the Rights of the Child requires that in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

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\(^{54}\) Int’l Covenant on Civil and Political Rights, art. 8, para. 3(a), adopted on Dec. 16, 1966, 99 U.N.T.S. 171. India ratified the covenant in 1979. See also Universal Declaration of Human Rights, art. 4, adopted on Dec. 10, 1948, U.N. Doc. A/810 (1948). “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” Id.

\(^{55}\) Convention Concerning the Minimum Age for Admission to Employment (No. 138), art. 3(1), adopted on June 26, 1973.

\(^{56}\) Convention for the Elimination of the Worst Forms of Child Labour, supra note 15.


\(^{58}\) Universal Declaration of Human Rights, supra note 54, at art. 25(2).

authorities or legislative bodies, the best interests of the child shall be a primary consideration." States must protect children from forced labor, especially given their vulnerability and need for special care.

Indian law prohibits forced labor. The Indian Constitution outlaws "beggar and other similar forms of forced labour" and prohibits employment of children in "any factory or mine or . . . other hazardous employment." Additionally, the constitution promises the right of liberty, as interpreted by the Indian Supreme Court to mean "the right to . . . work when one pleases, the right to be free from inhuman and degrading treatment . . . [and] the right to the benefits of protective labour legislation." Most pointedly, the Bonded Labourer System (Abolition) Act prohibits involvement in the bonded labor system or the compulsion "to render any bonded labour or other form of forced labour."

A number of laws prohibit specific types of labor for children. The Child Labour (Prohibition and Regulation) Act prohibits children under the age of 14 from working in specific occupations and processed specified in Parts A and B of the act’s schedule. Such occupations include railway work, cinder picking, catering at a railway station, construction, selling fireworks, slaughter houses, auto garages, mines, handloom industry, plastic factories, domestic servants, roadside dhabas or diving. Additionally, the law prohibits processes such as bidi making, carpet weaving, cement manufacture, cloth printing, dyeing and weaving, food processing, molding, paper making, potteries, saw mill, skinning, dyeing, gem cutting, tanning and other processes. The Apprentices Act prohibits employment of children as apprentices under the age of 14. The Factories Act prohibits the em-

61 INDIA CONST., art. 23(1).
62 Id. at art. 24.
65 The Child Labour (Prohibition and Regulation) Act, No. 61 of 1986; INDIA CODE, art. 3.
66 Id. at sched. A.
67 Id. at sched. B.
68 The Apprentices Act, No. 52 of 1961; INDIA CODE, art. 3(a).
ployment of children under the age of 14 for any work in a factory. The Mines Act prohibits anyone under the age of 18 from working in a mine. The Merchant Shipping Act prohibits anyone under the age of 15 to work in a shipping vehicle. Finally, children are not permitted to work in any motor transport undertaking.

While the law prohibits children’s involvement in these forms of labor and in forced labor, children continue to be employed as domestic servants, dhaba stall workers, tea-shops, factories and mines. As an official at the Ministry of Labour noted, many people remain unaware of the prohibition of child labor or how to define a child. As a result, there are a number of children, including foreign children, who have been rescued from exploitive labor conditions and need to be repatriated home.

II. LEGAL REQUIREMENTS TO REPATRIATE FOREIGN-BORN CHILDREN, ESPECIALLY THOSE ENGAGED IN FORCED LABOR

While many children engaged in forced labor in India migrate from state to state within India, some children migrate from a different country. Sometimes children are brought to India from Bangladesh, Nepal, Pakistan, Myanmar or other countries. Foreign-born children become particularly vulnerable to exploitation. Many foreign-born children do not have proper documentation such as birth certificates, school certificates or other forms of identification. Without proper identification, language skills or family, these individuals become dependent on their traffickers, smugglers or employers because they otherwise face jail, cannot obtain legitimate work and

69 The Factories Act, No. 63 of 1948; India Code, sec. 67.
70 The Mines Act, No. 35 of 1952; India Code, sec. 40. However, apprentices learning a trade can be 16 years of age. Id.
71 The Merchant Shipping Act, No. 44 of 1958; India Code, sec. 109.
72 The Motor Transport Workers Act, No. 27 of 1961; India Code, sec. 21. (Section 14 permits adolescences (below age 18 and over age 14) to work. Id.
73 While Indian law rejects child exploitation in labour and forced labour, a number of exceptions exist in the regulations. For example, under the Child Labour (Prohibition and Regulation) Act, children may work in any of the prohibited processes if she works with her family or a government school. Supra note 65, at sec. 3. Under the Factory Act and Mines Act, employers reportedly skirt the legal prohibition by qualifying under the exceptions of the acts. Supra note 69, at sec. 2(m) (definition of ‘factory’); Supra note 70, at sec. 2(j) (definition of ‘mine’).
74 Interview with Harish Kumar Jethi, Deputy Secretary, Ministry of Labour and Employment, in Delhi, India (Feb. 18, 2009).
would have difficulty obtaining housing, healthcare, education or any other services. Such illegal transportation of children across country borders violates the Hague Convention,\textsuperscript{76} the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,\textsuperscript{77} the Palermo Protocol\textsuperscript{78} and local laws.\textsuperscript{79}

International law entitles children smuggled or trafficked into India for purposes of forced or coerced labor to be repatriated to their homes in a safe and efficient manner. The Palermo Protocol states that

The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.\textsuperscript{80}

The right to return to the home country should be balanced “with due regard for the safety of that person” and should “preferably” be a voluntary return.\textsuperscript{81} Additional rights under the protocol state that the victim’s home state should “without undue or unreasonable delay”\textsuperscript{82} identify the victim’s nationality and provide “travel documents or other authorization.”\textsuperscript{83} When repatriation occurs, it should be done in a manner that complies with the UN Convention on the Rights of the Child, ensuring that the return should be conducted in the “best interests” of the child.\textsuperscript{84}

India has no federal law guaranteeing the right of a safe and efficient repatriation, but its policy statements suggest that India wants to encourage the goal of the safe and efficient repatriation of child victims of forced labor. In 2007, India hosted the South Asia Regional Conference of


\textsuperscript{77} Optional Protocol to CRC, \textit{supra} note 57, at art. 3(1)(a)(i).

\textsuperscript{78} Palermo Protocol, \textit{supra} note 4.

\textsuperscript{79} The Foreigner’s Act, No. 31 of 1946; \textit{India Code}, sec. 14.

\textsuperscript{80} Palermo Protocol, \textit{supra} note 4, at art. 8(1).

\textsuperscript{81} \textit{Id.} at art. 8(2).

\textsuperscript{82} \textit{Id.} at art. 8(3).

\textsuperscript{83} \textit{Id.} at art. 8(5).

\textsuperscript{84} Convention on the Rights of the Child, \textit{supra} note 60.
the Global Initiative to Fight Human Trafficking in Delhi.\textsuperscript{85} The conference delegation declared that each of the parties should “ensure the availability of proper protocols and legal processes for rescue and repatriation procedures which are oriented towards victim care and protection.”\textsuperscript{86} Additionally, in the Model Rules under the Juvenile Justice Act issued by the Ministry of Social Justice and Empowerment,\textsuperscript{87} the committee emphasized that child foreign nationals should be repatriated promptly: “Any juvenile or child, who is a foreign national and who has lost contact with his family, shall also be eligible for protection under the said Act and he shall be repatriated, at the earliest, to his country.”\textsuperscript{88}

Commissions like the National Commission of Women (“NCW”) and government ministries such as the Ministry of Women and Child Development (“MWCD”) and the Ministry of Labour and Employment (“MOLE”) have likewise publicly supported the rights of repatriating child victims of human trafficking or forced labor. The NCW identifies the need of repatriation in its National Integrated Plan of Action to address Trafficking of Human Beings with Special Focus on Women and Children.\textsuperscript{89} The NCW encouraged the MWCD, Ministry of Home Affairs (“MHA”), Ministry of External Affairs (“MEA”), state government departments, National Human Rights Commissions, NGOs, representatives from the Border Security Forces (“BSF”) and police to create standard protocols, guidelines and lists to manage the repatriation process and to develop a means to share information between countries in a speedy manner.\textsuperscript{90}


\textsuperscript{88} \textit{Id.}


\textsuperscript{90} \textit{Id.} at 13.
The National Human Rights Institutions and related bodies of India attended the Regional Workshop on Human Trafficking and National Human Rights Institution in Australia. The purpose of the workshop was to assist in the development of bilateral and regional agreements. The National Human Rights Institutions recommended to related Indian bodies that they should improve the rehabilitation and repatriation process of foreign victims. Like the Palermo Protocol, recommendations included safe and, if possible, voluntary repatriation. Other recommendations included the destination country providing options to legally stay in the destination country and benefit from various rehabilitation programs.

In 2007, the MWCD launched a “Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking and Commercial Sexual Exploitation” called Ujjawala. This scheme recognizes and appropriates funds for the repatriation of foreign child victims of commercial sexual exploitation. Four NGOs have applied for and received funding for rehabilitation and repatriation under this scheme. However, reports from the field suggest that it remains difficult to apply for and receive assistance under it. In addition to the Ujjawala scheme by the MWCD, the MOLE also recommended plans to provide for repatriation of children of forced labor. In its Draft Protocol for Trafficked and Migrant Child Labor, the MOLE suggests that the origin state government should provide financial arrangements for the safe and efficient repatriation of children:

**Transportation and Restoration of rescued children:**

(1) The nodal department of the rescuing State shall make arrangements to send the child to his family under escort. However, it would be the responsibility of the State of the child’s origin to pay for his transportation back to the

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92. Id. at 8-9.

93. Id.

94. MWCD UNODC India Country Report, supra note 5, at 12.

95. Interview with Ministry of Women and Child Development, in Delhi, India (Feb. 9, 2009).
child’s family. The fare for the child as well as the escorts shall be borne by the State of the child’s origin.\textsuperscript{96}

In fact the MOLE acknowledges that the repatriation of children from other countries involves a more complicated process. However, it asserts that despite additional challenges, a “smooth repatriation” must be ensured.\textsuperscript{97}

The policy of such national bodies articulates the need for a safe repatriation of children, and Indian law requires the same treatment to a safe and speedy repatriation of foreign and domestic victims. Indeed, foreign nationals have the same rights of personal safety and dignity as citizens in India under the Constitution. In \textit{Chairman Railway Board & Ors. v. Mrs. Chandrima Das & Ors.}, a foreign national was raped at the government railway station by government railway personnel.\textsuperscript{98} The appellants argued that because the foreign national was not a national, she should not be entitled to the benefits of public law.\textsuperscript{99} However the court disagreed and found that based on the Constitution as well as human rights jurisprudence (specifically the Universal Declaration of Human Rights), rights such as the ‘right to life’ and ‘dignity’ available to citizens were also available to foreign victims.\textsuperscript{100} Similarly, foreign nationals staying in government-run or government-sponsored shelter homes maintain the rights to life and dignity, and therefore have the same right to a speedy and safe repatriation to their home countries as nationals have to their home states. Indeed, the standard operating procedures for repatriation in West Bengal remind the police that “[f]oreigners in Indian territory are entitled to equal protection under law and, therefore, should be treated at par with an Indian victim.”\textsuperscript{101}

While various government ministries in India are reaching a consensus to cooperate in cross-border repatriation, reports from the field suggest that safe and expeditious repatriations do not usually occur. Lack of political will and consensus interferes with efficient repatriations. In addition, as seen below, lack of information and misinformation about the repatriation process are also common obstacles to the speedy and safe return of foreign-born children.

\textsuperscript{96} MOLE Draft Protocol on Child Labour, \textit{supra} note 5, at 34.
\textsuperscript{97} \textit{Id.} at 8.
\textsuperscript{98} The Chairman Railway Board & Ors. v. Mrs. Chandrima Das & Ors., A.I.R. 2000 S.C. 988.
\textsuperscript{99} \textit{Id.} at 3.
\textsuperscript{100} \textit{Id.} at 10-11.
\textsuperscript{101} \textit{GUPTA}, \textit{supra} note 28, at 13.
III. CURRENT PROCESS OF INSTITUTIONALIZATION AND REPATRIATION FACED BY FOREIGN-BORN CHILDREN IN INDIA

One of the recent cases of trafficking has been a large number of Nepalese girls being stranded and lodged into the Tihar Jail of Delhi, India (where the most hard core criminals are kept) upon the case of Passport, Name, Age and Photo tampering. These girls were promised with domestic work in Kuwait and many other Gulf Countries, but their unfortunate fate of producing fake documents at the Indira Gandhi International Airport, Delhi, India landed them as culprits with different offence act of Indian Penal Code. . . . The police are supposed to file charge sheets in the court within 90 days from the arrest after the completion of the investigation, but it is found that in majority of cases they take extension of filing the charge sheet for more than 180 days. . . . Even after filing the charge sheets, the girls are not released from the jail until the finalization of the case . . . in most . . . cases finalization of [a] case could take more than two years, resulting [in] innocent sufferers to suffer more from the hands of authorities after suffering already from the hands of trafficker.102

A. Delays in Repatriation

A rapid assessment conducted by UNICEF in 2006 noted that a repatriation case could take 6 or 7 years.103 In that time, a child forgets her home, address, language and even culture.

Delays in repatriation result from a number of factors. Most often the longest delays result from a child’s lack of access to proper counsel, setbacks in the underlying legal cases against the employer, confusion among the many ministries that need to be involved in the process and the challenge of obtaining a nationality verification from the origin country. Indeed, the MOLE echoes that delays even result from a failure to produce


103 Telephone Interview with John Frederick, Consultant, UNICEF (Feb. 16, 2009).
rescued children before Child Welfare Committees ("CWCs") and legal proceedings in court.\footnote{MOLE Draft Protocol on Child Labour, supra note 5, at 5.}

A foreign-born child engaged in forced labor (whether brought to India with her family as an illegal migrant or through trafficking) will typically be "rescued" through one of two methods: 1. an NGO conducts a "raid" on the place of employment and "rescues" the child; or 2. the child is apprehended by the police on the street. At the point of "rescue" or apprehension, the child enters the "legal" system. The police official writes an entry into his daily diary and files a "First Information Report," or an FIR.\footnote{Dilawawr Singh v. State of Delhi, A.I.R. 2007 S.C. 3234, 3237 (also noting that "[d]elay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming . . . before the Court, the Courts always view the allegations with suspicion and look for [a] satisfactory explanation."). Id. at 3234.} An FIR details the identity of the victim, home information, nationality and the details or potential charges with regards to the child's rescue or apprehension.

The FIR carries two significant impacts for the child victims. First, information provided for the FIR becomes part of the official report. False information causes delays in locating homes, nationality and services. Children often give false information to the police during the first interview.\footnote{Interview with Tapoti Bhowmack, Attorney, in Kolkata, India (Jan. 7, 2009).} The traffickers may have coached the children to provide false identifying information, or they may be scared of the police and lie, or their language skills may be inadequate to provide accurate information.

The second impact of the FIR is that its legal provisions affect the child's access to an advocate, length of time spent in a home and access to various services. For example, information provided to the police determines whether the child should go to an observation home, a shelter home or jail.\footnote{The Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000; India Code, ch. 2.} Officials send juveniles in conflict with the law to an observation home, children in need of care and protection to a shelter home, and children accompanying adults who have violated the law to jail. The type of home police send the children to, in part, determines the speed of access to attorneys and length of stay in India.

Some children trafficked into India to work in a factory succeed in escaping and living on the street. If such child pursues any illegal activity during such time and is apprehended by the police, the child will be considered a juvenile in conflict with the law, presented before the Juvenile Jus-
A "juvenile in conflict with law" is a juvenile who "is alleged to have committed an offense" and is under the age of eighteen. Once the child's immediate needs for shelter, food, clothing and medical care are met, the legal process begins. Speedy access to counsel is not always provided from an observation home. If an NGO was not involved in the apprehension, voluntary legal representation is not readily available because an NGO will not be aware of the child's situation. Children apprehended by the police need to wait for counsel that has been pre-approved by the government-run institution. Only approved attorneys and organizations can enter the observation home to represent the child. Typically pre-approved counsel visits the home on scheduled dates. Anecdotal evidence suggests that obtaining counsel for children in conflict with the law takes a longer amount of time than child victims rescued by an NGO and sent to a shelter home.

If rescued as part of an official raid by an NGO and government officials, a child will most likely be considered one in need of care and protection, presented before the CWC and sent to a government-registered shelter home. A child "in need of care and protection" refers to a child "found without any home" "who is found begging, or who is either a street child or a working child," or who lives with someone whom has threatened, abused or neglected the child. Children involved in bonded labor or forced labor (smuggled or trafficked) will be sent to a government-registered shelter home. Those who enter such homes usually benefit from speedy access to counsel because the NGOs who rescued them often deliver immediate and persistent attention and legal representation.

Some children are not registered as juveniles in conflict with the law or children in need of care and protection. If a child crosses the border with an adult and is apprehended by the border security forces or police, authorities may charge the accompanying adult with a violation of the Foreigner's Act. Section 14 of the Foreigner's Act prohibits anyone from entering or staying in India "without the valid documents required for such entry or for such stay."

108 Id. at ch. 1, secs. 2(k), 2(l).
109 Interview with Mr. Mandel, SLARTC, in Kolkata, India, (Jan. 9-10, 2009) (SLARTC has an MOU with the government to take up cases in the women's home and juvenile homes.) See also Interview with Tapoti Bhowmack, Attorney, Sanlaap, in Kolkata, India (Jan. 7, 2009) (organization got permission to work in government home).
110 Id. at ch. 1, sec. 2(d).
111 The Foreigner's Act, No. 31 of 1946; INDIA CODE, sec. 14.
If charged with a violation of the Foreigner’s Act, the burden of proving Indian nationality rests on the accused: “the onus of proving that such person is not a foreigner or is not a foreigner of a particular class or description . . . lie upon such person.”\textsuperscript{112} Indeed, the law presumes that the accused is a foreigner: “that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely . . . or if he is of uncertain nationality, of the country with which he was last so connected.”\textsuperscript{113} If the government succeeds in its case against the foreigner, the foreigner faces a penalty of jail time, even if that foreigner is a victim of trafficking, as the Foreigner’s Act does not provide an exception for trafficked victims. Child victims, however, will not be sent to jail because by law, all children apprehended by the police fall under the jurisdiction of the Juvenile Justice Act and must be presented before the Juvenile Justice Board and sent to a child-appropriate institution.\textsuperscript{114} In theory, children therefore do not face the same consequences as illegal migrant adults. However, in some reported cases, minors accompanying an adult who violated Section 14 of the Foreigner’s Act were still sent to jail with the adult.\textsuperscript{115}

One of the more significant causes of delay in repatriation results from a child’s involvement as a witness in any number of cases filed against the exploitive employer. For instance, the prosecution can file a case against the employer under the Bonded Labour System (Abolition) Act,\textsuperscript{116} the Child Labour (Prohibition and Regulation) Act,\textsuperscript{117} the Mines Act,\textsuperscript{118} the Factories Act,\textsuperscript{119} the Beedi and Cigar Workers (Conditions of Employ-
ment) Act,\textsuperscript{120} the Children (Pledging of Labour) Act,\textsuperscript{121} the Indian Penal Code\textsuperscript{122} or under the Constitution of India.\textsuperscript{123} Children must remain in the shelter home during ongoing cases because they act as a witness to the crime and as the primary evidence against the accused.\textsuperscript{124} Due to inadequate mechanisms for tracking children once released, they are not permitted to leave the shelter home until after they have provided testimony or until the end of the trial. This custodial restraint violates the child's rights and delays her return home. A number of researchers, international NGOs, NGOs and governments recommend alternative ways to provide evidence and more victim-friendly court proceedings.\textsuperscript{125} By expediting the child’s involvement in court proceedings, delays in repatriation could be seriously reduced.

B. Lack of a Legal Mechanism for Repatriation

Major delays in repatriation also result from the lack of international legal mechanisms, national law and bilateral agreements to govern the repatriation of children across country borders from India. Previously, because no laws guided the return, “government officials normally follow[ed] the “push back” method.\textsuperscript{126} In the push back method, authorities took adults and children to an unmarked border point in the middle of the night.\textsuperscript{127} Officers shot their guns in the sky and yelled at the foreigners to

\textsuperscript{120} The Beedi and Cigar Workers (Conditions of Employment) Act, No.32 of 1966; \textit{India Code}, sec. 24.

\textsuperscript{121} The Children (Pledging of Labour) Act, No. 2 of 1933; \textit{India Code}, sec. 3. Such contract is a void contract or agreement.

\textsuperscript{122} \textit{Indian Penal Code}, secs. 339-40; 351; 361-62; 365; 374.

\textsuperscript{123} \textit{India Const.} art. 23, §§ 23(l)-24 (prohibiting beggary and factory or mine work).

\textsuperscript{124} Technically, according to interviews, a child could leave the home if permission is granted by the CWC. However there would be costs associated with transferring the child home and then to return the child to court. Additionally, there is a risk that the prosecutor’s case will disappear if the child disappears. Disappearance cases have occurred. See Telephone Interview with Dr. Bharti Sharma, Child Welfare Committee, in Delhi, India (Feb. 27, 2009).

\textsuperscript{125} \textit{Trafficking in Women and Children}, \textit{supra} note 6, at 233. Improvements include the use of video testimony in order to eliminate the need of maintaining a victim in an institutional home during the duration of a legal case. \textit{Id.}

\textsuperscript{126} \textit{Id.} at 657.

\textsuperscript{127} Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India (Jan. 6, 2009); Interview with Rishi Kant, Shakti Vahini, in Delhi, India (Sept. 18, 2008) (both explaining the “push back” method that had been previously used).
run across the border. The push back process violates victim rights, and both NGOs and government officials reject the approach. However, no government-sanctioned standard method provides for an expeditious and safe alternative.

India is not a member of any international convention that governs repatriation like the Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention works to "establish procedures to ensure [children’s] prompt return to the State of their habitual residence" in order to "protect children internationally from the harmful effects of their wrongful removal or retention."128 The convention requires a speedy judicial process so that a child can be returned to her origin state within one year as long as the child wants to go back and there is a safe and appropriate place to return.129

Furthermore, India has no bilateral or regional agreement with any of its neighboring countries that dictate the repatriation process of foreign born children. Although the SAARC Convention requires state parties to "work out modalities for repatriation of the victims to the country of origin,"130 no official process has been established between India and its neighboring countries. In addition, even though India has ratified the SAARC Convention, a repatriation process created under this convention would only apply to children trafficked for commercial sexual exploitation, not to children smuggled or trafficked for forced labor. Other regional initiatives include a project commenced by the governments of India and Bangladesh to develop a process to return children trafficked from Bangladesh to India for purposes of commercial sexual exploitation.131 However, the scope of application and geographical limitation for this initiative, as seen in section V below, is narrow.

Additionally, India has no national law to govern the means or process of repatriating children. While nothing official has been drafted, the country’s policy statements have suggested an interest in developing an efficient repatriation mechanism as seen in section V below. Indeed NCW’s Model Rules under the Juvenile Justice Act issued by the Ministry of Social Justice and Empowerment,132 the MOLE’s Draft Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour133 and the MWCD’s Ujjawala scheme all recognize the need for

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128 Hague Convention, supra note 76, at recital.
129 Id. at arts. 11-13.
130 SAARC Convention, supra note 26, at art. 9, sec. 1.
131 See discussion infra Section 5.
132 See Rules under the Juvenile Justice Act, supra note 87.
133 See MOLE Draft Protocol on Child Labour, supra note 5.
repatriation. While ministry-level policy recommends safe and efficient repatriation of children, little effort has been expended to establish a single systemized process.

Because the government has not developed a formal process for repatriation, NGOs often manage the process. NGOs engage in ad hoc procedures that vary in degree of success and speed. Success and speed often depend on experience, dedication, capacity, relationships with government officials and access to knowledge. A handful of NGOs have developed expertise in the repatriation process in Delhi and Kolkata. Such NGOs have independently “built relationships with several NGOs across the borders that liaise with the Nepal Embassy and Bangladesh High Commission in the repatriation of trafficked women and children.” For inexperienced NGOs, lack of information and knowledge regarding the mechanics of the process continues to impede the speed of completion. Due to lack of experience, a number of NGOs outside of Delhi and Kolkata previously attempted to partner with the more experienced NGOs in Kolkata and in Delhi. However, more and more NGOs have abandoned this partnering method to independently manage the repatriation. Without access to information about appropriate channels and ministries to contact, organizations take a time-consuming try-and-see approach.

Delays also result when NGOs try to secure funds for repatriation. Repatriation of foreign children costs money. No readily accessible funds exist from the government to support the repatriation, and parents rarely have the resources to pay for the repatriation. Costs consists of paying for the legal documents such as visas or passports, Foreign Regional Registration Office certification and any other identification materials, the salary of the employees who pursue the repatriation process, the flight or train tickets of the children and their escorts, food and accommodations. Many NGOs complained that they needed to use program funds to repatriate the children, and that delays result from trying to identify new sources of funding.

No law or agreement between countries regarding repatriation exists, and therefore no line items in the governments’ budgets exist to pay for repatriation. However, two recent government policies indicated that the government should cover costs. The MOLE’s Draft Protocol suggests repatriation costs should be covered by the origin state. MWCD’s Ujjawala scheme also provides some funds for repatriation for commercial sexual

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134 See MWCD UNODC India Country Report, supra note 5.
135 Trafficking in Women and Children, supra note 6, at 22.
136 Interview with Bangladesh High Comm’n, in Delhi, India (Feb.12, 2009).
137 MOLE Draft Protocol on Child Labour, supra note 5, at 34.
exploitation victims.\textsuperscript{138} Other than the recommendation by MOLE for domestic labor victims and MWCD's support for commercial sexual exploitation victims, however, the government has not appropriated any additional funds to support the repatriation of children, especially for foreign-born child victims of forced labor.

Parents also often lack money or the immigration papers needed to retrieve their child. Even if parents had such funds, retrieval by out-of-town parents introduces a series of challenges such as additional paperwork and verification of parental identities. In fact, some adults try to claim children that are not theirs. In those cases, the adults are sometimes the labor exploiters:

One woman called and said she was a lawyer. Some of the parents wanted their kids back. We say that the parents have to come get the kids, not just an aunt or uncle. The lawyer came with two ladies. The [child] said that one [was] his mother and the other was the wife of the employer. The moment I knew, I asked the women to leave. I shamed them. We ensure the parents carry IDs and that the children also say that the people who come to get them are [their] parents.\textsuperscript{139}

NGOs are rarely in a position to make a positive identification: “CWC should give an affidavit and check to see if the people claiming to be parents are actually the parents.”\textsuperscript{140} Even if the NGOs make efforts to confirm identity by tracing the family to the home neighborhood or village, an official verification cannot be done.

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\textsuperscript{138} Interview with Ministry of Women and Child Development, in Delhi, India (Feb. 9, 2009).
\textsuperscript{139} Interview at Mukti Ashram, in Delhi, India (Nov. 2008).
\textsuperscript{140} Id. See also Telephone Interview with Dr. Bharti Sharma, Child Welfare Committee, in Delhi, India (Feb. 27, 2009) (noting that one report from the Child Welfare Committee indicated that the CWC takes a number of measures to verify a parents' identification. They require a minimum of two forms of identification: “Child confirms [the adults are] the parents. Before repatriation, parents must produce two types of documents. They can provide their ration cards [with the] name of child [or a] Group photograph of parents and child. [Also a] Document [that] is given by the head of village that guarantees parent identification, could be an election ID card, [can be evidence]. [Also,] the police can also give us identification [such as a missing person’s report that a parent filed]. . . . . Then we watch the encounter of the child and parents.”)
\end{flushleft}
The final cause of delay in repatriations results from waiting for nationality verification by the child’s home country. The procedure of verifying national identity varies by country. These variations can be demonstrated by reviewing the very different situations in Nepal and Bangladesh. See section C below.

C. Unique Repatriation Challenges to Nepal and Bangladesh

1. Nepal

Repatriations between Nepal and India are typically executed faster than repatriations between other countries. In fact, the actual repatriations can be accomplished in a matter of weeks or months. Typically repatriation between Nepal and India is expeditious because the border between Nepal and India is open. Citizens of Nepal do not need visas to travel to India, and Indian citizens do not need visas to enter Nepal. Therefore, Nepali citizens do not violate the Foreigner’s Act upon entry into India and likewise do not need to coordinate with a foreign consulate or commission to acquire visas to cross the border. As a result, fewer bureaucratic hurdles interfere with a return; however, challenges and obstacles still plague the process. In addition to the standard delay in the underlying legal cases, more problematic concerns include the lack of oversight of the repatriation process.

If a Nepali child is a witness for a case against an exploitive employer in India under the Bonded Labourer System (Abolition) Act, Child Labour (Prohibition and Regulation) Act, Indian Penal Code or other laws listed in Section 1 above, that child will be held in either a government home or an NGO-run home until the child provides witness testimony in a case against the employer. The case may take years. The amount of time a Nepali child will need to remain in the home is uncertain:

141 Interview with Don Gerred, Field Office Director, Int’l Justice Mission, in Kolkata, India (Jan. 7, 2009).
142 Id. One case notes that cases do not always pass through the courts in India in a timely manner: “Before parting with this case we would like to express our anguish at the delay in disposal of cases in our law courts. The present case is a typical illustration. A suit filed in 1957 has rolled on for half a century. It reminds one of the case Jarndyce v. Jarndyce in Charles Dickens’ novel ‘Bleak House’ which had rolled on for decades, consuming litigants and lawyers alike. . . . People in India are simply disgusted with this state of affairs, and are fast losing faith in the judiciary because of the inordinate delay in disposal of cases. We request the concerned authorities to do the needful in the matter urgently to ensure speedy disposal of cases if the people’s faith in the judiciary is to remain.” Rajindera Singh v. Prem Mai, A.I.R. 2007 S.C. 3057, 3058-59.
An NGO rescued eighteen Nepali girls from a brothel in Kolkata. This NGO then arranged housing for these girls at a shelter home. The girls speak a Nepali village language and do not speak Nepali, Hindi, Bengali or English. Their future remains uncertain as they will be witnesses in cases against their exploiters. Unfortunately, no one can communicate with them. The case will be delayed until a translator can assist in their interview and collect witness testimony. Additionally, no one can tell them how long they will be in the home, why they are in the home and what they can expect.

These girls face unfortunate circumstances. Although they hail from Nepal and can expect a more expeditious repatriation due to an open border, they will remain in India for a longer time because they must provide witness testimony in the case against their employer. Upon completion of the underlying case, the attorney will file a request for a repatriation order with the CWC or sometimes the court. Upon receiving the repatriation order from the CWC, the court or both, the repatriation process can begin.

While the open border offers the possibility of an expeditious return, it also poses an additional problem: no government regulation. Because Nepali citizens do not need to obtain visas or any other documents prior to crossing the border, the repatriation occurs with little to no government oversight. Some NGOs choose to work with like-minded NGOs in Nepal to negotiate a transfer rather than work with the Nepal government. Such NGOs do not always inform Indian and Nepali government officials about the imminent repatriation of rescued children. Once the Indian NGO obtains the home study that confirms the address of the child and receptivity of the family, the Indian NGO coordinates with the Nepali NGO to deliver the child across the border: “During a repatriation we send two staff members with three or four girls by train to their destination spot. We take care of anything on the way.” If the child is not accepted in his or her home, the Nepali NGO will identify an alternative government or NGO-run shelter where the child can live.

143 Interview with Don Gerred, Field Office Director, Int’l Justice Mission, in Kolkata, India (Jan. 7, 2009).
145 Interview with Mahesh Ruparelia, Project Manager, Rescue Foundation, in Mumbai, India (Jan. 15, 2009).
146 Id.
While inter-NGO coordination expedites the process, if the consul-
late is not involved, no official record exists of the entry and departure of
the child. The quality and safety of the return of the child cannot be guar-
anteed. Reports also suggest that some NGOs abandon repatriation entirely
and continue to house the foreign child. While the law requires all foreign-
ers to return to their home country, some NGOs suggested that foreign chil-
dren should be allowed to stay in the shelter home if they do not want to
return to their home or home country. The child then becomes a prisoner of
the institution, having no legal right to remain in the country. Without legal
validation, the child will not be able to obtain legitimate work and will live
in fear of deportation.

Other NGOs report working directly with the local Nepal embassy
or consulate in addition to the Nepali-based NGO: “We have people from
Nepal . . . We link with the embassy and network with other NGOs to
return people home.”147 For instance, Indian NGOs will contact local
Nepali NGOs such as ABC, Nepal or Maiti Nepal to coordinate the re-
turn.148 Before repatriation from India to Nepal, the Nepali NGO will initi-
ate a home study to determine the correct address of the child, the parents’
williness to accept the child home and the likelihood of the child being
re-trafficked. If the home appears safe, the Nepali NGO will sometimes
engage the family in counseling to prepare them for the return of the
child.149 Both NGOs and government officials have unanimously reported a
great working relationship with the Nepal consulate.150 An interviewee at
the Nepal consulate in Kolkata suggested that the consulate is comfortable
working with NGOs and recommends that all NGOs inform the consulate
of any repatriation.151 If informed about the repatriation, the Nepal Consu-

147 Interview with Sudiyatri Viya, Shakti Shalini, in Delhi, India (Oct. 22, 2008).
148 Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India
(Jan. 6, 2009).
149 See id.
150 Interview with Paramita Neogi, Child Protection Officer, UNICEF, in Kolkata,
India (Jan. 12, 2009) (“The consulate responds [quickly].”); see also Interview with
Bhuwan Ribhu, Attorney, Bachpan Bachao Andolan, in Delhi, India (Sept. 23,
2008) (“We always approach the embassy when it is an international case. We
have a good relationship with the Nepal embassy.”); see also Interview with Mr.
Mandel, SLARTC, Kolkata, India, (Jan. 9-10, 2009) (“The consulate in Kolkata is
cooperative. We maintain good relationships with Nepal.”).
151 Interview with Hari Prasad Bashyal, Nepal Consulate, in Kolkata, India (Mar.
3, 2009).
late will send police escorts with the children to the border point and coordinate with the NGO in Nepal.\textsuperscript{152}

Due to the expeditious nature of repatriation across an open border, reviewing the repatriation process to Nepal was almost dismissed as a non-issue by many NGOs. Government officials and NGOs both suggested that no complications arose in the repatriation of children to Nepal. One attorney noted that “most NGOs work NGO to NGO.”\textsuperscript{153} When they inform the Nepal consulate, they receive support. Although the open border facilitates an expedited process, the lack of formality creates a situation of vulnerability. The safety and security of repatriation widely varies. Without adequate monitoring, the child may become a victim of re-exploitation or re-trafficking. Children can be taken across borders without oversight, government participation or accountability. A mechanism that monitors a child’s return home would increase transparency and accountability.

To improve the efficiency of repatriations to Nepal, then, the government should reduce the amount of time Nepalese children must remain in India to provide court testimony. However, to improve safety of repatriations, the government should develop a monitoring system at the border or through the consulates to maintain public records and accountability of cross-border repatriations.

2. Bangladesh

Estimates suggest that at any one time “around 200 women [are] waiting to be repatriated to Bangladesh.”\textsuperscript{154} In 2008 in West Bengal alone, seventy children from Bangladesh sat in government homes and fifteen or twenty children sat in NGO shelter homes waiting for repatriation.\textsuperscript{155}

Unlike Nepal, the border between India and Bangladesh is not open. Bangladeshi citizens need to obtain the appropriate visas, repatriation orders and other miscellaneous paperwork to travel to and from India. As a result, it reportedly takes a substantial amount of time to repatriate children to Bangladesh. Due to the delays in the official process, several NGOs report that some Bangladeshi victims of commercial sexual exploitation

\textsuperscript{152} Interview with Tapoti Bhowmack, Attorney, Sanlaap, in Kolkata, India (Jan. 7, 2009).
\textsuperscript{153} Interview with Eliza Rumthao, Attorney, Int’l Justice Mission, Kolkata, India (Jan. 7, 2009); see also Interview with Rakesh Nair, CBATN, in Delhi, India (Nov. 5, 2008) (NGOs contact other NGOs in Nepal that will permit children to stay in their shelter home).
\textsuperscript{154} P.M. NAI, supra note 6, at 22.
\textsuperscript{155} Interview with Ms. Roy, West Bengal Task Force Coordinator, Dept. of Women and Child Development, in Kolkata, India (Jan. 13, 2009).
continue to be “pushed back across the border without protection services.”\textsuperscript{156}

Delays in repatriation to Bangladesh persist due to any of the following: legal delays in cases where a foreign citizen acts as a witness or an accused, delays in nationality verification, and a lack of awareness or knowledge of the appropriate channels or parties to contact in the case of a repatriation.

First, if a Bangladeshi child acts as a witness in a case under the Bonded Labourer System (Abolition) Act, the Child Labour (Prohibition and Regulation) Act, the Mines Act, the Factories Act, the Indian Penal Code or any other law mentioned in Section 1, that child will be held at either a government home or NGO-run home until testimony is given or until the underlying case is completed.\textsuperscript{157} As previously mentioned, delays in repatriation often result from delays in the underlying cases. Upon submission of testimony or the completion of the trial, the attorney files a request for a repatriation order to the CWC or the court.\textsuperscript{158}

Many delays also arise in verifying a nationality. After receiving a repatriation order from the court or CWC, the NGO forwards the information to the appropriate ministry, a Bangladesh shelter home and to the Bangladesh High Commission. The home department then forwards the address to the Bangladesh High Commission in India. At such point, the process of nationality verification begins.\textsuperscript{159}

Processing nationality verification takes an inordinate amount of time. In fact, some NGOs reported that they never received the verification: “Sometimes, even the reports about the nativity of the illegal immigrants are not received for a long period and at times, the reports fail to turn up at all. In such situations, the illegal immigrant has to be kept in detention in India.”\textsuperscript{160} Proper paperwork including visas and passports cannot be issued until the nationality verification has been completed. Some NGOs claimed

\begin{footnotes}
\item[\textsuperscript{156}] U.S. DEPT. OF STATE, INDIA'S COUNTRY NARRATIVE FOR THE TRAFFICKING IN PERSONS REP. 2008 (June 4, 2008), available at http://newdelhi.usembassy.gov/usgovtreportstipind.html.
\item[\textsuperscript{157}] Interview with Don Gerred, Int’l Justice Mission, in Kolkata, India (Jan. 7, 2009)
\item[\textsuperscript{158}] Interview with Eliza Rumthao, Attorney, Int’l Justice Mission, in Kolkata, India (Jan. 7, 2009); see also, Interview with Tapoti Bhowmack, Attorney, Sanlaap, Kolkata, India (Jan. 7, 2009).
\item[\textsuperscript{159}] P.M. NAIR, supra note 6, at 656-57.
\item[\textsuperscript{160}] Id. at 452.
\end{footnotes}
that Bangladesh officials in India are not always receptive to speedily processing visa requests.161

Before Bangladesh will provide national certification, correct addresses need to be verified. Children do not always provide accurate information about their addresses, and verification requires time-intensive travel to the children’s homes. Additionally, as most children cross the border without any type of identification, verification becomes a complicated process that involves a series of interviews with the child in India as well as visiting the child’s home state and identifying the specific home and family.162

Verification occurs simultaneously by an NGO and government. NGOs often manage the social welfare component of the home study, and government officials complete the official verification. While the process appears duplicative, an NGO cannot provide official verification, and the government may not be equipped to determine the social fitness of the home and receptivity of the parents. Indian NGOs will contact an NGO in Bangladesh and request that the Bangladesh-based NGO confirm the victim’s address and conduct a home study.163 This NGO will contact the Bangladesh officials, the India-based NGO will contact the Bangladesh High Commission in India, or the MEA will contact the Bangladesh High Commission to conduct the official verification. If the child remains at a government-based NGO, the government officials will contact the officials through Bangladesh government channels.164 Once the Bangladesh High Commission in India receives information about the request for nationality verification, it will forward the information to its counterpart in Dhaka.165

Confirming the address requires that authorities travel to the child’s village, locate the parents or other relatives, interview them, talk to neighbors and speak with the village panchayat.166

To determine if the person is a bona fide Bangladesh child, we inform the ministry of home affairs in Bangladesh... Once the home ministry comes to know of the case, they

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161 Interview with Roma Debaratta, Executive Director, STOP, in Delhi, India (Dec. 5, 2008).
162 Interview with Ms. Roy, West Bengal Task Force Coordinator, Dep’t of Women and Child Dev., in Kolkata, India (Jan. 13, 2009).
163 Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India (Jan. 6, 2009).
164 P.M. NAI R, supra note 6, at 656-57.
165 Interview with Bangladesh High Comm’n, in Kolkata, India (Jan. 13, 2009).
166 Id.
send their people to verify if [the child is a] bona fide Bangladeshi. They send people to the village or native place. . . . The home ministry will ask police headquarters to collect information. . . . The headquarters will ask the district police headquarters in the home region to coordinate with the subdivision branch to collect identification information.\textsuperscript{167}

Sometimes the children lived in small villages on the outskirts of the country, and it takes time and money to send representatives to those villages to verify the address and identity. NGOs trying to conduct a home study need to locate funds to physically send an employee to each village.

Repatriation also relies on the coordination of multiple Indian government agencies. Delays are often due to a lack of coordination and bureaucracy. For example, the MEA, FRRO, MWCD and MOLE may all need to be involved in a particular case. Additional necessary parties include the shelter home officials, border security forces and police. "Once we have clearance and verification of the nationality, the process could take even three months from that point. There are diplomatic norms to follow."\textsuperscript{168} NGOs and government officials in Kolkata noted that they had a very good relationship with the Bangladesh High Commission.\textsuperscript{169} Likewise, the Bangladesh High Commission suggested that it had a good working relationship with the NGOs and government officials in India.\textsuperscript{170} The only negative reports result from the lack of communication and information exchanged between the NGOs and the commission.\textsuperscript{171} This lack of communication seems to lead to confusion about the process.\textsuperscript{172} For instance, the Bangladeshi officials in West Bengal have not worked with their counterparts in Delhi on the repatriation of children who were victims of forced labor.\textsuperscript{173} Also, coordination among NGOs within India remains ad

\textsuperscript{167} Id.
\textsuperscript{168} Id.
\textsuperscript{169} Interview with Ms. Roy, West Bengal Task Force Coordinator, Dep’t of Women and Child Dev., in Kolkata, India (Jan. 13, 2009).
\textsuperscript{170} Interview with Bangladesh High Comm’n, in Kolkata, India, (Jan. 13, 2009).
\textsuperscript{171} Id.
\textsuperscript{172} Interview with Roma Debaratta, Executive Director, STOP, in Delhi, India (Dec. 5, 2008).
\textsuperscript{173} Interview with Bangladesh High Comm’n, in Kolkata, India, (Jan. 13, 2009).
hoc and uncoordinated. Not all NGOs share the same capacity to execute such repatriation projects.\textsuperscript{174}

Legal delays, home verification and coordination among NGOs and government officials in both India and Bangladesh cause numerous delays in the repatriation of children to Bangladesh. To reduce delays in repatriation to any country with a closed border, like Bangladesh, India should develop a simple process of negotiation with the origin country to more expeditiously obtain nationality verification and an effective method of return.

V. INNOVATIVE EFFORTS FOR REPATRIATION

A. Developments between India and Bangladesh

Due to delays and an unsafe, informal process of “push back” repatriation, UNICEF, at the request of government officials, conducted a rapid assessment of the process of rescue, repatriation, rehabilitation and integration of survivors of commercial sexual exploitation to Bangladesh. UNICEF presented the results to the governments of India and Bangladesh in Kathmandu, Nepal in December 2006.\textsuperscript{175} In its report, UNICEF found that repatriation sometimes took several months to six years.\textsuperscript{176}

Recognizing the need to improve the system of repatriation, the governments developed a joint plan of action. Government ministries in India, their counterparts from Bangladesh and the states of West Bengal and Maharashtra joined the process.\textsuperscript{177} In addition to government involvement, some experienced NGOs were invited to join.\textsuperscript{178} The participants designed a joint plan of action to expedite the repatriation process. In 2007, the governments again met in Goa, India, to share plans of action and to begin to identify the next steps.\textsuperscript{179} Such efforts resulted in the creation of a “road map for streamlining procedures and processes for safe and quick repatriation.

\textsuperscript{174} Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India (Jan. 6, 2009).
\textsuperscript{175} Telephone Interview with John Frederick, Consultant, UNICEF (Feb. 16, 2009).
\textsuperscript{176} Id.
\textsuperscript{177} Interview with Paramita Neogi, Child Protection Officer, UNICEF, in Kolkata, India (Jan. 12, 2009).
\textsuperscript{178} Interview with Indrani Sinha, Executive Director, Sanlaap, in Kolkata, India (Jan. 6, 2009).
\textsuperscript{179} Telephone Interview with John Frederick, Consultant, UNICEF (Feb. 16, 2009).
tion of cross-border victims between India and Bangladesh."\textsuperscript{180} The joint plan of action outlined the joint responsibilities that the governments would undertake to improve the processes related to rescue, rehabilitation, repatriation and integration. While plans continue to percolate among the official government bodies, no immediate or final steps have been taken.

\textbf{B. West Bengal’s Initiatives}

While the federal government continues to discuss plans, one state in particular has taken a lead on adopting a new repatriation process. In 2007, West Bengal designed and adopted standard operating procedures for the deportation and repatriation of foreigners, especially to Bangladesh.\textsuperscript{181} Such procedures identify the appropriate government officials who need to receive notification of the repatriation and an outline of how to initiate and complete the formal process, filling the void of a treaty-based repatriation process.\textsuperscript{182}

The procedures focused on both adults and children living in correctional or observation homes.\textsuperscript{183} According to the procedures, upon completion of the victims’ sentences, the repatriation/deportation process commences. First, the Director of Police on the Intelligence Branch works with the Home (F \& NRI’s) Department to obtain the nationality verification.\textsuperscript{184} This office works with the MEA and the Bangladesh High Commission to transmit the address information, confirm it and issue a repatriation order. Finally, the police, border security forces, NGO, shelter home and their colleagues in Bangladesh arrange the time and date for repatriation.

While functional, these procedures did not provide a victim-centered approach or arrange for the special needs of victims of human trafficking or forced labor. For instance, adults and children were treated the same, not considering that but children require more protection and special needs in repatriation procedures. Therefore, in 2008, the West Bengal government developed new procedures specific for the repatriation of commercial sexual exploitation child victims of Bangaldeshi origin. UNICEF provided technical support to the West Bengal Task Force for Rescue, Recovery,

\textsuperscript{181} \textsc{Gupta, supra} note 28, at 74-75.
\textsuperscript{182} \textit{Id.}
\textsuperscript{183} \textit{Id.}
\textsuperscript{184} Home (F \& NRI’s) Department means Home (Foreigner’s \& Non-Resident Indian’s) Department.
Repatriation and Integration of child victims of trafficking that included developing the Standard Operating Procedures to facilitate return of Bangladeshi children. The new procedures take a more child-friendly, victim-centered approach.

Representatives from Border Security Forces ("BSF"), the MEA, Center of Intelligence Branch, West Bengal, Kolkata Police, CWC, UNICEF, Home Department, Department of Women and Child Development ("DWCD") and NGOs sit on the task force. The task force holds regular meetings and has adopted West Bengal's Standard Operating Procedures.

According to such procedures, upon rescue, a child is produced before the CWC and sent to a shelter home. If determined that the child is foreign-born, the child will be presented to the Juvenile Justice Board. After initial interviews, the home transmits information to the Superintendent District Intelligence Branch [SP (DIB)], Deputy Commission, Special Branch [DC (SB)] with copies to the task force, NGO and Director of Social Welfare. Upon confirmation of identity, the DIB sends details to the Home Department, task force, Director of Social Welfare, the MEA, Branch Secretariat and NGOs. The Home Department again forwards the information to the MEA, which then forwards the child’s details to the Bangladesh High Commission (BDHC) and task force. The BDHC works with its counterparts in Dhaka, Bangladesh, to confirm nationality of the child. Upon receipt of confirmation by its Bangladesh counterparts, BDHC sends confirmation to the MEA, Home Department, task force and Director of Social Welfare. Upon receipt of the family information, the Home De-

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185 Interview with Paramita Neogi, Child Protection Officer, UNICEF, in Kolkata, India (Jan. 12, 2009).
186 Id. Additionally, West Bengal is reviewing a need to improve upon case management. Finding that NGO’s care and documentation varies with the quality of the NGO, the initiative works to develop a standardized form for case documentation. Draft forms of basic documentation have been drafted and are being used in pilot form. Such standardized forms will provide transparency, accountability and a measure for tracking success over time. Id.
188 Id.
189 Id.
190 Id.
191 Id.
192 Id.
partment issues the repatriation order. The police, BSF, task force, NGOs and Bangladesh counterparts then arrange the date, time, and other specifications for the official return.

The most significant difference between the 2007 and 2008 procedures is the open channels of communication. Multiple parties receive copies of the notifications. Also, the process charges the task force to maintain up-to-date information on the process for each child. The secretariat can then follow up with any agency regarding the status of the repatriation and pro-actively minimize delays.

The standard operating procedures only impact Bangladeshi children rescued from commercial sexual exploitation in West Bengal. They therefore do not apply to children rescued from situations of forced labor, children rescued in other parts of the country or to non-Bangladeshi children. However, the model and procedures could be adapted for children of any nationality who were rescued from forced labor.

C. Innovative Efforts by Various Ministries in India

In addition to West Bengal’s initiatives, some Indian ministries are also currently working to improve the repatriation process. For instance, the MWCD passed Ujjawala in 2007. Regarding repatriation, the ministry set aside funds to assist in the cross-border return of victims of commercial sexual exploitation. Under Ujjawala, the government annually appropriates twenty-five thousand rupees to support NGO efforts to facilitate repatriation procedures through communication, documentation and transportation. Additionally, the “scheme would cover travel of the cross-border victims and an escort from destination area to her country of origin or border, expenses incurred towards her food during her travel and incidental expenses.” Reportedly, four NGOs had received funding for repatriation under Ujjawala.

193 Id.
194 GOV’T OF INDIA, MINISTRY OF WOMEN AND CHILD DEV., UJJAWALA, A COMPREHENSIVE SCHEME FOR PREVENTION OF TRAFFICKING AND RESCUE, REHABILITATION AND RE-INTEGRATION OF VICTIMS OF TRAFFICKING FOR COMMERCIAL SEXUAL Exploitation (2007) [hereinafter UJJAWALA, A COMPREHENSIVE SCHEME]
195 Id.
196 Id.
197 Id at 7.
198 INTERVIEW WITH MINISTRY OF WOMEN AND CHILD DEVELOPMENT, IN DELHI, INDIA (FEB. 9, 2009). See also UJJAWALA, A COMPREHENSIVE SCHEME, supra note 193 (explaining that in order to qualify for funding, NGOs need to complete a long process. First they must apply through the state governments or UT Administration
In addition to efforts by the MWCD, the MOLE drafted a protocol for the repatriation of trafficked and migrant labor in 2008. MOLE recognized the lack of a national protocol to manage situations of trafficked and migrant forced labor of children and therefore designed "a set of guidelines for smooth rescue, repatriation and rehabilitation of these children." Of- ficial adoption and implementation of this protocol, however, has not occurred. Also, this protocol recognizes the challenge in repatriating foreign-born children, but it only offers a remedy for repatriating nationals to their home states.

Finally, the National Commission for Protection of Child Rights submitted an action plan for repatriation and rehabilitation of children rescued from forced labor, but significant action under the plan has not been undertaken. Initial efforts by West Bengal, MWCD, MOLE and the National Commission for Protection of Child Rights demonstrate progress in the expedition of repatriation. However, pockets of effort will not resolve the problem. Instead, more significant changes need to be made by the federal government. The recommendations listed below are offered as a starting point to develop a more expeditious and safer repatriation process by the federal government.

VI. RECOMMENDATIONS

When children cross an international border by force, coercion, deception or even at the hands of family members, they face exploitation and victimization. Once rescued, they face a future of institutionalization. They spend several years in a shelter home. They wait for someone to hear

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199 MOLE Draft Protocol on Child Labour, supra note 5, at 8.
their cases; they wait for legal representation; they wait for the shelter home to provide them with services; they wait to find out if they will remain in India; they wait to find out if their parents will accept them in their home or whether they will be placed in a shelter home in their own country. During this waiting, they forget their language, family, cultural practices and home.

The right to a safe and efficient repatriation is clearly defined in international law and a consensus of its importance seems to be growing in India. A number of obstacles, however, continue to plague the process: the legal system requires children to stay in shelter homes to provide witness testimony in legal cases against corrupt employers; the repatriation process remains undefined and managed on an ad hoc basis by NGOs; and the lack of international cooperation often stalls the repatriation process. States like West Bengal and ministries like the MWCD are taking some initiatives to improve the process. However, in most parts of India, the process remains stilted and information limited.

The proposals below suggest approaches to build upon initiatives already taken and offer new avenues for a safe and speedy repatriation.

1. Establish a legal convention or protocol to govern repatriation of foreign-born children

The federal government of India has not ratified or codified an international, national or local law governing the return of former child victims of forced labor to their countries of origin. Alternatively, no standard procedures for repatriation have been adopted and distributed nationwide. As a result, NGOs administer ad hoc processes of repatriation.

India should sign the Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention promotes the establishment of “procedures to ensure [children’s] prompt return to the State of their habitual residence” in order to “protect children internationally from the harmful effects of their wrongful removal or retention.”\(^\text{201}\) The convention requires a speedy judicial process so that a child can be returned to the origin state within one year as long as the child wants to return and there is a safe and appropriate place to return.\(^\text{202}\) By signing and ratifying the Hague Convention, India would have a legal instrument through which to facilitate an official repatriation with other member states.

The Hague Convention only provides a starting point. India should then outline a method to manage the process with specific attention to the concerns of repatriating children to individual countries. Such an outline

\(^{201}\) Hague Convention, supra note 76, at preamble.

\(^{202}\) Id. at arts. 11-13.
should provide a set of universal and coordinated procedures for NGOs and government ministries to follow. Most interviewees recommended that any such plan should remain simple and informal. An overly-detailed formula will create more red tape and obstacles. Therefore, any formal process that is adopted should be adequately formal so that the transfer of children across borders can be tracked and monitored. However, the process should not require the involvement of multiple agencies to reduce the potential red tape and bureaucratic hurdles that most official processes endure. In addition, the plan should clearly identify the NGO’s role. NGOs currently assume the role of managing the repatriation process because the government has not made such efforts. However, an official recognition of the NGO role will enable them to effectively complete the tasks.

The outlined process could be as simple as standard procedures that provide a mechanism to repatriate children without creating any additional bureaucratic or legal burdens. The procedures adopted in West Bengal for the repatriation of child victims of commercial sexual exploitation to Bangladesh provide a good model to be adopted, with appropriate modification, at the federal level and expanded nationwide. First, the program can be expanded geographically to involve and include additional NGOs and parties in all of the states in India. Second, the program should include children involved in forced labor. Finally, it should be implemented as the systematic process used for children who must be returned to other foreign countries.

2. **Repatriation to Nepal should involve official administration**

Due to an open border between Nepal and India, some repatriations reportedly occur without any oversight or even notification to government officials. No authority monitors nor communicates in follow-up for the safe and secure return of children, even when the government officials are notified. Lack of oversight, transparency and accountability thus leads to possible re-exploitation.

In order to assure accountability for repatriations, a government body should register child repatriations. Some countries utilize an official ceremony to mark the repatriation. For example in the Mekong Region of Vietnam, the International Organization for Migration (“IOM”) worked with the region on an initiative called the Return and Reintegration of Victims of Trafficking and other Vulnerable Women and Children in the Mekong Sub-region (the Return and Reintegration Project). The proposal focused on “identification, return and re-integration of trafficked and other
vulnerable women and children."203 Countries participate in the joint collaboration through various means. For example, in Cambodia, the government improved oversight and accountability of repatriation because it "records and documents cases of returned trafficked victims in order to follow-up on their reintegration."204 Additionally, government officials from Cambodia, along with Vietnam, participate in a ceremony called the "Baveat ceremony." This ceremony acts as the official recognition of the hand-over of foreigners across the border and lends formality to the repatriation process. Officials from both sides of the border participate. Such a formal process puts both sides of the border on notice regarding the repatriation. The documentation of the process provides the means to monitor and verify a child's return.

However, reports show that the Mekong process does not always function as it was designed to function. Assuming the ceremony worked perfectly in the Mekong Region, obstacles would still prevent a transplantation of this process to India given the different challenges of the region. While challenges with a transplantation exist, the attempt to provide a formal repatriation ceremony provides an example of how countries within a region can work together to bring transparency and accountability to the return process. India should consider adopting a formal repatriation process for children returned to Nepal that includes the involvement of border officials, family members, partner NGOs and any related government authorities.

3. Expedite the process of repatriation by minimizing time foreign-born children remain in India and require employers to pay for the cost of repatriation

As identified in the UNICEF rapid assessment, the repatriation process takes years. The primary causes for delay include the time a child spends in a shelter while waiting for the completion of cases filed against their corrupt employers, the process of nationality verification in the child's home country, and the lack of capacity and information at certain NGOs and lack of funds to cover the cost of repatriation.

First, to shorten the delay caused by awaiting trial, numerous human rights specialist recommend that courts rely on videotaped and written witness testimony of children rather than have them wait in a shelter to

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203 INT'L ORG. FOR MIGRATION "IOM", A STUDY ON THE SITUATION OF CAMBODIAN VICTIMS OF TRAFFICKING IN VIETNAM AND RETURNED VICTIMS OF TRAFFICKING FROM VIETNAM TO CAMBODIA 5( 2002).
204 Id. at 51.
provide live testimony. Permitting this alternative testimony would eliminate a large amount of time children currently spend in shelter homes. Additional legal measures to limit the length of the trial and delaying tactics by the defense would also shorten the trial time.

Second, to reduce the additional delay associated with nationality verification, the case worker should immediately send the child’s details to the MEA, the court and CWC. Home country verification can be conducted on a simultaneous track with any other ongoing court procedures. When the court or CWC issues a repatriation order, the child will not need to begin the verification process. Instead, she can begin the actual return home.

Third, only a handful of NGOs currently have the capacity, connections and knowledge to conduct an efficient repatriation. Because NGOs are moving toward independent repatriations, such NGOs should have access to information about appropriate procedures and contacts. Once the government adopts standard procedures, such procedures should be published online and made publicly accessible. Additionally, public trainings on the procedures should be conducted. The government should take a role in identifying NGOs who have the capacity to facilitate repatriations and then encourage them to provide additional training to those who want to do repatriations but do not yet have the capacity to do so. The repatriation process should be transparent in order to educate and enable the NGOs that insist on conducting independent repatriations.

Finally, NGOs noted that repatriation costs are covered from program management budgets. To reduce the burden on NGOs and to facilitate the acquisition of funding for repatriation, exploitive laborers should be required to submit fees to cover the costs of repatriation to a government based account. A regulated fund from such account should be immediately accessible to NGOs conducting repatriations upon production of a repatriation order from CWC or the court.

4. India should permit some foreign-born victims of trafficking and forced labor to remain and work in India and provide an exception to the Foreigner's Act

Foreign-born adults and possibly accompanying children living in India without proper documentation violate Section 14 of the Foreigner's Act. Even though such foreigners have been trafficked into India and victimized by forced labor, they may be required to serve jail time before they can return to their home country. Once released from jail, they begin the arduous task of proving to their home country that they are citizens of such origin, sometimes a multi-year process. If such foreigners receive entry into their home country, they are not always accepted by their families or
communities. Their only home may be an NGO-based shelter in their home country.

Some countries offer foreign-born victims an opportunity to remain in the country and exempt them from penalties of illegal entry. In the United States, for instance, victims of human trafficking, including victims smuggled into the United States and imprisoned in forced labor, can choose to remain in the United States or return home. If the trafficked victim desires to stay in the United States, she can qualify for continued presence or a T-Visa, a special non-immigrant visa, as an alternative to repatriation. To qualify she must be identified as having been subjected to “severe trafficking in persons,” must assist in the investigation and prosecution of accused traffickers and must demonstrate that if returned to her home country she “would suffer extreme hardship involving unusual and severe harm.” A child under the age of eighteen, however, does not need to be a witness in a legal case against her exploiter. The minor can still obtain the special immigration status as long as she can prove she was a victim.

If victims choose to remain in the United States, they also qualify for a number of housing, training, employment and food benefits. For example, the Office of Victims of Crime and the Office of Refugee Resettlement provides grants to organizations offering services to victims of human trafficking, including case management, legal assistance, medical, psychological and dental services, shelter, clothing, daily sustenance, transportation, English language training and job skills training. Additionally, the Department of Labor provides career centers with job search assistance, General Education Diploma assistance, career counseling and occupational skills training. Survivors can live in the United States on the T-Visa for up to four years. They are eligible to apply for adjustment of their status to lawful permanent residence or an extension on their T-Visa if they meet certain qualifications. Therefore, under U.S. law, the victim escapes penalty for violating immigrant laws. Instead, the victim qualifies to receive a visa and other benefits.

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207 Id. at 11-12.

208 Id. at 15.

209 Id. at 20.
Exempting victims of human trafficking from penalties under immigration laws and enabling them to legally remain in the destination country is an ideal option to victims. Former victims are sometimes rejected from their home, community or country and can find better opportunities to independently support themselves in the destination country. While providing legal immigration is optimal, it may not be feasible for all countries. Before India could consider providing such an option, it would need to evaluate the likely scale of potential beneficiaries. For instance, from 2005 to 2007, the United States reportedly facilitated the “reunification” of only 143 family members in the United States. The number of victims qualifying for such repatriation benefits or services remained small. The American visa model may not be feasible in India; however, India could exempt victims of human trafficking from penalties under the Foreigner’s Act and could consider providing legal residency to a subset of victims.

5. Develop a unified case management system that accurately documents and monitors the repatriation of children

The number of children brought to India from other countries for purposes of forced labor is currently unknown. Therefore, no record of the success or failure of repatriation programs can be documented. Many NGOs offered anecdotal evidence of successful repatriation; however, it can be misleading when not accurately recorded.

Without effective or accurate documentation, the safety of children found in India and returned to their home country cannot be monitored. An effective case management system that documents the child’s name, home address, contact information, age, occupation, parental information, NGO in India, and NGO in the home country should be recorded for proper monitoring and verification. Although difficult to introduce and manage, a unified case management system would enable accurate ongoing evaluation.

VII. Conclusion

Bangladeshi or Nepali children brought to India for purpose of forced labor and commercial sexual exploitation suffer at the hands of their transporters and employers. Once rescued from exploitative conditions, they face years of institutionalization before they return home. Justice demands a safe and efficient repatriation to their home country. While various Indian

210 Id. at 14-15. If a victim chooses to remain in the U.S., the U.S. government will provide logistical and financial support to bring their immediate family members to the U.S. Only ten former victims were repatriated to country of origin during this same time period. Id.
ministries appear to be reaching a consensus on the right of such children to a quick and efficient repatriation, the federal government has not yet succeeded in adopting unified and simple procedures to enable such a process. In order to protect the safety and security of such children, India should adopt standard procedures that would expedite the process of return to the origin country and bring official acknowledgement to the repatriation.