

***HUMAN TRAFFICKING IN UKRAINE
AND PERSPECTIVE OF IT'S PREVENTION***

Today trafficking in women recognize as a big international problem. The United Nations estimates that 4 million people are trafficked each year, resulting in \$7 billion in profits to criminal groups². The trafficking issue may be viewed as a human rights violation, forced prostitution, illegal migration, and as organize crime.

One of the areas of the world where trafficking is growing fastest is the former Soviet Union³. Human trafficking from Ukraine⁴, especially for sex work, is a serious and increasing problem for the country. Evidence exists from a wide variety of sources including police, NGOs, health care providers, prosecutors and international organizations of the widespread and increasing nature of the problem⁵. Following a recent study by the International Organization of Migration (IOM), reference is now being made to 420,000 women having been trafficked out of the country in the last few years alone⁶.

Increased economic globalization and privatization has resulted in an increased feminization of poverty, forcing greater numbers of women worldwide to migrate in search of work.⁷ Today, women are trafficked from South to North, from South to South and from East to West the flows are from poorer countries to countries where the standard of living for an average person is

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² General Assembly Distr: 1 September 1998 Original: English. 53 session Agenda item 103 Advancement of women: Trafficking in women and girls Report of the Secretary-General Summary Pursuant to General Assembly resolution 52/98 of 12 December 1997

³L.Shelley Sex Trade: Trafficking of Women and Children in Europe and the United States, hearing before the Commission on Security and Cooperation in Europe (the Helsinki Commission), June 28, 1999. (<http://www.american.edu/tracc/pdf/HTMLs/testimony699.htm>)

⁴ Ukraine is recognized as a country-supplier of "human stock" to Yugoslavia, Hungary, Czechia, Italy, Cyprus, Greece, Turkey, Israel, USA, UAE, etc. According to Embassy of Ukraine in Greece, there are three thousand young Ukrainian women working in legal or illegal sex business in Athens and Saloniki, and five thousand of such women are in Turkey. See: O.V.Druz', O.O.Hryshynska, *Trafficking in Young Women, Observation of Women's Human Rights and Relevant Tasks of Law Enforcement Bodies in Ukraine*, a collection of academic articles edited by the University of the Interior of Ukraine and International Women's Human Rights Protection Center *La Strada Ukraine*, Kharkiv-Kyiv, 1999, p. 88

⁵ Minnesota Advocates Group, *Trafficking in Women: Moldova and Ukraine*, December 2000, p. 16. The International Helsinki Federation for Human Rights in its *Women 2000* report at p. 491 cites the figure of 100,000 having been transported across the border illegally since 1991 from the Ukraine. Current estimates appear much higher however.

⁶ IOM, *Information Campaign against Trafficking in Women from Ukraine: Research Report* 1998, p. 16.

⁷ Alfred C.Aman, Jr., *Indiana Journal of Global Legal Studies: "An Introduction"*, 1 Ind. J/ Global Legal Studies 1, 1-2 (1993); Katherine Van Wezel Stone, *Labour and Global Economy: four Approaches to Transnational Labour Regulation*, 16 Mich. J. 987, 989 (1995)

relatively higher⁸. Many of these migrants end up as victims of illegal and unscrupulous trafficking networks. According to U.S. Senate Resolution 82 on Trafficking, trafficking "involves one or more forms of kidnapping, false imprisonment, rape, battering, forced labor, or slavery-like practices which violate fundamental human rights."⁹

Contemporary population movements are characterized by increasing pressures by individuals seeking, through migration, either to escape war, persecution, poverty, or human rights violations, or simply to find better economic opportunities¹⁰. Women from Ukraine also have a strong economic incentive to seek employment in Central Europe where living standards are higher than in the countries of transition.¹¹ In discussions on trafficking, particular attention must be given to the question of the voluntaries of the migrants' movement¹².

Since most Western country have imposed strict limits on the numbers of legal migrants who can enter their territories, many women are forced to accept the service of traffickers if they wish to

⁸ Dorchen Leidholdt, Position Paper for the Coalition Against Trafficking in Women, Special Seminar on Trafficking, Prostitution and the Global Sex Industry, United Nation Workshop Group on Contemporary Form of SlaVERY, organized by Coalition Against Trafficking in Women, International Movements Against Discrimination and Rasism, International Human Rights Law Group and Anti-slavery Geneva, Switzerland June 21, 1999, <http://www.uri.edu/artsci/wms/hughes/catw/posit1.htm>

⁹ U.S. Senate Resolution 82 which was introduced in 1998

¹⁰ Vanessa von Struensee, - Globalized, Wired, sex trafficking in Women and Children: a worldwide, dehumanising, epidemic of poverty, disease, corruption, collaboration, crime, violence, murder, slavery, and the valuing of unprecedented profits at the expense of human dignity, decency, and the rule of law.

¹¹ The main reason why do so many Ukraine women want to go to abroad is:

1. Liberalization of low enabling international travel both to Ukraine and to the European Union.
2. The introduction of a free market economy. The previously unknown unemployment has stricken women first and most of all, both economically and psychologically. Women were the first to lose their jobs and the possibilities of finding a new position are, to say the least, not promising, especially outside the big cities. Migration is especially popular among young women from small, underdeveloped cities and countryside where job are very scarce. Women in those areas cannot find a position in their own professions such as salesperson, teacher, nurse. It should be added that work in these occupations is very low paid as well and cannot assure economic independence.
3. The disappearance of the social security state system.
4. The myth of an easy and affluent life in the West and the tradition of migrant workers also contribute to the phenomenon of accepting a job abroad.
5. Increasingly, higher education has to be paid for, which also closes a road to a good career for many young women. Some of them think money for further education can be quickly earned abroad.

¹² In Ukraine the transition to a market economy has resulted in huge job losses and an increase in poverty. Given this context, it is not surprising that many young women are keen to find employment in the West, and to travel to countries which for years inaccessible to them. The economic and political reform process in Ukraine has been slow compared to some other countries under former Soviet regime. Today, where some countries are showing remarkable political, social and economic progress towards stability and democracy, Ukraine is lagging behind in its transition process. The most notable reason for that is the issue of governance. Ukraine has hesitantly embarked upon political, economic and social reforms essential to democratisation. That situation leads to the real stuck in economical, legal and political reforms currently underway in Ukraine. The prolonged political and socio-economic transition has had severe implications. One of them is marginalization and, to some extent, exclusion of some groups from the social and political front. One of those groups are women.

Ukraine now has marginalised women who have been largely excluded from the development of democratic processes through discriminatory policies practised by political parties, governments and individual employers. Recent studies and discussions in Ukraine on the subject of women's situation confirm that the past political and economic changes have not been gender neutral. Women make up 54% of the population of Ukraine and 45% of its labor force. Over 60% of all Ukrainian women have higher education (college level and above). However, the unemployment rate of women is very high compared to men with the same educational background (80% of all unemployed in Ukraine are women), not to mention the extensive hidden unemployment among women.

migrate. Most forms of labor migration from developing countries to Western Europe are severely restricted. A legal work option available to migrant women is work in the entertainment sector as “artists” or “dancers”. In practice this type of work is frequently linked to work in the sex industry.

As to the issue of prostitution it is a relatively new problem for the Ukraine. According to the date of the Ministry of Internal Affairs there is an increase in quantity of the women who are prostitutes and the problems is that girl of 12-13 years old are being involved in it. First of all big cities and resorts are the zones of the dissemination of prostitution. Nowadays small towns, first of all their distraught ones, where there are closed plants or the plants with the reduced number of employed, where there is a big unemployment rate, become the zones of problem. Today there are a lot of prostitutes among students who live in hostels in the Ukraine. A survey results show that almost 1/6 of female college students in Ukraine perceive prostitution positively and almost 55% of them believe it to be caused by factors other than inability to find some other source of income or coercion¹³. Thus there are reasons to assume that a numerous group of young women in Ukraine regard prostitution as another profession, which means that the possible scope of prosecuting activity in this field could be rather high.

It is clear that introduction of criminal liability for consistent practice of prostitution will obviously deepen its marginalization rather than facilitate elimination of this phenomenon.

As organize crime trafficking in women for the purpose of sexual exploitation is an increasing type of international criminal group generating high profits with low risk for traffickers¹⁴. Trafficking networks may recruit and transport women legally or illegally for slavery-like work, including forced prostitution, sweatshop labor, and exploitative domestic servitude.

As mention Dr.Shelley “trafficking helps perpetuate systemic government corruption. It helps fund the expansion of other organized crime activities as traffickers are often also engaged in trafficking arms and drugs. The quick and continuous profits made from trafficking also permit the criminal organizations to expand into other areas of illicit activity”¹⁵.

Trafficking in women as a shadow economy does not bring financial prosperity to local communities. The women often end up with nothing, or any money they earn comes at great cost to their health, emotional well being and standing in the community. The money made by the criminal networks does not stay in poor communities or countries, but is laundered through bank

¹³ L.A.Shevchenko, N.A.Gutorova, *Social, Psychological and Legal Aspects of Prostitution During Crisis, Observing Women’s Human Rights and Relevant Tasks of Law Enforcement Bodies in Ukraine*, a collection of academic articles edited by the University of Interior and International Women’s Human Rights Protection Center *La Strada Ukraine*, Kharkiv-Kyiv, 1999, p.148

¹⁴ L.Shelley Organized Crime and Corruption in Ukraine: Impediments to the Development of a Free Market Economy, *Demokratizatsiya*, Vol. 6, No. 4, pp. 648-663, Fall 1998.; L.Shelley Crime Victimized Both Society and Democracy, E-Journal of the U.S. Department of State (2001). (<http://usinfo.state.gov/journals/itgic/0801/ijge/gj06.htm>)

¹⁵ L.Shelley Sex Trade: Trafficking of Women and Children in Europe and United States, hearing before the Commission on Security and Cooperation in Europe (the Helsinki Commission), June 28, 1999. <http://www.american.edu/traccp/pdfs/HTMLs/testimony699.htm>

accounts of criminal bosses in financial centers, such US, Western European countries or in off-shore accounts.¹⁶

Ukrainian Governmental Action Against Human Trafficking

Ineffective privatization, the lack of law enforcement, lack of rule of law¹⁷, the professionalization of organized crime, and the absence of a legal culture have allowed organized crime to flourish from trafficking.

Nina Karpachova, Parliamentary Ombudsman for Human Rights in Ukraine¹⁸, has also been reported as referring to this number of women trafficked from Ukraine. However, these figures appear somewhat exaggerated and thus dubious to experts in sociology. Still, Ukraine has no published official statistics on the magnitude of the problem, while unofficial estimates of the numbers of persons being trafficked out of the country differ.

The government of Ukraine has employed different strategies to address the issue of trafficking in people. It created a National Coordination Council for Prevention of Trafficking in People headed by the Parliamentary Ombudsman. Also, on September 25, 1999, the Cabinet of Ministers of Ukraine adopted a comprehensive national *Program for Prevention of Trafficking in Women and Children* by a Decree # 1768. This program is to be financed from the State budget funds, and its implementation is to be supervised by the State Committee for Youth and Family Affairs. However, the government's commitment to this program is questionable. Firstly, no funding has been provided for the program by the government.¹⁹ Funding provided by the European Commission and USAID allowed accomplishing certain counter-trafficking initiatives in Ukraine, which in fact implemented several aspects of the national program.²⁰ However, in the absence of these funds no governmental counter-trafficking activities would exist. Secondly, following governmental reforms, the State Committee for Youth and Family Affairs, responsible for the implementation of the national program, was disbanded and it remains unclear which governmental body takes responsibility for the supervision of the implementation of the national program in its place.

¹⁶ Ibid

¹⁷ The term "rule of law" embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. A predictable legal system with fair, transparent, and effective judicial institutions is essential to the protection of citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals. Unfortunately in Ukraine where democratic tradition is weak and judicial independent is compromised individual rights are not truly guaranteed.

¹⁸ Ukraine is a member of the United Nations and has committed to adhering to internationally recognized human rights standards. Specifically, Ukraine ratified the Convention on the Elimination of All Forms of Discrimination against Women with a Decree of the Presidium of the Supreme Council of the Ukrainian Soviet Socialist Republic in 1981.

¹⁹ Information obtained from La Strada, a women's rights NGO in Ukraine, affiliated with the Dutch organisation of the same name and operating in Ukraine since 1997. Minnesota Advocates Group, *Trafficking in Women: Moldova and Ukraine*, December 2000, p. 29, also reports that resources are yet to be dedicated to the Program to counter trafficking.

²⁰ IOM Kyiv reports that it is working with an Inter-ministerial Co-ordination Group to implement an EC project on counter-trafficking, which includes implementing the relevant aspects of the National Program.

In 1998, Ukraine has adopted a criminal law against trafficking in people. Article 124-1 was added to then effective Criminal Code of Ukraine. For the first time in its legal practice Ukraine legally bind sanctions for trafficking in people including women.

Many criticisms had been leveled at article 124-1 on the basis that elements of the crime had not been defined, and so police and prosecutors were unclear as to how to apply its provisions in practice. New terms such as ‘debt bondage’, ‘sexual exploitation’ and ‘exploitation of work’ were used with no guidance as to their definition. No official commentaries were provided concerning implementation of the law and although these commentaries are not binding, courts generally rely on them in interpreting the law. Also, law enforcement officers were not provided with any new ‘procedures’ in relation to trafficking, as is normally the case in connection with the enforcement of new crimes. The overall effect of these inadequacies has been to discourage police from investigating allegations of trafficking, and prosecutors have also been reluctant to initiate new cases. According to information provided by the Ministry of Interior, only 30 criminal cases on trafficking in people were filed since the adoption of article 124-1 in 1998 until 2001, and 37 such cases were filed in 2001²¹.

In September 2001, the new Criminal Code of Ukraine came into force, which constitutes a radical departure from the previous one, essentially based upon the Code of the USSR. Article 149 of the new Code creates the crime of trafficking in people. It provides criminal liability for trafficking in people or entering any other illegal agreements regarding transfer of humans as well. This article was meant to correspond with international standards and to prevent commitment of such crimes. Nevertheless, this article is deeply rooted in article 124-1 of the earlier Criminal Code. The same terminology described above is used without further definition, and it is not clear whether new procedures will be issued to the police for their guidance in investigating crimes of trafficking. One aspect of the new law, which worsens the position of trafficked women, is the requirement that the offence is only committed where a person is trafficked across an international border. Many of the women trafficked in Ukraine are only moved from one region to another and do not necessarily leave the country. The traffickers of such individuals could not be prosecuted with the crime of trafficking under article 149 of the Criminal Code.

The other point is that the principal route of trafficking in women lies through employment agencies, which legalize this activity. Article 149 of the Criminal Code does not provide any efficient mechanisms, which could make it possible to disclose criminal activities of such agencies as the “purpose of further sale” or other criminal purposes defined by article 149 are practically impossible to prove.

In February 1999, the Licensing Chamber of Ukraine, the State Employment Center of Ukraine and the Ministry of Labor and Social Policy issued an order authorizing the suspension of licenses for businesses that arrange for work abroad when the committee inspecting those businesses found violations of Ukrainian law. The order however, targets employment agencies only. A certain number of licenses were subsequently suspended, but none of those seems to have been on the grounds of their connection with trafficking. The order has not been considered effective in addressing trafficking since it prompted activation of disguising criminal groupings as tourist agencies rather than employment agencies as it used to be before.

²¹ These figures are cited in *Violence against Women in Ukraine: Mainstreaming the Human Rights of Women* (an OMCT report for the Committee Against Torture at its 27th session, 12-23 November 2001)

So travel agents or ‘tourist firms’ are often fronts for traffickers and have little trouble obtaining passports and visas for victims in much less time than is generally required. The connection of such businesses with corrupt officials is therefore open to question. The committee responsible for inspecting registered travel agencies suspects some of them being involved with the trafficking business, however, it is not empowered to suspend such licenses. All it can do is recommend that licenses are given up. Further to this, many suspicious travel agencies operate without licenses.²² The government, however, has not conducted any investigation into the practices of these firms.

CONCLUSIONS AND RECOMMENDATIONS

Trafficking in women and girls for the purposes of sexual exploitation, forced marriage and domestic servitude is a serious and growing problem in Ukraine. While the government has taken certain legislative and policy measures to address the issue of trafficking, it appears that there is little political commitment to tackle the problem. It’s need to recommends the government to amend article 149 of the Criminal Code, which deals with trafficking in order to make trafficking that takes place within the borders of Ukraine a crime²³. It also recommends that interpretative commentaries for judges and other officials as well as comprehensive procedural guidelines for police and immigration officers on prevention and prosecution of trafficking offences are developed.

Measures to encourage victims of trafficking to identify traffickers and act as witnesses in criminal prosecutions should also be explored. These might include restrictions on deportation where victims are prepared to act as witnesses²⁴, and witness protection measures. Victims of trafficking should have access to legal, psychological and medical assistance. Victims of trafficking should be awarded compensation through criminal compensation schemes, which could be financed through the confiscated criminal revenue of traffickers.

Intergovernmental agreements to guarantee the voluntary and safe return of women and ensure that protection and support is provided to trafficked women awaiting repatriation proceedings should be elaborated. The human rights of victims should be assured and steps should be taken to ensure they are not criminalized or imprisoned. Bilateral agreements obliging cooperation between local immigration officials and consulates to assist trafficked women should be developed and publicized. Measures to guarantee the voluntary and safe return of trafficked women should be put in place, and any barriers for trafficked women to return to their countries, with or without passports or identification documents, should be eliminated. Broad efforts to strengthen training and public awareness of civil servants dealing with migration, particularly those at embassies and

²² *Ibid.*

²³ This recommendation was put into ground to the Alternative Report prepared by the Analytical & Research Group of Kharkiv Center for Women Studies, Kharkiv, Ukraine

²⁴ Government in Europe and North America are taking steps to use a temporary resident permit in schemes to protect trafficking victims and successfully prosecute traffickers. The US Government has announced that the Department of Justice will soon start issuing T visa to protect the victims of severe forms of trafficking in person. The visa will allow the victims to remain in the US and assist federal authorities in the investigation and prosecution of human trafficking cases. (Detail see “*Temporary resident permits: a new way to protect trafficking victims?*” Trafficking in Migrants, IOM, Quarterly bulletin # 25 – Spring 2002

consulates and those in charge of the delivery of visas, should be increased, and Governments should train law enforcement officials at all levels with respect to trafficking, violence against women and recognition of trafficking situations, including identification of front companies and groups. Broad-based ongoing educational and awareness-raising campaigns, including the media, to combat domestic and international trafficking should be introduced nationally, regionally, and internationally. Vulnerable groups should be particularly targeted and community-based strategies employed. Relevant cases and evidence should be collected, shared, and the *modus operandi* of traffickers should be encouraged so as to provide a concrete basis for legal and policy change.

By all means, strategies aimed at trafficking should focus on trafficking and the criminal nature of this activity and those involved in this conduct, rather than on the activity of the victims of trafficking, whose human rights should be assured.