

Trafficking in Ukraine

An Assessment of Current Responses

UNICEF, OSCE, USAID, British Council

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TRAFFICKING IN UKRAINE: AN ASSESSMENT OF CURRENT RESPONSES

Current situation and responses to trafficking in human beings in Ukraine.

Report by Yevhenia Lutsenko, Lydia Matiaszek, Shivaun Scanlan and Inna Shvab

- United Nations Children's Fund
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The views presented in this paper do not necessarily reflect those of the British Council, OSCE, UNICEF, USAID, or the Government of Ukraine.

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|------------------|---|
| ABA/CEELI | American Bar Association/Central European and Eurasian Law Initiative |
| AIDS | Acquired Immunodeficiency Syndrome |
| ATU | Anti-Trafficking Unit |
| BBC | British Broadcasting Corporation |
| CIS | Commonwealth of Independent States |
| COATNET | Catholic Organizations Against Trafficking Network |
| CPP | Crisis Prevention Programme |
| CURE | Centre for Ukrainian Reform Education |
| EU | European Union |
| FAQ | Frequently Asked Question |
| FDI | Foreign Direct Investment |
| GO | government organization |
| HIV | Human Immunodeficiency Virus |
| Hr | hryvnia (Ukrainian currency) |
| HUHTC | Help Us Help the Children |
| ILO | International Labour Organization |
| IOM | International Organization of Migration |
| IPEC | International Programme to Eliminate Child Labour |
| LSP | Legal Services Programme |
| MES | Ministry of Education and Science of Ukraine |
| MFCYA | Ministry of Family, Children and Youth Affairs of Ukraine |
| MFA | Ministry of Foreign Affairs of Ukraine |
| MIA | Ministry of Internal Affairs of Ukraine |
| MLSP | Ministry of Labour and Social Policy of Ukraine |
| MOJ | Ministry of Justice of Ukraine |
| NAC | National Adoption Centre |
| NGO | non-government organization |
| ODIHR | Office of Democratic Institutions and Human Rights |
| OHCHR | Office of High Commissioner on Human Rights |
| OSCE | Organization for Security and Cooperation in Europe |
| SBU | State Security Service of Ukraine |
| SEC | State Employment Centre |
| Sida | Swedish international development agency |
| SME | Small or Medium Enterprise |
| Tech-voc | technical-vocational (schools) |

| | |
|---------------|--|
| TACIS | Technical Assistance to the CIS, a programme of the EU |
| UAH | Ukrainian currency |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children’s Fund |
| US | United States of America |
| USAID | United States Agency for International Development |
| VR | Verkhovna Rada, Ukraine’s legislature |
| WEE | Women’s Economic Empowerment Programme |
| WTW | Woman to Woman, a network of support centres |
| YEC | Youth Employment Centre |
| YSC | Youth Services Centre |

The terms ‘trafficking in human beings’ and ‘trafficking in persons’ used in this assessment are interchangeable.

Executive Summary

This study was commissioned by the Kyiv representative missions of UNICEF, OSCE, USAID and the British Council, with the support of the Ministry of Family, Children and Youth Affairs of Ukraine.¹ This report on the results of the research presents an overview of the current situation with trafficking in Ukraine and assesses the strengths and weaknesses of programmes aimed at combating trafficking.

This paper focuses on the wider context of trafficking in persons from Ukraine. One of the key points in this report is that, despite a number of very effective programmes conducted within the current notions of what is popularly understood as trafficking in persons, there remain identifiable gaps in the understanding of this phenomenon. This has resulted in the exclusion of certain groups that were not traditionally viewed as being at risk of being trafficked, including men and older women. As such, the current strategies do not necessarily tackle all the issues pertinent to these groups, nor the actual situations that may confront them. Thus, the report explores this criminal phenomenon in all its aspects and provides a situation analysis of trafficking in Ukraine.

Overview of Findings and Recommendations

The analysis of **preventive** activities focuses on the vast and diverse range of programmes conducted to address vulnerability issues such as unemployment, poverty, discrimination, domestic violence, and the violation of human rights.

¹ On 4 February 2004, the State Committee of Family and Youth was reorganized into the Ministry of Family, Children and Youth Affairs. In this report, the new name of this Government body is used. The Ministry coordinates the activity of the Government programmes to combat trafficking in Ukraine.

The strengths of some of the current programmes are several:

- Trafficking awareness-raising activities, such as workshops and conferences, have proven their overall effectiveness, success in reaching target groups, and longer-term sustainability – in particular, job skills training and economic empowerment. These help to tackle root “push” factors, but should be extended to additional target groups, including the work of lecture groups in isolated regions.
- Educational, media and other informational campaigns remain important outreach tools and are still in high demand.
- The multi-dimensional benefits of trafficking hotlines have demonstrated that this outreach service warrants continued support: they provide concrete answers and referral information to specific questions posed by callers, and they contribute to invaluable data collection.
- Ukraine’s participation as both teacher and student in the exchange of international experience has broadened its government’s understanding and handling of the trafficking problem.

In addition to presenting the actual roles of international, government and non-government organizations, this report explores alternative outreach mechanisms, such as working through youth groups and faith-based organizations. Additional focus areas include:

- The need to emphasize the responsibilities and obligations of destination countries in tackling the trafficking problem by offering migrant workers legal and transparent employment opportunities and protecting their rights as workers.
- The importance of amending domestic legislation to include internal trafficking.

In studying the effectiveness of the **prosecution** process and each of the roles performed by different law enforcement agencies, this report identifies specific areas where progress has been made:

- The number of trafficking cases has increased.
- Capacity among law enforcement agencies is growing.
- In recent years, cooperation has emerged between NGOs and law enforcement agencies, particularly with regard to witness protection.
- The UN Convention Against Transnational Organised Crime and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which adds to the Convention, have been ratified and the appropriate changes in domestic legislation initiated.

However, serious obstacles to conducting a complete and successful investigation and seeing it through to a conviction remain, and they require action:

- Implementing a functional witness protection programme.
- Introducing specialised training and support for the State Border Service.

- Getting the Supreme Court to hand down guidelines on handling trafficking cases, so that the lower courts might more effectively apply legislation that may be unclear, especially as regards heavier sentences against those convicted of trafficking crimes.

The issues of **protection and assistance** for trafficked persons have taken on particular significance in more recent programmes. Findings show that various types of assistance are available, including medical, psychological, legal, and job skills training, job placement and other reintegration assistance, such as micro-crediting. However:

- While psychological assistance is widely available through state institutions, medical assistance, due to the high costs involved, is only available through shelters funded by international organizations and is therefore not necessarily sustainable.
- Legal assistance is critical in the protection of the rights of trafficked persons, but at this time, it is not fully provided in all cases.

The shelters currently available to trafficked persons fulfil a much-needed function for short-term rehabilitation and reintegration. However, there is a lack of resources to support drop-in crisis centres that could provide long-term reintegration support for the majority of trafficked persons who prefer to live at home upon their return to Ukraine but need access to professionals such as psychologists and social workers.

This report places particular emphasis on:

- The concept of compensation to trafficked persons for moral and material damages.
- The process of identifying trafficked persons.

Considering Ukraine's multi-faceted and long-term approach to programmes combating trafficking in persons, the issues of **coordination and cooperation** on the national and regional level are of utmost importance. Currently, degrees of cooperation tend to shift at the international, national and regional levels. An analysis of mechanisms that have been effective and areas of activity that need to be improved, in terms of greater cohesion, impact and sustainability, shows that:

- The Comprehensive Anti-Trafficking Programme needs to be more task-oriented and specific in establishing the role of government institutions designated as executors, and should include time frames and benchmarks.
- The Inter-Agency Coordinating Council for the Prevention of Trafficking in Persons needs to demonstrate leadership and commitment to the Comprehensive Programme by meeting more often and regularly, and taking the initiative in coordinating anti-trafficking activities in Ukraine.
- Cooperation between government and non-government organizations should be based on mutual respect and understanding of each other's strengths and resources.
- The cooperation of law enforcement both internally and internationally will contribute to the successful conclusion of cases involving trafficking in persons.

- The diversity of organizations involved in anti-trafficking activities will contribute greatly to the successful creation of innovative, complementary programming through the specific experience and background that each of these organizations brings into its work.

We hope that this report will help promote further constructive dialogue between government and non-government organizations, both in Ukraine and abroad, as well as better cooperation in counteracting the trafficking of persons from Ukraine.

THE STUDY OF TRAFFICKING IN UKRAINE

Trafficking in persons has been recognised as a problem of immense significance for Ukraine. This is evident in the presence of a legislative base that is directed at counteracting this kind of crime, and the growing activity of government, international and non-government organizations in this area over the last few years.

To ensure that programmes are on target and complementary, the Kyiv missions of the UNICEF, OSCE, USAID, and the British Council, with the support of the Ministry of Family, Children and Youth Affairs of Ukraine, decided to take stock of the current situation and the effectiveness of counteractions. This report aims to fulfil this purpose by presenting an overview of the situation in Ukraine with respect to trafficking, and an assessment of the responses to it. Finally, it tries to identify the remaining gaps or weaknesses in current approaches and provide recommendations for future action.

1.1. What is Meant by “Trafficking in Human Beings”

To assess the situation with respect to trafficking in Ukraine, what is firstly needed is a clear definition of the concept “trafficking in persons”. The internationally accepted definition of trafficking is provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) which supplements the UN Convention against Transnational Organized Crime. Ukraine ratified both the Convention and Protocol in February 2004, and both are now in force. Changes to domestic legislation, specifically Arts. 149

and 303 of the Criminal Code of Ukraine, were prepared by the Ministry of Internal Affairs (MIA), to ensure compliance with the provisions of the Convention and Protocol. These bills were submitted to the Verkhovna Rada, Ukraine's legislature, for approval.²

The definition of trafficking in human beings in the Palermo Protocol describes the conduct of criminal gangs involved in the trafficking process. A crime is considered to have occurred whether or not an international boundary has been crossed, that is, the Protocol considers both domestic and international trafficking in persons. In particular, Art. 3 of the Protocol states:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force, coercion, abduction, fraud, deception, abuse of power, exploitation of a position of vulnerability, giving or receiving payments or benefits in order to attain the consent or control of a person, for the purpose of exploitation. Exploitation shall include, at a minimum, the forced 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.”

The current Ukrainian definition of trafficking in persons provided in Art. 149 of the Criminal Code has been criticised for its lack of clarity. For the most part, it focuses on the facilitation of movement across the Ukrainian border for the purposes of exploitation:

“Trafficking in persons and other illegal agreements regarding the transfer of a person means the sale, or otherwise paid transfer of a person, as well as any other illegal agreement concerning legal or illegal transport, with or without that person's consent, across the state border of Ukraine for further sale or transfer to another person or persons for the purpose of sexual exploitation, employment in the pornography business, engagement in criminal activity, indenture, adoption for commercial purposes, use in armed conflicts or labour exploitation.”

The above does not make any mention of the violation of human rights that is experienced by trafficked persons, specifically when they are being exploited.³ This is because the concept of trafficking in persons was defined in the context of organized crime and the criminalisation of the process of trafficking. In those instances when standard criminal mechanisms are involved, including enticement in the country of origin with the purpose of exploitation in the country of destination, this kind of definition is acceptable.

² ‘Analysis of Institutional and Legal Frameworks and Overview of Cooperation Patterns in the Field of Counter-Trafficking in Eastern Europe and Central Asia’, IOM Kyiv, November 2003, p. 7 for a discussion of changes to the current trafficking provision, Art. 149 of the Criminal Code.

³ However, it is indicated that such violations include violations of a person's honour and dignity, freedom from discrimination, freedom of movement, and, in some instances, the right to live. PACE Resolution №1337 (2003) on ‘Migration connected to trafficking in women and prostitution’.

Yet the conclusions of some studies⁴ carried out in recent years show a changing trend in the way such trafficking is organized. In particular, data show that the impact of migration involving forced labour, including sexual exploitation, is not always connected to enticement in the country of origin. This is particularly true of those countries where Ukrainians can freely travel without any assistance from intermediaries, such as Russia. The organization of exploitation takes place in destination countries to which people travel independently and freely, without any enticement in the country of origin.

The data indicate that it is men – though not only men – who are more often likely to run into exploitation that is organized in this way, without any recruitment in the country they came from. Thus, we have to acknowledge that the current concept of trafficking in persons does not always cover all situations connected to this crime.

Intolerance of the violations of human rights suffered by trafficked persons is the main reason for counteracting this phenomenon. That is why more ambiguous situations connected to the trafficking of persons also need to be seen as the same kind of crime. But the inadequacy of the definition of trafficking in human beings in Ukrainian legislation at this time, that is, linking the organization of trafficking in persons between a country of origin and a country of destination, leads to vagueness in the handling of situations involving other mechanisms of organizing forced labour. This raises the question of the connection between these situations and the crime of trafficking in persons.

Many Ukrainian migrant workers find themselves in this kind of situation. From the point of view of human rights violations, there is not a huge difference between the two kinds of scenarios. But the issue of defining such a situation under the Palermo Protocol, especially if the key aspects of trafficking – including recruiting, transporting forcibly or enticing – took place in the destination country, remains an open question.

In order to avoid a unilateral description of the problem of trafficking, this report will look at all possible mechanisms for trafficking in persons, and appropriate counter measures for these situations.

1.2. What We Know about Trafficking

Our knowledge of the characteristics of trafficked persons, vulnerability factors related to trafficking, and organizational mechanisms for trafficking out of Ukraine is generally based on information gathered from trafficked women who have returned home.⁵ As a result,

⁴ ‘Trafficking in Persons from Albania, Moldova, Romania and Ukraine for the purpose of labour and sexual exploitation’, draft report, ILO, Kyiv, 2003, p. 26.

⁵ Current data on trafficked persons and overviews and analyses of its nature and organization have been provided primarily by those organizations working with trafficking returnees in Ukraine on a regular basis, including La Strada, Winrock International and IOM. A recent trafficking study by the State Institute on Family and Youth Affairs in 2003 also utilises in-depth interviews with such returnees.

what we know is incomplete, insofar as these victims cannot tell us much about the experiences of men or minors.⁶ Thus, it is critical to recognise at the outset the common features of the group of persons influencing our current knowledge of trafficking and then to identify the gaps that remain.

Firstly, this group consists of trafficked persons who have returned to Ukraine, as opposed to those who cannot return or have chosen not to return. Recent studies indicate that increasing numbers of those trafficked now choose not to be assisted or to return once identified as having been trafficked in destination countries.⁷ This appears to be the case for an increasing number of women identified as trafficked in the Balkans and Italy.⁸ In addition, many women have taken advantage of the temporary residency permits offered in certain destination countries to trafficked persons.⁹ It is conceivable that either the trafficking profiles or the experiences of those who do not return home differs from those who have returned. There appears to be no research available that has explored the commonalities and differences among various groups of women identified as trafficked. This represents yet another gap in the understanding of trafficking in women.

Secondly, we generally only have information on those persons who have returned to Ukraine and have been identified as trafficked. Identifying these people is currently possible:

- When a trafficked person, after returning to their country of origin seeks assistance from NGOs through, for instance, hotlines or law enforcement agencies.
- When a trafficked person is returned through an IOM repatriation programme, an NGO or through a Ukrainian embassy, and identified as trafficked prior to arrival.
- When a trafficked person is deported and identified as trafficked by border authorities, police officials, or NGOs providing relevant assistance.

⁶ For instance, IOM data show that nearly 4 per cent of those who have been trafficked and who have been assisted by this organization are juveniles. Still, such indicators cannot be representative, as they reflect only a small proportion of all the victims of trafficking.

⁷ 'Trafficking in Persons in Southeastern Europe: Current situation and responses to trafficking in persons in Albania, Bosnia and Herzegovina, Croatia, The Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, Moldova, and Romania', UNICEF, UN OHCHR, OSCE/ODIHR, 2002, p. 5.

⁸ Ibid. p. 254. Between 2000 and 2003, IOM assisted in the repatriation to Kyiv of 98 victims from Macedonia, 59 from Kosovo and 49 from Bosnia and Herzegovina. However, returnees from these countries in 2003 dropped to a third of those in 2002. In the opinion of independent consultants hired by Sida to analyse current trends among victims of trafficking who return to Ukraine, this reduction in numbers is attributable, in part, to an increase of the number of trafficked persons refusing assistance offered by the police during raids, or assistance from IOM to return home voluntarily. It appears that these women are not willing to take advantage of the limited choices offered to them once they are identified as trafficked persons, which they believe are to be simply returned to their country of origin, to the identical circumstances from which they had previously chosen to flee, coupled with the stigma and humiliation of having been sexually exploited. They therefore remain in the country of destination, subject, in many cases, to continued exploitation.

⁹ Currently, temporary residence permits are available to trafficked persons in a number of EU member states and new member countries, including Belgium, Ireland, Italy and the Netherlands. In certain cases, temporary residency is possible if the person is cooperating with the criminal justice system (e.g. Finland, Germany, Portugal, Spain, and the UK) or in exceptional circumstances where there are considered to be extreme risks to the safety of the individual (Austria). A proposed Council Directive on Short-Term Residence Permits of the European Union providing for such permits to 'victims of activities involving illegal immigration or trafficking in persons who cooperate with competent authorities' is still pending adoption by the EU.

The types of trafficking cases that do not fall into these categories and about which we therefore know little include, at a minimum, the following:

- Individuals who do not wish to be recognised as having been trafficked on return. Research and those interviewed for this study, suggest that reluctance about being identified as a victim is generally on the increase. This appears to be mostly because of the stigma associated with being recognized as trafficked into the sex business, so that many women prefer to keep quiet about their experience.
- Individuals who are unaware of their trafficked status and neither know of nor seek assistance, including not only women but also possibly many men and children. A recent study conducted on the trafficking of adults from Ukraine, which used a methodology developed for research to identify trafficked persons, found that most of the male respondents identified as trafficked did not recognize themselves as such, nor as having any right to seek assistance and redress.¹⁰ This may be connected to the fact that most people associate trafficking exclusively with the sexual exploitation of women.
- Those who believe that the fact that they have violated immigration and labour laws in their destination countries is a bigger crime than the abuse that they have experienced. In effect, this means such people do not feel that they have a right to ask for help or for protection of their rights.

Additional reasons for the failure to come forward and seek assistance are reflected in the sentiment expressed here.

“People are already exploited in Ukraine, both at home and at work, so they don’t consider exploitation beyond their borders, however serious, as something unusual. This suffering is something that you have to put up with in order to make a living. So when they come home, people like this will never think of themselves as having been victims of trafficking.”

Comment by a representative of an NGO in Ivano-Frankivsk, November 2003

- Individuals who are not identified by border officials or highway patrols on their return home. This is especially true of those who return from Russia, where deportation is almost unheard of, while crossing the border without a passport is quite common and documents are not especially carefully checked.¹¹ The role of border patrols in identifying trafficked persons in order to provide assistance to such people is an important one. (see Chapter 6)

¹⁰ Based on interviews with Gulbarshyn Mimandusova, Olena Varetska and Yuriy Pryvalov of the Centre of Social Expertise under the National Academy of Science of Ukraine on 19 December 2003. In 2003, they conducted rapid assessment research for ILO on trafficking from Ukraine. This issue is relevant to the current discussion on the definitions of trafficking in situations where individuals have not been recruited in the country of origin for exploitation and might not recognise themselves as trafficked.

¹¹ Interview with Mr. Zyubkov, consul of the Russian Federation in Ukraine, 17 December 2003, Kyiv. The borders between Ukraine and Russia are currently being reinforced with EUR 8.5 million contributed by the EU to shore up Ukraine’s capacity to combat crime and better manage migration. Interview with Francesco Luciani, EU TACIS representative, December 2003.

In conclusion, the number of trafficked persons about whom little or nothing is known is considered to be tens and even hundreds of times greater than the number of those who have been identified as victims and have provided information about their experiences.¹² Although studies such as this one generally do not rely exclusively on trafficked persons as a source, but collect information from other informants, the fact remains that in most of what key informants can tell us about the trafficking situation, information coming from victims is nevertheless central.¹³ Clearly, this information is not representative of the entire trafficking population, and this fact needs to be recognised at the outset.

1.3. How This Study was Carried Out

The purpose of this study was to assess and prepare a snapshot of the current situation and the responses to trafficking in individuals from Ukraine, and to provide recommendations for further action. This involved gathering information on stakeholders involved in counter-trafficking activities, collecting data on the trafficking of human beings, mapping out existing networks and initiatives to combat trafficking in Ukraine, identifying gaps in current programmes, and assessing regional and national coordination mechanisms.

The assessment was conducted over a four-month period between November 2003 and February 2004. A team of 4 researchers included both international and national consultants.

The methods used for data collection included:

- A review of the literature and current research and data on trafficking and migration from Ukraine.
- Semi-formal interviews with key informants.
- Participation in anti-trafficking activities and events.

1.3.1. Informants and locales

Key informants were selected on the basis of:

- Their role in the Government of Ukraine's Comprehensive National Programme Against Trafficking in Persons for 2002-2005.
- Their current involvement in counter-trafficking activities.
- Their knowledge of the current situation with respect to trafficking or migration from Ukraine.

Thus, key respondents were mostly selected from government agencies, international organizations, embassies and NGOs.

¹² Various interviews with law enforcement authorities in Kyiv and the regions, November-February 2003-4.

¹³ 'Social Analysis of Key Factors in the Trafficking of Persons: The real situation and ways to prevent it', A.V. Alekseyeva, Y.M. Galustian, I.A. Schwab, et al. Kyiv, State Institute for Family and Youth Affairs, 2003, 92 pp. 'A review of the mechanisms and approaches of law enforcement agencies to counteracting trafficking in persons in Ukraine', S. Kryvosheev, Kyiv, IOM, 2001.

In addition to interviews in Kyiv, research was also conducted in six oblasts to provide a broader picture of programmes working to counter trafficking. The oblasts chosen were Donetsk, Ivano-Frankivsk, Mykolayiv, Odesa, Ternopil and Zakarpattia, with some interviews also conducted in L'viv.

The table below provides a breakdown of interviews conducted by team members:

Key Informant Interviews

| Type of Organization | Kyiv | Donetsk | Ivano-Frankivsk | L'viv | Mykolayiv | Odesa | Ternopil | Zakarpattia | Total |
|-----------------------------------|-----------|-----------|-----------------|----------|-----------|-----------|----------|-------------|------------|
| International | 12 | | | | | 1 | | | 13 |
| Consulate/aid organization | 9 | | | | | | | | 9 |
| NGO | 20 | 4 | 5 | 3 | 3 | 6 | 4 | 2 | 47 |
| Government | 15 | 9 | 8 | | 5 | 8 | 5 | 11 | 61 |
| Other | 3 | | | | | 1 | | 1 | 5 |
| Total | 59 | 13 | 13 | 3 | 8 | 16 | 9 | 14 | 135 |

1.3.2 Anti-trafficking events

In addition to interviews with key informants, the consultants attended a number of events that focused on anti-trafficking activities. In most cases, these events provided opportunities to find out more about the activities of different organizations and to listen to what participants thought on a variety of issues. These events were usually followed by in-depth interviews with selected respondents.

Under a joint project between the Ministry of Family, Children and Youth Affairs and La Strada-Ukraine entitled ‘The Prevention of Trafficking in Persons Through The Joint Efforts of Government and NGOs’, which was financed by the Council of Europe from October 2003 through June 2004, the research team was able to participate in sessions of regional commissions involved in coordinating activities and sharing information on preventing trafficking. These roundtables provided excellent snapshots of each region’s level of awareness, activities and cooperation.

The team attended such roundtables in Donetsk and Ternopil, both regions where cooperation between government agencies and NGOs has been successful and initiatives to counter trafficking in persons have been strong, largely because of pro-active local NGOs working on this issue. Thus, the discussions were much more specific, and often highlighted innovative ideas on how to implement trafficking programmes despite limited state funding.

In addition, the team participated in a regional press club session in Donetsk, as part of the ‘16 Days Against Gender Violence Campaign’. Here, representatives of NGOs (Winrock

International's Women's Consortium, the Woman to Woman Centre and Men Against Violence), government organizations (the State Employment Centre), and the oblast unit of the Ministry of Internal Affairs Anti-Trafficking Division listened to eyewitness accounts of three trafficked persons who volunteered to share their stories. The press posed very knowledgeable, specific questions and was sensitive in its treatment of the three, which showed the effectiveness of the training on trafficking provided to journalists in the past few years.

The research team also attended a roundtable in the Verkhovna Rada on the implications of ratifying the UN Convention Against Organized Crime and its Palermo Protocol, organized by Winrock International and the VR Anti-Organized Crime and Corruption Committee. This was an important forum for legislative change. It included presentations from government organizations, law enforcement agencies and both national and regional NGOs, and illustrated the range of counter-trafficking activities in Ukraine. The Convention and Protocols were finally ratified by Ukraine in February 2004.

By participating in a roundtable in January 2004 in which the promotion of a national trafficking prevention hotline was the focus, the research team was able to gather information about the activities of a wide range of organizations. This event was organized by La Strada, the OSCE and the Ministry of Family, Youth and Children and included participants from public and private media, as well as representatives of government and community organizations.

At a more grassroots level, a roundtable for La Strada-Ukraine's anti-trafficking lecture groups provided useful insights into regional differences in public awareness campaigns, and various community outreach programmes for at-risk groups.

Finally, the consultants attended two international conferences, one organized by Winrock International on economic opportunities for women, and a second organized by Caritas-Ukraine, the Italian government and Caritas-Italiana, with a focus on trafficking from Ukraine to Italy.

1.3.3. Problems encountered

Among the problems encountered during the study was the fact that a number of government and law enforcement agencies were either reluctant to share information, or remained unavailable for interviews, despite repeated attempts to meet with them. Government representatives were also often hesitant about sharing any real opinions or anecdotal information, referring exclusively to the official position and statistical data.

While attempting to study the issue of trafficking in children or internal trafficking, it was found that these areas seriously lack both statistics and research. In connection with child trafficking, more often than not it was found that criminal cases were filed under kidnapping or other charges related with exploiting child labour, rather than specifically for trafficking in persons. Similarly, although internal trafficking was often mentioned as a major push factor for trafficking in persons abroad, and examples were given about

women trafficked from Donetsk to Kyiv or from Mykolayiv to Odesa from where they were then shipped abroad for their ‘debts’, most of these cases were not officially recognised as internal trafficking.

Within the time limits for conducting this assessment, it was not possible to cover all programmes conducted throughout Ukraine. Any omissions in this study are due to time and travel constraints, rather than a reflection of the quality of such programmes.

1.4. How this report is structured

This report is divided into nine chapters. The first seven chapters each provide an overview and assessment of:

- The study of trafficking in persons in Ukraine.
- Legal resources for counteracting trafficking in Ukraine.
- The situational analysis of trafficking in Ukraine.
- Prevention of trafficking in human beings.
- Prosecution of those who traffic in human beings.
- Protection and reintegration of trafficked persons.
- Mechanisms of coordination and cooperation in counteracting trafficking.

Two final chapters provide a summary of conclusions and recommendations.

LEGAL RESOURCES

2.1. A Review of Anti-Trafficking Legislation

2.1.1. Normative and rights legislation

As in many other countries, trafficking in persons is a phenomenon that has a high level of latency in Ukraine, due to a number of factors. One of these is the impossibility of studying the problem from all angles and objectively coming to conclusions using traditional methods. Counteracting trafficking in persons requires the consolidation of forces among a variety of institutions.

As early as 1998, recognizing the fact that the trafficking in human beings is among the most heinous crimes against an individual, the Government initiated changes to Art. 124-1, then the Criminal Code of Ukraine, entitled ‘The Trafficking of Human Beings’. It was defined in the article thus:

*The trafficking of human beings is the overt or covert exercise of power over an individual, connected with the transport of that individual, with or without his or her consent, across the Ukrainian border or within the territory of Ukraine, for the purpose of subsequent trafficking, or any other paid transfer of said individual, with the intent of exploiting that person in the sex business, pornography, criminal enterprises, indenture, adoption for commercial purposes, using the person in armed conflict, or the exploitation of their labour.*¹⁴

¹⁴ The Criminal Code of Ukraine, official edition, Kyiv, 1999, p. 71-2.

The placement of Art. 124-1 in the section on crimes against a person resulted in trafficking investigations being put under the jurisdiction of the Prosecutor General's Office, in accordance with Art. 112 of the Criminal Procedures Code entitled 'Investigative Jurisdiction'. This meant that only investigators from the Prosecutor General's Office were authorised to launch criminal proceedings pursuant to this article.

A number of additional changes were introduced to other legislative acts. For instance, amendments were made to Art. 7 of the Criminal Code, defining the 'Concept of Felonies'.¹⁵ A new amendment included 'trafficking in persons' in the category of serious crimes.¹⁶

On the whole, the introduction of an article defining the sentences to be imposed upon those convicted of trafficking in persons was an important step forward in combating this phenomenon: 1) Ukraine was the first post-Soviet state to adopt a law against this crime; 2) Ukraine was the first country in the region to include every aspect of trafficking in its legislation. For instance, Art. 124-1 imposed punishment not only for the trafficking of women forced into the sex business, but also for trafficking in persons for any type of exploitation, trafficking in children, and trafficking in human organs.

Despite the law's ground-breaking innovations, it remained flawed and required numerous modifications and improvements before it would actually be an effective legislative and prosecutorial tool against trafficking in persons, and thereby truly protect the rights of Ukrainian citizens. In particular:

- The name of the crime did not reflect its extent and did not meet the basic requirements of new international laws.
- The law did not differentiate among various forms of trafficking and specific aspects, such as trafficking in women for the purpose of sexual exploitation.
- The principles of definition and unified terminology were not applied; as a result, terms like 'sexual exploitation', 'pornography business', 'indenture' and 'labour exploitation' were used, but the full definitions remained unclear to both specialists and researchers.
- The content of the statute did not highlight the objective side of the crime in suitable detail. The objective side was defined simply as the overt or covert power or domination of a person connected with, or without, legal or illegal transport across state borders. But it is impossible to define power over someone as "overt or covert", if that power has been assumed as a result of fraud, assault, threat or illegal detention of a person or a child who is unable to understand the meaning of the actions being taken against them. The fact of trafficking or any other form of transferral of an individual for profit was not defined as part of the crime's objective side.
- The subjective side of the crime was also not presented ideally. To launch an investigation into any violations under Art. 124-1, it was necessary to prove the actual

¹⁵ Art. 12 'Classification of Crimes' of the Criminal Code of Ukraine adopted on 5 April 2001.

¹⁶ A felony is known as a 'serious crime' in Ukrainian and is one that carries a maximum sentence of 10 years.

intent of a suspect to exploit the person for the purpose of prostitution, pornography, involvement in criminal enterprises, imprisonment for indenture, or similar offences.¹⁷

To help address these and other legal concerns, the Verkhovna Rada adopted a new Criminal Code on 5 April 2001, which came into force on 1 September of the same year. Art. 149, entitled ‘Trafficking in Persons or Other Illegal Agreement Regarding the Transfer of an Individual’ was moved from the section on crimes against the life and health of an individual to the section on crimes against the will, honour and dignity of a person.

Compared to Art. 124-1, Art. 149 provides a new principle for defining this crime:

“The trafficking of human beings shall be defined as the sale or other paid transfer of an individual, as well as any other illegal transaction regarding that individual, involving the legal or illegal transfer of that individual across the state border of Ukraine, with or without that individual’s consent, with the intent of further sale or paid transfer of that individual to another individual or other individuals for the purpose of sexual exploitation, pornography, involvement in criminal enterprises, indenture, adoption for commercial purposes, use in armed conflict, or exploitation of labour.”¹⁸

The listed offences are punishable by imprisonment for 3 to 8 years.

The second part of Art. 149 assigns responsibility for the same actions when victims are either minor children or a group of individuals and the crime is committed by repeat offenders, through prior collusion among a group of offenders, through abuse of official power, or by an individual on whom the trafficked person had been financially or otherwise dependent. Sentences for convicted violators under this section of Art. 149 include imprisonment for a term of 5-12 years with the possible seizure of assets.

The third section applies to criminal acts mentioned in Para. 1 and 2 of this Article, if they are carried out by an organized group, involve the transfer of minor children abroad, prevent their return to Ukraine, aim to seize human organs from a victim for transplant or forced donation, or if any of these acts result in grievous consequences and bodily harm. Such acts are punishable by imprisonment for 8-15 years and seizure of assets.

¹⁷ Such flaws were mentioned in a number of papers: ‘Harmonisation of European legislation on responsibility for trafficking in persons’, V.M. Kuts, Bulletin №14 of the National University of Internal Affairs, Kharkiv, 2001, pp. 22-24; ‘The Objective Side of Crime under Art. 124-1 of the Criminal Code of Ukraine: Problems and Proposals’, A.M. Orlean, Ibid. №13, 2001, pp.48-55; ‘Problematic Issues in the Qualification of Crimes Tied to Trafficking in Persons’, Y.F. Strelakov, Ibid. №14, 2001, pp. 48-54; ‘Improving the Effectiveness of Law Enforcement Agencies in the Prevention and Combating of Trafficking in Persons’, M.M. Maksiuta, Ibid. №14-X, 2001, pp. 45-48; ‘Issues of Criminal Responsibility for Trafficking of Women by Organised Rings’, N.O. Hutorova, Ibid. Special Edition, 1999, pp. 26-29; ‘Activities of Ministry of Internal Affairs Anti-Trafficking Units: A methods handbook’, V.M. Kuts, K.B. Levchenko, V.O. Sobolev et al., 2001, 242 pages; ‘Illegal Migration and Trafficking in Persons in the International Legal Context’, 2 volumes, edited by Y.S. Shemchuchenko, Kyiv, 2001; and others.

¹⁸ The Criminal Code of Ukraine, official edition, Kyiv, 2001, pp. 97-98.

An analysis of Art. 149 leads to a number of conclusions. A more concise definition of the crime's components is provided, but the fact of additional illegal agreements for further trafficking aimed at sexual exploitation **MUST** be connected to the legal or illegal transit **ACROSS THE STATE BORDER OF UKRAINE**, with or without the consent of the victim, within this definition.

After these changes were made to the Criminal Code, Ukrainian anti-trafficking legislation more closely reflected international norms for combating this scourge, in particular the UN Convention Against Transnational Organized Crimes and the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons especially the Trafficking of Women and Children.¹⁹ However, Ukraine's anti-trafficking statutes still do not fully come up to international standards.

Changes also appeared in the Criminal Procedural Code, particularly in Art. 11, which defines the main provisions governing pre-trial investigations. The Addendum to the Article entitled 'Investigative Jurisdiction' shifts responsibility for trafficking investigations from the investigators with the Prosecutor's Office to police investigators.²⁰ Now, operational procedures and investigating criminal cases pursuant to Art. 149 of the Criminal Code are the responsibility of the Ministry of Internal Affairs.

Comprehensive Programme to Prevent Trafficking in Women and Children Resolution of the Cabinet of Ministers of Ukraine №1768, 25 September 1999²¹

To ensure a comprehensive approach to this problem and to coordinate the activities of different agencies, the Cabinet of Ministers adopted a comprehensive plan of action to prevent the trafficking of women and children. The Programme was planned to operate from 1999 to 2001.

The Programme included a range of activities directed towards improving existing legislation, signing international conventions, greater activity among law enforcement agencies and other government institutions, forming systems of preventive actions, and setting up conditions for social rehabilitation among the exploited. The Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Family, Children and Youth Affairs, the Ministry of Labour and Social Policy, the State Border Security Committee, Centres of Social Services for Youth, NGOs, international organizations, among others, were named as the executors of the Programme.

The adoption of a comprehensive plan was a major step towards dealing with the issue of trafficking in persons and the democratic development of the country. Still, the Programme had both positive and negative aspects.

¹⁹ During ratification in December 2000, Ukraine joined the UN Convention, but failed to sign the Protocols. During 2001, the MFA kept negotiating the ratification of the Protocols and on 15 November 2001, Ukraine joined the list of countries who are party to these conventions.

²⁰ The Criminal Procedural Code of Ukraine, Kyiv, Atika, 2001, pp.65-66.

²¹ Official Government Bulletin №39, 1999, p. 1947.

Positive aspects:

- Engaged many government institutions to prevent and combat trafficking in persons.
- Anticipated cooperation among government agencies and NGOs.
- Anticipated data collection on this problem.
- Included the introduction of a special course on human rights and trafficking in women into the school curriculum.
- Called for establishing within the MIA system a separate division to fight crimes involving trafficking in persons, which would be responsible for investigating such crimes.

Negative aspects:

- Did not always respect human rights principles, such as Art. 9, which mentioned keeping track of citizens who were arrested for being engaged in prostitution while abroad. Moreover, this Article treated trafficking in persons as a prostitution issue.
- Placed responsibility for enacting a good portion of the Programme solely on the Ministry of Family and Youth Affairs, which shortly afterwards was reorganized into the State Committee for Family and Youth Affairs.
- Failed to consider the need for enough specialists who might be able to carry out the different aspects of the Programme.
- Failed clearly to define channels of funding for the Programme.²²

Comprehensive Anti-Trafficking Programme for 2002-2005

Resolution of the Cabinet of Ministers of Ukraine №766, 5 June 2002²³

This Comprehensive Programme was adopted to extend the comprehensive approach to preventing and combating trafficking in persons in Ukraine. The Programme's three parts include objectives on the prevention of trafficking in persons, the prosecution of traffickers, and the protection of victims and their reintegration. The Programme places responsibility for coordinating activities and ensuring the implementation of its various measures with an Inter-Agency Coordinating Council for the Prevention of Trafficking in Persons. The MFCYA is responsible for the fulfilment of specific aspects of the Programme. This Programme, too, has both positive and negative aspects.

Positive aspects:

- Treats the issue of trafficking in persons holistically, unlike the earlier Programme, which only addressed women and children.
- Includes NGOs and international organizations, who have been the driving force in implementing the various aspects of the Programme.

²² 'Combating Trafficking in Women for the Purpose of Forced Prostitution: Ukraine Country Report', K. Levchenko, Kyiv, 1999, pp. 30-31.

²³ Official Government Bulletin №23, 2003, p. 1123.

- Anticipates not only measures to prevent crime, but also means of prosecuting the perpetrators and assisting victims.

Negative aspects:

- Lacks a clear mechanism for coordination among the various executors of the Programme.
- Lacks mechanisms for funding the various parts of the Programme.
- Lacks clear time-lines for implementing the various parts of the Programme and accountability among the responsible institutions.

In terms of protecting victims and reintegrating them into society, the negative and positive aspects of the Programme are analysed further in relation to Ukrainian legislation that is geared towards assisting those who have suffered from trafficking.

Establishing an Inter-Agency Coordinating Council for the Prevention of Trafficking in Persons Resolution of the Cabinet of Ministers of Ukraine № 1961, December 25, 2002²⁴

In accordance with this Resolution, the Inter-Agency Coordinating Council for the Prevention of Trafficking in Persons is a permanent advisory body under the Cabinet of Ministers of Ukraine that is established to carry out the coordination of measures taken to prevent trafficking in people. The head of this Coordinating Council is the Minister of Family, Children and Youth Affairs. The Resolution also decrees that the Council shall convene on an as-needed basis, but not less than once in a quarter (90 days). Despite the fact that the membership of the Inter-Agency Council was announced by the Chair in June 2003, the body met for the first time only in September 2004. Another negative point is the fact that representatives of NGOs and international organizations are not included among Council members, although this was recommended by the Resolution.

2.1.2. Legislation on prostitution

Prior to the adoption of the new Criminal Code in 2001, prostitution was not considered a felony in Ukraine but an offence against the public order. It was categorized along with such misdemeanours as juvenile hooliganism and consumption of alcohol in public places.

Art. 181 (1) ‘On Prostitution’, which was added to the Administrative Code of Ukraine in 1987 and amended in 1997, reads:

“Engaging in prostitution shall result in a warning or payment of a fine equal to 5-10 times the untaxed minimum wage. If the same activities are repeated within a year following the administrative penalty, the violator shall be penalized by a fine equal to 8-15 times the untaxed minimum wage.”²⁵

²⁴ Official Government Bulletin №52, 2002, p. 2381.

²⁵ The untaxed minimum wage is UAH 17 or about US \$3.

Thus, under the old legislation, prostitution itself threatened only public order, although at the same time, the coercion of women into prostitution was punishable under the Criminal Code.

Art. 303 ‘Prostitution and Coercion or Enticement into Prostitution’ was added to the new Criminal Code. The first part of Art. 303 reads:

“Systematic prostitution, that is the providing of sexual services for material gain, is liable to a fine of between 50 and 500 times the official untaxed minimum wage or the performance of community service up to 120 hours.”²⁶

The second part of the Article imposes punishment for coercion or enticement into prostitution – that is, the provision of sexual services for payment – through the use of violence or threats of violence, destruction or damage of property, blackmail or fraud, of a fine between 500 and 1000 times the official untaxed minimum wage, detention for up to 6 months, or imprisonment for 1-3 years.

The third part defines punishment for the actions stipulated in part one and two of the Article when they involve a minor or are committed by an organized group as imprisonment for 3-5 years.

The fourth part states that pimping, meaning establishing, managing or participating in an organized group that does business involving the provision of sexual services by men or women for profit, can result in imprisonment for 5-7 years.

Ever since this Article went into force, there has been a debate about the first portion of the statute, which determines responsibility for prostitution itself and the destructive effect it has on efforts to investigate trafficking in persons. Representatives of some law enforcement agencies, including foreign ones, say that the criminalisation of prostitution in Ukraine could end up deterring trafficked persons from appealing for help or filing complaints with the police about having been coerced into the sex industry. This could also provide an opportunity for traffickers to blackmail their victims. Should the police uncover the crimes being committed by the perpetrator, the victim could also face charges for engaging in prostitution. As an argument in support of this, law enforcement officials refer to the terms of Art. 40 ‘Physical or Mental Coercion’ and Art. 39 ‘Extreme Need’ of the Criminal Code.

In particular, Art. 40 stipulates that any “action or inaction that damages the interests of law enforcement and is performed while under the influence of direct duress which prevents the individual from controlling his or her behaviour will not be considered a crime”.²⁷

The second part of Art. 40 states that *“The criminal responsibility of an individual for damage inflicted upon law enforcement interests while under*

²⁶ The Criminal Code of Ukraine, official edition, Kyiv, 2001.

²⁷ Ibid.

*physical duress, but maintaining the ability to control his or her actions, should be determined according to the provisions of Art. 39 of the Code”.*²⁸

Art. 39 states: *“It is not a crime to harm law enforcement interests in a state of extreme necessity, that is, to remove immediate danger that directly threatens individuals or their lawful rights...if the danger in a particular situation cannot be removed in any other way...”*²⁹

In practice, law enforcement officials rarely apply this statute. The first part of this Article will be eliminated after the Criminal Code is amended so that national legislation will be in compliance with the requirements of the UN Convention Against Transnational Organized Crime and the supplementary Palermo Protocol, which Ukraine ratified on 4 February 2004.

2.1.3. Compensation for damages

Under current Ukrainian legislation, an individual who has suffered financial, physical or psychological damage as a result of being a victim of a crime has the right to bring a civil suit against the individual or individuals responsible for the damage, separate from or in addition to any criminal case that may be considered in a court of law.³⁰ Any awards to the victim in a civil action are exempt from federal taxes, while responsibility for proving the guilt of the defendant rests with the pre-trial investigating unit. The court considers the evidence for the plaintiff’s claim, and rules whether compensation for material physical or psychological damages is warranted. These are the standards that apply under civil law, regardless of the type of crime.

Although the law provides for every person to have the right to pursue and receive compensation for damages, in practice, this is very difficult. To start with, a civil suit involving trafficked persons is considered jointly with the criminal case, and the assets of the defendant, if any, are the basis for any awards. However, the process of collecting any money is such that, once the guilt of a defendant is established, the trafficker’s assets are confiscated on behalf of the state. Victims have to collect any awards or compensation for material, physical or psychological damages from the State Treasury.

Financial damages are awarded on the basis of the actual circumstances of the crime, whereas psychological damages can be evaluated by the trafficked persons themselves. For example, in the case of Anna M. from Sevastopol, it was proved that she incurred financial losses of UAH 300 (the cost of travel documents and telephone calls to her parents), but she assessed her psychological damage at UAH 10,000.

A judge determines the amount of any awards for psychological damage, and past practice has shown that actual awards of this type are generally much lower than the amount

²⁸ Ibid.

²⁹ Ibid.

³⁰ Art. 28 ‘Civil Suit in a Criminal Case’ Criminal-Procedural Code of Ukraine.

sought by the victim. If the accused is cleared of all charges in a criminal case, then the civil suit is dealt with separately, in accordance with the norms of the Civil Code.

Thus, it is technically possible for trafficked persons to receive compensation for damages. In practice, however, it is difficult to do because:

- The mechanism for receiving compensation is very complicated: first assets are seized by the government, and then transferred to the plaintiff.
- There are no established norms for compensation linked to mental suffering or psychological damage.
- Often defendants have no assets that can be seized to satisfy a civil judgement.

In order to simplify this process and make it realistic for victims to receive compensatory awards, there needs to be a mechanism for such compensation to be provided by the state.

2.1.4. Witness protection law

‘The Security and Protection of Persons Involved in Criminal Court Proceedings’ Law of Ukraine №3926-XII, 4 February 1994³¹

Trafficked persons are formally entitled to receive official protection according to the Law on the Security and Protection of Persons Involved in Criminal Court Proceedings. Currently, this is the only piece of legislation in Ukraine that provides for witness protection in criminal proceedings.

An analysis of the law shows that it is actually a good one, but it is more declarative than actual. This is because the security measures stipulated by the statute are quite costly, and unfortunately the state is unable to underwrite these provisions. Also, no mechanism has been developed to implement the statute.

This law defines a range of safety measures, including:

- personal bodyguards.
- security services for home and property.
- provision of special means for individual protection or warnings of impending danger.
- the use of surveillance technology.
- tapping of phone and other conversations.
- visual surveillance.
- the provision of new personal documents and a changed appearance.
- change of residence.
- guaranteed confidentiality of personal data.
- a closed trial.

³¹ Holos Ukrainy, 2 March 1994, № 40 (790).

But MIA officials admit that, to date, none of these measures is being used during the investigation of trafficking cases.

Trafficked persons and witnesses have the right to choose the desired level and type of security measures, but they do not have the right to insist on being provided with them. The ultimate decision for providing security during an investigation rests with the investigators. During actual court proceedings, this decision rests with the judge. In situations where the trafficked persons are not aware of possible dangers to their person, the investigator or criminal investigation official can request security measures.

Yet, in contrast to providing security, some of the law's provisions have particular importance, and implementing them does not require any additional cost. For example, Art. 15 stipulates the confidentiality of any personal data regarding the victim including "... limiting disclosure of personal information in materials used during trial proceedings, name changes, use of pseudonyms..."³² Despite this stipulation, in practice the accused has access to the protocol during suspect identification and face-to-face interviews. If elementary security measures are not taken, this suspect can immediately obtain the personal data of the trafficked persons, even at the investigation stage.

Guaranteeing the confidentiality of personal data during trafficking cases is even more vital when the sensitive nature of the issue is considered. A suspect may already have all the information about possible witnesses against him or her that he or she needs in order to exact retribution or to intimidate, since he or she more than likely was engaged in one way or another in enticement, in preparing documents, or other activities. Sometimes even a small amount of data is enough for the suspect to positively identify the trafficked person who is to testify against him or her.

Closed trials are also a very important factor in encouraging trafficked persons to testify against traffickers. However, in the general provisions of Ukrainian law, trafficking in human beings is not included in the category of crimes that are subject to closed trials.³³ More often than not, trafficking cases raise a lot of publicity in the community and the press. There was a well-known case where accusations of a criminal nature were posted on the website of the University of Internal Affairs, including the names of the participants in the trial, which violated the right to confidentiality of the victims and witnesses.

A judge can declare a trial closed after reviewing a victim's application for such a trial. But trafficked persons and witnesses are often not even aware of the fact that they have a right to apply for such a trial, so they do not take advantage of this right. In most cases, moreover, when the witness protection law is applied, the police apply only the most basic forms, such as bodyguards and confidentiality of personal information.

³² Ibid.

³³ Art. 20 of the Criminal Procedural Code defines the types of crimes whose trials are to be closed as cases whose examination threatens the preservation of state secrets. A closed trial can also be called, if the court provides grounds for such, in sex crimes and other cases where the aim is to prevent information about the private lives of persons involved in such trials from being divulged and in cases where this is required for the safety of persons who are under protection.

In addition to the adoption of the Law on ‘The Security and Protection of Persons Involved in Criminal Court Proceedings’, changes were made in the Law on ‘State Protection of Workers in the Judiciary and in Law Enforcement Agencies’ (№3925-XII dated 4 February 1994) which clarified the kinds of security measures to be taken on behalf of judges, police detectives and prosecutors. Unfortunately, so far, the main thrust of security measures during court proceedings has been for the benefit of state officials, and not witnesses and trafficked persons. In summary, the witness protection programme in Ukraine has both positive features and shortcomings.

Positive aspects:

- Provides a witness protection law for trial participants and conforms to international standards.
- Includes a special witness protection department.
- Shows that law enforcement agencies understand the problem and the need to work with NGOs.
- Provides for trafficked persons to receive assistance from NGOs.

Negative aspects:

- Is not being applied, largely due to lack of funding and lack of mechanisms.
- Considers only the physical security of participants and does not address social security.
- Focuses, in practice, on officials, not on trafficked persons or witnesses during trials.
- Does not ensure sufficient awareness of the particular needs and concerns of trafficked persons among protection department agents assigned to provide protection.
- Does not enshrine a mechanism for cooperation between law enforcement agencies and NGOs.
- Provides no specific witness protection programme for trafficked persons who testify.

2.2. Social Assistance to Trafficked Persons

The main legislative acts regulating social assistance to trafficked persons in Ukraine include:

- Cabinet Resolution №766 of 5 June 2002, on ‘The Comprehensive Anti-Trafficking Programme for 2002-2005’.
- Cabinet Resolution №987 of 27 June 2003, on ‘Establishing Standard Rules for a Rehabilitation Centre for Trafficked Persons’.
- Law № 2558-III of 21 June 2003, on ‘Social Work with Children and Youth’.
- Law № 966-IV of 19 June 2003, on ‘Social Services’.

The most important of these are worth closer analysis.

Comprehensive Anti-Trafficking Programme for 2002-2005 Resolution of the Cabinet of Ministers of Ukraine №766, 5 June 2002

This Comprehensive Programme to prevent and combat trafficking in persons in Ukraine is organized in three parts to include objectives in the prevention of trafficking in persons, the prosecution of traffickers, and the protection of victims and their reintegration. Its third section, which deals with the protection of victims and their reintegration, is examined here. It, too, has both positive and negative features.

Positive aspects:

- Describes the possibilities of working with NGOs, charitable organizations, law enforcement agencies and the Ministry of Foreign Affairs in providing the necessary assistance to repatriate Ukrainian citizens to their homeland.
- Makes it possible to set up a network of reintegration and crisis centres for trafficked persons. This can be done in cooperation with government agencies, NGOs, charities, and international organizations.³⁴
- Contains articles that underscore the urgency of providing trafficked persons with the necessary medical, psychological and legal assistance.
- Includes NGOs among possible executors of the aspects of the Programme that concern providing assistance to trafficked persons.
- Anticipates developing and approving a standard resolution on rehabilitation and crisis centres for people who have been trafficked or suffered other forms of exploitation.³⁵

Negative aspects:

- Lacks mechanisms for how NGOs and charities should work with law enforcement agencies and the Ministry of Foreign Affairs.
- Contains an incomplete and inadequate list of the kinds of services that trafficked persons would need.
- Lacks a clear definition of the financing for the different parts of the Programme.

Establishing Standard Rules for a Rehabilitation Centre for Trafficked Persons Cabinet of Ministers Resolution №987, 27 June 2003³⁶

In accordance with the definition given in this regulation, a rehabilitation centre for trafficked persons is a specialized institution whose activity is directed at providing a range

³⁴ In practice, such centres are based on Oblast Youth Services Centres in close cooperation with local NGOs. Of course, since the resolution on the State Committee of Family and Youth places the main responsibility for this on the same committee, funding can only be provided for youth or children's organizations, and not to the women's organizations which, as a rule, are the initiators behind setting up rehabilitation centres. This is a major hurdle to getting government support for the work of women's rehabilitation centres.

³⁵ This point in the Programme has already been carried out through the passing of Cabinet Resolution №987 of 27 June 2003, on 'Establishing Standard Rules for a Rehabilitation Centre for Trafficked Persons'. See further.

³⁶ Official Government Bulletin, 2003, №27, p. 1324.

of social and rehabilitation services and organizing medical assistance for those who have been trafficked, in order to help them out of a psychological crisis state.

This definition is a very important milestone for the Government to continue its anti-trafficking activity. The Regulation has both positive and negative aspects.

Positive aspects:

- Shows understanding at the Government level of the urgency of creating rehabilitation centres for trafficked persons.
- Defines the functions of rehabilitation centres, which makes it easier to prepare documents to open such centres for trafficked persons.
- Anticipates cooperation among rehabilitation centres, government agencies, NGOs and charities.
- Declares the urgency of engaging health organizations in providing assistance to trafficked persons at these centres.

Negative aspects:

- Allows only government agencies to establish rehabilitation centres, which leaves unresolved the issue of funding for the operation of shelters that work under NGOs and religious organizations.
- Lacks clear mechanisms for work between government agencies and NGOs.
- Places responsibility for financing the operation of rehabilitation centres for trafficked persons entirely on local budgets. However, because regional budgets are operating at different levels of funding, finding money to open such centres can prove difficult.
- Lacks options for financing rehabilitation centres from the State budget, which complicates the coordination of opening such centres and establishing networks as described in Art. 30 of the Anti-Trafficking Programme.

Social Services

Law of Ukraine №966-IV, 19 June 2003³⁷

This law defines the main organizational and legal bases for providing social services to people who find themselves in difficult situations and need outside help.

For the first time in Ukrainian legislation, the term ‘social worker’ is defined, a term that has long been used by specialists but was not reflected in legislation. The law also defines such terms as ‘social services’, ‘social centres’, ‘social support’, ‘volunteers’, and ‘temporary shelter for minors and adults’. The term ‘social centres’, defined as establishments that have the right to provide social services, is extended to all organizations of whatever form of ownership, as well as individuals who provide such services, and not just Centres of Social Services for Youth as in the Law on ‘Social Work with Children and Youth’. The

³⁷ Ibid., 2003, №29, p. 1435.

definition of ‘subjects of social services’ also includes non-state establishments that do not intend to profit from providing social assistance.

The law also defines the criteria for both paid and unpaid services to the general public and provides for two main forms of social services: material support and social assistance. Material support can be given to those in a difficult situation, either in cash or in kind.

This law anticipates such social services as social amenities, psychological, medical, economic, legal, job placement, and informational, among others.

Social services are provided by organizations according to their statutes, which should include a list of the social services provided and the category of persons to whom they are given.

The categories of people who can be offered social assistance include the unemployed, refugees, the elderly, the sick and invalids, orphans, impoverished youth, and others. Trafficked persons are not included in the list of categories that have a right to receive social services. However, relatives of trafficked persons, such as elderly or incapacitated parents, or the children of parents who cannot provide for them, are eligible for such assistance. The full list of social services, conditions for providing them, and the proper regulation of fees are supposed to be determined by the Cabinet of Ministers.

The law anticipates cooperation among all structures involved in providing social services, and financial support on a competitive basis from the government to NGOs who provide such services. Professional activity in providing social services must now be licensed. Once again, the law has both positive and negative points.

Positive aspects:

- Contains key terms for social work and for providing social services.
- Allows for trafficked persons to be regarded as persons in trouble, although this category is not listed separately.
- Recognizes the role and participation of the non-government sector, such as NGOs, charities, faith-based organizations, and individuals whose activities include providing social services, in providing such services.
- Anticipates cooperation among all structures involved in social services, both government and non-government institutions.
- Provides for the delivery of government social services through NGOs.
- Determines the need to license those who provide social services, which should help to improve the quality of such services.
- Includes a list of social services most needed by trafficked persons.

Negative aspects:

- Does not specifically identify trafficked persons and their immediate family members as a category eligible for being provided with social services. This makes it difficult (or sometimes even impossible) to provide these individuals with such services.

- Fails to define the amount of cash support for those who are in trouble.
- Fails to define a mechanism for cooperation among different organizations.
- Fails to provide clearly funding for the implementation of the law.

Social Work with Children and Youth

Law of Ukraine № 2558-III, 21 June 2001³⁸

In accordance with this law, the social rehabilitation of those who have suffered from trafficking is to be carried out by juvenile services and centres of social services for youth in the following manner:

- Systematically keep track of and supervise children and youth who are in difficult life situations.
- Organize systematic and full-range activities oriented towards overcoming life problems, and upholding and raising the social status of children and young people. Social follow-up and rehabilitation shall include:
 - ◆ Providing a wide range of social services: medical, psychological, legal, informational, financial, and other services.
 - ◆ Developing and implementing a system of measures to create better living conditions for children and young people.
 - ◆ Developing and implementing rehabilitation measures to improve the social functions of children and youth, their moral, psychological and physical state, and their adaptation to healthy lifestyles; and providing assistance to children and youth who have suffered from cruelty and abuse or have experienced extreme situations.

Social work involving children, youth and families is defined in the Law on ‘Government Standards and Guarantees’. These standards and norms apply to all subjects of social work. Subjects such as trafficked persons are not separately identified in this law. Hence, Ukrainian legislation concerning the provision of social assistance to trafficked persons has both positive and negative features.

Positive aspects:

- Contains guidelines for providing social services for children and youth, and other categories of the population who can be regarded as part of the country’s youth, family and gender policy. It also defines social work as systematic and broad-ranging, explains the main points of social work, its principles, objects and subjects, and lists types of services and their features.
- Treats trafficked persons both as subjects and objects of social work by increasing available resources for the family, the community, and trafficked persons themselves.

³⁸ Ibid., 2001, №29, p. 1293.

- Defines cooperation among subjects of social work for the benefit of clients.
- Allows for the possibility of alternative social services (provided by the government or NGOs), thus offering victims more freedom of choice of both paid and unpaid services, avoiding ‘consumerism’ and ensuring that such services are clearly targeted.

Negative aspects:

- Lacks a mechanism for identifying trafficked persons who need to be provided with social assistance by the government.
- Needs to provide for social assistance to the families of trafficked persons, including care for children.
- Needs to standardise social services provided by NGOs.
- Needs financing for state programmes on combating trafficking in persons and providing social assistance to trafficked persons.

The resolution of these issues will determine the development and implementation of social follow-up and rehabilitation of trafficked persons and social services for their families.

SITUATIONAL ANALYSIS

Trafficking is often described as a form of modern-day slavery. This, for many people, evokes images of women, men and children being snatched from their homes and forcibly transported elsewhere for exploitation. However, research tends to conclude that, in the vast majority of cases, trafficking is a distorted mode of migration. It transforms very specific migration plans, such as the desire to accumulate savings or support dependants by migrating for work, into a total nightmare.³⁹ Therefore, not every man, woman and child is at risk of trafficking, as is sometimes suggested, but mainly those migrating to seek work abroad, to marry a foreigner, or to achieve similar goals. Moreover, the majority of this group are expected to migrate successfully.⁴⁰

3.1. Overview of Migration

There are no reliable estimates about the extent of trafficking in Ukraine, mainly due to the difficulties associated with the identification of trafficked persons (see Chapters 1, 5 and 6). Nor are there reliable means of monitoring the numbers of people currently moving abroad and staying there. Moreover, due to the irregular nature of much migration, it is even harder to determine which people have become victims of trafficking. Therefore, realistic

³⁹ 'Is Trafficking in Persons Demand-Driven?', IOM Migration Series, №15, 2003.

⁴⁰ Trafficking in children requires special and separate attention. In certain cases, the trafficking of minors arises in the same context as the trafficking of adults: adolescents seeking opportunities abroad end up being trafficked. In this study, however, trafficking in children has been reported sometimes to arise from the hiring out of young children for begging. In such cases, the paradigm of trafficking as 'a migration plan gone wrong' is clearly inappropriate.

statistics on which to base discussions on trafficking are impossible to obtain. Still, some ‘spot’ statistics are presented as partial indicators of the extent of trafficking, as ‘push’ factors and patterns of migration from the country can provide a starting point for considering trafficking.

Accepting that reliable estimates of migration from the country have been elusive, the Ukrainian Ombudsman for Human Rights has reported that between two and seven million Ukrainians have gone abroad. For a different perspective, the State Border Service of Ukraine reported that, in 2002, more than 11 million people crossed the border. Many of those making the crossing—although it is not possible to say exactly how many—were believed to be doing so in connection with migration for work abroad.⁴¹

3.1.1. Migration from border oblasts

A 2001 study on labour migration conducted in selected regions indicated that only two million Ukrainians had migrated abroad at that time. This study also highlighted some interesting geographical patterns in migration. Oblasts bordering Western countries showed particularly high rates of migration. For example, Zakarpattia oblast, which borders all four of Ukraine’s western neighbours, contributed the most to migration in 2000, representing 10 per cent of overall movement. This was attributed to both the traditional excess of labour in this area coupled with a lack of employment opportunities. Ivano-Frankivsk oblast followed with the next highest figures, contributing 6.5 per cent to overall migration, followed by L’viv, Chernivtsi and Volyn oblasts, which contributed 2.7-4.5 per cent to the overall movement. Although Luhansk, Donetsk and Rivne oblasts contributed less than 2 per cent,⁴² it is clear that those areas which were formerly heavily industrialised, such as Donetsk, have suffered seriously from the closure of mines and other industries, leading to growing numbers of unemployed in search of opportunities abroad.

3.1.2. Rural migration

The study also showed that rural communities have been the most acutely affected by economic transition, and thus by migration. Migration from these areas represented more than 50 per cent of the overall movement. The fact that the population density in rural areas is half of that in urban areas means that this has led to almost catastrophic losses of inhabitants from the Ukrainian countryside.⁴³

Possibly, rural migration has affected women more than men. Recent research suggests that the proportion of young women leaving the countryside is 1.5 times higher than that of men. This is being seen as a ‘silent revolt’ by women against the inequality they have traditionally faced in villages.⁴⁴ Young people in the countryside have been particularly affected by the closure of collective farms in rural areas. Every year, some 200,000 students

⁴¹ State Border Service Statistics for 2002.

⁴² ‘Trafficking from Ukraine for Labour and Sexual Exploitation’, ILO (1) draft report, Kyiv 2003, 69 pp.

⁴³ Ibid.

⁴⁴ ‘Gender Issues in Ukraine: Challenges and Opportunities’, UNDP report, Kyiv, 2003.

graduate from high schools in rural areas and see little future for themselves in the villages. They, too, are moving away in droves.⁴⁵

As a whole, young people aged 15 to 28 constituted over a third of the labour migration flow in the regions studied, although this also depended on the extent of urbanisation in the region. The majority of migrants remained men, constituting 64.6 per cent of all migrants, while women made up 35.4 per cent of the total.⁴⁶

3.2. Legal vs. Illegal Migration

It is clear that much of the migration described here has been illegal. The Ukrainian Ombudsman for Human Rights believes that a majority of the two to seven million who have gone abroad to seek work and managed to do so successfully, in fact, most likely did so illegally.⁴⁷ This does not imply that most Ukrainians have migrated clandestinely, but that few have migrated in possession of valid work permits, since legal opportunities for work abroad are few. The situation is summed up by a respondent from Mykolayiv here.

“People are aware of trafficking and know that work abroad should be legal, but they travel illegally since there are no opportunities to obtain a work visa. Not one of the companies working in this city has an official agreement for job placements abroad.”

Interview with the MIA Passport Office, Mykolayiv oblast

State Employment Centres can only provide legal opportunities abroad when there is a bilateral agreement with the destination country and concrete requests have been received from employers.⁴⁸ Ukraine has bilateral agreements with 11 countries, but currently there are no requests for employees from any of them. Moreover, there are no specified quotas for job placements of Ukrainian citizens in these countries.⁴⁹ Only regularised Ukrainians working lawfully in these countries will be afforded protection under bilateral agreements.⁵⁰

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ ‘Helping Survivors of Human Trafficking’, Winrock International, Kyiv, 2003, speech by Nina Karpachova, the Verkhovna Rada’s Ombudsman for Human Rights.

⁴⁸ Interview with State Employment Service, Kyiv, 3 February 2004

⁴⁹ These countries include: Poland, the Czech Republic, Lithuania, Estonia, Latvia, Russia, Moldova, Belarus, Slovakia, Armenia, Portugal and Vietnam. Additional agreements are now being negotiated with Hungary, Cyprus, Italy, Libya, Bulgaria, Georgia, Ireland, Iran, Kazakhstan, Romania, Argentina, Azerbaijan, and Greece.

⁵⁰ Compare these resolutions with the legislation of those countries who have ratified the UN Convention on the Rights of Migrant Workers and Their Families or ILO Convention №143, The Migrant Workers Convention (Supplementary Provisions) of 1975, concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers. These instruments guarantee protection to such persons, irrespective of their migration status. Also note a recent decision of the Inter-American Court of Human Rights, which declares that non-discrimination and the right to equality were *jus cogens* applicable to all residents regardless of immigration status. Moreover, once an employment relationship has been initiated, unauthorised workers become rights-holders entitled to the full panoply of labour and employment rights available to authorised workers. See ‘The rights of non-citizens’, a report by David Weissbrodt to the UN Sub-Commission on Human Rights, E/CN.4/Sub.2/2003/23.

Job placement agencies licensed in Ukraine, of which there are approximately 455, (depending on the number of licenses issued or revoked in any given month) can also offer job opportunities through their own contacts with employers in destination countries. The SEC reported that, for the first six months of 2003, 18,940 Ukrainian citizens registered as legally working abroad had found their employment through such job placement agencies. The majority of these people were working in the Czech Republic, Germany, Cyprus, Greece, Great Britain, and Russia.⁵¹

During the first six months of 2003, 2,031 individuals from Donetsk were registered as working abroad. These included 126 in Russia, 1,097 in Greece, 181 in Great Britain, 174 in the United Arab Emirates, 105 in Cyprus, 47 in Latvia, 3 in Estonia, 2 in Germany, and 1 in Italy.

Donetsk Oblast SEC statistics

Nevertheless, this information reflects only the movement of those citizens who stated that their purpose for going abroad was employment. Those who did register, in the opinion of employees of statistical agencies and employment services, represent only a small proportion of the real contingent working abroad.⁵²

Aside from legal work, job placement agencies also offer many more positions that are not entirely legitimate. For instance, many positions are arranged with employers in destination countries on the basis of tourist visas rather than work visas. These activities, among other evidence, have led to the belief that job placement agencies may often be involved in trafficking. Data on trafficked persons has occasionally confirmed that job placement agencies may have been involved in trafficking. But the latest information suggests, in fact, that employment agencies play a very minor role in trafficking activities, at most by providing tourist visa services for those who are going abroad to work (see Section 3.7). The organization of some of these illegitimate kinds of placements in Uzhhorod is described here.

“Today, there are about three or four serious companies in Uzhhorod who handle job placement abroad. As far as we know, these agencies work honestly and send people to countries with whom bilateral agreements have been signed. But there are also firms who work differently. Some of those returning from abroad report that, although they received their wages, they were working illegally and had no social security. The set-up for illegal employment is as follows: the tourist agency arranges a 7-12 day tourist visa for Schengen countries and the client is then transported by train, plane or minivan to a neighbouring country, and from there they travel further. For example: by train to Poland, by bus to Germany, and then by minivan to Spain. On reaching their destination, the migrant pays once more for the specific job placement.”

Interview with the Zakarpattia Youth Employment Centre

⁵¹ Op. cit., interview SEC.

⁵² ILO draft trafficking report *supra*.

In addition to those who have registered as ‘working abroad’ with an SEC, there are numbers of Ukrainians legally residing and working abroad without ever having registered with an SEC. Moreover, many Ukrainians have regularised themselves in Western European countries, taking advantage of periodic amnesties for illegal residents.⁵³

For instance, the Spanish consulate has reported 45,000 regular and at least 70,000 illegal Ukrainians in Spain. The Portuguese consulate has recognised as many as 130,000 Ukrainians with working visas in Portugal, and a further 20,000 Ukrainians residing illegally.⁵⁴ The Turkish consulate has reported that there are some 200,000 illegal Ukrainian workers in Turkey and it has been pushing for their regularisation. Although every year nearly 180,000 Ukrainians travel to Turkey, only about 35,000 stay behind.⁵⁵ The Italian Ministry of the Interior estimated that, in 2000, 6,598 Ukrainian women were legally registered, out of a total of 8,761 Ukrainian nationals known to be in Italy.⁵⁶ However, by the end of 2003, nearly 100,000 Ukrainian migrants had gained legal status in Italy.⁵⁷ Moreover, some Italian organizations are certain that the number of Ukrainians residing illegally in Italy far exceeds these figures.

In conclusion, opportunities for legal migration from Ukraine are few, and even those organizations that should be providing legal positions, such as job placement agencies, are also contributing to the incidence of illegal migration. While much of this migration has been considered successful, irregular migration remains in violation of the law. Yet, far from being something exceptional or reprehensible, irregular migration actually represents the normal face of movement from Ukraine. This reality is a source of considerable problems in combating trafficking. A trafficking organization, functioning in similar manner to a job placement agency that facilitates irregular migration, may not appear any different from legitimate services arranging successful migrations.

3.3. Extent of Trafficking

Determining the extent of trafficking among overall migration numbers is not possible. Nevertheless, there are figures that can throw some light on the situation.

3.3.1. Trafficking statistics

In 2003, there were 289 trafficking cases filed by the Anti-Trafficking Unit of the MIA, involving 413 victims.⁵⁸ In 2002, 169 cases were filed with the MIA, involving a total of 400 victims. In addition, between 2000 and the end of 2003, IOM assisted 1,153 trafficked

⁵³ Italy declared four amnesties for illegal residents between 1986 and 2002. Spain and Portugal followed suit, with Portugal declaring an amnesty in 2000 and Spain declaring two in recent years.

⁵⁴ Interviews with Spanish and Portuguese Consulates, *supra*.

⁵⁵ Interview with Ahmed Dogan, Turkish Consulate, 18 December 2003.

⁵⁶ ‘Migration Policy’, Caritas-Ukraine.

⁵⁷ Interview with Gabrielle Papadio of the Italian Embassy in Ukraine, April 2004.

⁵⁸ MIA statistics.

persons – all of the trafficked persons assisted during that period.⁵⁹ Also in 2002, Interpol Ukraine received 742 notices from 30 countries concerning trafficking crimes against Ukrainian citizens, including 126 from Turkey, 61 from Germany, 42 from Italy, and 24 from Belgium.⁶⁰ The overwhelming majority of trafficked persons referred to in this data are women, with a small proportion of minors.⁶¹ There are many possible reasons for this bias, in the light of increasing evidence about the trafficking of men and children (see Chapter 1).

3.3.2. Most vulnerable regions

Whether the extent of trafficking from specific oblasts resembles the overall migration patterns from Ukraine described above is difficult to tell. A number of respondents reported that, whereas trafficking was originally seen particularly to affect to urban dwellers, it has now more increasingly begun to affect rural Ukrainians. This change in trends has been attributed to a heightened awareness of trafficking among potential victims in urban areas, provided mostly by informational campaigns.⁶² However, rural communities have generally witnessed more migration than urban areas, especially of women. Thus, the fact that there are more trafficking cases from these areas is not surprising.

Although there was no disaggregated data available for trafficked persons by region, there are figures representing the regional numbers of trafficked persons providing testimony to law enforcement agencies in 2003. Kharkiv reported the highest number of trafficked persons (66) followed by Donetsk (41), Luhansk (35), Dnipropetrovsk (20), and Ternopil (17). Of those areas targeted for this study, Odesa police reported only 4 trafficked persons willing to provide testimony, Mykolayiv 2, and L'viv and Uzhhorod 9 each.⁶³

Law enforcement respondents also noted that the most effective anti-trafficking departments in Ukraine were to be found in Kharkiv, Donetsk, Dnipropetrovsk and Luhansk oblasts which, all other things being equal, might suggest the seriousness of the problem from these oblasts.⁶⁴ Hotline statistics also indicate particular problems in the highly industrialised regions of Ukraine that, since independence, have witnessed a collapse of traditional industries and higher unemployment. These include Donetsk, Luhansk and Sumy.

3.3.3. Key destination countries

Another migration pattern worth noting is the tendency for inhabitants of certain oblasts to migrate to specific destination countries. For example, residents of Ternopil oblast tend to migrate to Italy, Portugal and Spain; those from the Crimea to Turkey, the United Arab Emirates, Portugal, Cyprus, Israel, Syria and Macedonia; those from Donetsk oblast to Russia, Serbia, Turkey, Lebanon, Macedonia, and Israel; and from Zakarpattia they tend

⁵⁹ 'Combating Trafficking in Persons in Ukraine: Cooperation and Support from NGOs', IOM report of 31 December 2003.

⁶⁰ Op. cit., Aleksieyeva, Y. Galustian, et al.

⁶¹ Op. cit., IOM NGO report.

⁶² Ibid.

⁶³ Op. cit., IOM NGO report.

⁶⁴ Interview with the Anti-Trafficking Department, Main Administration of MIA in Donetsk.

to go to their neighbours: Poland, Hungary, the Czech Republic, and Romania.⁶⁵ Some researchers are convinced that the patterns of trafficking follow general migration trends, while others⁶⁶ believe that trafficking patterns have more to do with the personal connections of the traffickers operating in a particular oblast than the proximity of, or traditional links with, certain destination countries. In other words, someone can just as easily be trafficked from eastern Ukraine to Moscow, and then re-routed from there to almost anywhere in the world.⁶⁷ This study has been unable to determine which position reflects reality.

The main destination countries for trafficked persons suggested by key informants for the study (without considering the oblasts of origin of the person) included Russia, Turkey, Italy, Spain, Portugal, Germany, former Yugoslavia, Hungary, Greece, the Czech Republic, the UAE, and Israel. However, a review of the latest IOM statistics show a slightly different picture: the top destination countries of trafficked persons receiving assistance in 2003 were Turkey (129), followed by Russia (82), Poland (51), Italy (45), Germany (26), Greece (25), Israel (18), the Czech Republic (17), Portugal (15), and Spain (9).⁶⁸

This data points to some interesting trends – firstly, that assisted cases from Russia have nearly tripled from 2002 to 2003 and doubled from Turkey, Italy and Poland. However, the proportion of trafficked persons who actually returned from Turkey in 2001 fell from 22 per cent to 17 per cent of the total in 2002 and further to 16 per cent in 2003. As of April 2004, the portion of trafficked persons who returned from Turkey was down to 11 per cent. As for Russia, the number of repatriated trafficked persons was 8 per cent of the total number for 2002, 17 per cent in 2003, and 31 per cent as of April 2004. There have also been substantial increases in trafficked persons returning from Germany, Israel and the Czech Republic, while figures from Macedonia, BiH and Kosovo are down by 50 per cent.⁶⁹

The increase in numbers of assisted persons is not necessarily indicative of an increase in trafficking to these countries, nor is a reduction in numbers necessarily indicative of a reduction in trafficking. An increase possibly only reflects greater collaboration between IOM and an NGO network referring clients for assistance, or the fact that return programmes have recently been introduced in certain countries, including Poland and Italy.⁷⁰ Thus, it is not possible to report categorically that trafficking has increased to these destination countries, although the identification of it clearly has.

Finally, the majority of deportees arriving at Boryspil International Airport in the Ukrainian capital of Kyiv, including trafficked persons, are coming from Spain, Germany, Italy, Portugal, and Turkey. Most of them were originally from western Ukraine, including Ivano-Frankivsk, L'viv, Khmelnytskyi and Ternopil oblasts.⁷¹

⁶⁵ Op. cit., IOM NGO report.

⁶⁶ Ibid.

⁶⁷ 'Review of the Mechanisms, Means and Law Enforcement Response to Trafficking in Persons in Ukraine', S. Krivosheyev, IOM, Kyiv, 2001.

⁶⁸ Op. cit., IOM NGO report. These figures include foreign nationals assisted in Ukraine by IOM.

⁶⁹ Ibid.

⁷⁰ Minutes from the Counter-Trafficking Advocacy Group Meeting, 28 January 2004, Kyiv.

⁷¹ Interview with immigration control at Boryspil International Airport in Kyiv.

3.4. Causes of Migration

Various studies and the informants for this study have been unanimous as to the causes for the recent migration and trafficking from Ukraine. They attribute it to a declining standard of living, unemployment, poorly paid employment, and generally insufficient opportunities in Ukraine to satisfy basic needs. This section analyses the factors underlying trafficking in persons in more detail.

3.4.1. Socio-economic factors

Much-promised economic reforms have been only slowly materialising, at last, in recent years, and Ukraine's GDP, after falling 60 per cent, has been growing steadily since 2000.⁷² Despite the arrival of economic growth,⁷³ however, there has not been enough of a trickle-down effect for much of the population, and unemployment, both hidden and official, remains high in many regions.

On 1 January 2003, the official number of unemployed in Ukraine was 1,034,200 or 3.8 per cent of the working age population of 23 million. This does not reflect the number of unregistered jobless, as well as hidden unemployment and under-employment. The results of a 2002 household survey indicated that the real Ukrainian jobless level stood at 9.8 per cent, with 8.7 per cent in Donetsk oblast, 14 per cent in Zakarpattia, and 13.9 per cent in Ternopil.⁷⁴ The ratio of male to female unemployment differs, depending on the methodologies used. According to ILO methodology, considered to provide a more realistic representation of unemployment in the country, male and female unemployment is almost identical.⁷⁵

3.4.2. 'Push' factors

Many reports have noted that the impact of the socio-economic crisis during the past ten years has particularly affected women, leading to much more intense migration among their ranks and, consequently, to trafficking.⁷⁶ Although the unemployment rates appear identical for both men and women, women have suffered discrimination in wages. Their monthly incomes have been shown to be almost a third less than that of men.⁷⁷

Women have also been subject to discrimination in terms of employment opportunities, as they are denied equal access in the labour force, particularly to better-paying and more prestigious jobs. Employment ads often stipulate gender, age and appearance requirements. Besides possibly excluding women from jobs for which they are professionally qualified, such

⁷² Country figures, Ukraine on the US Department of State website at <http://www.state.gov>.

⁷³ ILO draft trafficking report *supra* plus data on <http://www.state.gov>. Predictions for this year, according to ICPS, a Kyiv-based think-tank, are for over 13 per cent growth in the gross domestic product (GDP), the highest in Europe. However, this is mostly driven by exports of commodities, in industries where overstaffing was once the norm.

⁷⁴ Ibid.

⁷⁵ Op. cit., UNDP Gender report.

⁷⁶ Op. cit., Aleksieyeva et al. and UNDP Gender report.

⁷⁷ Op. cit., UNDP Gender report.

discrimination is not in accordance with the Ukrainian Constitution, domestic laws or international norms⁷⁸ guaranteeing freedom from all forms of discrimination, including on the basis of sex.⁷⁹ Unfortunately, discrimination against women in the labour market is regularly practised and is deeply embedded even in the public sector. As a result, little is being done at the national level to combat it.⁸⁰

Another key factor that makes women vulnerable to trafficking is their desire to get away from crises at home. Evidence of the widespread domestic violence that women suffer is particularly worrisome. A recent study, ‘Trafficking in Women as a Social Problem in Ukrainian Society’, showed that 33 per cent of women suffer from psychological or verbal abuse at the hands of their husbands, friends or neighbours, 11-12 per cent are subjected to sexual abuse, and 5 per cent suffer physical abuse from their husbands. Another 10 per cent of those surveyed feel their rights and freedoms have been infringed upon by the state.⁸¹

The collapse of social infrastructure and the loss of childcare facilities have led to increasing difficulties for families and particularly for women, since they still bear the main responsibility for children.⁸² The transition towards a liberal market model also led to the rapid dismissal of many women from work, because labour law provides for a large number of benefits and special payments for mothers and their children, and many employers preferred not to shoulder this financial burden.⁸³ Studies have also shown that 89 per cent of the poorest families are headed by single mothers.⁸⁴

The standard of living is considered to be five to ten times lower in rural areas than in urban ones. This particularly affects women, since housework is still perceived to be women’s work. With no running water in most houses and sometimes no electricity, the

⁷⁸ As a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Ukraine is obligated to eliminate all forms of discrimination in political, economic, social and cultural spheres, to prevent discriminatory practices in both the public and the private sectors, and to provide effective remedies to those who have suffered abuse and violence. In addition, Ukraine has ratified all the fundamental conventions of the International Labour Organization (ILO), including Convention №111 Concerning Discrimination in Respect of Employment and Occupation, which provides specifically for the elimination of discrimination at work. Additional information about the conventions ratified by Ukraine can be found at www.un.kiev.ua.

⁷⁹ Art. 24 of the Constitution of Ukraine and Art. 2, point 1 of the Labour Code of Ukraine.

⁸⁰ ‘Women’s work: Discrimination against women in the Ukrainian workforce’, Human Rights Watch, August 2003, Vol. 15, №5(D). Most government workers acknowledged that their employers frequently prefer to hire men. They defended discriminatory practices which violated the right of women to equal opportunity in the professional arena. Although the lack of financial resources was often cited as the primary excuse for the non-enforcement of laws, Ministry of Labour inspectors demonstrated a lack of will and insufficient training to investigate discriminatory recruitment practices. In its statistical records, the Ministry of Labour does not include a category for recording complaints, reviews, or violations related specifically to discrimination of any kind. Moreover, the State Employment Service endorses employer discrimination against women by posting vacancy announcements with gender specifications and requesting gender-specific vacancy information from employers. The materials of this study can be found on <http://www.hrw.org/reports/2003/Ukraine0803>.

⁸¹ ‘Trafficking in Women as a Social Problem in Ukrainian Society: a National Survey’, Social Monitoring Centre, Ukrainian Institute of Social Studies, Winrock International and USAID, Kyiv, January 2001.

⁸² UNDP Report, *supra*.

⁸³ *Ibid.* p. 33.

⁸⁴ *Ibid.*

burden of daily housework is particularly heavy.⁸⁵ As a result, more women feel pressed to seek unskilled low-paying work abroad, such as waiting on tables, housekeeping, caretaking, or dancing. Although figures on the proportion of male and female migrants in the studies above indicate that more men have migrated than women, many respondents for this study say that, in fact, more migrants are women.

3.4.3. 'Pull' factors

In addition to the push factors encouraging migration and trafficking, the need for workers in destination countries clearly plays an important role as a pull factor stimulating the current movement. This often means cheap, insecure work. These openings no doubt satisfy many migrants, but are also the source of the unregulated chaos that traffickers know how to exploit. This factor is still not recognised enough by those researching the problem of trafficking in persons.

The latest report from Portugal recognises the importance of opportunities in destination countries in attracting migrants. “Although job losses and wage cuts associated with the political and economic transition of Eastern Europe have pushed many people to migrate, the needs of Portuguese employers have played a significant role in the recruitment of these newcomers. As a country with a low level of unemployment (4.2 per cent in 1999, when the EU average was about 9 per cent), expanding consumption, and significant investment in basic infrastructure such as roads and dams, Portugal is in desperate need of foreign labour. This is particularly felt in sectors like construction, manufacturing, cleaning and retailing. In a mere five years, Ukrainians have become the third-largest group of foreigners after Cape Verdeans and Brazilians.”⁸⁶

This pull factor is especially evident when the extent of remittances to Ukraine from workers abroad is examined. In a recent study in Ukraine, both those trafficked and successful migrants acknowledged that remittances from migrants abroad were a major factor influencing their own decisions to seek work abroad.⁸⁷ Moreover, most trafficked persons reported that those around them survived on those remittances, and so they were convinced that only those families with someone who was working abroad had any money.⁸⁸ All these cases of apparently successful migration not only provide concrete proof of opportunities abroad, but also create the basis for migrants to fall into the hands of traffickers.

The respondents in this study also recognised the positive effects of recent migrations. They cited reinvestment in the regions, increased buying power for the families left behind, and less dependence on social assistance from the State as some of the benefits resulting from migrant remittances.⁸⁹ The amount of remittances to some oblasts is well known. In some

⁸⁵ Ibid. p. 50.

⁸⁶ ‘Portugal Seeks Balance of Emigration and Immigration’, Jorge Malheiros, Centro de Estudos Geograficos, Universidade de Lisboa Metropolis, Portugal Team, Migration Information Source, December 2002.

⁸⁷ Op. cit., ILO draft report, p. 69.

⁸⁸ Ibid.

⁸⁹ Interview with SEC, Kyiv, *ibid.*

cases, they exceeded the oblast budget by a hundred times. For instance, in Chernivtsi, remittances totalling \$300 million were reported and in Ternopil \$100 million.⁹⁰ Other respondents also recognised Western Ukraine as a region that is particularly dependent on remittances.⁹¹ Similarly, many respondents mentioned the escalation of housing prices, reflecting, in their opinion, that those returning with significant earnings from working abroad were now investing in property.⁹²

Work opportunities are thus clearly available, but they are not transparent and legally accessible. So, in trying to access opportunities, individuals are forced to take certain risks. The question is, What are the characteristics of those more vulnerable to serious risk-taking?

3.5. Vulnerability

3.5.1. Key features of vulnerability

A key criterion for falling into the hands of traffickers seems to be the willingness to seek work abroad or go abroad for work.⁹³ The instances of victims being kidnapped or drugged while on holiday in a foreign country are, in fact, few.⁹⁴ The desire to go abroad remains high in Ukraine and is driven by a variety of factors. One out of three Ukrainian citizens would like to move to another country, according to a recent opinion poll, and only 37 per cent of 18-year olds actually want to stay in Ukraine.⁹⁵

The possibility of successful migration continues to motivate new migrants. However, much of this movement ultimately remains illegal. The very decision to travel and seek work illegally subjects individuals to certain risks. In other words, migrants who leave in this fashion are considered at risk of trafficking. So, what characterises a successful migrant, and what must a person do in order to undertake successful, albeit irregular migration?

A 2003 IOM study attempted to explore and compare the characteristics and the organization of successful illegal migrants from Ukraine with those who fell victim to trafficking revealed that most successful irregular migrants relied entirely on their own resources to organize travel and find work abroad.⁹⁶ They almost entirely ignored information on jobs abroad from the government, job placement agencies or the press. The study found that successful female migrants generally had their own funds to travel with, they used travel agencies to organize their travel, and they relied on close social networks in the destination country to

⁹⁰ Interview with the Main Department of External Relations, Foreign Trade and Tourism of the Ternopil Oblast State Administration [hereinafter, Tourism Department], November 2003, Ternopil.

⁹¹ Interview with Francesco Luciani, EC Delegation, Kyiv, 17 December 2003.

⁹² Interview with Oleksandr Harnovdiy, Deputy Director of the Zakarpattia Oblast Committee for Family and Youth; 26 November 2003.

⁹³ With the exception of trafficking in minors and children.

⁹⁴ Faith, Hope and Love, an Odesa NGO, December 2004 reported one case of drugging while on holiday in Turkey.

⁹⁵ Poll conducted by the Democratic Initiatives Fund and the Kyiv International Sociology Institute between 23 January and 1 February 2004. (A total of 2,011 people were polled across Ukraine.) Reported in the Ukrainian Monitor, 16 February 2004.

⁹⁶ ILO draft report, *supra*

find themselves work. In addition, they tended to have a higher education or incomplete degrees and were mostly employed, but dissatisfied with their earnings. These findings were similar to those found in a later study in Italy on migrant Ukrainian women. The only difference was that the respondents in Italy had paid an agency a certain amount of money on arriving at their job placement. (It is possible that access to such placement agencies was only through the women's social network.)⁹⁷

On the other hand, the IOM study revealed that trafficked persons, both male and female, were consistently poorer than successful migrants, they had only secondary education, and they were more frequently unemployed or not getting paid for their work prior to departure. Perhaps more importantly, they also did not have access to job opportunities in the destination countries through a social network. Although they, like successful migrants, tried to organize their trips themselves, and also generally disregarded information about jobs abroad from the government, job placement agencies or the press, they tended to make the mistake, especially if women, of turning to intermediaries to lend them money for the trip, to organize travel, and to arrange for documents, and then to find them work in the destination country.⁹⁸

Trafficked men did not tend to use intermediaries to organize their travel, since many of these men travelled to Russia, which Ukrainians can do with little formality. As a result, instances of trafficked men being recruited by middlemen in their country of origin were few. Indeed, the study indicated that there did not appear to be intermediaries recruiting from the country of origin among successful male migrants. Thus, where for women the use of a middleman to organize their travel or their job was a trap, it was not always so for men.⁹⁹

The study thus confirmed certain vulnerability factors already indicated in other research, and pointed to new factors as well. Lower levels of education, a relatively poor household situation, and lack of money to fund personal migration were confirmed as typical characteristics of trafficked persons. In addition, the absence of concrete links in the destination country, compared to successful migrants, appears to be a new vulnerability factor to trafficking, although perhaps predictable. Willingness to migrate illegally, without an employment contract or a work permit, does not appear, in and of itself, to constitute a vulnerability factor to trafficking, since equal numbers of successful migrants have migrated on the same terms.

More importantly, the study showed that although trafficked persons and successful migrants differed in certain material ways, the two groups shared key features:

- Both depended on illegal mechanisms to organize work abroad.
- Both at some point violated migration laws.

⁹⁷ Op. cit., Caritas-Ukraine.

⁹⁸ Op. cit., ILO.

⁹⁹ Ibid.

The similarity to successful illegal migration makes trafficking cases all the more difficult to prevent. It also makes it difficult to sensitize the public to the real risks. Nevertheless, the finer details of the organization and nature of successful, irregular migration compared to those who are trafficked need to be understood so that awareness-raising activities are more relevant and effective.

3.5.2. Other vulnerability factors

The young age of most trafficked women has led to the realisation that younger people are most at risk of trafficking. Since young women have been seen as most at risk, training programmes for raising awareness about trafficking have traditionally targeted youth. All the same, it appears that the age of a trafficked person is related to the sphere in which they have been exploited. The IOM suggests that the prime demographic feature of trafficked persons remains that they are young, between the ages of 22 and 27. But the vast majority of these cases relate to trafficking into the sex trade.¹⁰⁰

On the other hand, studies by ILO and La Strada-Ukraine indicate that the age group affected may be wider, especially when labour exploitation is considered. The ILO study indicates two vulnerable groups, young men and women between 17 and 25, and men and women over 50. The areas of exploitation include sexual exploitation, construction work, caretaking with children, invalids and the elderly, domestic work, and farm work. La Strada-Ukraine's in-depth interviews with trafficked persons revealed that 13 per cent of them were in exploitative childcare or domestic work and were between the ages of 19 and 41 or older. But most respondents were aged 19-27 and had been sexually exploited.¹⁰¹

According to IOM figures, it is clear that the majority of currently identified trafficked persons are in the younger age groups.¹⁰² But problems with identifying victims of other types of exploitation means that other age groups are not equally represented in the statistics. It would appear that age is not necessarily the best indicator of vulnerability to all trafficking situations, although it remains a factor in sexual exploitation.

The other side of the trafficking experience, which we still hear little about, is illustrated here.

“It’s not just women who are trafficked. Men are, too. Men from this region traditionally travel to Siberia and the Urals for work. Recently, they’ve also begun to travel to Spain and Portugal. Our assistance was requested in the case of two men who returned from abroad as invalids. One man was working in Spain as a farm worker. The climate was hot and he was forced to work for up to 16 hours a day. He was also starved. He returned in terrible condition, on the verge of suicide. With the help of his sister and wife, he came to us.

¹⁰⁰ Op. cit., IOM report *supra*.

¹⁰¹ ‘System of Assistance for Trafficked Persons: Research Results’, O. Levchenko, O. Kalashnyk, I. Schwab, et al., Kyiv, 2004, 127 pp.

¹⁰² Op. cit., IOM.

The other man worked in a quarry in Portugal, although he had been taken on to work as an electrician. They took away his passport, abused and threatened him, and made him work hard. After eight months of hard physical labour, his health was ruined and all they did was pay him \$300, put him on a plane and send him home.”

Interview with Vesta, an NGO in Zakarpattia

Respondents for this research identified a number of additional groups they consider at risk of trafficking. Among them, women living in coal mining communities were identified as particularly vulnerable to trafficking. People in these areas have little access to information and they are desperate for work to support their families, particularly with many mines being closed down or simply too dangerous to work in.¹⁰³ Similarly, with the downsizing of the army and navy in the Crimea, there are many more cases of seamen leaving for Portugal and other destinations in search of work.¹⁰⁴ Other risk groups include Ukrainian women in the sex business and students of specialised secondary schools, who often moved from the country to the city to attend these schools. In some instances, the latter resort to sex work to support themselves and eventually become at risk of trafficking.¹⁰⁵

Young people who leave state orphanages were also often mentioned as one of the most vulnerable groups in terms of trafficking. Not only is there no support system for orphans once they leave the state orphanage system, they are often unskilled in assessing the potential risks of proposals people make them or handling newly-gained freedoms and responsibilities. Not only are they at risk of being exploited for work in Ukraine (see Chapter 4), they are also easy prey for traffickers.¹⁰⁶

A final group noted by respondents as being at risk of exploitation were migrants stranded in the destination country. These persons, who under other circumstances might be able to get out of a difficult situation, cannot leave the destination country for lack of money to pay for either their return trip or fines for overstaying their visas. This kind of situation can lead to the development of pools of vulnerable people likely to be targeted by organized criminals involved in trafficking in persons in the destination country.

3.6. Trafficking in Minors

3.6.1. General risk situations

Trafficking in the under-aged is a serious problem for Ukraine. It is intensified by the fact that there are essentially no organizations that focus solely on countering the trafficking of children from Ukraine. There are a number of reasons for this. Firstly, trafficking in

¹⁰³ Interview with Tourism Department, Oblast Committee for Family and Youth Affairs, Donetsk, November 2003.

¹⁰⁴ Interview with Women's Initiatives Youth Centre in Sevastopol, Crimea, August 2003.

¹⁰⁵ Interview with Salus Foundation, L'viv, November 2003.

¹⁰⁶ Interview with Ternopil Oblast State Administration Department of Education and Science, November 2003.

children is not as widespread as trafficking in adults. Secondly, the issue of trafficking in children is less visible, because children rarely come forward as having been trafficked. Often this is due to the fact that such children are orphans or have been left without parental guidance, and they have little or no opportunity to let people know about what happened to them. Thirdly, any activities aimed at combating trafficking of children, particularly in providing assistance to victims, have to be based on a different set of laws and different rights, and different operating principles than assistance to adults. Anti-trafficking strategies that are effective for adults cannot be applied in working with children. Therefore, organizations with serious experience in combating trafficking need to develop new programmes and approaches to address the protection of minors.

A Government report on the state of children in Ukraine for 2002 warns that trafficking in children is on the rise.¹⁰⁷ A study entitled ‘Preventing Trafficking in Children for Exploitation in Labour or the Sex Business in Ukraine’, launched in 2003 by IOM and the ‘International Programme for Eliminating Child Labour’ (IOM/IPEC), confirms this, noting that most children who end up trafficked are between 13 and 18. Statistics from NGOs show that even children aged 3 to 10 are occasionally victims of trafficking. Most underage victims are girls who are exploited in the sex business, although there are plenty of cases of boys being exploited for sex, cheap labour or acting as couriers for drugs. Most such cases of trafficking in persons tend to happen within Ukraine.

Among other forms of exploitation of minors, beggary and petty crime are very widespread. According to data from the Ministry of Interior, 92 criminal cases were opened in 2002 under Section 2 of Art. 149 of the Criminal Code (Trafficking in Persons or Other Illegal Contracts to Transfer Persons). Another 60 criminal cases were initiated under Section 3 of this Article covering activities by organized gangs involving the illegal transfer of minors across state borders, or not returning them to Ukraine, for the purpose of extracting organs or tissues for transplanting or forced donation of organs. Finally, 10 criminal cases were launched under Art. 50 of the Criminal Code (Exploitation of Minors).¹⁰⁸

Among Roma families, there is a widespread practice of hiring out their children for begging or pick-pocketing in other CIS countries. Although this activity is recognised, it is often not seen as trafficking by those involved in counter-trafficking activities.¹⁰⁹

Many respondents commented that the children of parents working abroad are forming a major group at risk of trafficking. Although these children are often left in the care of grandparents, neighbours or friends, they rarely receive the supervision and family warmth that young people really need. In some cases, they are left to fend for themselves.¹¹⁰ One respondent from Lutsk revealed that in one class in her village school, the parents of 14 out

¹⁰⁷ ‘The State of Children in Ukraine’, Government report for 2002, State Institute on Family and Youth Affairs, Kyiv, 2003, p. 91.

¹⁰⁸ Ibid.

¹⁰⁹ Interview with Zakarpattia Juvenile Shelter, 27 November 2003.

¹¹⁰ Op. cit., interview, Ternopil.

of 16 children were working abroad. In Ternopil, the principal of one middle school closed three primary classes in a single year, because most of the children had moved out to nearby villages to live with their grandparents. In Zbarazh county in Ternopil oblast, there were 251 families whose children were left without parents because their mothers and fathers had gone abroad to work.¹¹¹ There are an estimated 100,000 ‘temporary’ orphans whose parents are abroad, who at risk of being caught up in drug abuse, alcoholism and trafficking.¹¹²

Some respondents have also reported that many children leave home to search for their parents abroad and thus end up as vagrants or are targeted by traffickers.

“Last year, nearly 6,000 children were picked up throughout the oblast. Three thousand went to orphanages and 2,000 were sent home to their families. For those children who are searching for parents who have disappeared abroad, there has to be some accessible information about organizations that help find missing people.”

Interview with the Donetsk Juvenile Service

The Criminal Code of Ukraine provides tougher punishment for those who traffic in minors. However, traffickers are rarely punished appropriately (see Chapter 5). This study was unable to find figures on just how many convictions have been handed down in cases related to trafficking in minors.

3.6.2. International adoptions

One of the ways children can end up trafficked is through illegal adoptions. The illegal adoption of Ukrainian children by foreigners is punishable under Art. 169 of the Criminal Code.

The adoption process is regulated by Section 18 of the Family Code, ‘The Registration and Supervision of a Adoptable Children and Persons Wishing to Adopt a Child’, and ‘Safeguarding of a Child’s Rights after Adoption’ approved by the Cabinet of Ministers on 28 August 2003 №1377, and other legislation. These documents place responsibility for overseeing the adoption process with guardianship agencies and the National Adoption Centre (NAC) under the Ministry of Education and Science.¹¹³ NAC employees have to maintain a roster of children who are eligible for adoption by foreigners, to correspond with adoptive parents, and to verify all the documents required for adoption. Priority of adoption is given to Ukrainian citizens, so, under Ukrainian law, foreigners can only adopt a child that has been on the NAC adoption roster for over a year, or a newborn that has a serious medical condition identified by law as allowing immediate adoption by foreigners.

¹¹¹ Interview with Oblast Administration in Ternopil, November 2003.

¹¹² Speech by Nina Karpachova, Ukraine’s Ombudswoman, 2 April 2003

¹¹³ Cabinet Decree №98 of 30 March 1996.

Such medical conditions include HIV, Down's Syndrome, brain damage, heart conditions, and others.

The Centre serves as the intermediary between the child and potential adoptive parents. Among the problems identified by respondents is thorough checks of the validity of documents submitted by adoptive parents. These include a marriage certificate, if the prospective parents are married (priority is given to married couples) and a home study conducted by a competent social worker or agency from the country of origin that certifies their ability to become adoptive parents and provides information on their living accommodations and financial status, biographical data, family members, the presence of children of their own, and other information. If such a study is not conducted by a government agency, then a copy of the license certifying that this agency is authorised to work on adoptions is also required, as well as proof that the agency has never been sued.¹¹⁴ All these documents must be legalized at the Embassy of Ukraine in the country where the adoptive parents reside. Ukrainian diplomatic missions in other countries are responsible for confirming the legitimacy of any documents being submitted, before approving them and passing them on to Ukraine. However, as some of the respondents pointed out, embassies have neither the financial nor the human resources to conduct such investigations. On the other hand, NAC employees are essentially powerless to deny applicants whose documents seem in order. The inability to crosscheck documents effectively could lead to a situation where children are adopted with harmful intent.

On the other hand, the requirements for Ukrainian citizens wishing to adopt a child are far less stringent. Some of the respondents felt this was unfair, because the danger of a Ukrainian adopting a child for commercial gain was no less great than with a foreigner. The situation with domestic adoptions is further complicated by the fact that current legislation guarantees confidentiality in the adoption process, which means that guardianship agencies and social services effectively may not be able to follow up on the welfare of an adopted child.

After all documents have been checked, NAC employees select a child based on the wishes of the prospective parents, after which Centre directs the parents to the orphanage where the child lives so that they can become acquainted. The adoptive parents have the right to meet only with the child that has been approved for them, so that other children are not traumatized. This is another instance where there could be violations, inasmuch as the photos of the child are 3x4 cm and were taken at the time when the child was entered into the register for adoption. Yet for a foreign adoption, the child has to have been on the roster at least a year. Since a child can change greatly in the course of the year, potential parents could be shown a totally different child from the one in the photo. If the prospective parents do not feel a connection with the child, they can refuse the first referral and go back to the NAC to start the process all over again. In this case, the child could be given to someone else for a bribe, although no such instances have been reported.

¹¹⁴ Cabinet Decree №1377.

If the prospective parents decide to proceed with the adoption, all the documents are forwarded to the court to rule on whether the adoption should be approved. After the court approves the adoption, there is a 30-day waiting period before the adoption paper comes into force. The documents are first sent to the Ministry of Justice so that a new birth certificate with a new name and other vital information can be issued. The documents are then forwarded to MIA's Citizenship and Passport Service for the issuance of a new Ukrainian passport, and finally to the Ministry of Foreign Affairs. According to Art. 31 of the consular by-laws and with the approval of MFA, oversight for the welfare and upbringing of children adopted by foreigners is the responsibility of the Ukrainian Consulate of that country until the child reaches 18 years of age. According to respondents, in reality, this supervision remains a mere formality, as most consulates do not have the resources for court orders, legal fees and transportation expenses to follow up on each child – nor the legal right to invade the private lives of the adopting families.

In practice, the adoptive parents are expected to send in periodic reports with updated photos to the Ukrainian consular offices in their home countries, but not everyone does this.

As a result, as of 1 April 2002, a total of 1,168 children adopted by foreigners were not included in the registers of Ukrainian consulates. Obviously, with few actual controls in place to track the welfare of these children, adoptive parents are theoretically free to pursue commercial gain at the expense of their adopted children.

In general, according to NAC statistics, over 2000-2002, foreigners adopted 4,872 orphaned Ukrainian children. Since the Centre opened its doors, US citizens alone have adopted nearly 10,000 Ukrainian children.

Reviews of current information have revealed many violations of the established procedures for adopting Ukrainian children. According to law enforcement agencies, despite the ban on commercial adoption brokers, their use is actually quite widespread. The lack of supervisory mechanisms to regulate the activities of such intermediaries has resulted in some intermediaries conspiring directly with the management of maternity hospitals and orphanages or with medical personnel and local government officials, with the idea of documenting healthy children as having non-existent illnesses to expedite their adoption by foreigners under Decree № 2 of the Ministry of Health. For example, in 2001, the MIA investigative unit in Kherson oblast opened a case against an international ring that included some of the managers of the Kherson Oblast Orphanage. The case involved illegal adoptions of Ukrainian orphans by US citizens, who conspired with the genetics doctor at the Kherson oblast diagnostics centre in providing false diagnoses for the children, making them eligible for adoption by foreigners. Based on these medical results, in October 2001, a district court of Kherson issued a ruling about the adoption of these children. Between 1999-2003, 5 criminal cases were launched under Art. 169 of the Criminal Code, 'Illegal acts related to adoption', but this does not reflect the real number of violations of Ukrainian legislation.

In 2000, the Prosecutor General's Office launched a criminal investigation into the activities of the National Adoption Centre itself. According to interviews with some former employees

of the Centre, the case was initiated after the NAC addressed the Verkhovna Rada about the state of children adopted by foreigners. Lack of information regarding a large number of children adopted by foreigners over the 4-year period that the Centre had been in operation led to the case. Yet some respondents pointed out that collecting this kind of information is the responsibility of the Consular Department of the MFA, not of the NAC.

Another problem raised by respondents is the lack of assurances that the adopted child will receive full rights of citizenship in the receiving country. According to Ukrainian legislation, a child that has been legally adopted should receive full rights of inheritance. However, there are hardly any guarantees that such rights will be upheld in his or her new homeland.

The main obstacle to keeping track of the rights of an adopted child in the case of an international adoption is the absence of bilateral agreements between Ukraine and other countries. This would improve if Ukraine joined the Council of Europe's 'Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoptions', adopted at The Hague Conference on International Private Law on 29 May 1993.

If Ukraine ratifies this Convention, it will be possible for the country to:

- Enter into international agreements with other member-countries, which will make it possible for adoption bodies in both countries of origin and destination countries to cooperate officially.
- Formulate the adoption of a child with the guarantee that his or her rights will be upheld, as well as his or her best interests. This would also guarantee the child's right to property and other rights that are recognised in international law and the legislation of his or her new homeland.
- Establish a single national agency that will be responsible for international adoptions and will maintain contact with independent agencies in the receiving country.
- Guarantee the legitimacy of documents required by law from those wishing to adopt a child.

It will also make it impossible:

- For commercial entities to be involved in the adoption process, which, in turn, will allow greater control over the adoption process and reduce the exploitation of children.
- For corruption to flourish among staff at the consolidated state body responsible for adoption, since all initial agreements on international adoptions of children will be prepared by the relevant body in the receiving country.

3.6.3. Health programmes abroad

Law enforcement officers note that another way children can be trafficked is when they are taken abroad for educational or health purposes. It is therefore important that the organization of vacations or health cures abroad comply with the law. This is also true of the medical institutions providing treatments to orphans or children removed from

parental custody. Some experts who took part in the survey referred more than once to Cabinet Resolution № 231 of 31 March 1995 on ‘Confirming the Right to Prepare and Issue Passports to Citizens of Ukraine for Travel Abroad and Travel Documents for Minors, their Temporary Issue and Withdrawal’, which formulates the right to take children abroad, and to the fact that it needs improvement. For example, birth certificates that allow children to travel to the Russian Federation, Belarus or Moldova did not include an identifying photo. The Border Service and the MIA have already submitted a joint proposal to the Cabinet of Ministers to introduce special photo identity documents (IDs) that would provide proof of citizenship. Introducing such new regulations for leaving the country is especially important considering the increasing numbers of minors being taken to neighbouring countries, among which Russia is at the top, for exploitation. Changing the rules for taking children abroad will make it possible to strengthen controls over the illegal transport of minors from Ukraine.

In this way, although Ukraine has been one of the more active countries in combating trafficking in persons in general, there still remains much to be done in combating trafficking in children. The current situation requires active efforts on the part of government bodies, international organizations and NGOs, the ratification of international treaties, and changes to national legislation, including its harmonisation with international norms.

3.7. The Organization of ‘Traditional’ Trafficking

The mechanisms traditionally believed to be used to organize trafficking have included travel agencies, job placement firms, marriage agencies, and ads in the press and the internet. It appears from the findings of this study that none of these mechanisms play a significant role in trafficking in Ukraine. The most effective and widespread means of recruiting women into trafficking now appears to be a combination of acquaintances and intermediaries.¹¹⁵

A number of interviewees noted that, to the best of their knowledge, not a single license had been revoked nor an investigation launched over the activities of a travel or job placement agency because of illegal actions in connection with trafficking. One respondent commented that such agencies are being carefully monitored through the combined efforts of the MIA and the SBU, making it unlikely that they are now involved systematically in criminal activities, as in the past.

During the first 9 months of 2003, regional SEC officials inspected all 455 registered agencies and uncovered 513 violations, but none of these were related to trafficking. Although this acknowledges that many of these international job placement agencies provide more than just properly authorised jobs, it does not necessarily mean that their activities lead to trafficking. A 2003 ILO study also showed that only a very small proportion of the trafficked persons surveyed had used employment agencies.¹¹⁶

¹¹⁵ ILO draft report *supra* and State Institute on Family and Youth Affairs research *supra*. Findings from 26 in-depth interviews in this study revealed that possibly 81 per cent of migrants received information about jobs from someone they knew. However, the study does not explore in any detail how these offers were connected to actual trafficking.

¹¹⁶ Ibid.

Travel agencies also undoubtedly facilitate the acquisition of tourist visas for the purpose of migrating for work, and may well be used by traffickers. But they themselves do not appear to be directly responsible for such trafficking. There have, however, been cases where travel agents or ‘visa agents’, as they are sometimes referred to, swindle people. Several interviewees stated that many of those who use the services of such agents pay large sums of money for their visa services then discover that either the agency has disappeared or the visa is fake. This can result in confiscated documents and the passport authorities being overwhelmed trying to replace them.¹¹⁷ Research in Moldova revealed that the debts incurred after being defrauded by phoney visa agents actually pushed people deeper into vulnerable migration situations in order to repay their borrowings. This, in turn, indirectly increased vulnerability to trafficking.

There were also cases of travel agencies proposing work abroad without the proper authorisation to do so. But, again, the lack of authorisation does not mean that these agencies are directly involved in trafficking activities. The manner in which these kinds of ‘scam’ agencies organize themselves is illustrated here.

“The latest trend is for recruiters to go around villages showing pictures and encouraging people to sell their homes and land. They charge between \$5,000 and \$15,000 for their services and then send those people via Moscow to other countries. The victims end up abroad without any actual job, often without documents, and usually without any way of returning home.”

Interview with the Border Service, Mukachevo Border Patrol, Zakarpattia

Some oblast SECs also reported that they have been monitoring vacancy notices in the papers and those posted on the street. They have requested that newspapers not accept advertisements for jobs if the placing agency does not provide a license number. Since then, fewer suspicious advertisements have appeared in the press.¹¹⁸

It appears that trafficking from the country of origin is generally organized through middlemen acting on their own or through the recommendations of friends and acquaintances. Law enforcement respondents reported that recruiters on the Ukrainian side are often women, sometimes even mother-and-daughter teams, whereas in the country of destination, men are in control.¹¹⁹ Those who have themselves been trafficked often come home in order to work as recruiters.¹²⁰ Much of the recruitment typically takes place outside oblast centres, often in nightclubs, in discos, at student gatherings, on public transportation, or at train and bus stations, where it is easy to recognize newcomers who are looking for work.¹²¹

¹¹⁷ Interview with the Department for Citizenship, Immigration and the Registration of Persons, MIA Main Department in Kyiv.

¹¹⁸ Interview with Donetsk SEC, Donetsk, 5 December 2003.

¹¹⁹ Interview with Anti-Trafficking Department, Main Department of the MIA in Donetsk oblast.

¹²⁰ Interview with Caritas Ternopil Shelter for Trafficked Persons, Ternopil, 19 November 2003.

¹²¹ Ibid. and interview with Revival of the Nation, a Ternopil NGO, 19 November 2003, and the State Tourism Administration, Kyiv, February 2004.

Most of those who fell prey to traffickers were actually travelling with legal documents, and faked documents were found among very few of those leaving the country. In any case, as some respondents pointed out, a passport can be had legally, easily and cheaply, through those same travel agencies.¹²² Still, the possession of valid documents on leaving Ukraine does not mean that such persons will not obtain fake documents en route to their country of destination.¹²³

“We see about two to three trafficked persons a month, mostly between the ages of 18 and 26, who have been in Greece, Italy, former Yugoslavia, or Poland. Some women still buy the whole package from a travel agency to get abroad, but most travel legally on tourist visas, and then stay on illegally. We see victims of both labour and sexual exploitation.”

Interview with Salus Foundation, L'viv

In addition to trafficking through offers of work, some proportion of trafficked persons end up the victims of intermediaries offering only transportation services. In theory, these individuals are only providing help with travel, either clandestinely or in transit. In certain cases, it appears that these ‘travel brokers’ can be very trustworthy, especially with men. But for women, they are generally dangerous.¹²⁴

It appears that it is generally known in a given community whom to trust among transport intermediaries, and they are sought out on the basis of reliable information obtained from others. It also seems that paying up front is much safer and more reliable in this situation. However, popular information is not a reliable indicator. Many trafficked women do not wish to be recognised upon their return, so those individuals who may have been responsible for their ‘sale’ continue to operate.

In terms of vulnerability factors, recent studies indicate that, in fact, successful female migrants rarely use intermediaries to find a job or to arrange travel. Thus, any kind of intermediaries offering services to women should be treated with extreme caution.

3.8. New Mechanisms for Trafficking

Case histories of trafficked persons and other sources have often mentioned exploitation in destination countries as a result of circumstances other than being recruited in the country of origin. Research conducted in Italy, for instance, claims that 80 per cent of women trafficked into sexual exploitation were lured in Italy, not in their country of origin.¹²⁵ There have been stories of women looking for jobs on Garibaldi Square in Naples and

¹²² Interview with Citizenship, Immigration and Registration of Persons, MFA, Ivano-Frankivsk Oblast, November 2003.

¹²³ Interview with Immigration Control at Boryspil International Airport in Kyiv.

¹²⁴ Op. cit., ILO draft report.

¹²⁵ Op. cit., Caritas study.

being tricked into sexual exploitation.¹²⁶ In one well-known case that came to the attention of researchers, two Ukrainian farm workers arrived in the UK to seek work and found themselves exploited in farm work at the hands of ‘gang-masters’, who traditionally organize farm workers in the UK.¹²⁷

Respondents also noted that destination countries have their own gangs or mafias from whom a person will have to buy their way if they want to find work. Clearly, such criminal organizations can get away with any amount of violence and abuse.¹²⁸

This is confirmed by a recent initiative by the Portuguese Government to regularise migration from Ukraine, when it became clear that there was a need to take the organization of job placement out of the hands of organized crime. These rings, mainly of Moldovan origin, were found to be responsible for exploiting thousands of men, including many Ukrainian nationals, at construction sites throughout Portugal. They operated both as traffickers in the traditional sense, organizing transport from countries of origin, and as conduits for job placements for those arriving in Portugal independently. The gangs immediately seized documents and money from newcomers and restricted their freedom of movement. First to react to this in Portugal were NGOs, who began providing services to incoming migrants to reduce their reliance upon job placement gangs. It is now hoped that the ratification of a bilateral labour migration agreement between Ukraine and Portugal will also improve the situation.¹²⁹

The ILO study on trafficking mentioned earlier revealed that law enforcement officers in Ukraine recognise four kinds of situations as constituting trafficking in persons, two of which involve independent travel to the destination country with subsequent entrapment in a trafficking situation.¹³⁰

A respondent in this study illustrates the general tendency here.

“The problem with trafficking is that most people leave the country independently and get caught up in trafficking in another country. So it’s difficult for the government to crack down on the problem. Men and women are often aware of the risks, but most choose to ignore this, hoping that they will be lucky.”

Interview with Donetsk Juvenile Services Centre

Despite various references to these different mechanisms, little attention seems to be paid to them. Apart from the example of Portugal, efforts to locate and address these problems and to provide potential migrants information on how to avoid them do not appear widespread. This may be due to a number of reasons.

¹²⁶ Op. cit., IOM mechanisms report, 2001.

¹²⁷ Interview with Chris Lain, British Immigration Liaison Officer, 11 November 2003.

¹²⁸ Interview with Youth Affairs Department, Ternopil Oblast State Administration, Ternopil, 20 August 2003.

¹²⁹ Interview with Christina Matros, Portuguese Consul, 18 December 2003. The bilateral agreement on labour migration remains to be ratified. With the recent change of Government in Portugal, which espouses a ‘zero tolerance’ immigration policy, there is a strong likelihood that the agreement will not be ratified.

¹³⁰ Op. cit., State Institute on Family and Youth Affairs report, 2003.

First, because of the typical trafficking mechanisms that entrapped most people who were trafficked.

Second, it is unclear whether trafficked people are those who have independently travelled to destination countries only to find themselves in extremely difficult, abusive situations. Some interviewees for this study were convinced that these persons qualify as trafficked persons, considering this form of trafficking to constitute the bulk of the problem. Thus, the absence of local involvement in destination countries was seen as central to the current failure to effectively combat the issue.¹³¹

Other interviewees said that the difficulties in defining trafficking lay in the fact that the exploitation of labour could take place in circumstances that had nothing to do with trafficking in persons. They stated that the independent migration of an individual to a country of destination precluded that person's being categorised as a trafficked person. This type of movement should be considered irregular labour migration, and dealt with separately from trafficking.¹³²

This view is obviously based on the belief that trafficking in persons must include initiating the transport of the person. The definition of trafficking in the Palermo Protocol provides little guidance as to which interpretation is correct. It refers to the recruitment, transfer and harbouring of persons but also the "receipt" of persons for the purposes of exploitation, through the threat or use of force or other forms of coercion. How this definition applies in practice depends on the manner in which the Protocol is implemented in national legislation and interpreted by the judiciary. Interviewees in this study confirmed that no cases of this nature had been brought to court in Ukraine.¹³³ In any case, Ukraine, in theory, would not have jurisdiction over such cases unless those involved in the organization of exploitation in the country of destination were Ukrainian citizens.

From the perspective of NGOs, these persons would no doubt be assisted regardless of their official status, and would nevertheless probably be treated to as trafficked persons. In fact, most NGOs assisting such persons probably do not consider the organizational mechanisms behind their client's exploitation as the decisive factor.¹³⁴ Indeed, it would be rather strange if those who were being assisted and returned to their homelands as trafficked persons through, say, the efforts of the IOM, were required to show proof that they had been recruited in their country of origin. Studies have shown that most of those returned as trafficked persons were, in fact, women identified in police raids as illegal workers in the sex or entertainment trade and who volunteered to return home.¹³⁵ The manner in which these individuals arrived in such situations does not seem to have been central to the identification process at all.

¹³¹ Interview with Yuriy Balabalka, director, Oblast Juvenile Services Centre, 4 December 2003.

¹³² Interview with Anatoliy Zakharchenko, SEC, Kyiv, 3 February 2004.

¹³³ Interviews with Anti-Crime Division for Trafficking Crimes, Main Department of MIA in Odesa oblast, Odesa, December 2003.

¹³⁴ Interviews with Faith, Hope and Love, an Odesa NGO, and the La Strada-Ukraine Centre, Kyiv.

¹³⁵ 'Trafficking in Persons in Southeastern Europe: Current situation and responses to trafficking in persons in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova, and Romania', 1st edition, 2002, UNICEF, OHCHR, OSCE-ODIHR, 254 pp.

From a human rights perspective, this is clearly the correct approach. The primary concern of anti-trafficking efforts should be to identify and combat the use of forced labour, slavery and servitude regardless of the way in which it was organized. It is commendable that both NGOs and IOM have implicitly pursued this approach.

Recent studies on labour exploitation in the region emphasise the importance of paying proper attention to this issue.¹³⁶ Cases of labour exploitation are generally recognised by interviewees as amounting to trafficking cases. Organizations regularly provide assistance to trafficked persons who have been exploited as labour. The IOM reports that, of 921 victims it assisted between 2000 and 2003, the vast majority had been sexually exploited, but some had been subject to different forms of labour exploitation. IOM also reports that 4 per cent of its cases concerned men in forced labour in Russia, Turkey, the Czech Republic, Portugal, and Spain.¹³⁷

While the reality of trafficking for labour exploitation has been recognised, there has been little separate attention paid to the nature of this kind of exploitation, the organizational mechanisms behind it, and the means by which exploited persons are controlled. It has invariably been assumed that these organizational mechanisms and experiences or exploitation are identical to those involved in the trafficking of women into sexual exploitation.

The latest studies have attempted to explore some of these issues in detail.¹³⁸ The findings suggest that the mechanisms in destination countries are particularly responsible for the exploitation of men, while intermediaries in the country of origin play a very minor role in organizing such exploitation.¹³⁹ The findings also confirm that some of the trafficking of women into both sexual and labour exploitation is also organized through mechanisms operating in the country of destination and not through intermediaries in the country of origin.¹⁴⁰ A recent ILO report on Moldova suggested that up to 10 per cent of women identified as trafficked into sexual exploitation were recruited through mechanisms in the destination country, and not the country of origin. Also, up to 30 per cent of women subject to other forms of forced labour had been recruited in the destination country and not the country of origin.¹⁴¹

The acceptance of these situations as a form of trafficking will have important implications at the conceptual, programmatic and operational level. It will require:

- Re-thinking/reframing trafficking in Ukraine to recognise truly the variety of outcomes of trafficking beyond sexual exploitation to include exploitation in agriculture, construction, caretaking, and domestic work, among other activities.

¹³⁶ 'Trafficking in persons from Albania, Romania and Ukraine with the purpose of labour or sexual exploitation', draft report and preliminary results, ILO, Kyiv, 2003, 26 pp.

¹³⁷ Op. cit., IOM counter-trafficking analysis.

¹³⁸ Op. cit., IOM draft report. The aim of this study was to research the consequences of trafficking not only for sexual, but also for labour exploitation.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Moldova Rapid Assessment, draft report, 2003.

This new concept will need to be reinforced in awareness campaigns to inform trafficked persons, among others, of the availability of assistance and redress and their right to seek these.

- Refining awareness strategies to recognise that mechanisms operating in destination countries to trap those seeking work may be as harmful as those operating to recruit in the country of origin.
- Changing and improving the mechanisms for identifying trafficked persons and their referral by law enforcement, border patrols, specialised police detachments, embassies, and all others tasked with assisting them.
- Providing appropriate protection and assistance to different kinds of trafficked persons.
- Arranging temporary residency permits for trafficked persons in destination countries to facilitate the pursuit of legal remedies there, since Ukrainian agencies have no jurisdiction to act.

Responsibility for combating these kinds of trafficking should mainly lie with destination countries, since the trafficking mostly arises there.

It is also clear that thousands of Ukrainian migrants are finding themselves in extremely precarious situations as migrant workers in Western Europe, the CIS and Middle East. In drawing the line between trafficked persons and exploited migrants, great political sensitivity and accuracy are needed, not least because destination countries have, at least theoretically, undertaken obligations towards trafficked persons by ratifying the Palermo Protocol and the Convention on Transnational Organized Crime.¹⁴²

3.9. Changes in the Organization of Migration

As of 2003, the embassies in Kyiv of Schengen member states and other countries began introducing stricter controls on the issuance of tourist visas. The Schengen country embassies in Kyiv all meet once a month to share information about travel agencies who have gone on their blacklist and with whom they will no longer cooperate.¹⁴³ This means that visas will no longer be issued to individuals who use these agencies. These agencies have been providing travel documents for individuals who have no intentions of returning or who are likely to claim asylum upon arrival.¹⁴⁴ There is no doubt that this is the mechanism through which successful migrants arrived in destination countries in the past. But these agencies are also widely believed to have – possibly inadvertently – provided the necessary travel documents to traffickers as well.¹⁴⁵

Meanwhile, new visa regimes with new EU member-countries have also had a major impact on migration. One respondent reported that visas for certain countries have now

¹⁴² Framework EU agreement on providing temporary residency permits.

¹⁴³ Interviews with the Swiss and Spanish consulates, March 2004.

¹⁴⁴ Ibid.

¹⁴⁵ Op. cit., IOM mechanisms report and interview references.

become very difficult to obtain due to the numbers of applicants and the lack of capacity to process requests – at least at the outset of the new regulations.¹⁴⁶ Respondents were also convinced that reducing travel options will not necessarily stem migration. On the contrary, it may simply become one more burden for those who are determined to leave, driving up the prices for illegal migration and possibly pushing more people into the arms of traffickers.

Obviously, traffickers will not be especially affected by these measures. They will simply change their transportation routes. Perhaps Russia will now become a major transit country through which migrants will travel on to the same destination countries, most likely by air.¹⁴⁷ Ukrainians will clearly be able to obtain fake documents, allowing them to travel to various Western European destinations from Russia, as well as to points east.¹⁴⁸

“Until recently, the Ukrainian and Hungarian border was at the centre of smuggling and trafficking routes. But changes in Hungarian legislation making such activities punishable crimes have changed the situation. In cooperation with the Hungarian police and Ukrainian law enforcement agencies, a number of international organized rings were dismantled and the border now sees less of this kind of activity. The EU and Germany have provided considerable assistance to Hungary in reinforcing this border. Hungarian border guards now have heat-scanning machines that make it very difficult to smuggle people.”

Interview with the Border Service, Mukachevo Border Patrol, Zakarpattia

On a positive note, certain respondents thought that EU expansion would create new opportunities for Ukrainian citizens to find work, mostly because residents from the new member-countries will begin to look for better jobs west, thereby creating a need for their old jobs to be filled by migrants. Eventually, these opportunities will lead to the opening of new, and hopefully more transparent and legal, employment offers for Ukrainians in the new EU member-countries.¹⁴⁹ Lower labour migration should stimulate the development of tourism in Ukraine (see Chapter 4), which should, in turn, increase job opportunities within Ukraine and lower migration from specific oblasts.

3.10. Re-trafficking

It is generally accepted that successful rehabilitation and reintegration of trafficked persons who have returned home is key to avoiding re-trafficking. There are no reliable figures on the re-trafficking of returnees. IOM statistics suggest that possibly some portion of the 25 persons with whom contact has been lost out of 473 Ukrainian citizens assisted in

¹⁴⁶ Op. cit., Salus Foundation.

¹⁴⁷ Interview with Donetsk Anti-Trafficking Department, MIA.

¹⁴⁸ Interview with Woman to Woman Centre, L'viv, 17 November 2003.

¹⁴⁹ Interview with SEC, Kyiv, 3 February 2003.

2003 might have been re-trafficked.¹⁵⁰ In addition, some respondents have indicated that up to 30 per cent of the trafficked persons whom they have assisted continue to seek other opportunities abroad and are therefore at risk of being re-trafficked.¹⁵¹

Many respondents indicated that the situation is particularly difficult for those who have been away from their community for long periods of time, or who know that those problems from which they had fled await them upon their return. In the absence of successful reintegration, they clearly consider remigration as a solution, on the assumption that, next time around, they will avoid the traps and pitfalls. A typical scenario is described here.

“Thirty per cent of trafficked women who received assistance at our shelter will most likely look again for opportunities to go abroad. They’re mostly young women from villages where there is no electricity or heating. They know that there’s nothing waiting for them at home. From the outset, these women refuse the work offered to them at the shelter. Even though they don’t openly admit that they’re not interested because they’re planning to go abroad again, it’s obvious that they have no intentions of staying in Ukraine.”

Interview with Caritas-Ternopil Shelter

Some respondents also felt that the long-term psychological support critically needed by many trafficked persons is not provided under the current assistance programmes of NGOs and state agencies. This is another major factor behind the re-trafficking risk.¹⁵²

The availability of suitable work is also a critical issue for successful reintegration and has been a problem in the past. It is now the focus of a number of new programmes run by international organizations in Ukraine (see Chapter 6), but whether these will improve the situation and reduce the re-trafficking risk, remains to be seen.

¹⁵⁰ ‘Trafficking in Persons in Ukraine: Cooperation and support with NGOs’, IOM report of December 2003.

¹⁵¹ Interview with Caritas-Ternopil Shelter for Trafficked Person, 19 November 2003.

¹⁵² Interview with Woman to Woman Centre, Donetsk.