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THE HUMAN TRAFFICKING ASSESSMENT TOOL REPORT

MOLDOVA

June 2005

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INTRODUCTION

Moldova is primarily a country of origin for victims of trafficking in persons. Initially, perpetrators trafficked Moldovan women and girls to the Balkans and Western Europe for the purposes of sexual exploitation.¹ More recently, though, Moldovan men, women, and children are increasingly trafficked to Turkey, Russia, and the Middle East for the purposes of sexual exploitation as well as forced labor, begging, and, in some cases, forced removal of organs.² A new wave of victims, headed mostly for Turkey, comes from Gagauzia, which is in the southern part of Moldova and which is populated by a Turkish minority.³ The status of Moldova's borders with the separatist region of Transnistria augments the problem of trans-border trafficking. Internal trafficking also exists as traffickers bring victims from Moldova's rural areas to Chisinau, often with the intent to subsequently transport them abroad.⁴

Since Moldova became independent in 1991, between 600,000 to 1 million of its citizens (out of a total of 4.3 million) moved overseas to seek employment.⁵ Specific figures concerning those who were trafficked out of this large number of migrants are lacking. However, the International Organization for Migration ("IOM") has gathered statistics based on the testimony of returning victims of trafficking. IOM estimates that 60% of female victims repatriated to Moldova between 2001 and 2003 were between the ages of 18 and 24. Sixty-five percent of them were single and 52% of them came from poor families earning roughly 202 Lei (\$17) a month.⁶ According to IOM "[w]omen and men are often motivated to go abroad to provide for their families. The consequence is that a large percentage of those trafficked leave their children behind, making them more vulnerable to social consequences of poverty and, in some cases, trafficking."⁷

Given the magnitude of the trafficking problem in Moldova, the government established The National Committee for Combating Trafficking in Human Beings ("National Anti-Trafficking Committee"), which is comprised of representatives from various ministries and which conducts monthly meetings throughout Moldova's various regions. Members of the international community and NGOs have observer status and monitor the committee's progress in implementing the current National Plan of Action to Combat Trafficking in Human Beings ("Anti-Trafficking National Plan of Action.")⁸ The plan is not a legislative act *per se*, thus, it

¹ See BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE: 2003 UPDATE ON SITUATION AND RESPONSES TO TRAFFICKING IN HUMAN BEINGS IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, SERBIA AND MONTENEGRO, INCLUDING THE UN ADMINISTERED PROVINCE OF KOSOVO, ROMANIA 72 (2003), available at www.seerights.org [hereinafter 2003 SOUTH EASTERN EUROPE UPDATE]; see also U.S. DEPARTMENT OF STATE, 2004 TRAFFICKING IN PERSONS REPORT 158 (2004), available at <http://www.state.gov/g/tip/rls/tiprpt/2004/>.

² See INTERNATIONAL ORGANIZATION FOR MIGRATION, TRAFFICKING AS IT IS; A STATISTICAL PROFILE [hereinafter IOM Statistics].

³ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁴ See *id.*

⁵ See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 1, at 71.

⁶ These figures are based on interviews conducted by the IOM Mission in Moldova with 1140 returning victims between 2001 and 2003. See IOM Statistics, *supra* note 2.

⁷ See *id.*

⁸ See generally Decision of the Government of the Republic of Moldova on Approving the Nominal Composition of the National Committee on Combating Trafficking in Human Beings and the National Action Plan on Combating Trafficking in Human Beings, Annex No. 2: National Plan of Action to Combat Trafficking in Human Beings, No. 1219, Nov. 19, 2001

should not be interpreted as enforceable law. However, it is referenced together with other binding laws in several sections of this report. The plan delineates measures that the Moldovan government should undertake to prevent trafficking from occurring, prosecute traffickers, protect the trafficked victims, and cooperate with other states in order to better combat the overall phenomenon.⁹ As this report will show, though, international organizations are currently driving the greater part of preventive and protective efforts in Moldova.

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (“Trafficking Protocol”)¹⁰ has 13 substantive articles that set forth a clear definition of trafficking,¹¹ encourage international cooperation, and call upon States Parties to criminalize trafficking, prosecute the offense, protect and assist trafficked persons, and adopt measures to prevent trafficking from occurring in the first place.¹² The Trafficking Protocol is unique in that it requires its States Parties to follow this three-tiered approach (prosecution, protection, and prevention) *at a minimum*, and encourages them to pay heed to other elements of the international anti-trafficking regime that are incorporated within the Protocol and its host Convention, as well as to undertake measures on their own.¹³ Thus, naturally countries such as Moldova can go beyond the Protocol and devise more specific measures that address the particulars of the trafficking situation occurring within and outside their borders.

Moldova signed both the Transnational Organized Crime Convention and the Trafficking Protocol on December 14, 2000.¹⁴ In February 2005, the government approved the ratification of both instruments, and a delegation must still formally deposit the instrument of ratification at the United Nations Office on Drugs and Crime (UN body that is currently administering the Convention and its Protocol).

The following report will assess Moldova’s compliance with the Trafficking Protocol using an assessment tool developed by the Central European and Eurasian Law Initiative of the American Bar Association (“ABA/CEELI”). Evident from its name, the Protocol applies in conjunction with the Transnational Organized Crime Convention,¹⁵ thus, pertinent provisions

[hereinafter Anti-Trafficking National Plan of Action].

⁹ *See id.*

¹⁰ *See generally* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/383 (2001), *available at* http://www.unodc.org/unodc/en/crime_cicp_resolutions.html [hereinafter Trafficking Protocol].

¹¹ *See id.* art. 3(a).

¹² *See id.* art. 2.

¹³ As one expert has stated the Trafficking Protocol “sets the floor not the ceiling of what countries can do against . . . trafficking of human beings.” *See* James Puleo, Senior Advisor on Migration Policies and Migration Management, Address at the MDSA Workshop on Extra-Regional Irregular Migration and Migrant Smuggling To, Through, and From the SADC Region in Johannesburg, South Africa (June 25-27 2003), *in* Preliminary Report and Recommendations on the MDSA Workshop on Extra-Regional Irregular Migration and Migrant Smuggling To, Through, and From the SADC Region, *available at* <http://www.sarpn.org.za/documents/d0000735/index.php>.

¹⁴ *See* Signatories to the UN Convention against Transnational Crime and its Protocols, *available at* http://www.unodc.org/unodc/en/crime_cicp_signatures.html.

¹⁵ *See generally* United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/55/383 (2001), *available at* http://www.unodc.org/unodc/en/crime_cicp_resolutions.html [hereinafter Transnational Organized Crime Convention].

from both instruments will be analyzed. Each section of the report has a de jure analysis that reviews the degree to which Moldovan laws comply with the Protocol and a de facto analysis that assesses the degree to which day-to-day practice complies with domestic laws and the Protocol. Most of the sections contain recommendations for future action, many of which are a direct reflection of concerns raised by persons who were interviewed during the three-week de facto portion of the assessment. A full list of respondents is attached as an appendix.

It should be noted that this report is not a scientific survey. It is an assessment conducted using a standard tool, which will be implemented in many countries around the world. The assessor used the de jure analysis, de facto evaluation, and various secondary sources to draw conclusions. Where applicable, statistics provided by reliable sources are included.¹⁶

¹⁶ These include statistics provided orally during the de facto interview process as well as statistics compiled by IOM, La Strada and other organizations working on trafficking issues in Moldova.

METHODOLOGY

This study was conducted using the Human Trafficking Assessment Tool that was developed by ABA/CEELI in Washington, DC. This study was the pilot implementation of the tool, which will be used in countries around the world.

The assessment tool measures a state's compliance with the Trafficking Protocol that supplements the Transnational Organized Crime Convention. The tool is divided into two portions: a de jure assessment and a de facto assessment. The de jure section focuses on whether a country's domestic laws comply with the obligations of the Trafficking Protocol and the Convention. The de facto section tracks a country's hands-on efforts to combat trafficking (i.e. programmatic efforts) and measures whether they comply with the Trafficking Protocol and the Convention. A lead assessor coordinated all of the information gathered from both the de jure and de facto evaluations and incorporated it into this final report.

A team of attorneys in Chisinau, Moldova, conducted the de jure assessment. The team was comprised of a prosecutor, who has extensive experience with trafficking cases, two criminal law professors, and a migration law expert. The team reviewed all appropriate binding and non-binding authority, including provisions from Moldova's Criminal Code and Criminal Procedure Code, the Anti-Trafficking National Plan of Action, and the new draft anti-trafficking law. It should be noted that Moldova's draft anti-trafficking law was developed and presented to Parliament for a vote during the assessment period and should shortly come into force. Given that the law seeks to fortify prevention and victim protection measures, among other things, it is pertinent to include it in this report even though it is currently in draft form. The draft law will aid Moldova in better complying with the Trafficking Protocol and the Transnational Organized Crime Convention although some of its provisions might undergo modification as the Parliament votes on its adoption.

The de jure team answered 104 questions pertaining to legislative compliance with the Protocol and Convention. The de jure questions closely mimic the language of the Protocol's substantive provisions (13 in total) and pertinent provisions of the Transnational Organized Crime Convention. The questions were organized into groupings according to various topics arising out of the delineated international obligations, as well as topics that were not directly addressed in the instruments but are necessary for a comprehensive analysis of anti-trafficking legislation worldwide. The members of the de jure team divided the questions among themselves according to the topics that closely relate to their areas of expertise. Once each of the team members completed their portion of the questions, they convened in a meeting with the assessor in order to discuss their findings.

The de facto assessment was based on interviews conducted by the assessor with 38 individuals who are generally known within the Moldovan community as experts in matters related to trafficking in persons. The assessor met with law enforcement officers, prosecutors, government officials, representatives of international organizations in Moldova, and members of the NGO community. The assessor asked a total of 155 de facto questions, which were also organized into groupings according to various topics arising out of Protocol and Convention provisions, as well as topics that were not directly addressed in the instruments. Not all of the interviewees answered all of the questions. The assessor matched questions clustered under

various topics with the particular expertise of each interviewee. For example, a representative from the Department of Border Guards was asked questions concerning border security measures under Article 11 of the Trafficking Protocol. A focus group of local NGOs answered questions regarding prevention measures and victim protection measures. The assessor also met with high school students in the 9th grade from Sipoteni (Calarasi province) in order to gauge the impact of anti-trafficking information campaigns. Throughout the de facto interview process, the assessor received recommendations from the respondents. These recommendations are included in the analysis below.

Finally, the assessor received various materials on anti-trafficking efforts in Moldova (i.e. secondary sources) as well as statistics from NGOs, government sources, and international organizations. Pertinent information is included below.

The final report was written by the lead assessor and reviewed by the persons who participated both in the de jure and de facto sections of this assessment.

EXECUTIVE SUMMARY

Moldova's weak economy continues to have a major impact on the government's ability to properly address the trafficking phenomenon. Poverty and high unemployment continue to drive Moldovan citizens to seek jobs overseas.¹⁷ The government has developed an anti-poverty plan,¹⁸ however, its impact has been limited in comparison to the magnitude of the overall problem. While an anti-trafficking legislative framework exists, the government has scarce resources, thus, it cannot fully sustain the necessary programs and initiatives to combat trafficking.

In general, Moldova's de jure compliance with the Trafficking Protocol and pertinent provisions of the Transnational Organized Crime Convention is largely satisfactory. Current laws, together with the Anti-Trafficking National Plan of Action, form a basic framework for prosecuting suspected traffickers, protecting victims who agree to cooperate with law enforcement, taking preventive action, and cooperating with other states in order to address trafficking trans-nationally. There are notable gaps in the legislation, though, and reforms are underway in order to fortify certain aspects, such as victim protection and prevention mechanisms, among other things.

Moldova's de facto compliance with the Trafficking Protocol and applicable provisions of the Transnational Organized Crime Convention is more problematic. The Moldovan national budget does not specifically dedicate financial resources to anti-trafficking efforts, thus, the requisite programs and initiatives cannot be sustained either on a short or long-term basis. While the state prosecutes traffickers, the bulk of prevention and victim protection efforts are undertaken by international organizations in Moldova. However, as one IOM representative pointed out, these efforts are short-term, and if organizations like IOM were to pull out from Moldova sometime in the near future, the government would not be able to continue the preventive campaigns, victim shelter program, and other measures instituted by the international community.¹⁹

DE JURE COMPLIANCE: AN OVERVIEW

Moldova's current Anti-Trafficking National Plan of Action delineates certain measures for prevention, prosecution, victim protection, and international cooperation to combat trafficking in persons.²⁰ As mentioned above, the plan is not an enforceable legislative act. Consequently, a new anti-trafficking law has been developed in order to impose legal obligations upon various government entities and require them to implement effective measures for prevention,

¹⁷ See 2003 SOUTH EASTERN EUROPE UPDATE, *supra* note 1, at 71; see also BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE: 2004 FOCUS ON PREVENTION IN ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, ROMANIA, SERBIA AND MONTENEGRO, AND THE UN ADMINISTERED PROVINCE OF KOSOVO 112-13 (2004).

¹⁸ See generally Hotarirea Guvernului Republicii Moldova cu Privire la Instituirea Comitetului Interministerial pentru Dezvoltarea Durabila si Reducerea Saraciei [Decision of the Government of the Republic of Moldova Regarding the Creation of the Inter-Ministerial Committee for Sustainable Development and Poverty Reduction], No. 1688, Dec. 25, 2002 [hereinafter Anti-Poverty Plan].

¹⁹ See Interview with Allan Freedman, Deputy Chief of Mission, International Organization for Migration (Sept. 23, 2004).

²⁰ See Anti-Trafficking National Plan of Action, *supra* note 8.

prosecution, victim protection, and international cooperation.²¹ The new law is still in draft form but should come into force in the near future as it was presented to Parliament for a vote at the beginning of 2005. The assessor referenced the draft law, together with other binding laws, throughout the *de jure* sections of this report, because it sets forth detailed prevention and victim protection measures, among other things. The draft law is more comprehensive than the non-binding Anti-Trafficking National Plan of Action and, once it enters into force, it will enable Moldova to meet the requirements of the Trafficking Protocol and the Transnational Organized Crime Convention in a more complete fashion.

Preventive measures, such as information campaigns, and other efforts, such as initiatives designed to address the root causes of trafficking (i.e. poverty, women's inequality, etc.) are broadly delineated in the Anti-Trafficking National Plan of Action.²² The draft anti-trafficking law, which will soon come into effect, fortifies the obligation of the government to develop and run prevention initiatives and address socio-economic issues that perpetuate the trafficking cycle.²³ As a result, Moldova will be able to better comply with the Trafficking Protocol and the Transnational Organized Crime Convention.

Existing provisions of Moldova's Criminal Code provide for two separate trafficking offenses. Article 165 criminalizes trafficking in adults²⁴ and Article 206 criminalizes trafficking in children.²⁵ While establishing sufficiently severe sanctions that, theoretically, should have a deterrent effect, the Moldovan definition of trafficking within Articles 165 and 206 does not contain all of the elements required by Article 3(a) of the Trafficking Protocol.²⁶ Furthermore, the Criminal Code definitions do not match the definition incorporated in the draft anti-trafficking law. The definition of trafficking in the draft law is more expansive. However, the draft anti-trafficking law is not meant to have a criminally punitive effect, thus, even when it comes into force, its expanded trafficking definition will not automatically replace or modify the current definitions in Article 165 and 206.²⁷ Accordingly, the trafficking offenses in the Criminal Code will have to be amended separately.

Victims of trafficking can receive protection under an existing witness protection law.²⁸ However, this particular piece of legislation solely provides for measures that seek to physically protect individuals.²⁹ Furthermore, the law only applies if victims agree to cooperate with law enforcement in the detection, prevention, deterrence, investigation, and discovery of a crime,

²¹ See generally *Legea Republicii Moldova Privind Prevenirea si Combaterea Traficului de Fiinte Umane* [Law of the Republic of Moldova on Preventing and Combating Trafficking in Human Beings] (not yet in force) [hereinafter *Draft Anti-Trafficking Law*].

²² See *Anti-Trafficking National Plan of Action*, *supra* note 8.

²³ See *Draft Anti-Trafficking Law*, *supra* note 21, art. 6.

²⁴ See *CRIMINAL CODE* [CRIM. C.] art. 165 (Mold.).

²⁵ See *id.* art. 206.

²⁶ See *Trafficking Protocol*, *supra* note 10, art. 3(a).

²⁷ See *CRIMINAL CODE* [CRIM. C.] arts. 165, 206 (Mold.).

²⁸ See generally *Legea Republicii Moldova Privind Protectia de Stat a Partii Vatamate, a Martorilor si a Altor Persoane care Acorda Ajutor in Procesul Penal* [Law of the Republic of Moldova on State Protection of the Victim, Witnesses and Other Persons who Provide Assistance in Criminal Proceedings], No. 1458-XIII, Jan. 28, 1998 [hereinafter *1998 Witness Protection Law*].

²⁹ See *id.* art. 8.

like trafficking, or agree to testify in court.³⁰ The draft anti-trafficking law offers victims protection without requiring them to become involved in criminal proceedings.³¹ The draft law not only provides for the physical safety of victims but also offers them in-depth assistance.³² More specifically, the law imposes an obligation upon pertinent government officials to establish and maintain shelters for trafficked individuals, where they will be able to receive proper medical care and other types of assistance.³³ Thus, when the draft law comes into effect, it will enable Moldova to better comply with the Trafficking Protocol and the Transnational Organized Crime Convention.

Presently, Moldova has the legal basis available for cooperating with other states in order to address the phenomenon of trafficking in persons. The Anti-Trafficking National Plan of Action calls for international cooperation to combat trafficking³⁴ and the draft law will legally require such cooperation.³⁵ In addition, Moldova has ratified several multi-lateral treaties regarding mutual legal assistance and has concluded a few bi-lateral agreements regarding the status of Moldovan citizens working illegally within the territory of several countries.³⁶ Experts indicate, though, that Moldova needs to sign and ratify additional international agreements in order to be able to combat trafficking more comprehensively³⁷ and to establish the legal status and domicile of victims of trafficking.³⁸

DE FACTO COMPLIANCE: AN OVERVIEW

The de facto portion of this assessment identifies several issues that the Moldovan government needs to address in order to better comply with the obligations delineated in the Trafficking Protocol and in pertinent provisions of the Transnational Organized Crime Convention.

Efforts to prevent the trafficking phenomenon from occurring in a country such as Moldova include awareness-raising campaigns, distribution of anti-trafficking materials, and the development of long-term strategies aimed at improving the economic and social position of groups susceptible to traffickers (i.e., poor families etc.). One example of such a long-term strategy is the creation of jobs in particularly impoverished areas. While the Moldovan government has developed an anti-poverty strategy that seeks to address the social and economic standing of all of its vulnerable citizens, the plan solely exists on paper. Persons interviewed for this assessment indicated that, while the strategy is in place, there are minimal state-driven efforts to implement it and such efforts do not have a great deal of impact. Another issue of concern is that the international organizations and local NGOs have taken the lead in running anti-trafficking campaigns and distributing materials. Government officials participate

³⁰ See *id.* art. 18(2)(a).

³¹ See Draft Anti-Trafficking Law, *supra* note 21, art. 20(4).

³² See *id.* art. 1(b).

³³ See *id.* art. 17.

³⁴ See Anti-Trafficking National Plan of Action, *supra* note 8.

³⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 33.

³⁶ See discussion *infra* pp. 44-45.

³⁷ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

³⁸ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

by lending their general support and making speeches, however, the bulk of the funding for such efforts comes from the international presence in Moldova. Some of the interviewees indicated that the preventive measures implemented thus far have been effective but only because of international involvement.³⁹

Specialized government units conduct trafficking investigations and prosecutions. There is a 5 to 6 person unit within the Ministry of Internal Affairs that is in charge of trafficking investigations. Likewise, there are several prosecutors within the State Prosecutor's Office who specialize in trafficking cases. Not only is this an inadequate number of anti-trafficking personnel, but these individuals are located in Chisinau and there are few law enforcement officials and prosecutors in other regions of Moldova who are versed in trafficking issues.⁴⁰

Currently, trafficked victims can receive protection in various ways when they return to Moldova. State authorities protect victims only if they agree to testify against their traffickers or otherwise cooperate with law enforcement officials. A special witness protection unit within the Ministry of Internal Affairs provides various means of physical protection, however, its budget is limited. All victims, including those who do not wish to testify or otherwise cooperate, are temporarily housed at a shelter run by IOM in Chisinau. While some victims can be found in various government-run or private shelters for orphans or homeless persons, trafficked individuals receive the best care and assistance tailored to their needs at the IOM shelter. During their temporary stay at the IOM shelter, victims receive medical, psychological, social, and legal assistance, as well as help with securing employment after they leave. The Ministry of Labor and Social Protection together with organizations such as the International Center for Women Rights Protection and Promotion "La Strada" ("La Strada") conduct job-training programs for formerly trafficked persons. In short, the international community bears most of the cost of victim protection, assistance, and rehabilitation in Moldova. Persons interviewed for the purposes of this assessment indicated that there is no separate state budget specifically dedicated to victims of trafficking. Thus, if organizations such as IOM and La Strada end their programs (which are solely meant to provide short-term solutions), the government will not likely commit adequate resources and continue assisting and protecting victims.⁴¹

Moldovan officials have made several efforts to cooperate at the international level in order to combat trafficking. Pertinent personnel participated in information exchanges and trainings with representatives from other countries. Law enforcement officers took part in regional efforts to track and apprehend traffickers such as operation "Miraj" under the auspices of the Southeast European Cooperative Initiative ("SECI"). Officials also joined in similar regional efforts to combat organized crime. Lastly, individuals suspected of trafficking have been extradited to and from Moldova for the purposes of prosecution. Some of the interviewees, though, called for additional cooperative efforts.⁴²

³⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

Article 1: Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 1 indicates that the Trafficking Protocol is to be interpreted together with the Transnational Organized Crime Convention and makes reference to provisions from the Convention that are to be applied *mutatis mutandis* along side provisions of the Protocol. This literally means “with such modifications as circumstances require” or “with the necessary modifications.” Thus, provisions from the Convention that are applied together with the Protocol will be modified or interpreted to have the same meaning or achieve the same result in a situation where the Protocol governs as in a situation where the Convention governs.⁴³ Some pertinent provisions from the Transnational Organized Crime Convention are those addressing:

- jurisdiction⁴⁴
- extradition⁴⁵
- witness protection⁴⁶
- participation in an organized criminal group⁴⁷
- money laundering⁴⁸
- corruption⁴⁹
- obstruction of justice.⁵⁰

Recommendations:

- The Moldovan government should cover all costs related to witness protection.
- Augment the financial and technological capabilities of the Witness Protection Section at the Ministry of Internal Affairs, which currently protects witnesses in all criminal cases, by increasing and stabilizing its budget as well as providing security cameras, telephones, and other equipment.

⁴³ See Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the Work of Its First to Eleventh Sessions; Addendum: Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, 55th Sess., Agenda Item 105, at 12, U.N. Doc. A/55/383/Add.1 (2000), available at http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf [hereinafter Convention and Protocol Travaux].

⁴⁴ See Transnational Organized Crime Convention, *supra* note 15, art. 15.

⁴⁵ See *id.* art. 16.

⁴⁶ See *id.* art. 24.

⁴⁷ See *id.* art. 5.

⁴⁸ See *id.* art. 6.

⁴⁹ See *id.* arts. 8-9.

⁵⁰ See *id.* art. 23.

- Create a special government unit that specifically focuses on the physical protection of trafficked victims and their families and establish concrete long-term procedures for such a unit.
- Conduct trainings on the latest measures that are available for protecting witnesses.
- Undertake drastic economic measures in order to prevent public officials from engaging in corrupt acts (i.e. increase their salaries) because mere prosecution for such acts is not a sufficient deterrent.
- Implement measures to prevent corruption and *then* prosecute persons suspected of engaging in corrupt acts when such measures fail. Preventive measures include conducting public education campaigns, imposing an obligation on public officials to periodically declare their income and assets, and enforcing conflict of interest laws and regulations.
- Ensure that persons who combat corruption (police officers, prosecutors, and judges) are independent. Ensure that the staff of the Center for Combating Economic Crimes and Corruption (governmental body) is independent.
- Amend the offenses of trafficking in persons as defined by Moldovan law to include corruption as an aggravating circumstance.

De Jure Compliance:

Jurisdiction

While jurisdiction provisions have not been specifically drafted for the offense of trafficking in persons *per se*, the Criminal Code of Moldova delineates general jurisdiction provisions that apply to all crimes incorporated in the code. These domestic provisions are in compliance with most, if not all, of the required and suggested means of asserting jurisdiction described in Article 15 of the Transnational Organized Crime Convention.⁵¹

Article 11(1) of the Moldovan Criminal Code states that “[a]ll persons who have committed crimes within the territory of the Republic of Moldova will be held criminally liable,”⁵² thus establishing territorial jurisdiction over crimes such as trafficking in persons, regardless of the nationality of the perpetrator. The Code explains that “[c]rimes committed within the borders of territorial waters or within the air space of the Republic of Moldova are considered to be committed within the territory of the Republic of Moldova.”⁵³ Furthermore, “[the] person who committed a crime on a ship, registered in a harbor of the Republic of Moldova, which is located in the water or air space of outside the borders of the Republic of Moldova, can be held criminally liable . . . provided that the International Treaties to which Moldova is a party do not

⁵¹ *See id.* art. 15.

⁵² CRIMINAL CODE [CRIM. C.] art. 11(1) (Mold.).

⁵³ *Id.* art. 11(5).

contain different provisions.”⁵⁴ Lastly, “[p]ersons who committed crimes aboard a military ship or military aircraft, irrespective of their location, are also held criminally responsible. . . .”⁵⁵

The Criminal Code establishes extraterritorial jurisdiction based upon the active nationality principle over “citizens of the Republic of Moldova and . . . persons without citizenship [i.e. stateless] who live permanently in the territory of the Republic of Moldova” who have committed crimes such as trafficking in persons “outside its borders.”⁵⁶ One commentator indicates that this particular type of jurisdiction can be asserted regardless of whether or not the victim of the offense is (or was) a Moldovan citizen.⁵⁷ Furthermore, such jurisdiction is pertinent regardless of *where* a crime, such as trafficking in persons, was committed or whether it was committed on the territory of several states.⁵⁸

Extraterritorial jurisdiction can also be asserted against “[f]oreign citizens and persons without citizenship [i.e. stateless] who do not live permanently within the territory of the Republic of Moldova”⁵⁹ and who have committed the following offenses *outside* Moldovan territory:

- crimes that are against the interests of the Republic of Moldova
- crimes delineated in international treaties to which Moldova is a State Party
- crimes against peace and security of mankind
- war crimes.⁶⁰

Moldovan courts can assert jurisdiction for any of the above offenses if the perpetrators have not already been held liable or convicted in the courts of other states.⁶¹

It should be noted that in order for Moldovan authorities to exercise extraterritorial jurisdiction, the crime in question, whether it is trafficking or not, does *not* have to involve an organized criminal group. As one expert points out, the fact that an offense, such as trafficking in persons, was committed by an organized criminal group⁶² or a criminal organization/association⁶³ is solely a qualifying element for the sentence that will subsequently be imposed.⁶⁴ Thus, it is not a requirement when Moldovan authorities initially assert jurisdiction.

Furthermore, Moldovan authorities can assert extraterritorial jurisdiction over money laundering operations that occur outside Moldovan territory and are tied to transnational crimes like trafficking. One commentator indicates that Article 243 of the Criminal Code of Moldova criminalizes the act of money laundering⁶⁵ and thus, it is an offense to which the

⁵⁴ *Id.*

⁵⁵ *Id.* art. 11(6).

⁵⁶ *Id.* art. 11(2).

⁵⁷ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁵⁸ See *id.*

⁵⁹ CRIMINAL CODE [CRIM. C.] art. 11(3) (Mold.).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *id.* art. 46 (Mold.) (“An organized criminal group is a stable reunion of persons who previously organized in order to commit one or more crimes.”).

⁶³ See *id.* art. 47 (Mold.) (describing in depth the definition of a criminal organization/association).

⁶⁴ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁶⁵ See CRIMINAL CODE [CRIM. C.] art. 243 (Mold.).

above mentioned general jurisdiction provisions apply.⁶⁶ Consequently, if an individual participates in, or attempts⁶⁷ to participate in, the laundering of money derived from trafficking activities outside the territory of Moldova, then Moldovan authorities can assert extraterritorial jurisdiction over him/her.

As mentioned above, the jurisdiction clauses in the Moldovan Criminal Code are also applicable to persons without citizenship, or stateless persons;⁶⁸ point stressed in the *travaux préparatoires* of the Transnational Organized Crime Convention.⁶⁹ In addition, Article 5(1) of the Criminal Procedure Code establishes that “[o]n the territory of the Republic of Moldova, the procedure in criminal cases regarding foreign and stateless [persons] is carried out in compliance with the present Code.”⁷⁰

Extradition

Article 13 of the Criminal Code of Moldova establishes that:

- (1) Citizens of the Republic of Moldova and persons who have been granted political asylum, who committed crimes outside the borders of the Republic of Moldova, cannot be extradited from the country and are subjected to criminal liability under the present Code.
- (2) Foreign citizens and persons without citizenship, who committed crimes outside the borders of the Republic of Moldova and who are on the territory of this republic, can be extradited only in the basis of an international convention to which the Republic of Moldova is a party or in terms of reciprocity.⁷¹

Thus, when Moldovan citizens and political asylees accepted on Moldovan territory commit an offense outside Moldova, they cannot be extradited to other states for prosecution.⁷² Their criminal liability is determined in Moldovan courts.⁷³ In contrast, foreign citizens and stateless persons who commit crimes outside of Moldova can be extradited from Moldova to other states for prosecution.⁷⁴ Their extradition occurs either on the basis of an international convention to which Moldova is a State Party or on the basis of reciprocity established on a case-by-case basis.⁷⁵ If the same foreign citizens and stateless persons commit crimes within the territory of Moldova, authorities can assert territorial jurisdiction over them (as mentioned above) and try

⁶⁶ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁶⁷ See CRIMINAL CODE [CRIM. C.] art. 27 (Mold.) (defining attempt as a general concept that applies to all offenses delineated in the Criminal Code of Moldova).

⁶⁸ See CRIMINAL CODE [CRIM. C.] arts. 11(2), 11(3) (Mold.).

⁶⁹ See Convention and Protocol Travaux, *supra* note 43, at 5.

⁷⁰ CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 5(1) (Mold.).

⁷¹ CRIMINAL CODE [CRIM. C.] art. 13 (Mold.).

⁷² See *id.* art. 13(1); MOLD. CONST. art. 17(3) (“No citizen of the Republic of Moldova can be extradited or expelled from his/her country.”).

⁷³ See CRIMINAL CODE [CRIM. C.] art. 13(1) (Mold.).

⁷⁴ See *id.* art. 13(2).

⁷⁵ See *id.*

them in Moldovan courts.⁷⁶ Moldovan authorities can also seek the extradition of individuals from other states based on international treaties or reciprocity.⁷⁷

Since Moldova is not yet a formal State Party to the Transnational Organized Crime Convention or the Trafficking Protocol,⁷⁸ authorities do not utilize the Convention as the direct legal basis for cooperating on extradition matters. Once a ratification instrument is deposited, this would be one international treaty that could be used for extradition purposes, as recommended in Article 16 of the Convention.⁷⁹ Currently, authorities use the 1957 European Convention on Extradition that became enforceable in Moldova in 1997,⁸⁰ as well as the 1993 Convention on Mutual Legal Assistance in Civil, Family and Criminal Matters for the Newly Independent States (“NIS Mutual Legal Assistance Convention”) that became enforceable in Moldova in 1995.⁸¹ These are both appropriate legal bases for extradition as confirmed by Article 16 of the Transnational Organized Crime Convention.⁸²

When seeking the extradition of individuals to Moldova from other states or when honoring extradition requests of foreign citizens and stateless persons from Moldova to other states, the European Convention on Extradition, the NIS Mutual Legal Assistance Convention, and the Moldovan Criminal Procedure Code impose certain obligations *inter alia*:

- the offense(s) for which the individual is being extradited must be punishable under the laws of both the state that is requesting the extradition and the state that is being requested to extradite⁸³
- extradition requests are to involve crimes that are punishable by one year imprisonment at a minimum⁸⁴
- if seeking extradition for several crimes, which vary in the extent of their punishment (i.e. some require less than the one year minimum above), the requested state has the authority to include all such offenses in the extradition⁸⁵

⁷⁶ See CRIMINAL CODE [CRIM. C.] art. 11(1) (Mold.).

⁷⁷ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 541(2) (Mold.).

⁷⁸ As mentioned above, the Republic of Moldova signed both the Transnational Organized Crime Convention and the Trafficking Protocol on December 14, 2000 but has not yet deposited an instrument of ratification. See discussion *supra* p. 2.

⁷⁹ See Transnational Organized Crime Convention, *supra* note 15, art. 16(4) (“If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition for another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition. . . .”) (emphasis added).

⁸⁰ See generally European Convention on Extradition, Dec. 13, 1957, ETS No. 24, available at <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>; Hotarirea Parlamentului Republicii Moldova pentru Ratificarea Conventiei Europene de Extradare [Decision of the Parliament of the Republic of Moldova on the Ratification of the European Convention on Extradition], No. 1183-XIII, May 14, 1997 (officially ratifying the European Convention on Extradition and listing certain reservations and declarations).

⁸¹ See generally Convention on Mutual Legal Assistance in Civil, Family and Criminal Matters, Jan. 22, 1993, arts. 56-71 [hereinafter NIS Mutual Legal Assistance Convention].

⁸² See Transnational Organized Crime Convention, *supra* note 15, art. 16(5)(b).

⁸³ See European Convention on Extradition, *supra* note 80, art. 2(1); see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 56(2).

⁸⁴ See European Convention on Extradition, *supra* note 80, art. 2(1); see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 56(2).

⁸⁵ See European Convention on Extradition, *supra* note 80, art. 2(2); see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 56(3).

- simplified extradition procedures are to be made available if the accused who is to be extradited agrees to such procedures⁸⁶
- authorities must extradite an individual or prosecute him/her ⁸⁷
- the fair treatment of the accused must be assured at all stages of the extradition proceedings.⁸⁸

The above requirements governing extradition requests in Moldova mirror most of the obligations of Article 16 of the Transnational Organized Crime Convention.⁸⁹

According to the European Convention on Extradition, the 1997 Decision of the Parliament of the Republic of Moldova on the Ratification of the European Convention on Extradition, and the NIS Mutual Legal Assistance Convention, Moldovan authorities are entitled to refuse extradition in the following circumstances:

- if they are requested to extradite Moldovan nationals to other states⁹⁰
- if the offense for which the individual is being extradited occurred in whole or in part on Moldovan territory⁹¹
- if the offense for which the individual is being extradited occurred outside the territory of Moldova but the laws of Moldova do not allow prosecution of such an offense in other courts or extradition of an individual for committing such an offense⁹²
- if the Moldovan courts have already initiated proceedings against the individual for the crime that s/he committed and that forms the basis for the extradition request⁹³
- if the courts of the requesting state have decided not to institute or to terminate proceedings against the accused in connection with the crime that forms the basis for the extradition request⁹⁴
- if too much time has lapsed from prosecution to punishment of the crime that forms the basis for the extradition request⁹⁵
- if the laws of the requesting state impose capital punishment for the crime that forms the basis for the extradition (unless the requesting state provides sufficient guarantees that capital punishment will *not* be imposed on the individual that is to be extradited)⁹⁶

⁸⁶ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 545(1) (Mold.).

⁸⁷ See European Convention on Extradition, *supra* note 80, art. 6(2).

⁸⁸ See *id.* arts. 8-11; see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 62.

⁸⁹ See Transnational Organized Crime Convention, *supra* note 15, art. 16.

⁹⁰ See European Convention on Extradition, *supra* note 80, art. 6(1)(a) ("A Contracting Party shall have the right to refuse extradition of its nationals."); see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 57(1)(a).

⁹¹ See European Convention on Extradition, *supra* note 80, art. 7(1); see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 57(2).

⁹² See European Convention on Extradition, *supra* note 80, art. 7(2).

⁹³ See *id.* art. 8; see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 57(1)(c).

⁹⁴ See European Convention on Extradition, *supra* note 80, art. 9.

⁹⁵ See *id.* art. 10; see NIS Mutual Legal Assistance Convention, *supra* note 81, art. 57(1)(b).

⁹⁶ See European Convention on Extradition, *supra* note 80, art. 11; see also CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 546(3) (Mold.).

- if the accused is to be prosecuted in a special hearing (extraordinary hearing) that was specifically established for the case at hand by the courts of the state requesting extradition (i.e. hearing targeting solely the accused that is to be extradited)⁹⁷
- if the accused is to be subjected to a sentence or safety measure established by such a special/extraordinary hearing in the courts of the state requesting extradition⁹⁸
- if the criminal case is brought against the accused who is to be extradited solely based upon the claim of a victim.⁹⁹

Article 546 of the Criminal Procedure Code of Moldova mimics a great number of the above reasons for refusing extradition requests and adds to the list,¹⁰⁰ thus, fully complying with the obligation delineated in Article 16(7) of the Transnational Organized Crime Convention that requires states to identify “grounds” upon which they are refusing extradition.¹⁰¹

Witness Protection

Article 215 of the Criminal Procedure Code of Moldova imposes an obligation on law enforcement officials and courts to ensure the safety of those who participate in criminal proceedings as well as the safety of other persons. Specifically, Article 215(1) indicates:

In the event there [are] sufficient grounds to consider that the injured party, the witness or other persons participating at proceedings, as well as the members of their families or their close relatives may be threatened with death, with use of violence, with deterioration or destruction of assets or with other illegal act[s], the criminal investigation body and the court shall be bound to take the measures prescribed by the legislation for the protection of the life, health, honor, dignity and assets of these persons, as well as for [identifying] and holding liable . . . responsible persons.¹⁰²

The key piece of legislation that describes in detail the protection measures alluded to in Article 215(1) is the 1998 Law of the Republic of Moldova on State Protection of the Victim, Witnesses and Other Persons who Provide Assistance in Criminal Proceedings (“1998 Witness Protection Law”).¹⁰³ This law complies with all the obligations as well as the required and suggested witness protection measures delineated in Article 24 of the Transnational Organized Crime Convention.¹⁰⁴ It should be noted, though, that this particular piece of legislation applies only if the individuals who are to be protected agree to cooperate with law enforcement in the detection, prevention, deterrence, investigation, and discovery of a crime or agree to testify in court.¹⁰⁵ Additional protections will become available even for those persons who do not agree to cooperate with law enforcement and who are considered victims of crimes such as trafficking when the draft anti-trafficking law of Moldova will come into force.¹⁰⁶

⁹⁷ See Decision of the Parliament of the Republic of Moldova on the Ratification of the European Convention on Extradition, *supra* note 80, art. 1.

⁹⁸ See *id.*

⁹⁹ See NIS Mutual Legal Assistance Convention, *supra* note 81, art. 57(1)(d).

¹⁰⁰ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 546 (Mold.).

¹⁰¹ See Transnational Organized Crime Convention, *supra* note 15, art. 16(7).

¹⁰² See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 215(1) (Mold.).

¹⁰³ See generally 1998 Witness Protection Law, *supra* note 28.

¹⁰⁴ See Transnational Organized Crime Convention, *supra* note 15, art. 24.

¹⁰⁵ See 1998 Witness Protection Law, *supra* note 28, art. 18(2)(a).

¹⁰⁶ See Draft Anti-Trafficking Law, *supra* note 21, art. 21 (describing in detail the obligation to keep information about the

Presently, the 1998 Witness Protection Law applies to victims of all crimes, including victims of trafficking in persons. More specifically, the law provides protection to the following individuals:

- persons who have informed law enforcement authorities of crimes that have been committed, and have participated in the detection, prevention, deterrence, investigation and discovery of such crimes¹⁰⁷
- witnesses¹⁰⁸
- victims and their legal representatives in criminal cases¹⁰⁹
- suspected persons, persons that have been indicted, accused persons, and their legal representatives as well as convicted persons¹¹⁰
- close relatives of all of the above (husbands, wives, parents, children, adoptive parents, adopted children, blood siblings, grandparents, and grandchildren)¹¹¹
- other persons that have influence over the persons enumerated above (but solely in exceptional circumstances).¹¹²

This list fulfills and even surpasses the obligation in Article 24(1) of the Transnational Organized Crime Convention to protect “witnesses” as well as “relatives and other persons close to them.”¹¹³

Article 8 of the 1998 Witness Protection Law delineates two types of protective measures that can be undertaken: ordinary¹¹⁴ and extraordinary.¹¹⁵ Ordinary measures include:

- physical protection¹¹⁶
- protection of home and assets¹¹⁷
- special measures for individual protection¹¹⁸
- special communication and information measures in order to detect danger¹¹⁹
- temporary relocation to a safe place¹²⁰
- non-disclosure of personal data by introducing a false name for the protected person in court documentation, allowing the protected person to identify the perpetrator without confronting him/her face-to-face, interviewing the victim/witness in a

lives of victims of trafficking confidential); *see also id.* art. 23 (guaranteeing measures for the physical security of victims of trafficking).

¹⁰⁷ *See* 1998 Witness Protection Law, *supra* note 28, art. 2(1)(a).

¹⁰⁸ *See id.* art. 2(1)(b).

¹⁰⁹ *See id.* art. 2(1)(c).

¹¹⁰ *See id.* art. 2(1)(d).

¹¹¹ *See id.* art. 2(1)(e).

¹¹² *See id.*

¹¹³ *See* Transnational Organized Crime Convention, *supra* note 15, art. 24(1).

¹¹⁴ *See* 1998 Witness Protection Law, *supra* note 28, art. 8(1)(1).

¹¹⁵ *See id.* art. 8(1)(2).

¹¹⁶ *See id.* art. 8(1)(1)(a); *see also id.* art. 9.

¹¹⁷ *See id.* art. 8(1)(1)(a); *see also id.* art. 9.

¹¹⁸ *See id.* art. 8(1)(1)(b); *see also id.* art. 10.

¹¹⁹ *See id.* art. 8(1)(1)(b); *see also id.* art. 10.

¹²⁰ *See id.* art. 8(1)(1)(c); *see also id.* art. 11.

confidential environment, and allowing the protected person to testify via affidavit, video link, or audio link (and not personally appear in court).¹²¹

Extraordinary measures include:

- change of place of employment or study¹²²
- change of residence (accompanied by the obligation to provide a new place of residence, house, or apartment)¹²³
- change of identity documents (by changing names and other personal information)¹²⁴
- change of appearance¹²⁵
- proceeding with a case in closed hearings as ordered by a judge.¹²⁶

The enumerated ordinary and extraordinary measures for protecting victims, witnesses and other persons who assist in criminal proceedings, fully comply, and even surpass in detail, some of the measures suggested in Article 24(2) of the Transnational Crime Convention,¹²⁷ as well as those required by Article 6(1) of the Trafficking Protocol.¹²⁸

Article 110 of the Moldovan Criminal Procedure Code further describes ways of protecting the identity of a witness and allowing him/her to testify in an undisclosed location before a magistrate judge (instruction judge) or via video or audio link while his/her image and voice can be distorted.¹²⁹ This particular provision, unlike the 1998 Witness Protection Law, emphasizes the importance of allowing the accused and his/her counsel to examine the protected witness.¹³⁰ Granting the accused and his/her counsel this opportunity complies with Article 24(2) of the Transnational Organized Crime Convention that requires authorities to balance witness protection measures with the rights of the accused, including his/her right to due process.¹³¹

Article 8(2) of the 1994 Law of the Republic of Moldova on the Operative Activity of Investigations (“1994 Investigations Law”) adds to the list of protective measures and allows authorities to intercept telephone calls and other means of communication if the life, health, or property of a protected person is in danger.¹³² Authorities may undertake such measures only at the request of the protected person or via written consent from the protected person.¹³³

¹²¹ See *id.* art. 8(1)(1)(d); see also *id.* art. 12.

¹²² See *id.* art. 8(1)(2)(a); see also *id.* art. 11.

¹²³ See *id.* art. 8(1)(2)(b); see also *id.* art. 11.

¹²⁴ See *id.* art. 8(1)(2)(c); see also *id.* art. 13.

¹²⁵ See *id.* art. 8(1)(2)(c); see also *id.* art. 13.

¹²⁶ See *id.* art. 8(1)(2)(d); see also *id.* art. 14.

¹²⁷ See Transnational Organized Crime Convention, *supra* note 15, art. 24(2).

¹²⁸ See Trafficking Protocol, *supra* note 10, art. 6(1).

¹²⁹ See generally CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 110 (Mold.).

¹³⁰ See *id.* art. 110(6).

¹³¹ See Transnational Organized Crime Convention, *supra* note 15, art. 24(2).

¹³² See Legea Republicii Moldova Privind Activitatea Operativa de Investigatii [Law of the Republic of Moldova on the Operative Activity of Investigations], No. 45-XIII, Apr. 12, 1994, art. 8(2) [hereinafter 1994 Investigations Law].

¹³³ See *id.*; see also CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 135 (Mold.) (explaining the details of intercepting communications).

After reviewing all pertinent domestic provisions on witness protection measures, their scope of application is unclear. That is, neither the 1998 Witness Protection Law, the 1994 Investigations Law, nor the relevant provisions of the Criminal Procedure Code clearly state whether the delineated witness protection measures are to apply before, during, and/or after the conclusion of the criminal proceedings in question as inferred by Article 24 of the Transnational Organized Crime Convention.¹³⁴ The decision as to the scope of application seems to be left to the Moldovan authorities who order and carry out such protective measures.¹³⁵

Lastly, Moldova's witness protection provisions do not safeguard members of the NGO community who assist victims and witnesses during criminal proceedings or otherwise. While this is not an obligation that is explicitly delineated in either the Transnational Organized Crime Convention or the Trafficking Protocol, it is an important obligation nevertheless. Article 2 of the 1998 Witness Protection Law of Moldova lists "legal representatives" of victims and defendants as persons who can receive state protection.¹³⁶ However, such individuals can be any attorneys; not specifically persons belonging to NGOs that focus on victim assistance and rehabilitation.

Participation in an Organized Criminal Group

Article 46 of the Criminal Code of Moldova defines an "organized criminal group" as "a stable reunion of persons who previously organized in order to commit one or more crimes."¹³⁷ Article 47(1) of the Criminal Code defines a "criminal organization" or "criminal association" as:

[A] reunion of criminal groups in a stable community, whose activity is based on the division among the members of the organization and its structures of the administration functions, assurance and execution of the criminal intentions of this organization for the purpose of influencing or controlling the economic or . . . other . . . activity of legal and physical entities with a view to [obtain] economic, financial or political advantages and interests.¹³⁸

Article 47(2) explains that if a member of such a criminal organization or an individual charged by such an organization commits an act to further its purpose and interests, then this is considered to be an offense committed by the criminal organization.¹³⁹

The definitions in Articles 46 and 47(1), together with the criminalization of the illicit act in Article 47(2), comply with the requirements of Article 5 of the Transnational Organized Crime Convention that defines "participation in an organized criminal group" as a cluster of offenses *separate* from trafficking in persons.¹⁴⁰ Specifically, the provisions of the Moldovan Criminal Code mentioned above mimic elements of the criminal activity described in Article 5(1)(a)(i) of the Convention:

¹³⁴ See Transnational Organized Crime Convention, *supra* note 15, art. 24.

¹³⁵ See 1998 Witness Protection Law, *supra* note 28, art. 3(1).

¹³⁶ See *id.* arts. 2(1)(c), 2(1)(d).

¹³⁷ CRIMINAL CODE [CRIM. C.] art. 46 (Mold.).

¹³⁸ *Id.* art. 47(1).

¹³⁹ See *id.* art. 47(2).

¹⁴⁰ See *generally* Transnational Organized Crime Convention, *supra* note 15, art. 5.

Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.¹⁴¹

Article 47(5) of the Moldovan Criminal Code indicates that “[a] member of the criminal organization shall be held responsible *only* for the crimes in which he participated in preparation or commission.”¹⁴² This parallels the language in Article 5(1)(a)(ii) of the Transnational Organized Crime Convention that criminalizes

Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: a. [c]riminal activities of the organized criminal group; b. [o]ther activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.¹⁴³

Article 47(3) of the Criminal Code of Moldova explains that “[t]he person who created the criminal organization or who [leads] it, is to be considered the organizer or the leader of the organization.”¹⁴⁴ Article 42(3) defines an “organizer” as “the person who organized the commission of a crime or conducted its accomplishment, as well as the person who organized a group of people or [led] their criminal activity.”¹⁴⁵ Article 47(4) indicates further that “[t]he organizer and leader of the criminal organization is liable for all the crimes committed by the criminal organization.”¹⁴⁶ These provisions comply with Article 5(1)(b) of the Transnational Organized Crime Convention that criminalizes the “[o]rganizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.”¹⁴⁷

Certain defenses can be raised when a person is accused of the above crimes. Article 39(1) of the Moldovan Criminal Code indicates that if an individual was under physical or mental constraint (or duress), and s/he was not able to control his/her actions as a result of such constraint, s/he will not be held criminally liable.¹⁴⁸ It should also be noted that a member of a criminal organization can avoid criminal liability if s/he volunteers information regarding the existence of the criminal organization in question, helps with the discovery of the crimes committed by such an organization, or exposes the leaders or members of such an organization.¹⁴⁹

The penalties for the aforementioned crimes vary. Article 284(1) of the Moldovan Criminal Code indicates that a person can be sentenced anywhere from 16 to 25 years in jail for setting up

¹⁴¹ *Id.* art. 5(1)(a)(i).

¹⁴² CRIMINAL CODE [CRIM. C.] art. 47(5) (Mold.) (emphasis added).

¹⁴³ Transnational Organized Crime Convention, *supra* note 15, art. 5(1)(a)(ii).

¹⁴⁴ CRIMINAL CODE [CRIM. C.] art. 47(3) (Mold.).

¹⁴⁵ *Id.* art. 42(3).

¹⁴⁶ *Id.* art. 47(4).

¹⁴⁷ Transnational Organized Crime Convention, *supra* note 15, art. 5(1)(b).

¹⁴⁸ *See* CRIMINAL CODE [CRIM. C.] art. 39(1) (Mold.).

¹⁴⁹ *See id.* art. 47(6).

or leading a criminal organization.¹⁵⁰ Article 284(2) indicates that membership in a criminal association or participation in the criminal activities of such an association can be punished by a period of 3 to 10 years imprisonment.¹⁵¹ Article 283 states that “[t]he organization of armed bands [or groups] for the purpose of attacking legal entities or individuals, as well as participation in such bands or in the attacks perpetrated by them, is to be punished by imprisonment for a period of 16 to 25 years or with life imprisonment.”¹⁵² Commentators point out that the Criminal Code’s general sanction provisions delineating punishments for physical entities¹⁵³ as well as fines¹⁵⁴ can also apply to offenses involving an organized criminal group or association.

Money Laundering

Article 243(1) of the Criminal Code of Moldova punishes an individual for attributing a legal aspect to the source and origin of money, goods, or proceeds obtained illicitly following the commission of crimes.¹⁵⁵ This provision is comparable to Article 6(1)(a)(i) of the Transnational Organized Crime Convention that criminalizes “[t]he conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property”¹⁵⁶

Furthermore, Article 243(1) of the Moldovan Criminal Code punishes an individual for concealing, disguising, or changing information regarding the nature, origin, movement, placement, or ownership of money, goods, or proceeds that s/he knows derive from criminal activity.¹⁵⁷ This language mimics Article 6(1)(a)(ii) of the Transnational Organized Crime Convention that criminalizes “[t]he concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”¹⁵⁸

Article 243(1) of the Criminal Code of Moldova also punishes an individual for obtaining, possessing, or using goods knowing that such goods are derived from the commission of a crime.¹⁵⁹ This is comparable to “[t]he acquisition, possession or use of property, knowing at the time of receipt, that such property is the proceeds of crime” described in Article 6(1)(b)(i) of the Transnational Organized Crime Convention.¹⁶⁰

Lastly, Article 243(1) of the Moldovan Criminal Code punishes an individual for participating in any association, understanding, or complicity by providing assistance or advice in the commission of the offenses delineated throughout Article 243 (i.e. the offenses described in

¹⁵⁰ See *id.* art. 284(1).

¹⁵¹ See *id.* art. 284(2).

¹⁵² *Id.* art. 283.

¹⁵³ See *id.* art. 62.

¹⁵⁴ See *id.* art. 64.

¹⁵⁵ See *id.* art. 243(1).

¹⁵⁶ Transnational Organized Crime Convention, *supra* note 15, art. 6(1)(a)(i).

¹⁵⁷ See CRIMINAL CODE [CRIM. C.] art. 243 (1) (Mold.).

¹⁵⁸ Transnational Organized Crime Convention, *supra* note 15, art. 6(1)(a)(ii).

¹⁵⁹ See CRIMINAL CODE [CRIM. C.] art. 243 (1) (Mold.).

¹⁶⁰ Transnational Organized Crime Convention, *supra* note 15, art. 6(1)(b)(i).

detail above).¹⁶¹ This language closely follows Article 6(1)(b)(ii) of the Transnational Organized Crime Convention that criminalizes the “participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of any of the offences established” by Article 6 (i.e. money laundering offenses).¹⁶²

Commentators indicate that all of the above money laundering offenses included in the Moldovan Criminal Code contain the requisite element of intent.¹⁶³ Furthermore, they indicate that such offenses are based on predicate offenses. That is, a crime must have occurred in order for an individual to launder money, goods or proceeds that derive from such a crime.¹⁶⁴

Certain defenses can be raised when a person is accused of money laundering. For example, Article 39(1) of the Moldovan Criminal Code indicates that if an individual was under physical or mental constraint (or duress), and s/he was not able to control his/her actions as a result of such constraint, s/he will not be held criminally liable.¹⁶⁵

The sanctions for the money laundering offenses delineated in Article 243(1) of the Moldovan Criminal Code vary depending on whether aggravating circumstances are present. The base punishment for all money laundering crimes is a fine in the amount of 500 to 1,000 conventional units (currently 1 unit equals circa 20 Lei) or imprisonment up to 5 years, both with or without forfeiture of the right to hold certain positions or to engage in certain activities for a period of 2 to 5 years.¹⁶⁶ The sanctions increase to a fine in the amount of 1,000 to 5,000 conventional units (currently 1 unit equals circa 20 Lei) or imprisonment between 4 and 7 years if an individual commits the delineated money laundering offenses repeatedly, if 2 or more persons commit the delineated money laundering offenses, or if the delineated money laundering offenses were committed through the use of public office.¹⁶⁷ Criminal penalties amounting to imprisonment between 5 and 10 years are available if an organized criminal group or a criminal organization (or association) commit money laundering offenses, or if the money laundering offenses are committed on a large scale.¹⁶⁸

In 2002, the National Bank of Moldova issued certain recommendations that would enable all Moldovan banks to prevent and combat money laundering activities.¹⁶⁹ These recommendations mirror most if not all of the required and suggested measures incorporated in Article 7 of the Transnational Organized Crime Convention.¹⁷⁰ Among other things, Moldovan banks are to:

¹⁶¹ See CRIMINAL CODE [CRIM. C.] art. 243 (1) (Mold.).

¹⁶² Transnational Organized Crime Convention, *supra* note 15, art. 6(1)(b)(ii).

¹⁶³ Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

¹⁶⁴ *Id.*

¹⁶⁵ See CRIMINAL CODE [CRIM. C.] art. 39(1) (Mold.).

¹⁶⁶ See *id.* art. 243(1).

¹⁶⁷ See *id.* art. 243(2).

¹⁶⁸ See *id.* art. 243(3).

¹⁶⁹ See *generally* Banca Nationala, Recomandarile Referitor la Elaborarea de Catre Bancile din Republica Moldova a Programelor Privind Prevenirea si Combaterea Spalarii Banilor [National Bank, Recommendations Regarding the Development, by the Banks in the Republic of Moldova, of Programs to Prevent and Combat Money Laundering], Apr. 25, 2002 [hereinafter Recommendations on Money Laundering].

¹⁷⁰ See *generally* Transnational Organized Crime Convention, *supra* note 15, art. 7.

- issue rules that promote ethics and professionalism and that better identify the banks' clientele¹⁷¹
- establish policies and procedures that ensure the proper and secure operation of the banks¹⁷²
- create procedures for reporting suspect activities including reporting to the Center for Combating Economic Crimes and Corruption¹⁷³
- develop adequate procedures for selecting bank personnel¹⁷⁴
- organize trainings for bank personnel regarding measures for prevention and combating money laundering.¹⁷⁵

Corruption

The Criminal Code of Moldova criminalizes both passive and active acts of corruption. Article 324(1) defines "passive corruption" as "[t]he act of an official person, who [requests] or receives offers, money, securities, gifts, other goods or advantages with a real estate character, accept[s] services, privileges, or other profits, [that are not due to him], for the purpose of carrying out (or not carrying out) or delaying or hastening the fulfillment of an act with regards to his professional duties, or for the purpose of performing an act against his professional duties, as well as to obtain from authorities distinctions, functions, open markets or other favorable decisions."¹⁷⁶ This language is similar to the language in Article 8(1)(b) of the Transnational Organized Crime Convention that criminalizes "[t]he solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."¹⁷⁷

Article 325(1) of the Moldovan Criminal Code defines "active corruption" as the "[p]romise, offer or giving, personally or [through] an intermediary, to a [public official] goods or services, enumerated in article 324 of the present Code [see above]. . . ."¹⁷⁸ This provision mimics the language in Article 8(1)(a) of the Transnational Organized Crime Convention that criminalizes "[t]he promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."¹⁷⁹

Article 326(1) of the Criminal Code of Moldova defines another type of corruption that is not enumerated in Article 8 of the Transnational Organized Crime Convention: "corruption committed by a person who can exert influence over a public official."¹⁸⁰ That is, if a person who has influence or purports to have influence over a public official, receives or extorts money,

¹⁷¹ See Recommendations on Money Laundering, *supra* note 169, arts. 4(1), 5(3), 6.

¹⁷² See *id.* arts. 4(1), 7.

¹⁷³ See *id.* arts. 5(5), 7, 8.

¹⁷⁴ See *id.* art. 7(4).

¹⁷⁵ See *id.* art. 7(5).

¹⁷⁶ CRIMINAL CODE [CRIM. C.] art. 324(1) (Mold.).

¹⁷⁷ Transnational Organized Crime Convention, *supra* note 15, art. 8(1)(b).

¹⁷⁸ CRIMINAL CODE [CRIM. C.] art. 325(1) (Mold.).

¹⁷⁹ Transnational Organized Crime Convention, *supra* note 15, art. 8(1)(a).

¹⁸⁰ See CRIMINAL CODE [CRIM. C.] art. 326(1) (Mold.).

securities, other goods or advantages or accepts services or promises for goods and advantages, in exchange for making the public official act in a certain way or fail to act while carrying out his/her official duties, s/he is criminally liable under Moldovan law.¹⁸¹

Commentators explain that all of the above corruption offenses require the mental element of intent.¹⁸² Accomplice liability for all of the above corruption offenses is also a possibility as a prosecutor could apply general Articles 41-49 of the Criminal Code in a pertinent case.¹⁸³

Experts further note that the passive corruption provisions can only apply to public officials representing the Republic of Moldova as defined in Article 123 of the Criminal Code.¹⁸⁴ Criminal liability for passive corruption as committed by other individuals, such as foreign public officials or international civil servants, could possibly be inferred from Article 333 that defines the act of bribe-taking by persons who belong to commercial, public, and non-governmental organizations (that is, if the corrupt act fits the definition in Article 333).¹⁸⁵ The Moldovan Criminal Code can hold foreign public officials and international civil servants liable for all other corrupt acts.¹⁸⁶

Certain defenses can be raised when a person is accused of any of the above corrupt acts. For example, Article 39(1) of the Moldovan Criminal Code indicates that if an individual was under physical or mental constraint (or duress), and s/he was not able to control his/her actions as a result of such constraint, s/he will not be held criminally liable.¹⁸⁷

The sanctions for all of the above corrupt acts vary depending on whether aggravating circumstances exist. The base punishment for passive corruption as delineated in Article 324(1) of the Moldovan Criminal Code is a fine in the amount of 1,000 to 3,000 conventional units (currently 1 unit equals circa 20 Lei) and 3 to 7 years imprisonment accompanied by forfeiture of the right to occupy certain positions or to engage in certain activities for a period of 2 to 5 years.¹⁸⁸ The sanctions increase to a fine in the amount of 3,000 to 5,000 conventional units (currently 1 unit equals circa 20 Lei) and 5 to 10 years imprisonment accompanied by forfeiture of the right to occupy certain positions or to engage in certain activities for a period of 2 to 5 years if an individual commits the delineated acts of passive corruption repeatedly, if 2 or more persons commit acts of passive corruption, if the acts of passive corruption involve extorting the goods and services enumerated in Article 324(1), or if the delineated acts of passive corruption were committed on a large scale.¹⁸⁹ Lastly the sanctions for passive corruption change to a fine in the amount of 1,000 to 3,000 conventional units (currently 1 unit equals circa 20 Lei) and 7 to 15 years imprisonment accompanied by forfeiture of the right to occupy certain positions or to

¹⁸¹ *See id.*

¹⁸² *See* Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

¹⁸³ *See generally* CRIMINAL CODE [CRIM. C.] arts. 41-9 (Mold.).

¹⁸⁴ *See id.* art. 123.

¹⁸⁵ *See id.* art. 333.

¹⁸⁶ *See* Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

¹⁸⁷ *See* CRIMINAL CODE [CRIM. C.] art. 39(1) (Mold.).

¹⁸⁸ *See id.* art. 324(1).

¹⁸⁹ *See id.* art. 324(2).

engage in certain activities for a period of 3 to 5 years, if a person holding high office commits acts of passive corruption, if the delineated acts of passive corruption were committed on an exceptionally large scale, or if the delineated acts of passive corruption were committed in order to benefit an organized criminal group or a criminal organization/association.¹⁹⁰

The base punishment for active corruption as delineated in Article 325(1) of the Moldovan Criminal Code is a fine in the amount of 2,000 to 4,000 conventional units (currently 1 unit equals circa 20 Lei) and 2 to 5 years imprisonment.¹⁹¹ The sanctions increase to a fine in the amount of 2,000 to 4,000 conventional units (currently 1 unit equals circa 20 Lei) and 3 to 7 years imprisonment if an individual commits acts of active corruption repeatedly, if 2 or more persons commit acts of active corruption, or if the delineated acts of active corruption were committed on a large scale.¹⁹² Lastly, the sanctions change to 6 to 12 years imprisonment if the delineated acts of active corruption were committed on an exceptionally large scale, or if they were committed in order to benefit an organized criminal group or a criminal organization/association.¹⁹³

The base punishment for corruption committed by a person who can exert influence over a public official as delineated in Article 326(1) of the Moldovan Criminal Code is a fine in the amount of 500 to 1,500 conventional units (currently 1 unit equals 20 Lei) or 2 to 5 years imprisonment.¹⁹⁴ The sanctions increase to a fine in the amount of 1,000 to 3,000 conventional units (currently 1 unit equals 20 Lei) or 3 to 7 years imprisonment if the above crime was committed repeatedly, if 2 or more persons committed the above crime, or if the above crime involved the receipt of goods or advantages on a large scale.¹⁹⁵ Lastly, the sanctions change to 5 to 10 years imprisonment and a fine in the amount of 500 to 1,500 conventional units (currently 1 unit equals 20 Lei) if the above crime involved the receipt of goods or advantages on an exceptionally large scale, or if the above crime was committed in order to benefit an organized criminal group or a criminal organization/association.¹⁹⁶

In 1996, the Parliament of Moldova adopted the Law on Combating Corruption and Protectionism (“1996 Anti-Corruption Law”)¹⁹⁷ that enumerates legislative, administrative, and other measures required by Article 9 of the Transnational Organized Crime Convention to effectively combat corruption.¹⁹⁸ Article 6 of the 1996 Anti-Corruption Law outlines the following measures:

- establishing judicial and state control over the activities of public officials and ensuring that such activities are made public¹⁹⁹
- perfecting the structure of public office and related procedures²⁰⁰

¹⁹⁰ See *id.* art. 324(3).

¹⁹¹ See *id.* art. 325(1).

¹⁹² See *id.* art. 325(2).

¹⁹³ See *id.* art. 325(3).

¹⁹⁴ See *id.* art. 326(1).

¹⁹⁵ See *id.* art. 326(2).

¹⁹⁶ See *id.* art. 326(3).

¹⁹⁷ See *Legea Republicii Moldova Privind Combaterea Coruptiei si Protectionismului* [Law of the Republic of Moldova on Combating Corruption and Protectionism], No. 900, June 27, 1996 [hereinafter 1996 Anti-Corruption Law].

¹⁹⁸ See Transnational Organized Crime Convention, *supra* note 15, art. 9.

¹⁹⁹ See 1996 Anti-Corruption Law, *supra* note 197, art. 6(a).

- ensuring that public officials receive salaries and benefits from the state that are commensurate with their abilities and job responsibilities, thus, ensuring an adequate standard of living for them and their families (and ultimately ensuring independence in their profession)²⁰¹
- protecting the rights and legitimate interests of persons who perform administrative functions²⁰²
- restricting certain rights and freedoms of public officials, within legal bounds, if it is necessary to protect the constitutional system, the rights and legitimate interests of both physical and legal persons, as well as the rights and legitimate interests of non-governmental organizations and members of civil society who benefit from the services of public authorities²⁰³
- implementing special measures of fiscal and financial control in order to avoid money laundering activities aimed at bribing public officials²⁰⁴
- rehabilitating the rights of both physical and legal persons against whom an injustice was committed and eliminating other dangerous consequences of corruption and protectionism.²⁰⁵

Article 7 of the 1996 Anti-Corruption Law describes the duties of public officials in detail as well as the activities that are proscribed.²⁰⁶ Lastly, Article 8 explains even more explicitly that public officials, and members of their families, are forbidden from taking bribes and enumerates all possible types bribes.²⁰⁷

Obstruction of Justice

Article 309(1) of the Criminal Code of Moldova defines the following illicit acts that can occur during all stages of a criminal case:

- coercing a person, either through threats or other unlawful means, to make certain statements during interrogation
- coercing an expert, either through threats or other unlawful means, to reach certain conclusions
- coercing a translator or an interpreter, either through threats or other unlawful means, to incorrectly translate or interpret.²⁰⁸

Article 310(1) of the Moldovan Criminal Code holds a party or his/her legal representative criminally liable if either of them falsify evidence during a civil or criminal trial.²⁰⁹

Article 314(1) of the Criminal Code of Moldova criminalizes the following acts:

- coercing a witness or a victim to make false statements

²⁰⁰ See *id.* art. 6(b).

²⁰¹ See *id.* art. 6(c).

²⁰² See *id.* art. 6(d).

²⁰³ See *id.* art. 6(e).

²⁰⁴ See *id.* art. 6(f).

²⁰⁵ See *id.* art. 6(g).

²⁰⁶ See *id.* art. 7.

²⁰⁷ See *id.* art. 8.

²⁰⁸ See CRIMINAL CODE [CRIM. C.] art. 309(1) (Mold.).

²⁰⁹ See *id.* art. 310(1).

- coercing an expert to reach false conclusions or make false statements
- coercing an interpreter or translator to incorrectly interpret or translate
- coercing all of the above to evade their obligations.²¹⁰

Articles 309(1), 310(1), and 314(1) comply with the language set forth in Article 23(a) of the Transnational Organized Crime Convention that criminalizes “[t]he use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences”²¹¹

Article 303 of the Moldovan Criminal Code criminalizes the following acts:

- interfering, in any way, with the judicial review process in order to hinder its multilateral, absolute and objective examinations or to achieve an unlawful judicial decision²¹²
- interfering, in any way, with the activities of law enforcement in order to hinder the speedy, complete, and objective investigation of a criminal case.²¹³

Article 304 of the Moldovan Criminal Code holds an individual criminally liable for slandering (orally or in written form- i.e. libel) a judge, law enforcement officer, or person who is part of the judicial process, and accusing those individuals of committing a serious crime, an exceptionally serious crime, or a heinous crime in connection with the examination of the charges or evidence in a case.²¹⁴

Article 305 of the Criminal Code of Moldova criminalizes the attempt on the life of a judge, law enforcement officer, or person who is part of the judicial process, as well as the life of their close relatives, in connection with the examination of the charges or evidence in a case, in order to hinder the legitimate activities of said persons or to take revenge against them for those same activities.²¹⁵

Articles 303, 304, and 305 comply with Article 23(b) of the Transnational Organized Crime Convention, which indicates that the following acts obstruct justice: “[t]he use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences. . . .”²¹⁶

The Moldovan Criminal Code contains other obstruction of justice offenses that are not necessarily delineated in Article 23 of the Transnational Organized Crime Convention. For example, Article 311(1) of the Criminal Code holds an individual liable for knowingly and falsely denouncing, or slandering (both in oral and written form- i.e. libel), another person

²¹⁰ See *id.* art. 314(1).

²¹¹ Transnational Organized Crime Convention, *supra* note 15, art. 23(a).

²¹² See CRIMINAL CODE [CRIM. C.] art. 303(1) (Mold.).

²¹³ See *id.* art. 303(2).

²¹⁴ See *id.* art. 304.

²¹⁵ See *id.* art. 305.

²¹⁶ Transnational Organized Crime Convention, *supra* note 15, art. 23(b).

before law enforcement authorities by accusing him/her of committing a crime.²¹⁷ Article 312(1) holds:

- a witness or victim liable for knowingly submitting a false statement either during the investigation stage or at trial
- an expert liable for knowingly reaching a false conclusion either during the investigation stage or at trial
- a translator or interpreter liable for knowingly and incorrectly translating or interpreting either during the investigation stage or at trial.²¹⁸

Lastly, Article 313 criminalizes the refusal or evasion on the part of a witness or victim to make statements during the investigation stage or at trial.²¹⁹

Certain defenses can be raised when a person is accused of obstructing justice. For example, Article 39(1) of the Moldovan Criminal Code indicates that if an individual was under physical or mental constraint (or duress), and s/he was not able to control his/her actions as a result of such constraint, s/he will not be held criminally liable.²²⁰

The sanctions for the above obstruction of justice offenses vary depending on whether aggravating circumstances are present. Article 309 offenses are punishable by imprisonment for a period of up to 3 years with forfeiture of the right to occupy certain positions or to engage in certain activities for a period of up to 5 years.²²¹ The criminal penalties increase to 3 to 8 years imprisonment with forfeiture of the right to occupy certain positions or to engage in certain activities for a period of up to 5 years, if the illicit acts are accompanied by violence or the conclusion of a plea bargain.²²²

Article 310 offenses are punishable with a fine of 500 to 800 conventional units (currently 1 unit equals circa 20 Lei) or with arrest up to 6 months.²²³ The sanctions increase to a fine of 500 to 1,000 conventional units (currently 1 unit equals circa 20 Lei) or with imprisonment for a period of up to 3 years, both accompanied by forfeiture of the right to occupy certain positions or to engage in certain activities for a period of 2 to 5 years, if a person holding high office commits the offense delineated in Article 310.²²⁴ If an attorney, while concluding a plea bargain, commits an Article 310 offense, s/he can be punished with 3 to 8 years imprisonment with forfeiture of the right to occupy certain positions or to engage in certain activities for up to 5 years.²²⁵

Article 314 offenses are punishable with a fine of 200 to 500 conventional units (currently 1 unit equal circa 20 Lei) or with imprisonment for a period of up to 3 years.²²⁶ The sanctions increase to a fine of 300 to 800 conventional units (currently 1 unit equals circa 20 Lei) or with 2 to 5

²¹⁷ See CRIMINAL CODE [CRIM. C.] art. 311(1) (Mold.).

²¹⁸ See *id.* art. 312(1).

²¹⁹ See *id.* art. 313.

²²⁰ See *id.* art. 39(1) (Mold.).

²²¹ See *id.* art. 309(1).

²²² See *id.* art. 309(2).

²²³ See *id.* art. 310(1).

²²⁴ See *id.* art. 310(2).

²²⁵ See *id.* art. 310(3).

²²⁶ See *id.* art. 314(1).

years imprisonment, if an organized criminal group or a criminal organization/association commits the offenses delineated in Article 314, or if the offenses involve blackmail.²²⁷

The first offense in Article 303, interfering, in any way, with the judicial review process, is punishable with a fine in the amount of 200 to 500 conventional units (currently 1 unit equals circa 20 Lei), or 180 to 240 hours of unpaid community service, or imprisonment for a period of up to 3 years.²²⁸ The second offense in Article 303, interfering, in any way, with the activities of law enforcement, is punishable with a fine of up to 350 conventional units (currently 1 unit equals circa 20 Lei), or 180 to 240 hours of unpaid community service, or arrest up to 6 months.²²⁹ The sanctions increase for both offenses, to a fine in the amount of 200 to 600 conventional units (currently 1 unit equals circa 20 Lei) or 2 to 5 years imprisonment with or without forfeiture of the right to occupy certain positions or to engage in certain activities for 2 to 5 years, if a person that holds public office commits such offenses.²³⁰

Article 304 offenses are punishable with a fine in the amount of 200 to 500 conventional units (currently 1 unit equals circa 20 Lei), or arrest up to 6 months, or imprisonment for a period of up to 2 years.²³¹

Article 305 offenses are punishable by 16 to 25 years imprisonment, or life imprisonment.²³²

Article 311 offenses are punishable with a fine of up to 300 conventional units (currently 1 unit equals circa 20 Lei), or 180 to 240 hours of unpaid community service, or imprisonment for a period of up to 2 years.²³³ The sanctions increase to a fine in the amount of 200 to 800 conventional units (currently 1 unit equals circa 20 Lei), or 2 to 7 years imprisonment, if Article 311 offenses are connected to the commission of a serious, exceptionally serious or heinous crime, if such offenses are committed for profit, or if such offenses are committed to falsify evidence for the prosecution.²³⁴

Article 312 offenses are punishable with a fine of up to 300 conventional units (currently 1 unit equals circa 20 Lei) or with imprisonment for a period up to 2 years.²³⁵ The sanctions increase to a fine in the amount of 200 to 800 conventional units (currently 1 unit equals circa 20 Lei) or 2 to 7 years imprisonment, if Article 312 offenses involve the accusation of committing a serious, exceptionally serious, or heinous crime, or if such offenses are committed for profit, or if such offenses are committed to falsify evidence for the prosecution.²³⁶

²²⁷ See *id.* art. 314(2).

²²⁸ See *id.* art. 303(1).

²²⁹ See *id.* art. 303(2).

²³⁰ See *id.* art. 303(3).

²³¹ See *id.* art. 304.

²³² See *id.* art. 305.

²³³ See *id.* art. 311(1).

²³⁴ See *id.* art. 311(2).

²³⁵ See *id.* art. 312(1).

²³⁶ See *id.* art. 312(2).

Lastly, Article 313 offenses are punishable with a fine of up to 300 conventional units (currently 1 unit equals circa 20 Lei).²³⁷

De Facto Compliance:

Jurisdiction

Article 266 of the Criminal Procedure Code of Moldova indicates that “[t]he criminal prosecution body of the Ministry of Internal Affairs will carry out the criminal prosecution of any crime which the law does not establish the competence of other criminal prosecution bodies or if this crime is given into its competence through a prosecutor’s ordinance.”²³⁸ Thus, generally speaking, when a crime has been committed, Moldova’s various law enforcement units from the Ministry of Internal Affairs primarily assert jurisdiction if such units have been designated to do so by law or if a prosecutor’s office orders them to do so.

In cases involving trafficking in persons, the particular unit that currently asserts jurisdiction is the Division for Combating Trafficking in Persons within the General Division for Combating Organized Crime, which is part of the Ministry of Internal Affairs (“MoI Anti-Trafficking Division”).²³⁹ In addition to this specialized division, any other law enforcement officer, either in Chisinau or other parts of Moldova, can begin an investigation in a trafficking case.²⁴⁰ Individuals who were interviewed for the purposes of this assessment indicated that persons suspected of trafficking can be apprehended at border checkpoints by customs officials. However, customs officials have the authority to solely detain suspected traffickers until the MoI Anti-Trafficking Division or other law enforcement officers assert jurisdiction over them and commence the investigation.²⁴¹ Several interviewees pointed out that customs officials do not detain all persons suspected of trafficking; just those who are suspected of committing crimes that do not involve live victims, such as document falsification or contraband.²⁴²

For the purposes of territorial jurisdiction, the investigation begins depending on where the trafficking case is uncovered within the territory of Moldova. However, one interviewee pointed out that if a trafficked victim is from Chisinau, the Chisinau police and the MoI Anti-Trafficking Division have jurisdiction of the case.²⁴³

Given that trafficking is a trans-border crime, Moldova has signed mutual legal assistance treaties with 6 countries, countries such as Romania, Ukraine, and Russia, in order to cooperate with law enforcement bodies in those countries when investigating a case of trafficking in

²³⁷ See *id.* art. 313.

²³⁸ CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 266 (Mold.).

²³⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004); see also Ministry of Internal Affairs of the Republic of Moldova, at <http://www.mai.md/>.

²⁴⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁴¹ See *id.*

²⁴² See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004); see also Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocar, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

²⁴³ See Interview with Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs (Sept. 25, 2004).

persons. In addition to these instruments, bi-lateral treaties with Israel, China, and Italy are currently being negotiated.²⁴⁴ Moldovan law enforcement officials can also submit rogatory commissions to other states in order to exercise jurisdiction in a trafficking case where the suspects or victims are found on the territory of those states (i.e. extraterritorial jurisdiction).²⁴⁵ In such cases, the arrest, transport, and transfer of individuals take place overseas and, starting at the borders of Moldova, the MoI Anti-Trafficking Division has full jurisdiction.²⁴⁶ Representatives from the Organization for Security and Co-operation in Europe (“OSCE”) who were interviewed, noted, though, that these procedures for gathering evidence and pursuing suspects overseas are new for Moldovan law enforcement officials and that, to date, they could not cite one concrete case of extensive cooperation with other countries.²⁴⁷

Once an investigation is started, whether in the territory of Moldova or otherwise, the investigators must inform the relevant prosecutorial bodies. The prosecutors are responsible for overseeing the police in their investigations. For example, if the investigation begins with a victim of trafficking, s/he is detained solely for interrogation purposes and is not treated as a suspect (strictly as a victim). If, based on his/her testimony, it is established that the offense of trafficking was committed, the information is sent to the prosecutor who, in turn, formally opens the case.²⁴⁸ Cases are then brought before judges in District and Municipal Courts, and can be appealed to Courts of Appeals and, lastly, to the Supreme Court of Justice.²⁴⁹

According to the most recently available statistics, Moldovan authorities exercised jurisdiction in a total of 244 trafficking cases *per se* and trafficking-related cases in the first semester of 2004. Of those:

- 156 cases were based on charges of trafficking in persons
- 62 cases were based on charges of pimping
- 22 cases were based on charges of child trafficking
- 4 cases were based on charges of illegally taking a minor out of the country.²⁵⁰

This is an increase from the first semester of 2003 when only 53 such cases were registered in total.²⁵¹ Interviewees indicated that these statistics are available at the Ministry of Internal Affairs and that they are published within the State Prosecutor’s office²⁵² and in the Bulletin of the Supreme Court of Justice.²⁵³ OSCE representatives in Moldova indicated that they only received trafficking statistics by formally requesting them from the appropriate government authorities.²⁵⁴

²⁴⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁴⁵ See *id.*

²⁴⁶ See *id.*

²⁴⁷ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

²⁴⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁴⁹ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

²⁵⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004). NOTE: these were cases that were detected and registered in the first semester of 2004.

²⁵¹ See *id.*

²⁵² See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor’s Office (Oct. 06, 2004).

²⁵³ See Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

²⁵⁴ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

When asked if there are any trafficking cases presently before Moldovan courts where jurisdiction issues are being deliberated upon, the persons who were interviewed answered vaguely. In general, the assessor was told that the accused can argue improper assertion of jurisdiction at any point in the judicial process.²⁵⁵ One interviewee gave the example of a case involving an Israeli citizen who was initially suspected of trafficking in persons. The case went before a Court of Appeals on the issue of whether Moldovan authorities were allowed to exercise jurisdiction over the defendant. The lower court decided that Moldovan authorities could not assert jurisdiction, and the prosecutor agreed, thus, dropping the trafficking charges, replacing them with pimping charges, and fining the defendant with a sum of circa US \$1,000. At the time of this assessment, the case was still pending before the said Court of Appeals on the issue of jurisdiction.²⁵⁶

Extradition

The main government bodies in Moldova with authority over extradition requests are the State Prosecutor's Office and the Ministry of Justice. Specifically, the section on international relations within the State Prosecutor's Office receives and submits extradition requests.²⁵⁷ It should be noted that this particular section is responsible for extraditing persons that have been accused of a crime as well as persons that have been convicted of a crime.²⁵⁸ The Ministry of Justice also handles certain post-trial extraditions.²⁵⁹

Extradition usually occurs in extraordinary circumstances, on the basis of the European Convention on Extradition²⁶⁰ and the NIS Mutual Legal Assistance Convention²⁶¹ mentioned above as well as through the use of rogatory commissions. Currently, such commissions are mainly used to return Moldovan citizens found on the territory of other states to Moldova.²⁶²

The basic procedure for extraditing a suspect to Moldova from other countries is as follows:

- Moldovan law enforcement authorities (including domestic police and Interpol), who are investigating a case, solicit the extradition of the individual
- upon checking into the situation, the section on international relations within the State Prosecutor's Office issues and sends the requisite documents for a rogatory commission (NOTE: the documents are translated into the language of the state that is extraditing)
- Moldovan law enforcement authorities are informed that an individual is ready for extradition
- the individual is escorted to Moldova's borders where law enforcement authorities take him/her into custody.²⁶³

²⁵⁵ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁵⁶ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

²⁵⁷ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁵⁸ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocar, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

²⁵⁹ See *id.*; see also Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

²⁶⁰ See generally European Convention on Extradition, *supra* note 80.

²⁶¹ See generally NIS Mutual Legal Assistance Convention, *supra* note 81.

²⁶² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁶³ See *id.*

There is also a procedure for extraditing individuals from Moldova to other countries. That procedure is as follows:

- a request for extradition is sent through Moldovan embassies (or directly) to the State Prosecutor's Office or the Ministry of Justice
- the section on international relations within the State Prosecutor's Office or other pertinent bodies within the Ministry of Justice approve the extradition and issue the requisite documentation
- border check points and customs officials are informed of the extradition
- law enforcement authorities (both domestic police and Interpol) escort the person who is to be extradited.²⁶⁴

To date, Moldovan officials have requested that 300 individuals (in total) be extradited from other states for the prosecution of trafficking cases in Moldova.²⁶⁵ This being a total number, it includes requests for extradition of both Moldovan citizens as well as foreign citizens. Moldovan authorities have also received several requests to extradite suspected individuals to other countries. As of September 30, 2004, a total of 6 such requests were being processed.²⁶⁶ It should be noted that this number does *not* include the extradition of Moldovan citizens and political asylees accepted on Moldovan territory because their extradition to other countries is prohibited by the Criminal Code as well as the Constitution.²⁶⁷

The particular timeframe of extraditions varies. When requesting an individual to be extradited from another state to Moldova, the timeframe depends upon that state's procedures and laws. As one interviewee indicated, there have been cases where such extradition requests have taken up to 6 months.²⁶⁸ When Moldovan officials receive requests to extradite individuals from Moldova to other states, the procedure does not take more than 40 days.²⁶⁹

When asked about the specific measures that pertinent authorities implement in order to ensure the fair treatment of individuals who are to be extradited, interviewees answered somewhat vaguely. In general, persons are treated equally under the law, regardless of whether they are being extradited from Moldova or to Moldova from another country.²⁷⁰ Authorities abide by the requirements stipulated in the European Convention on Extradition²⁷¹ and the NIS Mutual Legal Assistance Convention.²⁷² One interviewee indicated that, when an individual is being extradited, law enforcement authorities offer him/her the opportunity to consult with an attorney. If s/he chooses to be legally represented, then his/her statements can only be recorded in the presence of his/her attorney.²⁷³

²⁶⁴ See *id.*

²⁶⁵ See *id.*

²⁶⁶ See *id.*

²⁶⁷ See CRIMINAL CODE [CRIM. C.] art. 13(1) (Mold.); see also MOLD. CONST. art. 17(3) ("No citizen of the Republic of Moldova can be extradited or expelled from his/her country.").

²⁶⁸ See Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

²⁶⁹ See *id.*

²⁷⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁷¹ See generally European Convention on Extradition, *supra* note 80.

²⁷² See generally NIS Mutual Legal Assistance Convention, *supra* note 81.

²⁷³ See Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

Witness Protection

There is a separate unit within the Ministry of Internal Affairs that is tasked with the protection of witnesses and victims: the Witness Protection Section. This section is part of the Special Missions Division within the Department of Operative Services at the Ministry of Internal Affairs.²⁷⁴ Currently, the Chisinau headquarters of the Witness Protection Section is staffed with 2 individuals.²⁷⁵ The Special Missions Division is responsible for the following regions in Moldova: Chisinau, Balti, and Cahul.²⁷⁶

In general, the procedure for protecting witnesses begins with an order issued by a prosecutor requesting that law enforcement officials protect an individual who is cooperating in the investigation process and/or is about to testify in a case. The order goes to the Special Missions Division, then to the Operative Investigations Section, then to ALFA, which is a special undercover unit that infiltrates organized criminal groups, and lastly to the Witness Protection Section that executes the order. If a case is already at the trial stage and a judge orders the protection of an individual, the order goes to the Special Missions Division who studies the requested measures of protection. If such measures are implausible, the Special Missions Division presents the judge with other options and s/he makes the final decision. In every case a contract is signed between the person who is to be protected and the party who is to provide the protection.²⁷⁷

In the first 8 months of 2004, a total of 54 to 56 individuals received protection from the Witness Protection Section. These were individuals who cooperated with authorities and/or testified in a range of cases involving illegal money withdrawals, illegal migration, extortion etc. 8 persons, out of the total number mentioned above, received witness protection in connection with trafficking cases.²⁷⁸ Readers should note that the assessor obtained these figures in an interview and that they are not extracted from any written compilation of numbers officially issued by the Ministry of Internal Affairs.

According to representatives from the Special Missions Division and the Witness Protection Section, the following protective measures are applied in Moldova:

- providing physical protection (in the home, outside the home, and while moving from one location to another)
- protecting the home
- concealing the witness' identity and whereabouts (i.e. by introducing a false name for the witness in court documents and retaining the witness' real identity in a separate file that is only available to the judge, prosecutor, and investigator in the case)
- disclosing the witness' identity and whereabouts in a limited fashion
- conducting proceedings involving the witness in a confidential manner (i.e. in camera proceedings but only in Chisinau courts)

²⁷⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁷⁵ See Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004).

²⁷⁶ See *id.*

²⁷⁷ See *id.*

²⁷⁸ See *id.*

- implementing evidentiary limitations to safeguard the witness.²⁷⁹

They further indicated that witness relocation, while available, does not occur often because of budgetary constraints²⁸⁰ and the fact that the territory of Moldova is small.²⁸¹ Witness testimony through video-link or other technology is also infrequent.²⁸² Video-link capabilities are only available at the Supreme Court in Chisinau but they are not yet being used.²⁸³

The representatives from the Special Missions Division and the Witness Protection Section and other interviewees added that the above measures balance the needs of the protected persons with the rights of the accused as required by law. For example, defense counsel (not the defendant himself/herself) can have access to the protected witness if such access is deemed appropriate through a court order or upon the intervention of the Special Missions Division acting under orders.²⁸⁴ It should be noted however, that the accused is completely excluded from the courtroom in cases where minors are testifying and in cases where the infraction is exceptionally grave. Currently, the Supreme Court is working on establishing measures whereby the defendant is excluded in other cases as well such that adult victims of crimes are not traumatized.²⁸⁵

When asked about the overall efficiency of witness protection measures in Moldova, some interviewees indicated that while such measures are available and are delineated in law, they are scarcely applied.²⁸⁶ Representatives from the OSCE stated that, based upon a recent questionnaire, most Moldovan judges and prosecutors have not attempted to use witness protection measures.²⁸⁷ Other interviewees stated that the efficiency of such measures depends upon financial and technological resources, which, currently, are scarce.²⁸⁸ There is a budget for investigations but it is limited. No money was allocated from the state's budget for witness protection.²⁸⁹ The OSCE donated 20 mobile telephones, which can be used by protected witnesses if they are in danger and 2 computers to the Witness Protection Section.²⁹⁰ One interviewee indicated that the OSCE is also in the process of creating a separate courtroom where witnesses can be examined without having to face the accused during proceedings. This room will also be available for investigators to conduct their interrogations before trial.²⁹¹ Despite all these efforts, some of the interviewees stressed that witnesses require continuous supervision and protection and, in order to provide that, the Witness Protection Section needs

²⁷⁹ *See id.*

²⁸⁰ *See id.*

²⁸¹ *See* Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

²⁸² *See* Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004).

²⁸³ *See* Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004); *see* Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

²⁸⁴ *See* ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁸⁵ *See* Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

²⁸⁶ *See* ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁸⁷ *See* Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocar, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

²⁸⁸ *See* Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004).

²⁸⁹ *See id.*

²⁹⁰ *See id.*

²⁹¹ *See* Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

to increase its financial capabilities and improve its technology (i.e. security cameras, telephones, and other equipment).²⁹²

When asked whether the state provides protection to members of the NGO community who assist victims/witnesses in court and otherwise, the persons interviewed indicated that, usually, no such protection is offered, although the danger faced by NGO representatives is as real as the danger faced by the victims and witnesses themselves.²⁹³ However, if a court or a prosecutor orders that an NGO representative is to be protected alongside the victim/witness, law enforcement authorities must follow that order.²⁹⁴

Participation in an Organized Criminal Group

The general consensus among persons interviewed for the purposes of this assessment was that, while provisions exist in Moldovan law that criminalize the illicit acts of participating in an organized criminal group or a criminal organization/association, there are only a few cases that are brought based upon such charges, either independently or together with trafficking charges. None of the interviewees could provide a concrete figure as to how many individuals have been indicted and/or convicted for their participation in an organized criminal group.²⁹⁵

Money Laundering

The interviewees also generally agreed that, while provisions exist in Moldovan law that define money laundering offenses, no cases based upon such charges, either independently or together with trafficking charges, have been brought.²⁹⁶ OSCE representatives pointed out that money-laundering offenses are fairly new and that Moldovan prosecutors are not yet experienced in bringing forth such charges.²⁹⁷

Corruption

Corruption exists among Moldovan public officials, according to the persons interviewed for the purposes of this assessment. The interviewees either explicitly or implicitly conveyed this fact to the assessor. IMAS-INC, an independent Moldovan research institute, conducted an opinion poll in 2004 that confirms the existence of corruption in Moldova.²⁹⁸ The poll covered 1446 persons from Moldova (excluding the territory of Transnistria) who identified corruption, in general, as an issue that concerns them:

- 4.6% identified corruption as the most important problem that concerns them

²⁹² See Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004).

²⁹³ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁹⁴ See Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004); see also Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

²⁹⁵ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

²⁹⁶ See *id.*

²⁹⁷ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

²⁹⁸ See generally IMAS-INC, BAROMETRUL OPINIEI PUBLICE DIN MOLDOVA [PUBLIC OPINION POLL FROM MOLDOVA] (2004), available at <http://www.ipp.md> [hereinafter IMAS-INC Poll].

- 8.6% identified corruption as the second most important problem that concerns them
- 9.3% identified corruption as the third most important problem that concerns them.²⁹⁹

The participants in the IMAS-INC poll were also asked which of the professions in Moldova are considered to be the most corrupt. They responded as follows:

- 26.6% identified police officers as the most corrupt group
- 18.3% identified doctors as the most corrupt group
- 10.8% identified customs officials as the most corrupt group.³⁰⁰

For comparison purposes, the reader should refer to a poll conducted by Transparency International, Moldova in 2002 (note: older than the IMAS-INC poll). In this poll, members of households, NGO representatives, and private businesspersons were asked to identify the most corrupt domains within the governmental sector.³⁰¹ The results were as follows:

- members of households identified health care providers as the most corrupt (82%), followed by customs officials (74%), teachers (70.8%), and police officers (65.8%)
- NGO representatives identified health care providers as the most corrupt (81%), followed by teachers (76%), customs officials (68%), and fiscal authorities (61%)
- Businesspersons identified health care providers as the most corrupt (68.3%), followed by customs officials (64.1%), fiscal authorities (57.7%), and police officers (56.9%).³⁰²

The Transparency International poll covered 1,009 respondents that included 401 members of households, 204 representatives of national and local NGOs, and 404 businesspersons from all regions of Moldova.³⁰³

Some of the persons interviewed for the purposes of this assessment indicated that corruption is a contributing factor to trafficking in persons. They made reference to a few on-going cases involving public officials who organized illegal migration schemes, received bribes to cover the illegal removal of children from Moldova, and participated directly in trafficking activities by forcing women into prostitution in Russia. The last case mentioned involved a corrupt police officer from Rascani who was convicted. It should be noted that other interviewees stated that there is insufficient evidence to support a continuous pattern linking corruption to trafficking in persons in Moldova.³⁰⁴

Most of the interviewees confirmed that Moldova has a national plan of action to combat corruption that has been adopted by the government for 2003-2005,³⁰⁵ but that there is no plan

²⁹⁹ See *id.* at 15.

³⁰⁰ See *id.* at 24.

³⁰¹ TRANSPARENCY INTERNATIONAL, MOLDOVA, CORRUPTION AND ACCESS TO JUSTICE 16-17 (2002), available at <http://www.transparency.md/documents.htm>.

³⁰² See *id.*

³⁰³ See *id.* at 6, 9.

³⁰⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁰⁵ See Hotarirea Guvernului Republicii Moldova cu privire la Programul de stat de combatere a criminalitatii si coruptiei pentru anii 2003-2005 [Decision of the Government of the Republic of Moldova Regarding the National Program to Combat Crime and Corruption for the Years 2003-2005], No. 1693, Dec. 27, 2002 (officially adopting the National Program to Combat Crime and Corruption for the period of 2003-2005).

of action to combat corruption as it specifically relates to trafficking in persons.³⁰⁶ Transparency International participated in the development of the 2003-2005 national plan of action to combat corruption.³⁰⁷ The Center for Combating Economic Crimes and Corruption, an independent government body was created in 2002 and is principally responsible for implementing anti-corruption measures approved by a presidential committee in accordance with the 2003-2005 national plan of action.³⁰⁸

In the first 8 months of 2004, Moldova's Ministry of Internal Affairs recorded 56 cases of active corruption and 126 cases of passive corruption. These numbers were considerably higher than numbers from the first 8 months of 2003 when the Ministry of Internal Affairs recorded 8 cases of active corruption and 24 cases of passive corruption. Separately, in the first 8 months of 2004, the Ministry of Internal Affairs recorded 69 cases of abuse of power and 64 cases of excess of power. These figures were also up from the first 8 months of 2003, when the Ministry of Internal Affairs recorded 54 cases of abuse of power and 53 cases of excess of power. It was unclear as to how many of these cases were related to trafficking in persons.³⁰⁹ The assessor obtained these figures in an interview. The reader should note, that the assessor did not have a written compilation of these figures officially issued by the Ministry of Internal Affairs when writing this assessment.

When asked whether Moldova's overall efforts to combat corruption are an adequate response to the problem, most interviewees answered that they are not. Some indicated that, while the provisions criminalizing corruption are effectively written, their implementation is ineffective given Moldova's economic and social problems (i.e. poverty etc.) and the lack of public education regarding corruption.³¹⁰ Poverty and low incomes dominate. 13% of the IMAS-INC poll participants (the highest number that answered out of a total of 1446 respondents) declared that their average salary for the month of September 2004 was between 201 Lei to 300 Lei (circa \$17 to \$25).³¹¹ The current salary of police officers and borders guards ranges from 700 Lei to 1200 Lei per month (circa \$58 to \$100 per month).³¹²

Obstruction of Justice

In general, persons interviewed for the purposes of this assessment stated that they either have not heard of individuals obstructing justice in connection with trafficking cases or that such illicit acts have not occurred.³¹³ In contrast, one interviewee indicated that there have been some instances where victims or witnesses have been threatened in connection with the

³⁰⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁰⁷ See TRANSPARENCY INTERNATIONAL, MOLDOVA, CORRUPTION IN MOLDOVA: FACTS, ANALYSIS, PROPOSALS 87-99 (2002) (enumerating Transparency International's detailed recommendations that were taken into consideration during the creation of a national plan of action to combat corruption in Moldova).

³⁰⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004); *see also* Center for Combating Economic Crimes and Corruption of the Republic of Moldova, at www.cccec.md.

³⁰⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³¹⁰ *See id.*

³¹¹ *See* IMAS-INC Poll, *supra* note 298, at 82.

³¹² *See* ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³¹³ *See id.*

prosecution of suspected traffickers but there are no concrete analyses or figure compilations as to how many instances and the motivation behind such acts.³¹⁴

³¹⁴ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

Article 2 : Statement of Purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Recommendations:

- Link all of the ad hoc efforts on prevention, prosecution, protection, and cooperation that are currently being undertaken by the Moldovan government, international organizations and local NGOs in order for these entities to be more effective and combat trafficking in persons together.
- Continue all of the programs initiated by international organizations in Moldova (i.e. when international organizations leave, build upon their legacy).
- The Moldovan government should contribute financially to prevention, prosecution, protection, and cooperation measures. The national budget should include a line item specifically for combating trafficking in persons.
- Combine the funds that are being donated to local NGOs (not the government) in Moldova to pursue anti-trafficking measures and develop an overall plan where certain NGOs are tasked to pursue prevention measures, others protection measures etc. (and thus better complement the government's efforts).
- Fund research studies to measure the impact of preventive campaigns, prosecution efforts, protection and assistance measures, and overall cooperation efforts in Moldova.
- Present all written reports regarding trafficking issues in Moldova to the government not just to international donors (this applies to international organizations conducting assessments as well as local NGOs).
- Conclude more bi-lateral and multi-lateral treaties in order to better prevent the trans-national phenomenon of trafficking from occurring, better prosecute suspected traffickers across borders, and better protect trafficked victims. Countries of origin (such as Moldova) *together* with countries of destination must undertake comprehensive measures to combat trafficking by signing bi-lateral treaties and establishing common financial resources.
- Create an overarching regional initiative to combat trafficking in persons by establishing centers of information for victims and potential victims in Moldova and

its neighboring countries and by instituting clear communication channels among these centers.

De Jure Compliance:

Prevention and Prosecution

Measures to prevent trafficking in persons and to prosecute individuals for engaging in trafficking activities are incorporated in Moldova's Anti-Trafficking National Plan of Action that is currently in effect³¹⁵ as well as in the Criminal Code.³¹⁶ More detailed measures for preventing and combating trafficking have been introduced in Moldova's draft anti-trafficking law, which will soon come into force.³¹⁷

The Anti-Trafficking National Plan of Action delineates the following preventive measures:

- development of a standard information database
- research and sociologic surveys on trafficking
- information campaigns and media coverage on the issue of trafficking in persons
- development and dissemination of anti-trafficking materials including statistics, brochures, videos, flyers, information posters etc.
- dissemination of information regarding health risks caused by sexual exploitation
- inclusion of information on the dangers of trafficking in school curricula
- special programs targeting marginalized youth, in particular those outside the education system
- counseling on the dangers of trafficking and targeted information regarding places where to receive assistance etc. for people seeking jobs
- programs aimed at improving the social and economic conditions of women
- programs for combating poverty and unemployment
- welfare programs to support impoverished individuals and families
- programs addressing illiteracy and continuous training
- prohibition of sexist expressions both in the press and on the radio/TV channels
- ban on violent, degrading, pornographic publications that affect human dignity.³¹⁸

These measures target women of all ages, youth in general, and men.³¹⁹

The draft anti-trafficking law seeks to clarify, among other things, the legal obligations of various governmental and non-governmental entities regarding the implementation of preventive measures.³²⁰ The draft law devotes an entire chapter to the prevention of trafficking in persons enumerating in detail the measures that each implicated governmental structure is to undertake.³²¹ Once this law comes into effect, entities such as the Ministry of Internal Affairs,

³¹⁵ See generally Anti-Trafficking National Plan of Action, *supra* note 8.

³¹⁶ See generally CRIMINAL CODE [CRIM. C.] arts. 11, 13, 165, 206 (Mold.).

³¹⁷ See generally Draft Anti-Trafficking Law, *supra* note 21.

³¹⁸ See Anti-Trafficking National Plan of Action, *supra* note 8.

³¹⁹ See *id.*

³²⁰ See Draft Anti-Trafficking Law, *supra* note 21, art. 1(a).

³²¹ See *id.* arts. 6-14.

Ministry of External Affairs, Information and Security Service, State Prosecutor's Office, Department of Migration, Department of Information Technologies, Department of Border Guards, Ministry of Labor and Social Protection, Ministry of Finance, Ministry of Education, and Ministry of Health will be legally responsible for implementing the detailed preventive measures alongside domestic NGOs and international organizations present in Moldova.³²² It should be noted that the current National Anti-Trafficking Committee is recognized as the body that is to primordially coordinate and monitor the implementation of preventive measures, together with other efforts.³²³ Furthermore, the draft law creates territorial commissions for combating trafficking that are to complement the National Committee.³²⁴

While the preventive measures delineated in the national plan of action and the draft anti-trafficking law, will be discussed in greater detail below, these domestic *de jure* efforts aid Moldova in better complying with Article 2(a) of the Trafficking Protocol that imposes a general requirement on States Parties to develop and implement means to prevent trafficking.³²⁵

In addition, Moldovan officials are equipped with the basics for prosecuting suspected traffickers and, from a *de jure* perspective, Moldova complies with the general requirement of Article 2(a) of the Trafficking Protocol to "combat" trafficking in persons.³²⁶ The Criminal Code enables authorities to exercise territorial and extraterritorial jurisdiction³²⁷ as well as initiate and respond to extradition requests³²⁸ in order to prosecute individuals for the offense of trafficking in human beings defined in Article 165³²⁹ and the offense of trafficking in children defined in Article 206.³³⁰ A more in-depth discussion regarding the intricacies of these definitions, the criminalization of all activities related to these offenses, and the sanctions imposed is presented below. In addition to trafficking of adults or children, Moldovan prosecutors can bring charges against individuals for other crimes, such as forcing a person in the drawing of organs or tissues for transplant,³³¹ illegal imprisonment,³³² slavery and conditions similar to slavery,³³³ forced labor,³³⁴ the illegal removal of children from Moldova,³³⁵ etc. For a complete list of additional charges the reader should refer to the discussion below under Article 5 of the Protocol.

The draft anti-trafficking law delineates the liability of legal entities when a trafficking act has been committed.³³⁶ While this legislative development will be discussed in greater detail in the

³²² See *id.* art. 10.

³²³ See *id.* art. 8.

³²⁴ See *id.* art. 9.

³²⁵ See Trafficking Protocol, *supra* note 10, art. 2(a).

³²⁶ See *id.*

³²⁷ See CRIMINAL CODE [CRIM. C.] art. 11 (Mold.).

³²⁸ See *id.* art. 13.

³²⁹ See *id.* art. 165.

³³⁰ See *id.* art. 206.

³³¹ See *id.* art. 158.

³³² See *id.* art. 166.

³³³ See *id.* art. 167.

³³⁴ See *id.* art. 168.

³³⁵ See *id.* art. 207.

³³⁶ See Draft Anti-Trafficking Law, *supra* note 21, art. 31.

analysis of Article 5 of the Protocol below, it is worthy to highlight it here because existing Moldovan laws do not hold legal entities responsible for being involved in the illicit activities of traffickers.³³⁷ Once the draft law is adopted and this responsibility is clearly established in legislation, Moldova will be able to better comply with Article 2(a) as well as with other provisions of the Trafficking Protocol.³³⁸

Protection

Measures for protecting and assisting victims of trafficking are outlined in the Criminal Code³³⁹ and in the Anti-Trafficking National Plan of Action that is currently in effect.³⁴⁰ In addition, the draft anti-trafficking law devotes an entire chapter to the protection and assistance of trafficked victims.³⁴¹

Articles 165(4) and 206(4) of the Moldovan Criminal Code absolve adult and minor victims of any criminal liability connected to the fact that they were trafficked *if they agree to cooperate with law enforcement officials*.³⁴² The draft anti-trafficking law eliminates the requirement that victims have to cooperate in investigations or agree to testify in order for them to receive protection and assistance.³⁴³ Thus, when the draft law is adopted, victims will no longer have to cooperate and they will automatically be entitled to receive the proper housing, medical care etc. However, until then, the requirement still stands in order for a trafficked individual to be identified and defined as a victim and not criminalized (procedures that are available in Moldovan law).³⁴⁴

The current Anti-Trafficking National Plan of Action enumerates the following measures for protecting and assisting victims of trafficking:

- establishing specialized reception centers within Moldova's welfare system which would help reintegrate victims into society
- developing means for meeting victims, giving them shelter, accompanying them to their places of residence, counseling them, monitoring cases (i.e. follow-up) etc.
- creating a procedure, on the basis of bilateral agreements with other states, for covering the cost of victims' repatriation and integration
- issuing travel and identification documents free of charge such that victims can return home
- providing social support services upon the return of victims (i.e. access to counseling, welfare, and health care)
- training government officials who have initial contact with trafficked victims (i.e. police officers, migration authorities, border guards, welfare authorities etc.)

³³⁷ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

³³⁸ See Trafficking Protocol, *supra* note 10, art. 2(a).

³³⁹ See CRIMINAL CODE [CRIM. C.] arts. 165(4), 206(4) (Mold.).

³⁴⁰ See *generally* Anti-Trafficking National Plan of Action, *supra* note 8.

³⁴¹ See *generally* Draft Anti-Trafficking Law, *supra* note 21.

³⁴² See CRIMINAL CODE [CRIM. C.] arts. 165(4), 206(4) (Mold.).

³⁴³ See Draft Anti-Trafficking Law, *supra* note 21, art. 20(4).

³⁴⁴ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

- establishing an emergency hot-line for victims
- providing job support and professional training for victims, as well as financial support for victims who start their own businesses.³⁴⁵

As discussed below, some of these measures are vaguely written. The draft anti-trafficking law improves and adds to the above measures and clearly designates responsibility to various governmental entities such that victims can truly be protected and assisted when they return to Moldova.³⁴⁶ Despite the flaws of the existing protective measures, they comply, from a *de jure* perspective, with Article 2(a) of the Trafficking Protocol that solely requires States Parties to protect and assist trafficked victims while respecting their human rights (i.e. general requirement).³⁴⁷

International Cooperation

The current Anti-Trafficking National Plan of Action calls for cooperation in order to accomplish various goals. The plan calls for:

- training programs for welfare agents, labor services, healthcare providers, and teachers such that they can learn how to cooperate with the justice system in combating trafficking
- training programs aimed at improving cooperation between government entities and NGOs in the fight against trafficking
- cooperation with other states in order to receive expert assistance for drafting and enforcing anti-trafficking legislation, and financial assistance for implementing anti-trafficking programs
- bi-lateral and multi-lateral agreements with countries of destination for trafficked victims in order to prevent trafficking and to ensure the return of victims to Moldova.³⁴⁸

Moldova has concluded several bi-lateral agreements with countries such as Italy, Portugal, and Israel in order to legalize the status of Moldovan citizens working illegally in those countries.³⁴⁹ Furthermore, Moldova is a party to the 1959 European Convention on Mutual Legal Assistance in Criminal Matters³⁵⁰ and the NIS Mutual Legal Assistance Convention,³⁵¹ and has concluded bi-lateral agreements on mutual legal assistance with countries such as Romania, Latvia, Lithuania, Russia, Ukraine, and Turkey.³⁵²

The draft anti-trafficking law seeks to fortify Moldova's international cooperation efforts by:

- reconfirming that cooperation to prevent and combat trafficking in persons is to be done on the basis of international treaties to which Moldova is a State Party³⁵³

³⁴⁵ See Anti-Trafficking National Plan of Action, *supra* note 8.

³⁴⁶ See Draft Anti-Trafficking Law, *supra* note 21, arts.15-24.

³⁴⁷ See Trafficking Protocol, *supra* note 10, art. 2(b).

³⁴⁸ See Anti-Trafficking National Plan of Action, *supra* note 8.

³⁴⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁵⁰ See generally European Convention on Mutual Assistance in Criminal Matters, Apr. 20, 1959, No. 030, available at <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>.

³⁵¹ See generally NIS Mutual Legal Assistance Convention, *supra* note 81.

³⁵² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁵³ See Draft Anti-Trafficking Law, *supra* note 21, art. 33.

- establishing liaison officers in the Ministry of Internal Affairs and in the State Prosecutor's Office who are to coordinate efforts with other countries when investigating and prosecuting trafficking cases (i.e. evidence sharing, extradition etc.).³⁵⁴

Once the draft law is adopted, Moldova's efforts to cooperate on an international scale should increase.

Thus far, though, the international cooperation efforts delineated in the Anti-Trafficking National Plan of Action and the few existing treaties satisfy, on paper, the general requirement of Article 2(c) of the Trafficking Protocol to simply cooperate with other states in order to prevent and combat trafficking and to protect trafficked victims.³⁵⁵

De Facto Compliance:

Prevention, Prosecution, Protection, and International Cooperation

The National Anti-Trafficking Committee was established in November 2001 as a central body to coordinate Moldova's efforts to combat trafficking in persons. In accordance with the Anti-Trafficking National Plan of Action, various state authorities were designated to address the issues of prevention, prosecution, protection, and international cooperation under the supervision of the national committee. Representatives from international organizations in Moldova and local NGOs participate in the committee's meetings, working groups, and overall activities.³⁵⁶

Presently, the state authorities who are in charge of implementing measures to prevent the phenomenon of trafficking in persons are the:

- Ministry of Education
- Ministry of Labor and Social Protection
- Ministry of Internal Affairs
- Ministry of Justice
- Ministry of Health
- Ministry of the Economy
- State Prosecutor's Office
- Department of Migration
- Department of Border Guards
- Customs Department
- Department of Information Technologies
- Information and Security Service.³⁵⁷

As one interviewee pointed out, though, while law enforcement officials are to engage in preventive measures, in addition to conducting criminal investigations, there are no such capabilities in the field (i.e. in regions outside of Chisinau). Furthermore, there is no separate

³⁵⁴ See *id.* art. 34.

³⁵⁵ See Trafficking Protocol, *supra* note 10, art. 2(c).

³⁵⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁵⁷ See *id.*

government budget for measures to prevent trafficking in persons. Technically, the funding is derived from the various budgets of the above government branches. However, interviewees noted that most (if not all) of the funding for prevention comes from international organizations such as the OSCE, IOM, and La Strada. International organizations and local NGOs have taken the lead on information and public awareness campaigns and the distribution of materials on trafficking. The measures undertaken and their impact on various target groups (i.e. women and children mostly) will be discussed in further detail below. It should be noted that government representatives participated in some of the preventive efforts put forth by the international community and domestic NGOs (i.e. with speeches, general support etc.). Some interviewees rated preventive measures in Moldova to be efficient but only because of international involvement. Others called for more preventive measures given the large number of individuals who are susceptible to trafficking and the existing social and economic problems in Moldova.³⁵⁸

The MoI Anti-Trafficking Division is a specialized unit within the Ministry of Internal Affairs, which is tasked with investigating trafficking offenses.³⁵⁹ The MoI Anti-Trafficking Division in Chisinau is made up of 5 or 6 officers and there are a few officers in other regions of Moldova who specialize in trafficking issues. Interpol is involved when trans-border operations are conducted. There are prosecutors in the State Prosecutor's Office in Chisinau who specialize in trafficking cases, but there are not that many specialized prosecutors in other regions of Moldova, especially in those regions vulnerable to trafficking like Gagauzia. As previously mentioned, the MoI Anti-Trafficking Division registered a total of 244 trafficking cases *per se* and trafficking-related cases in the first semester of 2004. The trafficking unit within the State Prosecutor's Office undertook a total of 115 cases during the first semester of 2004. There were a total of 32 convictions for trafficking in persons and pimping during the first semester of 2004. A detailed breakdown of these figures is included in the discussion of Article 5 of the Trafficking Protocol below.³⁶⁰

Protective measures are implemented by various bodies depending on the situation of the trafficked victim. If the victim agrees to cooperate with law enforcement officials and/or testifies against his/her trafficker, the Witness Protection Section within the Ministry of Internal Affairs is assigned to protect him/her (as previously discussed in detail). This section, however, has limited funds and the Center for the Prevention of Trafficking in Women ("CPTW"), a domestic NGO, rents apartments for witnesses, buys food and clothes for them, etc. Other trafficked victims, even those who do not agree to cooperate or testify, receive assistance primarily from IOM, La Strada, and CPTW (not the Moldovan government). While some victims can be found in various government-run or private shelters for orphans or homeless persons in Chisinau, IOM has established the only shelter in Moldova specifically meant to temporarily house returning adult and minor victims of trafficking. Victims receive the requisite medical care and assistance at this shelter. La Strada, among its other roles, repatriates victims of trafficking and refers them to the IOM shelter. CPTW offers legal counseling to returning victims in connection with specific trafficking cases and otherwise (i.e. their rights in general etc.). On the government side, the Ministry of Labor and Social

³⁵⁸ See *id.*

³⁵⁹ See *id.*; see also Ministry of Internal Affairs of the Republic of Moldova, at <http://www.mai.md/>.

³⁶⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

Protection is tasked with the social and professional reintegration of victims in society; responsibility which the Ministry integrates in an overall strategy for social assistance and job development in Moldova. La Strada conducts trainings together with the Ministry Labor in this regard. It should be noted that there is no separate state budget specifically dedicated to the protection, rehabilitation, and assistance of victims of trafficking. Details regarding all of the enumerated protective measures are discussed below when analyzing Moldova's compliance with Article 6 of the Trafficking Protocol.³⁶¹

As far as international cooperation to combat trafficking is concerned, there are some efforts on the part of the Moldovan Ministries of Internal Affairs and External Affairs. There are exchanges of information with other countries such as Albania, Kosovo, Romania, and Ukraine. There was an attempt to conclude an agreement with Macedonia but it failed. There are cooperative programs to combat organized crime within the NIS that include provisions on trafficking of adults and children. There is joint training of law enforcement authorities on trafficking specifically, however, only within the framework of European organizations (not among NIS countries). The OSCE and Council of Europe organized seminars, which were attended by police officers and prosecutors from Albania, Kosovo, Macedonia, Moldova, Romania, and Ukraine. Moldovan law enforcement officials pursue investigations with their counter-parts from other countries through rogatory commissions but very rarely. Police officers also participate in regional efforts to combat trafficking such as the Southeast European Cooperative Initiative ("SECI") and, specifically, in operation "Miraj." Lastly, individuals suspected of trafficking have been extradited to and from Moldova. These cooperative efforts will be discussed in greater detail below.³⁶²

³⁶¹ *See id.*

³⁶² *See id.*

Article 3: Use of Terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Recommendations:

- Amend provisions of the Moldovan Criminal Code criminalizing trafficking in human beings (Article 165) and trafficking in children (Article 206) such that they correspond with the comprehensive definition of trafficking included in the draft anti-trafficking law and better comply with the Trafficking Protocol.

De Jure Compliance:

Trafficking Definition

The Criminal Code of Moldova defines the offense of "trafficking in persons" (or trafficking in human beings) in Article 165.³⁶³ This article imposes liability solely for the act of trafficking adults. "Trafficking in children" is defined in a separate article as noted below.

The trafficking definition in Article 165 includes the same suspect activities as those that are delineated in Article 3(a) of the Trafficking Protocol: the recruitment, transportation, transfer, harboring, or receipt of a person.³⁶⁴

Article 165 mirrors most of the illicit means used to traffic individuals as enumerated in Article 3(a) of the Protocol:

- physical or psychological threats (not directly affecting the life and health of a person)
- use of force
- use of psychological violence
- abduction

³⁶³ See CRIMINAL CODE [CRIM. C.] art. 165 (Mold.).

³⁶⁴ See *id.* art. 165(1); see also Trafficking Protocol, *supra* note 10, art. 3(a).

- confiscation of documents in exchange for settling a debt of unreasonable size
- servitude in exchange for settling a debt of unreasonable size
- deception
- abuse of a position of vulnerability
- abuse of a position of power
- giving or receiving of payments or benefits to achieve the consent of a person who has control over another person.³⁶⁵

The above list does not include “fraud” as a possible illicit means, separate from “deception,” as required, at a minimum, by Article 3(a) of the Protocol.³⁶⁶ One expert noted further that when listing the illicit means used to commit trafficking, Article 165 does not contain an all-inclusive category of “other forms of coercion” as the Protocol requires at a minimum.³⁶⁷ While the drafters of Article 165 made a good-faith effort to list and explain the different means of coercion, which they envisioned would be used when trafficking a person, they did not leave room for extending the list.³⁶⁸ In other words, the list of illicit means in Article 165 is finite while the list of illicit means in Article 3(a) of the Protocol is not finite.³⁶⁹ These limitations in the current Moldovan definition of trafficking in persons cause it not to comply with the minimum requirements of Article 3(a) of the Trafficking Protocol.

It should be noted that the draft anti-trafficking law, which has not yet come into force, defines “trafficking in persons” differently from Article 165 of the Criminal Code. The draft law includes in its definition “fraud” and “other coercive means” as possible illicit methods that traffickers can utilize.³⁷⁰ However, as some experts indicated, the draft law does not have a punitive effect and will *not* automatically amend or modify Article 165 of the Criminal Code when it comes into force. Its definition cannot be used in place of the definition in Article 165 when prosecuting cases. Article 165 will have to be amended separately in order to include elements such as “fraud” and “other coercive means” in order to fully comply with the Protocol.³⁷¹

Article 165 presently incorporates all of the types of exploitation that are included in the Protocol’s definition of trafficking and even adds to the list:

- sexual exploitation (both commercial and non-commercial)
- forced labor or services
- slavery
- slave-like practices
- using a person in armed conflicts
- using a person in criminal activities

³⁶⁵ See CRIMINAL CODE [CRIM. C.] art. 165(1) (Mold.); see also Trafficking Protocol, *supra* note 10, art. 3(a).

³⁶⁶ See Trafficking Protocol, *supra* note 10, art. 3(a).

³⁶⁷ See Trafficking Protocol, *supra* note 10, art. 3(a); see also Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

³⁶⁸ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

³⁶⁹ See CRIMINAL CODE [CRIM. C.] art. 165(1) (Mold.); see also Trafficking Protocol, *supra* note 10, art. 3(a).

³⁷⁰ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(1).

³⁷¹ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004); see Interview with Lilia Ionita, Director, Order and Justice Division, Legislation Department, Ministry of Justice (Sept. 29, 2004).

- removal of organs and tissues for transplant.³⁷²

The above enumeration of exploitative purposes to which a trafficker can subject his/her victims seems to fully comply, and even go beyond, the requirements of Article 3(a) of the Protocol.³⁷³ Article 3(a) of the Protocol mentions the types of exploitation *at a minimum*,³⁷⁴ thus, expecting that a state will go beyond the list. From this standpoint, Article 165 of the Moldovan Criminal Code complies with Article 3(a) of the Trafficking Protocol.

However, one expert pointed out that while Article 165 presents a comprehensive compilation of exploitative purposes, this is a finite list.³⁷⁵ He suggested that Moldovan legislators should have added an all-inclusive category of “other types of exploitation that violate the rights of citizens as protected by the state” such that prosecutors could prove that an individual was trafficked even if s/he was subjected to exploitation other than what is currently listed. For example, if a person was trafficked for the purpose of removing his/her organs or tissues and such organs or tissues are not used for transplant, as mentioned in Article 165, but for other new scientific objectives, then a prosecutor cannot prove his/her case. As science evolves, Article 165 of the Moldovan Criminal Code will not be flexible enough to adapt to new forms of exploitation. The expert mentioned other possible exploitative purposes that will not be covered if Article 165 is not amended to include an “other” category. Such “other” types of exploitation could include:

- forcing women to be surrogate mothers
- removing substances other than organs and tissues from human beings
- using human beings for the purposes of medical experiments
- involving persons in activities that are not considered criminal according to Moldovan law but are criminal according to the laws of other states.³⁷⁶

The draft anti-trafficking law expands its definition of trafficking to include the above-suggested exploitative purposes,³⁷⁷ and a general, all encompassing “other” category of “forcing individuals to partake in other activities that violate the fundamental rights and freedoms of human beings.”³⁷⁸ However, as explained above, even when the draft anti-trafficking law will come into force, its expanded definition of trafficking in persons will not automatically replace or modify the current definition in Article 165 of the Criminal Code. Judges and prosecutors will have to abide by the current definition of trafficking until Article 165 is separately amended.³⁷⁹

Consent

The current Moldovan definition of the trafficking offense or any other pertinent provisions do not explicitly indicate that the victim’s consent to the various types of exploitation mentioned in

³⁷² See CRIMINAL CODE [CRIM. C.] art. 165(1) (Mold.).

³⁷³ See Trafficking Protocol, *supra* note 10, art. 3(a).

³⁷⁴ See *id.*

³⁷⁵ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

³⁷⁶ See *id.*

³⁷⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(3).

³⁷⁸ See *id.* art. 2(3)(k).

³⁷⁹ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

Article 165 is irrelevant when a trafficker has used the illicit means also delineated therein.³⁸⁰ In other words, the law does not clearly state that the accused *cannot* raise the defense of consent when indicted on trafficking charges. From this perspective, Article 165 and other pertinent laws do not comply with Article 3(b) of the Trafficking Protocol.³⁸¹ Given the lack of explanation regarding the consent of victims in Moldovan law, judges and prosecutors have had some difficulty in interpreting and applying the provisions of Article 165 (see de facto section below).

The draft anti-trafficking law clearly mentions that the consent of the victim to being exploited for various purposes is irrelevant when a trafficker uses any of the identified illicit means.³⁸² Once the draft law is adopted, practitioners will be able to use this particular provision as guidance when interpreting existing Criminal Code articles on trafficking. However, the Criminal Code provisions should be amended as well in order to clearly address the issue of consent.

Children

“Trafficking in children” is criminalized in Article 206 of the Moldovan Criminal Code.³⁸³ Article 206 delineates almost all of the same suspect activities as Article 165 of the Criminal Code: the recruitment, transportation, transfer, harboring, or receipt of a child.³⁸⁴ Article 206 adds a suspect activity: the “giving or receiving of payments or benefits in order to obtain the consent of a person who has control over a child.”³⁸⁵ According to Article 3(a) of the Trafficking Protocol, this is not a suspect activity but, rather, an illicit means that a trafficker uses to coerce his/her victims.³⁸⁶ In cases where children have been trafficked, such illicit means do not need to be proven. Article 3(c) of the Trafficking Protocol indicates that “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means” associated with trafficking of adults.³⁸⁷ By requiring prosecutors to prove the element of “giving or receiving of payments or benefits in order to obtain the consent of a person who has control over a child” as a suspect activity,³⁸⁸ Article 206 of the Moldovan Criminal Code does not comply with Article 3(c) of the Trafficking Protocol.

In contrast, Moldova’s draft anti-trafficking law clearly states that the illicit means used by traffickers, including the “giving or receiving of payments or benefits in order to obtain the consent of a person who has control over another person,” do not need to be proven in a case of child trafficking.³⁸⁹ It should be stressed that the draft law identifies the “giving or receiving of payments or benefits in order to obtain the consent of a person who has control over another

³⁸⁰ See CRIMINAL CODE [CRIM. C.] art. 165 (Mold.).

³⁸¹ See Trafficking Protocol, *supra* note 10, art. 3(b).

³⁸² See Draft Anti-Trafficking Law, *supra* note 21, arts. 2(4), 30(3).

³⁸³ See CRIMINAL CODE [CRIM. C.] art. 206 (Mold.).

³⁸⁴ See *id.* art. 206(1); see *id.* art. 165(1); see also Trafficking Protocol, *supra* note 10, art. 3(a).

³⁸⁵ See CRIMINAL CODE [CRIM. C.] art. 206(1) (Mold.).

³⁸⁶ See Trafficking Protocol, *supra* note 10, art. 3(a).

³⁸⁷ See *id.* art. 3(c).

³⁸⁸ See CRIMINAL CODE [CRIM. C.] art. 206(1) (Mold.).

³⁸⁹ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(2).

person,” as an illicit means and *not* as a suspect activity like Article 206 of the Moldovan Criminal Code.³⁹⁰ However, these changes in the draft law will not automatically replace or modify the current definition of trafficking in children in Article 206. Article 206 will have to be amended separately and until, then, practitioners must apply it “as is.”

Article 206 of the Criminal Code lists the following types of exploiting children:

- sexual exploitation (commercial and non-commercial)
- forcing into prostitution
- forcing into the pornography industry
- forced labor or services
- slavery
- slave-like practices
- illegal adoption
- using a child in armed conflicts
- using a child in criminal activities
- removal of organs and tissues for transplant
- abandonment overseas.³⁹¹

While this list of exploitative purposes meets and even exceeds the minimum requirements of the trafficking definition in Article 3(a) of the Trafficking Protocol,³⁹² it is a finite list. Once again, it can be argued that this list does not leave room for other types of exploitation, thus limiting practitioners. A child can be exploited in ways other than the ones enumerated above, and a prosecutor would not be able to prove that s/he was trafficked because the particular scenario does not exactly fit a type of exploitation delineated in Article 206. Article 206 should be amended to include a category of “other types of exploitation” as suggested by one expert.³⁹³ The draft anti-trafficking law adds a general, all encompassing category of exploitation defined as “forcing individuals to partake in other activities that violate the fundamental rights and freedoms of human beings.”³⁹⁴ However, even when the draft law is adopted, this provision will not automatically modify the current definition in Article 206.³⁹⁵

Article 206 of the Criminal Code does not explicitly indicate who is a “child” (i.e. what is the age of majority).³⁹⁶ In contrast, the draft anti-trafficking law defines a “child” as “a person who has not reached the age of eighteen.”³⁹⁷ Once the draft law is adopted, practitioners will be able to use this particular provision as guidance, together with existing criminal code provisions within the trafficking context.

³⁹⁰ See *id.* arts. 2(1)-(2); see CRIMINAL CODE [CRIM. C.] art. 206(1) (Mold.).

³⁹¹ See CRIMINAL CODE [CRIM. C.] art. 206(1) (Mold.).

³⁹² See Trafficking Protocol, *supra* note 10, art. 3(a).

³⁹³ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

³⁹⁴ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(3)(k).

³⁹⁵ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

³⁹⁶ See CRIMINAL CODE [CRIM. C.] art. 206 (Mold.).

³⁹⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(5).

De Facto Compliance:

Trafficking Definition

When asked whether the efforts of prevention, prosecution, and victim protection currently undertaken in Moldova to combat trafficking are consistent with the trafficking definitions in Article 165 and 206, most interviewees indicated that they are indeed compliant with national law for the most part.³⁹⁸

One interviewee listed several inadequacies in Moldova's current anti-trafficking provisions and, in particular, in the trafficking definition (see detailed comments in the de jure section above). He makes the general point that, given these legislative discrepancies, practitioners are often limited in what they can prove in trafficking cases and, thus, trafficking charges are dropped and replaced with pimping charges. The sanctions for pimping are lower than for trafficking in persons, thus, suspected traffickers serve less time in jail or even avoid imprisonment altogether and simply pay a fine, depending on the case.³⁹⁹

Consent

As mentioned above, the current Moldovan definition of the trafficking offense or other pertinent provisions do not explicitly indicate that the victim's consent to the various types of exploitation mentioned in Article 165 is irrelevant when a trafficker has used the illicit means also delineated therein.⁴⁰⁰ This has caused confusion among practitioners. One expert stated that attorneys representing the accused in trafficking cases raise the defense of consent, and, while not treating it as a defense *per se*, judges still take into consideration the fact that the victim consented to prostitution, lowering the charges from trafficking to pimping. Other times, judges take the more correct approach by acknowledging that the victim consented but maintaining the trafficking charges because they deem that there is sufficient evidence showing that the victim was *forced* into prostitution and, thus, exploited. Two interviewees pointed out that it is difficult to prove that a victim was exploited, because, for the most part, this exploitation occurred overseas and Moldovan officials do not have the means to quickly and frequently gather evidence from other states.⁴⁰¹ Separately, one expert indicated that prosecutors also take into consideration the victim's consent when deciding what charges to bring (trafficking vs. pimping).⁴⁰² It is hoped that this practice will cease, when the draft anti-trafficking law is adopted and its' indication that the victim's consent is *irrelevant*, when the trafficker uses illicit means in order to exploit him/her, becomes more clear.⁴⁰³

³⁹⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

³⁹⁹ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁴⁰⁰ See CRIMINAL CODE [CRIM. C.] art. 165 (Mold.).

⁴⁰¹ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004); *see also* Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁴⁰² See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁴⁰³ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(4).

Children

In general, interviewees indicated that judges, prosecutors, and defense attorneys do not have a great deal of experience with trials involving minors (whether they are victims or perpetrators). However, most interviewees explained that, currently, prosecutors are not obligated to and do not bring forth evidence to prove the illicit means used in cases where individuals trafficked children.⁴⁰⁴

As a side note, one interviewee suggested that trafficking cases involving minor victims are somewhat easier to prove because the perpetrator must have known the victim's age from the start. That is, in certain cases, in order to traffic a minor, the perpetrator falsifies his/her passport. When falsifying the passport, the trafficker inevitably becomes acquainted with the victim's age and knows that s/he is a minor. Thus, a prosecutor can easily argue that the perpetrator formed the intent to traffic a minor, not an adult, from the very beginning.⁴⁰⁵

⁴⁰⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁴⁰⁵ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

Article 4: Scope of Application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Recommendations:

- Study the issue of internal trafficking further. Programs need to be established in order to address the trafficking of persons within Moldova's borders.

De Jure Compliance:

Transnational Trafficking/Internal Trafficking

None of the provisions in the Moldovan Criminal Code delineating trafficking offenses indicate whether such criminal activity is transnational or internal in nature. That is, neither Article 165, criminalizing trafficking of adults,⁴⁰⁶ nor Article 206, criminalizing child trafficking,⁴⁰⁷ require that the perpetrators conduct their activities across the borders of Moldova and/or strictly within the borders of Moldova. Thus, experts indicate that it is generally understood that existing law covers both types of trafficking, transnational and internal.⁴⁰⁸ The draft anti-trafficking law reaffirms this fact by stating that trafficking offenses can be national and transnational in character.⁴⁰⁹ Once the draft law comes into force, this provision can aid practitioners to better identify various trafficking patterns. This interpretation of trafficking offenses is consistent with Article 4 of the Trafficking Protocol, which, despite explicitly incorporating the notion that trafficking in persons is transnational in nature, it does not limit its States Parties from developing legislation that covers internal trafficking as well.⁴¹⁰

Involvement of an Organized Criminal Group

The involvement of an organized criminal group or a criminal organization is an aggravating circumstance for the offense of trafficking in human beings as delineated in Article 165⁴¹¹ and the offense of trafficking in children as delineated in Article 206 of the Moldovan Criminal Code.⁴¹² Experts indicate that by including this element as an aggravating circumstance for both crimes, the Code does not exclude the possibility of other persons committing trafficking

⁴⁰⁶ See CRIMINAL CODE [CRIM. C.] art. 165 (Mold.).

⁴⁰⁷ See *id.* art. 206.

⁴⁰⁸ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁴⁰⁹ See Draft Anti-Trafficking Law, *supra* note 21, art. 30(2).

⁴¹⁰ See Trafficking Protocol, *supra* note 10, art. 4.

⁴¹¹ See CRIMINAL CODE [CRIM. C.] art. 165(3)(a) (Mold.).

⁴¹² See *id.* art. 206(3)(c).

offenses.⁴¹³ In fact, Article 21 of the Criminal Code states that any individual over the age of 14 can be prosecuted for committing various serious crimes, exceptionally serious crimes, or heinous crimes.⁴¹⁴ This is in compliance with Article 4 of the Trafficking Protocol, which, despite explicitly mentioning the involvement of an organized group, does not limit its States Parties from prosecuting other persons for committing trafficking offenses.⁴¹⁵

De Facto Compliance:

Transnational Trafficking/Internal Trafficking

The interviewees explained that trafficking activities in Moldova are mostly transnational in nature. While internal trafficking exists, such activities occur on a smaller scale. There have been some instances where victims are either trafficked from Moldova's rural areas to Chisinau or, in some cases, within their own villages. For the most part, persons are trafficked from Moldova to other countries due to existing economic problems and the lack of employment opportunities coupled with the increasing demand for victims overseas.⁴¹⁶

Two of the interviewees noted, though, that the problem of internal trafficking needs to be studied further. Programs need to be established in order to specifically address the issue of internal trafficking in Moldova.⁴¹⁷

Involvement of an Organized Criminal Group

Interviewees indicated that members of organized criminal groups and criminal organizations usually partake in trafficking activities transferring victims from Moldova. Each member of the trafficking ring has a designated role such as recruitment of victims, gathering the victims in one place, or transporting them overseas. There are also cases where relatives, friends, and former victims traffic individuals.⁴¹⁸ IOM's statistics, based on interviews with 1140 trafficked victims that were returned to Moldova between 2001 and 2003, indicate that:

- 54% of victims were trafficked by strangers
- 20% of victims were trafficked by friends
- 2% of victims were trafficked by their partners
- 2% of victims were trafficked by their relatives.⁴¹⁹

As a side note, one interviewee indicated that, in general, 20% of criminals in Moldova are women and 80% are men. However, in the case of trafficking, over 50% of the perpetrators are

⁴¹³ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁴¹⁴ See CRIMINAL CODE [CRIM. C.] art. 21 (Mold.).

⁴¹⁵ See Trafficking Protocol, *supra* note 10, art. 4.

⁴¹⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁴¹⁷ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004); *see also* Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁴¹⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁴¹⁹ See IOM Statistics, *supra* note 2.

women who, for the most part, were trafficked themselves.⁴²⁰ This fact is confirmed by IOM's 2001-2003 statistics that show women to make up 51% of traffickers.⁴²¹ IOM qualifies these statistics with the following statement:

Women make up the majority of recruiters, reflecting a consistent trend over the last three years [i.e. 2001-2003]. Many of these are women who have been trafficked and are now working for the boss for good money or because they or their loved ones are threatened with violence if they don't cooperate. The women recruit[ers] are more trusted by the young, female target group.⁴²²

⁴²⁰ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁴²¹ See IOM Statistics, *supra* note 2.

⁴²² See *id.*

Article 5: Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Recommendations:

- Amend the provisions of the Moldovan Criminal Code and Criminal Procedure Code such that assets, which are seized from traffickers and are not primarily used to compensate victims, can be collected in a fund created to support intergovernmental bodies in their efforts to combat trafficking in persons. Create and maintain such a fund.
- Amend the Moldovan Criminal Code to include a provision delineating the criminal responsibility of legal persons. The draft anti-trafficking law solely imposes administrative and civil responsibility upon such entities.
- Establish procedures specifically designed to enable authorities to seize the assets of businesses that act as fronts for trafficking activities.

De Jure Compliance:

States Parties' Obligations

Article 5(1) of the Trafficking Protocol outlines the obligation to define trafficking as a separate offense in domestic legislation.⁴²³ As discussed above, Moldova criminalizes the intentional act of trafficking in human beings in Article 165⁴²⁴ and the intentional act of trafficking in children in Article 206⁴²⁵ of the Criminal Code. Despite some of the issues with the definitions of each offense, the fact that they exist separately in Moldova's legislation, complies with the general requirements of Article 5(1) of the Trafficking Protocol.⁴²⁶

On a separate note, Moldovan law does not outline procedures for specifically identifying trafficked victims and their traffickers. There are general provisions in the Criminal Procedure

⁴²³ See Trafficking Protocol, *supra* note 10, art. 5(1).

⁴²⁴ See CRIMINAL CODE [CRIM. C.] art. 165 (Mold.).

⁴²⁵ See *id.* art. 206.

⁴²⁶ See Trafficking Protocol, *supra* note 10, art. 5(1).

Code that define a “victim of a crime”⁴²⁷ as well as an “injured party.”⁴²⁸ The draft anti-trafficking law indicates who is a “victim”⁴²⁹ and briefly outlines the process for identifying trafficked victims.⁴³⁰ Once the draft law will come into effect, practitioners will be able to use these provisions as guidance. However in order to properly identify individuals who have been trafficked and assist them, more detailed provisions are necessary. This will be discussed in greater detail below in the analysis of Article 6 of the Trafficking Protocol.

Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking

The Moldovan Criminal Code defines the lesser-included offense of “attempt” in two general provisions that apply to all of the crimes in the Code including trafficking. Article 26 defines “attempt” as acts in preparation of a criminal offense such as:

- previously agreeing to commit a crime
- purchasing, producing, or adapting devices or instruments to commit a crime
- intentionally creating other conditions for the commission of the crime if the crime, due to causes independent of the perpetrator’s will, cannot be accomplished.⁴³¹

Article 27 of the Criminal Code defines “attempt” as intentionally acting or omitting to act towards the commission of a crime, and the crime, due to causes independent of the perpetrator’s will, could not be accomplished.⁴³² These various definitions of attempt are in compliance with Article 5(2)(a) of the Trafficking Protocol, which requires States Parties to criminalize the act of attempt in connection with trafficking offenses.⁴³³

The Moldovan Criminal Code also defines “accomplice liability” for all crimes including trafficking. Article 42(5) indicates that a person is considered to be an “accomplice” if s/he contributed to the commission of the crime by:

- giving advice
- giving instructions
- providing information
- providing means or instruments, or
- removing obstacles.⁴³⁴

An “accomplice” is also a person who:

- promises in advance that s/he will support the main perpetrator of a crime
- hides the means and instruments used to commit a crime, the traces of a crime, or goods obtained as a result of a crime
- promises, sufficiently in advance, to procure and sell the goods obtained as a result of a crime.⁴³⁵

⁴²⁷ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58 (Mold.).

⁴²⁸ See *id.* art. 59.

⁴²⁹ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(12).

⁴³⁰ See *id.* art. 15.

⁴³¹ See CRIMINAL CODE [CRIM. C.] art. 26(1) (Mold.).

⁴³² See *id.* art. 27.

⁴³³ See Trafficking Protocol, *supra* note 10, art. 5(2)(a).

⁴³⁴ See CRIMINAL CODE [CRIM. C.] art. 42(5).

⁴³⁵ See *id.*

These various definitions of accomplice liability are in compliance with Article 5(2)(b) of the Trafficking Protocol, which requires States Parties to criminalize the participation of individuals as accomplices in the commission of trafficking offenses.⁴³⁶

The Moldovan Criminal Code holds accountable persons who have either organized or directed persons to commit a crime, or instigated persons to commit a crime. Article 42(3) indicates that an “organizer” is a person who organizes the commission of a crime, directs persons in the commission of a crime, or organizes or directs the activities of a criminal organization.⁴³⁷ A person is defined as an “instigator” when s/he convinces another person, through any means, to commit a crime.⁴³⁸ These are general provisions that apply to all offenses in the Criminal Code including trafficking offenses. These provisions are in compliance with Article 5(2)(c) of the Trafficking Protocol, which requires States Parties to criminalize the act of organizing or directing other persons to commit trafficking offenses.⁴³⁹

While the act of omitting or failing to prevent a crime such as trafficking in persons from occurring is not specifically delineated in the Trafficking Protocol, Moldova has applicable provisions in this regard. Article 331 of the Criminal Code, in particular, criminalizes the refusal of public officials to enforce the law, which, in turn, causes damage, on a large scale, to the public interest as well as to the rights and interests of persons and legal entities.⁴⁴⁰ Thus, in cases where a police officer does not arrest a suspected trafficker or does not investigate trafficking activities, and this largely impedes upon the rights of the individuals who were trafficked, s/he can be held criminally liable under Article 331.

Establishment of Additional Crimes Within the Trafficking Context

Both Article 165, trafficking in human beings, and Article 206, trafficking in children, of the Moldovan Criminal Code include aggravating circumstances that increase the penalties for each of the offenses. The punishment for Article 165 trafficking offenses increases when they are committed:

- repeatedly
- against 2 or more persons
- against a pregnant woman
- by 2 or more persons
- while endangering the life or physical or mental health of a person
- through the use of torture, inhumane, or degrading treatment
- involving rape
- involving the physical dependence of the victim
- by an armed perpetrator
- by threatening to divulge confidential information regarding the family of the victim or other persons.⁴⁴¹

⁴³⁶ See Trafficking Protocol, *supra* note 10, art. 5(2)(b).

⁴³⁷ See CRIMINAL CODE [CRIM. C.] art. 42(3) (Mold.).

⁴³⁸ See *id.* art. 42(4).

⁴³⁹ See Trafficking Protocol, *supra* note 10, art. 5(2)(c).

⁴⁴⁰ See CRIMINAL CODE [CRIM. C.] art. 331 (Mold.).

⁴⁴¹ See *id.* art. 165(2).

The penalties increase further if Article 165 trafficking offenses:

- are committed by an organized criminal group or a criminal organization
- cause serious bodily harm, physical illness, or death of a person.⁴⁴²

The punishment for trafficking children, as delineated in Article 206 of the Criminal Code, increases when:

- the minor victim was subjected to physical or psychological violence
- the minor victim was sexually abused or exploited for the purposes of commercial and noncommercial sex
- the minor victim was subjected to torture, or inhumane or degrading treatment
- the minor victim was raped
- the perpetrator took advantage of the minor victim's physical dependence
- the perpetrator was armed
- the perpetrator threatened to divulge confidential information regarding the family of the minor victim or other persons
- the minor victim was exploited for the purposes of slavery or slave-like practices
- the minor victim was forced to participate in armed conflict
- the minor victim was exploited for the purposes of organ and tissue removal for transplant.⁴⁴³

The penalties increase even further when Article 206 offenses are committed:

- repeatedly
- against 2 or more children
- by an organized criminal group or criminal organization
- while causing serious bodily harm, physical illness, or death of a minor victim.⁴⁴⁴

In addition to bringing Article 165 and Article 206 charges and seeking the increase of criminal penalties based on the existence of the above aggravating circumstances, Moldovan prosecutors can also indict perpetrators with other crimes delineated in the Criminal Code. Offenses that can be tacked on to trafficking offenses are the following:

- rape⁴⁴⁵
- sexual assault⁴⁴⁶
- physical assault⁴⁴⁷
- murder⁴⁴⁸
- kidnapping⁴⁴⁹
- extortion⁴⁵⁰
- racketeering (extortion committed by an organized criminal group or criminal organization)⁴⁵¹

⁴⁴² See *id.* art. 165(3).

⁴⁴³ See *id.* art. 206(2).

⁴⁴⁴ See *id.* art. 206(3).

⁴⁴⁵ See *id.* art. 171.

⁴⁴⁶ See *id.* art. 172.

⁴⁴⁷ See *id.* art. 151.

⁴⁴⁸ See *id.* arts. 145-149.

⁴⁴⁹ See *id.* art. 164.

⁴⁵⁰ See *id.* art. 190.

- money laundering⁴⁵²
- passive corruption⁴⁵³
- active corruption⁴⁵⁴
- corruption committed by a person who can exert influence over a public official⁴⁵⁵
- document forgery⁴⁵⁶
- pimping⁴⁵⁷
- drug trafficking⁴⁵⁸
- loan sharking⁴⁵⁹
- slavery⁴⁶⁰
- practices similar to slavery⁴⁶¹
- forced labor⁴⁶²
- torture and inhumane treatment⁴⁶³
- forcing a person in the drawing of organs or tissues for transplant⁴⁶⁴
- illegal imprisonment⁴⁶⁵
- illegal removal of children from Moldova⁴⁶⁶
- involving children in criminal or immoral activities⁴⁶⁷
- training children in military exercises.⁴⁶⁸

Sanctions

The base punishment for the crime of trafficking in human beings as delineated in Article 165(1) of the Moldovan Criminal Code is imprisonment for a period of 7 to 15 years.⁴⁶⁹ The criminal penalties increase to imprisonment for a period of 10 to 20 years when trafficking offenses are committed:

- repeatedly
- against 2 or more persons
- against a pregnant woman

⁴⁵¹ See *id.* art. 190(3). NOTE: the involvement of an organized criminal group or criminal organization is an aggravating circumstance for the offense of extortion in Moldovan law. See *id.*

⁴⁵² See CRIMINAL CODE [CRIM. C.] art. 243 (Mold.).

⁴⁵³ See *id.* art. 324.

⁴⁵⁴ See *id.* art. 325.

⁴⁵⁵ See *id.* art. 326.

⁴⁵⁶ See *id.* art. 332.

⁴⁵⁷ See *id.* art. 220.

⁴⁵⁸ See *id.* art. 217.

⁴⁵⁹ See *id.* art. 189.

⁴⁶⁰ See *id.* art. 167.

⁴⁶¹ See *id.*

⁴⁶² See *id.* 168.

⁴⁶³ See *id.* art. 137.

⁴⁶⁴ See *id.* art. 158.

⁴⁶⁵ See *id.* art. 166.

⁴⁶⁶ See *id.* art. 207.

⁴⁶⁷ See *id.* art. 208.

⁴⁶⁸ See *id.* art. 210.

⁴⁶⁹ See *id.* art. 165(1).

- by 2 or more persons
- while endangering the life or physical or mental health of a person
- through the use of torture, or inhumane or degrading treatment
- involving rape
- involving the physical dependence of the victim
- by an armed perpetrator
- by threatening to divulge confidential information regarding the family of the victim or other persons.⁴⁷⁰

The penalties increase further to imprisonment for a period of 15 to 25 years or life imprisonment if the trafficking offenses in Article 165:

- are committed by an organized criminal group or a criminal organization
- cause serious bodily harm, physical illness, or death of a person.⁴⁷¹

The base punishment for trafficking children as outlined in Article 206(1) of the Criminal Code is imprisonment for a period of 10 to 15 years.⁴⁷² The criminal penalties increase to imprisonment for a period of 15 to 20 years when:

- the minor victim was subjected to physical or psychological violence
- the minor victim was sexually abused or exploited for the purposes of commercial and noncommercial sex
- the minor victim was subjected to torture, or inhumane or degrading treatment
- the minor victim was raped
- the perpetrator took advantage of the minor victim's physical dependence
- the perpetrator was armed
- the perpetrator threatened to divulge confidential information regarding the family of the minor victim or other persons
- the minor victim was exploited for the purposes of slavery or slave-like practices
- the minor victim was forced to participate in armed conflict
- the minor victim was exploited for the purposes of organ and tissue removal for transplant.⁴⁷³

The penalties increase further to imprisonment for a period of 20 to 25 years or life imprisonment when Article 206 offenses are committed:

- repeatedly
- against 2 or more children
- by an organized criminal group or criminal organization
- while causing serious bodily harm, physical illness, or death of a minor victim.⁴⁷⁴

Experts argue that the criminal penalties for trafficking adults and children, as delineated in Moldovan law, are sufficiently severe to deter future trafficking activities. Such penalties are also proportionate to the crimes and are similar to penalties available in neighboring states for the same trafficking offenses.⁴⁷⁵

⁴⁷⁰ See *id.* art. 165(2).

⁴⁷¹ See *id.* art. 165(3).

⁴⁷² See *id.* art. 206(1).

⁴⁷³ See *id.* art. 206(2).

⁴⁷⁴ See *id.* art. 206(3).

⁴⁷⁵ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis

Civil sanctions are also available according to the Moldovan Criminal Procedure Code. Trafficked victims can join as parties in criminal trials against their traffickers and sue for damages.⁴⁷⁶

It should be noted, that the Moldovan Criminal Procedure Code also allows for plea-bargaining. Article 504(1) outlines the general notion that an individual who has been indicted or convicted can enter into an agreement with the prosecutor whereby s/he recognizes his/her guilt in exchange for a reduced sentence.⁴⁷⁷

Confiscation and Seizure of Assets

Article 106 of the Moldovan Criminal Code allows for special confiscation procedures whereby the state takes title to assets that were used in the commission of a crime or that are proceeds of a crime.⁴⁷⁸ If such assets no longer exist, the state confiscates other assets of the same value.⁴⁷⁹ The following are subject to confiscation by the state:

- proceeds of a crime
- assets used or designated for the commission of a crime if they belong to the perpetrator of that crime
- assets given for the commission of a crime or to repay a perpetrator for committing a crime
- assets that were evidently acquired through the commission of a crime if they are not returned to injured parties or used to compensate such injured parties
- assets that are held against legal orders.⁴⁸⁰

Special confiscation procedures apply to assets that belong to perpetrators of crimes as well as to other persons who accept such assets knowing their connection to the crimes.⁴⁸¹ Assets can be confiscated even if the perpetrator is not sentenced to serve a criminal penalty.⁴⁸² One expert indicated there is an overall presumption that all assets are legitimate. It is the prosecutor's duty to prove that such assets are proceeds of a crime or that they were used to commit a crime in accordance with Article 106. Only then can the state confiscate the assets, sell them, return the legitimate portions of assets (if any) to the perpetrator or other implicated parties, return the assets to an injured party, or use them to compensate an injured party.⁴⁸³

The Moldovan Criminal Procedure Code outlines general procedures for seizing assets in connection with the commission of a crime. The details of such procedures are outlined in Articles 203 through 210 and they include:

- the type of assets that can be seized⁴⁸⁴

(Sept. 2004).

⁴⁷⁶ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] arts. 58(3)(5), 59 (Mold.).

⁴⁷⁷ See *id.* art. 504(1).

⁴⁷⁸ See CRIMINAL CODE [CRIM. C.] art. 106(1) (Mold.).

⁴⁷⁹ See *id.*

⁴⁸⁰ See *id.* art. 106(2).

⁴⁸¹ See *id.* art. 106(3).

⁴⁸² See *id.* art. 106(4).

⁴⁸³ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁴⁸⁴ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 204 (Mold.).

- the requisite grounds for seizing assets⁴⁸⁵
- determining the value of seized assets⁴⁸⁶
- executing seizure orders⁴⁸⁷
- storing seized assets⁴⁸⁸
- the right to contest the seizure of assets⁴⁸⁹
- removal of seizure orders.⁴⁹⁰

The above provisions delineating Moldova's special confiscation procedures and seizure procedures are in compliance with the requirements and most of the recommendations of Article 12 of the Transnational Organized Crime Convention.⁴⁹¹

Moldova does not have established means of cooperating internationally for the purposes of confiscating assets or returning confiscated assets to other states as required by Article 13 of the Transnational Organized Crime Convention.⁴⁹² One expert explained that Moldova requests the return of proceeds of a crime or assets used in the commission of a crime, which are found in another state, on an ad hoc basis. Moldovan officials file rogatory commissions in order to establish that such illicit assets exist in other countries and request the assets on a reciprocal basis.⁴⁹³

Disposal of Confiscated Assets

One expert indicated that Moldova has procedures whereby victims of a crime can receive compensation from confiscated assets.⁴⁹⁴ As mentioned above, the Moldovan Criminal Procedure Code allows persons to join in criminal proceedings and sue for damages if they have been materially or morally prejudiced as a result of the crime at hand.⁴⁹⁵ Any assets that were confiscated from the perpetrator or any other person connected to the crime can cover these damages.⁴⁹⁶ The state can also initiate civil proceedings against a criminal defendant and receive damages from confiscated assets (if such assets exist).⁴⁹⁷ According to Article 51(2) of the Moldovan Criminal Procedure Code a prosecutor can bring a civil action simultaneously with a criminal action against a perpetrator either in the interest of a victim, who cannot bring forth a civil action himself/herself, or in the interest of the state.⁴⁹⁸ Such measures correspond with Article 14(1) of the Transnational Organized Crime Convention requiring States Parties to

⁴⁸⁵ See *id.* art. 205.

⁴⁸⁶ See *id.* art. 206.

⁴⁸⁷ See *id.* art. 207.

⁴⁸⁸ See *id.* art. 208.

⁴⁸⁹ See *id.* art. 209.

⁴⁹⁰ See *id.* art. 210.

⁴⁹¹ See Transnational Organized Crime Convention, *supra* note 15, art. 12.

⁴⁹² See *id.* art. 13.

⁴⁹³ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁴⁹⁴ See *id.*

⁴⁹⁵ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] arts. 58(3)(5), 59 (Mold.).

⁴⁹⁶ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁴⁹⁷ See *id.*

⁴⁹⁸ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 51(2) (Mold.).

dispose of proceeds of a crime or confiscated property according to their domestic laws and administrative procedures.⁴⁹⁹

Moldovan officials do not cooperate internationally in order to dispose of confiscated assets. That is, there are no special procedures delineated in Moldovan law that indicate how to respond when other states request confiscated assets in order to compensate victims or return such assets to their rightful owners as required by Article 14(2) of the Transnational Organized Crime Convention.⁵⁰⁰ Furthermore, such assets do not go into a common fund for technical assistance or efforts to combat organized crime as recommended by Article 14(3) of the Convention.⁵⁰¹

Liability of Legal Persons

The Criminal Code of Moldova establishes the criminal responsibility of physical persons starting at the age of 14 or 16 depending on the type of offense committed.⁵⁰² Physical persons can incur criminal liability for the offenses of trafficking in human beings⁵⁰³ as well as trafficking in children.⁵⁰⁴

The Criminal Code also establishes criminal liability for legal persons if they:

- omit to carry out or wrongfully carry out a legal duty required for certain activities
- engage in an activity that does not correspond with their intended purposes
- cause or threaten to cause injuries of considerable proportions to a person, society, or the state for their own benefit or the same acts are admitted, sanctioned, approved, or used by a body or person in charge of the legal person.⁵⁰⁵

Legal persons can be held criminally liable for certain offenses that are clearly delineated in the Code but *not* for trafficking offenses.⁵⁰⁶

The draft anti-trafficking law outlines the administrative and civil liability of legal persons for their involvement in trafficking activities. Article 31(1) of the draft law indicates that if trafficking activities were carried out with the aid of a legal person, the license (authorization to operate) of such a legal person is to be withdrawn.⁵⁰⁷ That is, if the legal person acts as a front in order to cover trafficking activities, its license is revoked. Article 31(2) further indicates that a legal person can be held responsible in civil suits brought by trafficked victims.⁵⁰⁸ Such liability does not affect the criminal liability that physical persons can incur for actually committing

⁴⁹⁹ See Transnational Organized Crime Convention, *supra* note 15, art. 14(1).

⁵⁰⁰ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004); *see also* Transnational Organized Crime Convention, *supra* note 15, art. 14(2).

⁵⁰¹ See Transnational Organized Crime Convention, *supra* note 15, art. 14(3); *see also* Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁵⁰² See CRIMINAL CODE [CRIM. C.] arts. 21(1), 21(2) (Mold.).

⁵⁰³ See *id.* art. 165.

⁵⁰⁴ See *id.* art. 206.

⁵⁰⁵ See *id.* art. 21(3).

⁵⁰⁶ See *id.* art. 21(4); *see also* Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004); Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁵⁰⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 31(1).

⁵⁰⁸ See *id.* art. 31(2).

trafficking offenses.⁵⁰⁹ Thus, when the draft anti-trafficking law is adopted, legal persons will more than likely bear clearly delineated responsibilities that are specifically connected to the trafficking of adults and children.

Establishment of Specialized Units

The 1990 Law of the Republic of Moldova on the Police indicates that the Ministry of Internal Affairs is in charge of certain law enforcement subunits that combat organized crime.⁵¹⁰ The law does not clearly state that units specialized specifically in trafficking cases are included in this category, however, such a unit does exist at the Ministry of Internal Affairs.⁵¹¹ Likewise, there are a few specialized prosecutors at the State Prosecutor's Office in Chisinau.⁵¹²

The draft anti-trafficking law affirms the existence of specialized practitioners and further clarifies their duties. Article 11(2) of the draft law forms the legal basis for a specialized unit within the Ministry of Internal Affairs that will contain subdivisions, which, in turn, will conduct investigations, pursue traffickers, cooperate internationally for the purposes of identifying and protecting trafficked victims, analyze data, and gather evidence.⁵¹³ In addition, the draft law establishes regional centers to prevent and combat trafficking under the auspices of the central specialized unit at the Ministry of Internal Affairs.⁵¹⁴

The draft law also creates a subdivision of prosecutors in the State Prosecutor's Office that will solely focus on trafficking cases. Their duties will include preventing and combating trafficking in accordance to the law, coordinating and leading investigations in matters related to trafficking cases, indicting individuals for trafficking, protecting human rights (including the rights of victims), and adopting any other necessary measures.⁵¹⁵

De Facto Compliance:

States Parties' Obligations

When asked whether the state's efforts to criminalize trafficking in adults and children were adequate to address the overall problem in Moldova, interviewees pointed to the number of cases that are being investigated by the Ministry of Internal Affairs and prosecuted by the State Prosecutor's Office.

As previously mentioned the current MoI Anti-Trafficking Division registered a total of 244 trafficking cases *per se* and trafficking-related cases in the first semester of 2004. Of those:

⁵⁰⁹ See *id.* art. 31(3).

⁵¹⁰ See *Legea Republicii Moldova cu Privire la Politie* [Law of the Republic of Moldova on the Police], No. 416-XII, Dec. 18, 1990, art. 9(5).

⁵¹¹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004); see also Ministry of Internal Affairs of the Republic of Moldova, at <http://www.mai.md/>.

⁵¹² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵¹³ See Draft Anti-Trafficking Law, *supra* note 21, art. 11(2).

⁵¹⁴ See *id.*

⁵¹⁵ See *id.* art. 11(5).

- 156 cases were based on charges of trafficking in persons
- 62 cases were based on charges of pimping
- 22 cases were based on charges of child trafficking
- 4 cases were based on charges of illegally taking a minor out of the country.

The trafficking unit within the State Prosecutor's Office undertook a total of 115 cases and, during the first 6 months of 2004, initiated proceedings in court for:

- 24 cases based on charges of trafficking in persons
- 38 cases based on charges of pimping and child trafficking.

Prosecutors lifted the charges in 4 cases. In the first semester of 2004, a total of 32 individuals were convicted for trafficking in persons and pimping.⁵¹⁶ One interviewee pointed out that, thus far, there have not been that many trafficking convictions such that experts can establish a conviction rate and compare it to that of other major crimes.⁵¹⁷ Another interviewee mentioned that while courts have issued convictions against traffickers, approximately 10 or 15 individuals actually served time in jail between 2002 and 2004 because Moldovan legislation provides for conditional sentencing.⁵¹⁸ Others indicated that even if trafficking convictions exist they do not have a deterrent effect on perpetrators because trafficking, in general, is a profitable business and it will not completely cease any time in the near future.⁵¹⁹

When asked what measures were and are being implemented to ensure that trafficking offenses are investigated and prosecuted in an effective manner, one interviewee pointed out that circa 4 years ago, there were no specialized units for combating trafficking and the conviction rate was very low in Moldova. Today, the situation has improved with an increase in the number of law enforcement personnel that specialize in trafficking, the establishment of separate anti-trafficking units both at the Ministry of Internal Affairs and the State Prosecutor's Office, and an increase in short-term technical assistance from international organizations and other states.⁵²⁰ Other interviewees mentioned that despite these advancements and the fact that the proper legislation has been drafted, there is not sufficient funding to sustain long-term initiatives.⁵²¹

Criminalization of Lesser Included Offenses and Other Activities Related to Trafficking

Although the acts of attempt, organizing, directing, and instigating a crime, omitting to prevent a crime, and accomplice liability are delineated in general provisions of the Moldovan Criminal Code and apply to all offenses including trafficking in persons, persons interviewed for the purposes of this assessment could not point to concrete figures of indictments and convictions based on such acts.⁵²²

⁵¹⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵¹⁷ See Interview with Lilia Ionita, Director, Order and Justice Division, Legislation Department, Ministry of Justice (Sept. 29, 2004).

⁵¹⁸ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁵¹⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵²⁰ See Interview with Ghenadie Astrahan, Head of the Operational Unit for the SECI Anti-Trafficking Focal Point in Moldova, Ministry of Internal Affairs (Sept. 23, 2004).

⁵²¹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵²² See *id.*

As a side note, one interviewee described a particular problem with the application of attempt provisions in trafficking cases. The expert indicated that, for the most part, prosecutors are not able to prove that an individual *attempted* to commit the crime of trafficking *per se*. When a perpetrator is apprehended during the initial stages of his/her illicit conduct (perhaps recruiting a victim) there are no means to prove that s/he intended in that moment to exploit the particular victim at the end of the potential trafficking cycle (i.e. when the victim arrives in the destination country). In fact, at that point, no evidence exists that the victim was exploited because the trafficking cycle was not yet complete. In an attempt scenario, the perpetrator's actions are interrupted and the requisite intent to actually traffic the person might not necessarily be present. Moldovan judges can arrive at a different conclusion- that the perpetrator intended to pimp the victim instead. Thus, they can charge a potential trafficker with attempted pimping.⁵²³

Establishment of Additional Crimes Within the Trafficking Context

The persons interviewed for the purposes of this assessment stated that there have been cases where perpetrators were charged with aggravated trafficking as well as with other crimes in addition to trafficking. However, the interviewees could not provide information regarding the exact number of indictments or convictions in such cases.⁵²⁴ The most frequent combination of charges in Moldova is trafficking together with pimping.⁵²⁵

One expert distinguished cases where a victim is trafficked for the purposes of sexual exploitation and s/he is raped as well. In this scenario, the application of charges is slightly different. Prosecutors usually charge the individual who forced the victim into sexual exploitation with trafficking in persons and the client, separately, with rape.⁵²⁶

Sanctions

As mentioned above, in the first semester of 2004, a total of 32 individuals were convicted for trafficking in persons and pimping in Moldova.⁵²⁷ A prosecutor interviewed for the purposes of this assessment indicated that the average prison sentence for trafficking offenses is 10 to 15 years. However, circa 90% of sentences imposed for trafficking offenses resulted in a fine and the suspension of criminal penalties. He estimated that between 2002 and 2004 approximately 10 or 15 traffickers actually served time in jail because Moldovan legislation provides for conditional sentencing.⁵²⁸ When asked whether the imposed sanctions thus far have had a deterrent effect, an interviewee mentioned that recent surveillance shows that traffickers have taken heed and are afraid of being apprehended. However, there is no data or research available on the overall deterrent effect of trafficking sanctions. Given the large profits of

⁵²³ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁵²⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵²⁵ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocar, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁵²⁶ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁵²⁷ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵²⁸ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

trafficking activities, interviewees predicted that perpetrators will continue to operate. A police officer estimated that about half of the number of traffickers that served prison sentences and have been released return to their illicit activities.⁵²⁹

Confiscation and Seizure of Assets

The state authorities in charge of asset seizure in Moldova are the judges, prosecutors and law enforcement authorities. Judges or prosecutors issue the order to seize and police officers execute the order.⁵³⁰

In practice, the only assets that are seized in connection with trafficking activities are those of the traffickers themselves and the means of transport used to commit the offense. Interviewees pointed out that it is difficult to locate the assets of traffickers because they do not register any of their property or they register it under someone else's name. Furthermore, Moldovan authorities rarely seize the assets of persons who helped the main perpetrators of a trafficking offense because it is difficult to establish their intent. Interviewees indicated that there is no data available as to how many assets have been seized in connection with trafficking cases, exactly what kind of assets have been seized, and their value.⁵³¹

As mentioned above, Moldova does not have established means for cooperating internationally for the purposes of confiscating assets or returning confiscated assets to other states.⁵³² Thus no such cooperation takes place on a regular basis.

Disposal of Confiscated Assets

One interviewee explained the manner in which Moldovan authorities usually dispose of confiscated assets. The general procedure is as follows:

- police officers seize assets under a judge's or prosecutor's order
- the judge formally confiscates the assets
- the assets are added to the state's budget.

If a victim of a crime, like trafficking in persons, joins criminal proceedings and seeks damages from the perpetrator, whose assets have just been seized, the seized assets are used to cover the victim's moral and material damages. The interviewee stressed, though, that victims usually receive small sums because there is no overall mechanism for actually recuperating the assets of traffickers and they usually do not register their property.⁵³³

As previously mentioned, Moldovan officials do not regularly cooperate with officials in other states in order to dispose of confiscated assets because there are no such special procedures delineated in Moldovan law.⁵³⁴

⁵²⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵³⁰ See *id.*

⁵³¹ See *id.*

⁵³² See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁵³³ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁵³⁴ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

Liability of Legal Persons

As mentioned in the de jure section above, legal persons can incur criminal liability for certain crimes but *not* for trafficking in human beings and children.⁵³⁵ While the draft anti-trafficking law establishes administrative and civil liability for legal persons,⁵³⁶ it is not currently in force. Consequently, no criminal, administrative or civil sanctions have been imposed against legal persons in Moldova.⁵³⁷ One interviewee indicated that if a company or organization is used as a front for trafficking activities, the persons in charge usually incur penalties in the form of fines or, at times, imprisonment.⁵³⁸ However, another interviewee pointed out that fines and fees for renewing a business license are relatively low, thus, owners prefer to pay the penalties and reincorporate continuing the trafficking cycle.⁵³⁹

Establishment of Specialized Units

The central unit within the Ministry of Internal Affairs that investigates trafficking cases is the MoI Anti-Trafficking Division.⁵⁴⁰ There is some confusion as to how many persons staff this section. One interviewee indicated that there are 15 to 20 officers within the MoI Anti-Trafficking Division. Another interviewee stated that the section has 5 or 6 staffers. In addition to this specialized division, any other law enforcement officer, either in Chisinau or other parts of Moldova, can begin a trafficking investigation. Furthermore, the Interpol bureau in Chisinau participates in trafficking investigations. Interpol has a total of 22 officers in Moldova and 2 or 3 of them are assigned to trafficking cases. There are also a few prosecutors at the State Prosecutor's Office who specialize in trafficking cases.⁵⁴¹

Interviewees stated that the MoI Anti-Trafficking Division lacks the necessary sustainable funding and requisite number of staff to operate at full capacity. One interviewee indicated that the cars, computers, and equipment available for investigative purposes are not sufficient. Most, if not all, of the funding is derived from short-term international assistance.⁵⁴²

The MoI Anti-Trafficking Division and the specialized prosecutors cooperate with other Moldovan governmental bodies, however, one interviewee pointed out that there are instances where there is disagreement regarding the number of cases that are being investigated and prosecuted. The MoI Anti-Trafficking Division joined with law enforcement officials in other countries to combat trafficking regionally. Such trans-border efforts include participation in the Southeast European Cooperative Initiative ("SECI") and, particularly, in three operations entitled "Miraj," which some of the interviewees declared as successes. Lastly, there is cooperation between government anti-trafficking units, international organizations, and local

⁵³⁵ See CRIMINAL CODE [CRIM. C.] art. 21(4) (Mold.).

⁵³⁶ See Draft Anti-Trafficking Law, *supra* note 21, art. 31.

⁵³⁷ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵³⁸ See Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

⁵³⁹ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁵⁴⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004); *see also* Ministry of Internal Affairs of the Republic of Moldova, at <http://www.mai.md/>.

⁵⁴¹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁵⁴² *See id.*

NGOs. However, the international organizations and NGOs provide their own funding and programming.⁵⁴³

⁵⁴³ *See id.*

Article 6: Assistance to and Protection of Victims of Trafficking in Persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Recommendations:

- Draft more detailed provisions establishing a victim identification process. These provisions need to create more comprehensive means of identifying trafficked victims than the means proposed in the draft anti-trafficking law.
- Create a unit within the Ministry of Internal Affairs that is strictly in charge of identifying trafficked persons and distinguishing between witnesses who are victims and those who are not victims in a trafficking case.
- Amend Article 165(4) and 206(4) of the Moldovan Criminal Code such that they cannot be easily challenged in practice and trafficked victims are no longer exposed to criminalization.
- Establish confidentiality procedures from the moment that a person is defined as a victim of trafficking and maintain such confidentiality during the trial of his/her trafficker and after trial. The draft anti-trafficking law presumes all individuals to be victims of trafficking, regardless of whether they testify or not, thus persons are not defined as victims solely when a formal investigation is undertaken. However, the

draft law solely maintains their identity and personal data confidential for the length of the trafficker's trial.

- Draft more comprehensive provisions that ensure the physical safety of trafficked victims regardless of whether they are willing to testify or otherwise cooperate with law enforcement officials. While the draft anti-trafficking law ensures police protection of proposed centers where both cooperating and non-cooperating victims are to be housed, such protection is temporary and does not extend to members of their family or other persons close to them.
- Create a special government unit that specifically focuses on the physical protection of victims of trafficking in persons and their families and establish concrete long-term procedures for such a unit.
- Increase state-sponsored pro bono legal assistance for victims of trafficking when they appear in court or otherwise.
- The Moldovan government should commit to undertake, in the near future, the responsibilities of running the IOM shelter for victims of trafficking in Chisinau and should develop similar shelters throughout Moldova, paying special attention to the needs of trafficked children.
- The Moldovan government should provide funding to local NGOs for rehabilitation and reintegration efforts.
- Develop a manual focused on the psycho-social rehabilitation of children who have been trafficked that is to be used by all implicated authorities in Moldova.
- Create an inter-state fund between Moldova, which is a country of origin for victims of trafficking, and countries of destination and use this fund solely for victim compensation.

De Jure Compliance:

Identifying Individuals as Trafficked Victims

Although not mentioned in Article 6 of the Trafficking Protocol, the first step in protecting individuals who have been trafficked is properly identifying them as victims. Currently, there are no measures to specifically identify victims of trafficking in Moldovan law. The Criminal Procedure Code defines a "victim of a crime" in general⁵⁴⁴ as well as an "injured party."⁵⁴⁵ These definitions will be discussed in the section below.

⁵⁴⁴ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58 (Mold.).

⁵⁴⁵ See *id.* art. 59.

The draft anti-trafficking law briefly outlines the process of identifying victims of trafficking.⁵⁴⁶ Article 15(1) states that identification entails verifying persons presumed to have been trafficked.⁵⁴⁷ Article 15(2) further indicates that public authorities and members of the NGO community who have a reasonable belief that a person was trafficked, are to initiate the identification process.⁵⁴⁸ Beyond these two brief explanations, the draft law does not go into detail as to what “verification” actually means and what specific measures are to be undertaken. Once the draft law enters into force, practitioners will be able to use these provisions, although brief, as guidance. However, in order to properly identify individuals who have been trafficked and provide adequate assistance, more in-depth provisions are needed.

Defining Individuals as Trafficked Victims

The next step in protecting individuals who have been trafficked is to define them as victims, although this is not explicitly mentioned in Article 6 of the Trafficking Protocol. The Moldovan Criminal Procedure Code generally defines a “victim of a crime” as any physical or legal person who incurred moral, physical, or material damages as a result of a crime.⁵⁴⁹ Procedurally, an individual files a claim to be recognized as a victim and law enforcement authorities are legally obligated to register the individual as a victim of a crime.⁵⁵⁰ The victim has certain rights including the right to be informed about matters related to his/her status as a victim,⁵⁵¹ the right to file supplementary petitions,⁵⁵² the right to be recognized as an injured party in a criminal case (only if s/he is a physical person),⁵⁵³ the right to be recognized as a party in a civil case brought along side a criminal case against the same perpetrator,⁵⁵⁴ and the right to be represented by a legal guardian if s/he is a minor.⁵⁵⁵

In addition, the Moldovan Criminal Procedure Code defines an “injured party” as a physical person who suffered moral, physical or material prejudice as a result of a crime.⁵⁵⁶ A victim becomes an injured party only when s/he gives her consent to be defined as such.⁵⁵⁷

The draft anti-trafficking law introduces the element of presumption and defines the term “victim of trafficking” by solely indicating that s/he is a physical person who was or is presumed to have been subjected to the offense of trafficking in human beings or the offense of trafficking in children as defined in the draft law.⁵⁵⁸ By implication then, a person can be defined as a victim of trafficking independent of the fact that the perpetrator was identified, apprehended, prosecuted, or convicted. One interviewee concluded that this new definition

⁵⁴⁶ See Draft Anti-Trafficking Law, *supra* note 21, art. 15.

⁵⁴⁷ See *id.* art. 15(1).

⁵⁴⁸ See *id.* art. 15(2).

⁵⁴⁹ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58(1) (Mold.).

⁵⁵⁰ See *id.* art. 58(2).

⁵⁵¹ See *id.* arts. 58(2), 58(3)(4).

⁵⁵² See *id.* art. 58(3)(3).

⁵⁵³ See *id.* art. 58(3)(5).

⁵⁵⁴ See *id.* art. 58(3)(6).

⁵⁵⁵ See *id.* art. 58(9).

⁵⁵⁶ See *id.* art. 59(1).

⁵⁵⁷ See *id.*

⁵⁵⁸ See Draft Anti-Trafficking Law, *supra* note 21, art. 2(12).

enables a person to gain victim status before s/he even agrees to testify and/or cooperate with law enforcement authorities.⁵⁵⁹

None of the above provisions clarify whether individuals are identified and defined as victims independent of the fact that they might be related to the perpetrator. Furthermore, the above provisions do not explain whether persons related to the individual who qualifies as a victim (either of crimes in general or trafficking in particular) also qualify as victims themselves.

Non-Criminalization

Currently, Article 165(4) of the Moldovan Criminal Code states that an adult victim of trafficking is absolved from criminal liability for acts committed in connection with the fact that s/he has been trafficked if s/he cooperates with law enforcement authorities.⁵⁶⁰ Article 206(4) states that a minor victim of trafficking is absolved from criminal liability for acts committed in connection with the fact that s/he has been trafficked if s/he cooperates with law enforcement authorities.⁵⁶¹ One expert noted, though, that these provisions could easily be challenged by arguing that the trafficked victim who agreed to cooperate gave false testimony and, thus, s/he can be criminalized.⁵⁶² Lastly, Article 362(4) of the Moldovan Criminal Code indicates that victims of trafficking do not bear criminal responsibility for illegally crossing the borders of Moldova.⁵⁶³ Thus, if an individual has been identified and defined as a victim of trafficking, s/he cannot be found guilty of committing the offense of “illegally crossing the border” as defined in Article 362.⁵⁶⁴

These exemptions from criminal liability were found to be too narrow, thus, the draft anti-trafficking law absolves victims of criminal, administrative, and civil responsibility for *all* actions committed by them in connection with their status as trafficked victims.⁵⁶⁵ Such actions, if not committed by trafficked individuals, would otherwise violate provisions of Moldova’s Criminal Code, Administrative Code, or Civil Code.⁵⁶⁶ Consequently, the draft anti-trafficking law is broader in its definition of non-criminalization than the current provisions of the Moldovan Criminal Code. Once the draft anti-trafficking law comes into force, practitioners will be able to follow more expansive guidelines when exempting victims from liability. However, it should be noted that the provisions of the new anti-trafficking law will not automatically amend Articles 165 and 206 of the Criminal Code. These articles will have to be amended separately in order to ensure that their non-criminalization provisions cannot be easily challenged.⁵⁶⁷

⁵⁵⁹ See Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

⁵⁶⁰ See CRIMINAL CODE [CRIM. C.] art. 165(4) (Mold.).

⁵⁶¹ See *id.* art. 206(4).

⁵⁶² See Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

⁵⁶³ See CRIMINAL CODE [CRIM. C.] art. 362(4) (Mold.).

⁵⁶⁴ See *id.* art. 362.

⁵⁶⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 32.

⁵⁶⁶ See *id.*

⁵⁶⁷ See Interview with Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice (Oct. 08, 2004).

Confidentiality

When victims of trafficking agree to cooperate with law enforcement officials and/or testify they receive protection as witnesses under Articles 110 and 215 of the Moldovan Criminal Procedure Code⁵⁶⁸ as well as the 1998 Witness Protection Law⁵⁶⁹ as described in detail in the de jure “Witness Protection” section of this assessment. These particular provisions comply with all the obligations and the required and suggested witness protection measures delineated in Article 24 of the Transnational Organized Crime Convention.⁵⁷⁰

More protections will become available when the draft anti-trafficking law of Moldova will come into force.⁵⁷¹ Article 20(4) of the draft law indicates that such protections and assistance measures are not conditional upon a trafficked victim’s wish to testify or participate in criminal proceedings in any way.⁵⁷²

Article 21, in particular, discusses the importance of maintaining information concerning the private life of trafficked victims confidential.⁵⁷³ All persons, including government officials implementing measures to prevent and combat trafficking, as well as protect and assist victims, members of the judiciary, persons running proposed centers for assistance and protection of victims, and social workers,⁵⁷⁴ will be required to uphold the following obligations:

- record, keep, and utilize personal information about victims in accordance with Moldova’s existing rules of confidentiality for the length of criminal trials against the traffickers⁵⁷⁵
- abstain from distributing information about the identity and private life of victims and the conditions in which they were trafficked if distributing such information poses a threat to their lives and health as well as to the lives and health of their relatives or other persons close to them⁵⁷⁶
- abstain from distributing information regarding measures that are being used to protect victims, persons who are providing such protections, and persons who aid the overall process of combating trafficking.⁵⁷⁷

If any of the aforementioned authorities breach these obligations, they will be subjected to criminal and administrative sanctions.⁵⁷⁸

Article 21(5) of the draft anti-trafficking law also allows for changing the identity of trafficked victims in cases where their lives and health are in danger. At the request of a law enforcement

⁵⁶⁸ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] arts. 110, 215 (Mold.).

⁵⁶⁹ See generally 1998 Witness Protection Law, *supra* note 28.

⁵⁷⁰ See Transnational Organized Crime Convention, *supra* note 15, art. 24.

⁵⁷¹ See generally Draft Anti-Trafficking Law, *supra* note 21.

⁵⁷² See *id.* art. 20(4).

⁵⁷³ See *id.* art. 21.

⁵⁷⁴ See *id.* art. 21(4).

⁵⁷⁵ See *id.* art. 21(1).

⁵⁷⁶ See *id.* art. 21(2).

⁵⁷⁷ See *id.* art. 21(3).

⁵⁷⁸ See *id.* art. 21(6).

officer, prosecutor or the victim himself/herself, a judge will be able to order the change of the victim's first and last name, as well as the victim's date and place of birth.⁵⁷⁹

All of these proposed measures to maintain the confidentiality of trafficked victims together with existing witness protection measures will help Moldova to better comply with Article 6(1) of the Trafficking Protocol. Once the draft anti-trafficking law will come into effect, Moldova will be able to uphold, in a more comprehensive manner, the Protocol's obligation "to protect the privacy and identity of victims of trafficking in persons."⁵⁸⁰

Assistance in Court

Article 58 of the Moldova Criminal Procedure Code delineates certain rights that victims who agree to testify have when appearing in court. Article 58(3) indicates *inter alia* that victims of all crimes are entitled to information regarding their status and the proceedings that they partake in.⁵⁸¹ Victims also have a right to be assisted by a representative of their choice.⁵⁸² Victims of exceptionally serious and heinous crimes have a right to be represented by an attorney for the length of the trial and during other related hearings.⁵⁸³ Such legal representation is to be provided pro bono when victims lack the financial means to compensate their attorneys.⁵⁸⁴ Victims of exceptionally serious and heinous crimes are entitled to bring in court a person whom they trust in addition to their lawyer.⁵⁸⁵ Members of the NGO community could qualify as such trusted individuals.⁵⁸⁶ Lastly, Article 16(2) of the Criminal Procedure Code states that interpreters can provide in-court assistance to persons who do not speak the official language of Moldova (such as foreign victims of trafficking).⁵⁸⁷

One expert stressed that the above assistance is only available to victims of trafficking who agree to testify against their perpetrators.⁵⁸⁸ Consequently, the draft anti-trafficking law provides for similar rights without requiring victims to testify or participate in criminal proceedings.⁵⁸⁹ The draft law indicates that all trafficked victims are to be informed, without delay, of their rights, as well as of the relevant public authorities, institutions, and organizations that undertake measures of prevention, prosecution, and victim protection.⁵⁹⁰ The draft law further guarantees that all victims of trafficking are to receive protection and assistance from public authorities and members of the NGO community who can formally represent victims in criminal and civil proceedings.⁵⁹¹ Once these assistance provisions will come into effect they

⁵⁷⁹ See *id.* art. 21(5).

⁵⁸⁰ See Trafficking Protocol, *supra* note 10, art. 6(1).

⁵⁸¹ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58(3) (Mold.).

⁵⁸² See *id.* art. 58(3)(11).

⁵⁸³ See *id.* art. 58(4)(1).

⁵⁸⁴ See *id.* art. 58(4)(2).

⁵⁸⁵ See *id.* art. 58(4)(3).

⁵⁸⁶ See Igor Dolea and Vasile Rotaru, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁵⁸⁷ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 16(2) (Mold.).

⁵⁸⁸ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁵⁸⁹ See Draft Anti-Trafficking Law, *supra* note 21, art. 20(4).

⁵⁹⁰ See *id.* art. 20(5).

⁵⁹¹ See *id.* arts. 20(6), 20(7).

will complement existing provisions of the Criminal Procedure Code and Moldova will be able to better comply with the obligations outlined in Article 6(2) of the Trafficking Protocol.⁵⁹²

It could be argued that Moldova has the equivalent of the “double witness rule” which bars the admission of evidence provided by only one witness unless that witness’s testimony is corroborated by another witness or other material evidence introduced against the accused. Article 100(4) of the Moldovan Criminal Procedure Code states that all types of evidence (both oral and written) brought forth in criminal proceedings are to be completely and objectively verified.⁵⁹³ Such verification entails, among other things, analysis of the evidence, and corroboration of the evidence with other pieces of evidence.⁵⁹⁴ When a witness testifies, his/her testimony is accepted as evidence only if s/he can prove the source of the information that s/he has presented before the court.⁵⁹⁵

Rehabilitation and Reintegration in Society

Moldova’s current Anti-Trafficking National Plan of Action provides for basic means to rehabilitate victims of trafficking and reintegrate them in society including:

- housing
- counseling
- welfare services
- health care services
- access to an emergency hotline
- support for finding employment
- involving victims in paid community projects
- professional training
- financial support for starting their own businesses.⁵⁹⁶

The plan solely lists the above measures of assistance but does not go into extensive detail. For example, the plan does not address the issue of providing *safe* housing, nor does it outline security measures that are to be undertaken at shelters. Likewise, the plan does not stress the importance of maintaining the victims’ privacy when providing any of the above services. Article 90(3)(7) of the Moldovan Criminal Procedure Code does prohibit a doctor from testifying about the private life of his/her patients,⁵⁹⁷ but this protection is limited given the overwhelming needs of persons who have been trafficked.

The Anti-Trafficking National Plan of Action seeks to involve members of the NGO community in providing some of the above services but does not clearly establish an obligation upon the Moldovan government to grant funding to such NGOs.⁵⁹⁸ In fact, the plan does not clearly establish a correlation between its goals and a set national budget solely devoted to trafficking in persons.

⁵⁹² See Trafficking Protocol, *supra* note 10, art. 6(2).

⁵⁹³ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 100(4) (Mold.).

⁵⁹⁴ See *id.*

⁵⁹⁵ See *id.* art. 102(2).

⁵⁹⁶ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁵⁹⁷ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 90(3)(7) (Mold.).

⁵⁹⁸ See Anti-Trafficking National Plan of Action, *supra* note 8.

The plan requires public authorities and personnel who are likely to come into contact with trafficked victims to undergo training and specialize in matters related to trafficking in persons.⁵⁹⁹ The plan does not go into detail as to the level of expertise that is required of such individuals.

Given the vagueness of the Anti-Trafficking National Plan of Action, the draft anti-trafficking law establishes centers for assistance and protection,⁶⁰⁰ which victims of trafficking will be able to access regardless of their willingness to testify or otherwise cooperate with law enforcement officials.⁶⁰¹ Such centers can be created under the auspices of the Moldovan government, international organizations, or local NGOs in cooperation with public authorities.⁶⁰² The purpose of these centers is to provide trafficked victims with:

- appropriate housing
- means for maintaining person hygiene
- food
- legal representation
- immediate social, psychological, and medical assistance
- physical protection
- assistance in contacting family members.⁶⁰³

The draft law envisions these centers to be “specialized institutions” which implies that they are to be staffed with qualified personnel.⁶⁰⁴

Victims will be housed at such centers for a period of 30 days or less.⁶⁰⁵ The period of shelter is to be extended if

- doctors advise that the victims remain for a longer period of time (which is not to exceed 6 months)
- law enforcement officials, prosecutors or judges request that the victims remain in the shelters for the length of criminal proceedings against their traffickers or longer (i.e. even after the trial is over) if the lives and health of the victims are in danger
- the victims provide valid reasons for staying longer (but not longer than 30 additional days)
- the victims are pregnant, thus, remaining in the shelter for up to 1 year.⁶⁰⁶

The draft law outlines several funding scenarios for the proposed centers of assistance. Article 17(7) of the draft law states that all costs related to the activities of the centers are to be covered by the national budget, local budgets, or a common budget established by the entities that

⁵⁹⁹ *See id.*

⁶⁰⁰ *See* Draft Anti-Trafficking Law, *supra* note 21, art. 17.

⁶⁰¹ *See id.* art. 20(4).

⁶⁰² *See id.* art. 17(2).

⁶⁰³ *See id.* art. 17(1).

⁶⁰⁴ *See id.*

⁶⁰⁵ *See id.* art. 17(3).

⁶⁰⁶ *See id.* arts. 17(4), 17(5).

create the centers.⁶⁰⁷ Article 17(8) also suggests that private donors and entrepreneurs can provide financial support.⁶⁰⁸

The draft law also ensures that trafficked victims, who have reached the age of 16, have access to employment.⁶⁰⁹ Agencies already functioning under the auspices of the Ministry of Labor and Social Protection will provide victims with free services that will inform, counsel, and guide them in choosing a profession or establishing a business of their own.⁶¹⁰ Trafficked victims will also have access to a professional training course; cost of which is to be covered by state unemployment funds.⁶¹¹

Thus, once Moldova's draft anti-trafficking law comes into effect, government officials will be able to achieve most, if not all, of the goals delineated in the Anti-Trafficking National Plan of Action, and better comply with the requirements of Article 6(3) of the Trafficking Protocol.⁶¹²

Children

Neither the current Anti-Trafficking National Plan of Action nor any existing law tailors any of the available assistance services to minors. When listing measures for the rehabilitation of victims and their reintegration into society, the plan does not take into consideration the special needs of children who have been trafficked.⁶¹³ Furthermore, there are no other enforceable laws on the subject. From this perspective, Moldova does not presently comply with the requirements of Article 6(4) of the Trafficking Protocol.⁶¹⁴

The draft anti-trafficking law devotes an entire chapter to the assistance and protection of child victims of trafficking.⁶¹⁵ While the proposed measures are too lengthy to describe in detail here, a few should be highlighted. Article 26 of the new law refers to the United Nations Convention on the Rights of the Child and sets forth several principles that apply specifically to children including respecting the opinion of children older than 10 years of age, informing children of their rights when providing assistance, and keeping their identity confidential.⁶¹⁶ The draft law assigns legal guardians to minor victims if their parents have disappeared.⁶¹⁷ The draft law requires that trafficked children be housed separately from adults in the centers/shelters described above.⁶¹⁸ Child victims are entitled to be housed in such centers for a period longer than adults: up to 6 months or for the length of the trial of their traffickers.⁶¹⁹ Minor victims of trafficking will also be allotted a 30-day reflection period during which they,

⁶⁰⁷ See *id.* art. 17(7).

⁶⁰⁸ See *id.* art. 17(8).

⁶⁰⁹ See *id.* art. 18.

⁶¹⁰ See *id.* art. 18(2).

⁶¹¹ See *id.* art. 18(3).

⁶¹² See Trafficking Protocol, *supra* note 10, art. 6(3).

⁶¹³ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁶¹⁴ See Trafficking Protocol, *supra* note 10, art. 6(4).

⁶¹⁵ See Draft Anti-Trafficking Law, *supra* note 21, ch. 4.

⁶¹⁶ See *id.* art. 26.

⁶¹⁷ See *id.* art. 29(4).

⁶¹⁸ See *id.* art. 29(6).

⁶¹⁹ See *id.* art. 29(7).

or their guardians, can decide whether they are going to testify against their traffickers.⁶²⁰ Lastly, the draft anti-trafficking law ensures the right of formerly trafficked children to attend public school.⁶²¹ It should be noted that none of the above rehabilitative services are conditioned on the willingness of a child victim to cooperate with law enforcement authorities.⁶²²

Consequently, when the draft anti-trafficking law comes into effect, the rights of trafficked children will be better protected, they will be able to receive specialized care, and Moldova will comply with the requirements of Article 6(4) of the Trafficking Protocol.⁶²³

Physical Safety

Currently, neither Moldova's Anti-Trafficking National Plan of Action nor any other enforceable law explicitly provide for the physical protection of *all* trafficked victims.⁶²⁴ If they agree to testify, various existing witness protection measures cover trafficked individuals as discussed in the "Witness Protection" section of this assessment. However, there are no guarantees for the physical safety of victims who do not wish to testify or cooperate with law enforcement authorities.

Consequently, the draft anti-trafficking law ensures that *all* individuals who have been trafficked receive physical protection regardless of their intentions.⁶²⁵ The law affirms the current protections that a victim is entitled to if s/he testifies,⁶²⁶ but also guarantees the safety of *any* person who is sheltered at the proposed centers for assistance and protection of trafficked victims.⁶²⁷ Article 17(9) of the law indicates that such centers can call upon the police to provide security.⁶²⁸ However, this type of physical protection is available only for the duration of the victims' stay in the centers and does not extend to members of their family or other persons close to them. Although these two key issues need to be revisited in connection with the physical safety of trafficked victims, the draft anti-trafficking law will be able to provide better and more expansive means of protection once it comes into force. Furthermore, the draft law, together with existing witness protection provisions, will help Moldova to better comply with the minimum requirement of Article 6(5) of the Trafficking Protocol "to provide for the physical safety of victims of trafficking in persons."⁶²⁹

⁶²⁰ See *id.* art. 29(5).

⁶²¹ See *id.* art. 29(9).

⁶²² See *id.* art. 29(1).

⁶²³ See Trafficking Protocol, *supra* note 10, art. 6(4).

⁶²⁴ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁶²⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 20(4).

⁶²⁶ See *id.* art. 23.

⁶²⁷ See *id.* art. 17.

⁶²⁸ See *id.* art. 17(9).

⁶²⁹ See Trafficking Protocol, *supra* note 10, art. 6(5).

Compensation

According to the Moldovan Criminal Procedure Code, a victim of a crime, such as trafficking in persons, has the right to be recognized as an injured party in a criminal case.⁶³⁰ S/he can join the criminal proceedings against the trafficker and sue for damages simultaneously.⁶³¹ S/he can seek reparations from the state for the prejudice caused to him/her as a result of the crime that was committed.⁶³² If actions undertaken by law enforcement officials were not legitimate, s/he can seek compensation for the costs incurred to join the criminal proceedings and the prejudice caused.⁶³³ Lastly, if his/her property was confiscated by law enforcement officials or taken by the perpetrator, s/he can seek to have it returned.⁶³⁴

A victim of an offense, such as trafficking in persons, also has the right to be recognized as a party in a civil case brought along side a criminal case against the same perpetrator.⁶³⁵ If the victim suffered moral or material prejudice as a result of the crime committed, s/he can sue the perpetrator for civil damages.⁶³⁶ In such proceedings, s/he can seek compensation for the costs incurred for the purposes of the *criminal* case and for any prejudice caused by illegitimate government action.⁶³⁷ The victim can also seek the return of property that was taken by authorities and introduced as evidence or that s/he volunteered as evidence, or property that was taken by the perpetrator in question.⁶³⁸

The draft anti-trafficking law simply recognizes the right of trafficked victims to seek compensation in accordance with already existing provisions in the Criminal Procedure Code of Moldova.⁶³⁹

Neither current law nor the draft anti-trafficking law establishes a fund for victim compensation. Nevertheless, given the existing compensation provisions in the Criminal Procedure Code, Moldova complies, from a *de jure* perspective, with the minimum obligation delineated in Article 6(6) of the Trafficking Protocol to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered.”⁶⁴⁰

⁶³⁰ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58(3)(5) (Mold.).

⁶³¹ See *id.* arts 59, 60.

⁶³² See *id.* art. 60(1)(16).

⁶³³ See *id.* art. 60(1)(17).

⁶³⁴ See *id.* art. 60(1)(18).

⁶³⁵ See *id.* art. 58(3)(6).

⁶³⁶ See *id.* art. 61.

⁶³⁷ See *id.* art. 62(1)(19).

⁶³⁸ See *id.* art. 62(1)(20).

⁶³⁹ See Draft Anti-Trafficking Law, *supra* note 21, art. 23(2).

⁶⁴⁰ See Trafficking Protocol, *supra* note 10, art. 6(6).

De Facto Compliance:

Identifying Individuals as Trafficked Victims

Most of the persons interviewed for the purposes of this assessment stated that, in practice, Moldovan authorities do not implement specific procedures to identify victims of crimes in general or victims of trafficking in particular. If victims agree to testify against their traffickers, then, and only then, are they defined as victims. NGO representatives indicated that many trafficked individuals are not identified and defined as victims because the majority of them are afraid to testify or otherwise participate in law enforcement efforts. Thus, an individual is not automatically presumed to be a victim of a crime like trafficking in persons. S/he must file a petition to be recognized as a victim at the time a formal investigation is open and s/he must agree to cooperate and/or testify.⁶⁴¹ As explained above, the element of presumption has been introduced in the draft anti-trafficking law, but the law is not yet in force.

Currently, identification of trafficked victims occurs on an ad hoc basis mostly through Moldova's embassies and with the aid of NGOs. For example, if a victim approaches an NGO overseas (IOM, La Strada or Save the Children), a representative from that NGO contacts the nearest Moldovan embassy. Moldovan embassy officials then check the victim's citizenship through a national database and verify the validity of the documents that s/he is traveling with. In cases where the documentation is false or where the victim does not have any documentation, embassy officials issue a new passport and identification card and waive the requisite fees. An NGO representative, or, at times, a Moldovan law enforcement official, accompanies the victim during her return in order to ensure his/her safety.⁶⁴² One interviewee indicated that Interpol is also involved in identifying victims. She mentioned that although Interpol does not have established procedures for victim identification, certain measures are undertaken such as transmitting data (date of birth, passport information if it exists etc.) to Moldovan officials, who in, turn, confirm that the victim is a Moldovan citizen, and then Interpol returns the victim in question.⁶⁴³

Interviewees indicated that there are several problems with the manner in which trafficked victims are identified today. First, there are no uniform identification procedures. Every victim is identified and defined differently depending upon the entity that takes his/her case. That is, Moldovan law enforcement officials identify and define victims in a certain way, Interpol in another way, and NGOs in accordance with international standards. In addition, one interviewee indicated that, in practice, border guards do not distinguish between trafficked persons and illegal migrants (i.e. they do not recognize the element of coercion that is present in a trafficking scenario). Some interviewees pointed out that, recently, La Strada and the United Nations Development Programme ("UNDP") trained police officers on identification procedures. There is also discussion to introduce such training in the curriculum of the Moldovan Police Academy.⁶⁴⁴ However, problems persist. The state does not have a uniform system for keeping track of individuals who are identified and defined as victims of trafficking.

⁶⁴¹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁶⁴² See *id.*

⁶⁴³ See Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

⁶⁴⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

IOM maintains a database at its shelter for trafficked victims in Chisinau. Between 2001 and 2004, Moldovan police referred 50 victims to the shelter. There were a total of 264 victims referred to the shelter by police in other countries.⁶⁴⁵ It should be noted that these numbers represent victims who were registered by IOM only and that victims who are separately identified by the police or other entities are not necessarily included in these figures.

Defining Individuals as Trafficked Victims

While the Moldovan Criminal Procedure Code defines victims of crimes in general⁶⁴⁶ and injured parties⁶⁴⁷ and outlines procedures to recognize persons as such, these provisions are seldom applied without difficulty in trafficking cases. The problems of identifying and defining victims of trafficking are circular as one interviewee explained. If an individual is willing to cooperate with law enforcement and/or testify, s/he is identified as a victim in connection with a trafficking case and receives protection. However, if the individual is deported, then no case can be established against the trafficker and, moreover, a potential victim is criminalized. If no case is established against the trafficker, then the individual cannot be defined as a victim.⁶⁴⁸

Non-Criminalization

There was consensus among interviewees that once an individual agrees to testify or cooperate with law enforcement authorities and s/he is identified and defined as a victim of trafficking, s/he is no longer subjected to criminal penalties or other sanctions for otherwise illicit acts connected to trafficking. Some interviewees indicated that there have been cases where Moldovan authorities initially held trafficked persons in custody for acts such as carrying false documentation and illegally crossing the border. Such persons were released once they provided information about their traffickers and/or agreed to testify at trial.⁶⁴⁹ However, as one interviewee pointed out, if individuals do not cooperate with law enforcement or authorities cannot establish a case against their traffickers for other reasons (i.e. lack of evidence to corroborate the victim's story etc.), then they are not considered victims and can be held liable for carrying a false passport or illegally crossing Moldova's borders.⁶⁵⁰ Another interviewee stated that there have been a few cases where such individuals were convicted and subjected to conditional sentences.⁶⁵¹

It should be noted that it was unclear from the interviews as to where exactly victims of trafficking were held responsible for illicit acts: in Moldova or in other countries. For the most part, interviewees mentioned that Moldovan officials do not hold persons who are defined as victims responsible for acts connected with the fact that they were trafficked. However, since

⁶⁴⁵ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁴⁶ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58 (Mold.).

⁶⁴⁷ See *id.* art. 59.

⁶⁴⁸ See Interview with Liliana Sorrentino, Officer on Anti-Trafficking Issues, Organization for Security and Co-operation in Europe (Sept. 27, 2004).

⁶⁴⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁶⁵⁰ See Interview with Liliana Sorrentino, Officer on Anti-Trafficking Issues, Organization for Security and Co-operation in Europe (Sept. 27, 2004).

⁶⁵¹ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

Moldova is mostly a country of origin for victims, a few interviewees referred to situations where Moldova citizens, who were trafficked to other countries, were subjected to criminal penalties and other sanctions because those particular jurisdictions lack non-criminalization clauses. For example, one interviewee pointed out that Moldovan children trafficked to Russia for exploitative purposes such as begging or trading fake gold, are held in custody and tried by Russian authorities.⁶⁵²

Confidentiality

When a victim of trafficking agrees to testify or otherwise cooperate with law enforcement officials in Moldova, certain measures are undertaken that protect the victim and his/her identity. Such measures and their effectiveness are discussed in the “Witness Protection” section of the de facto analysis above. Additional protections, including means to maintain the identity and other personal data of trafficked victims confidential, will become available when the draft anti-trafficking law will come into force.⁶⁵³ Article 20(4) of the draft law indicates that such protections and assistance measures are not conditional upon a trafficked victim’s wish to testify or cooperate with law enforcement in any way.⁶⁵⁴ Until this draft law comes into effect, though, Moldovan officials are not under a legal obligation to keep the identity and other information of victims who do not participate in criminal proceedings confidential.

In fact, one interviewee indicated that, presently, the Moldovan government does what it can to assist trafficked individuals but does not fully protect their privacy or the privacy of their families. Another interviewee went even further to mention that government officials force victims to testify by threatening them with a fine under Article 313 of the Moldovan Criminal Code and offering minimal or no protection in return.⁶⁵⁵ Article 313 penalizes individuals for refusing to testify.⁶⁵⁶

Assistance in Court

While the Criminal Procedure Code entitles victims of crimes like trafficking in persons to be represented by an attorney at no cost,⁶⁵⁷ the Moldovan government rarely provides such representation. CPTW, a local NGO, and IOM undertake this role in the majority of cases. The representative from La Strada indicated that prosecutors, especially those practicing outside of Chisinau, rarely inform victims of their right to an attorney and subsequently force them to cooperate without proper representation. For this reason, La Strada together with CPTW have conducted trainings on pro bono representation and gender sensitization with prosecutors and judges at the Supreme Court’s Center for Perfecting Professionals in the Judiciary. The purpose of these seminars is to stress the legal obligation of prosecutors to represent victims of crimes

⁶⁵² See Interview with Oxana Lipcanu, Program Assistant, International Labour Organization, International Programme on the Elimination of Child Labour (Oct. 06, 2004).

⁶⁵³ See Draft Anti-Trafficking Law, *supra* note 21, art. 21.

⁶⁵⁴ See *id.* art. 20(4).

⁶⁵⁵ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁶⁵⁶ See CRIMINAL CODE [CRIM. C.] art. 313 (Mold.).

⁶⁵⁷ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 58(4)(2) (Mold.).

like trafficking at no cost and to sensitize the audience to certain issues specifically related to the vulnerability of female victims.⁶⁵⁸

CPTW⁶⁵⁹ specializes in victim representation in trafficking cases. They publish and distribute monthly bulletins,⁶⁶⁰ preventive materials regarding the dangers of trafficking and the type of information one should know before agreeing to work overseas,⁶⁶¹ emergency contact information in case persons are trafficked,⁶⁶² as well as pamphlets delineating the legal rights of victims. Every victim who is referred to CPTW receives this information and lawyers specialized in trafficking issues aid them in several ways. CPTW offers general representation for the purposes of identifying the status of the victim, assistance in obtaining documents that a victim may need in order to be reintegrated in society, and representation in court when a victim testifies against his/her trafficker, seeks damages, or is a defendant in criminal proceedings.⁶⁶³ CPTW also maintains a telephone line, or “Trust Line,” that victims or potential victims can call in order to secure representation at no cost or to simply get answers to questions they may have about their situation. CPTW representatives have frequent contact with police officers from the MoI Anti-Trafficking Division as well as with prosecutors working on trafficking cases.⁶⁶⁴ CPTW does not, however, receive funding from the Moldovan government. Furthermore, as an entity, CPTW does not have tax-exempt status like NGOs in other countries (such a status does not exist in Moldova). Thus, CPTW is taxed at the same rate as private businesses (40%) cutting drastically into its grant and, thus, substantially limiting the number of victims that it can aid per year.⁶⁶⁵

Some interviewees also indicated that there are translation services available through the Ministry of External Affairs or Interpol in cases where trafficked victims do not understand the language in which the court proceedings are being conducted.⁶⁶⁶ However, most of the victims are returning Moldovan citizens, thus, language issues are minimal.⁶⁶⁷

As mentioned in the de jure section, it can be argued that Moldova has the equivalent of the “double witness rule” which bars the admission of evidence provided by only one witness unless that witness’s testimony is corroborated by another witness or other material evidence introduced against the accused. In some countries this evidentiary rule has been used in a discriminatory manner in order to exclude the testimony of female victims or, at least, give such

⁶⁵⁸ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion “La Strada” (Sept. 28, 2004).

⁶⁵⁹ See generally Centrul de Prevenire a Traficului de Femei [Center for the Prevention of Trafficking in Women], at www.antitraffic.md.

⁶⁶⁰ See Buletin Informativ al Centrului de Prevenire a Traficului de Femei [Information Bulletin of the Center for the Prevention of Trafficking in Women], at http://www.antitraffic.md/materials/bulletins/information_bulletin_cptf/.

⁶⁶¹ See Brosura Traficul de Femei: Ce Trebuie sa Stii [Trafficking in Women Pamphlet: What You Must Know], at http://www.antitraffic.md/materials/booklets/ce_trebuie_sa_stii/.

⁶⁶² See *id.*

⁶⁶³ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004); see also Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁶⁶⁴ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁶⁶⁵ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁶⁶⁶ See Interview with Nicolae Dobos, Head of the Special Missions Division & Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs (Sept. 27, 2004).

⁶⁶⁷ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

testimony less weight. When asked whether Moldova's rules concerning corroborating evidence have a discriminatory effect upon women who have been trafficked and who agree to testify, most interviewees answered in the negative.⁶⁶⁸

Rehabilitation and Reintegration in Society

Currently, the Moldovan government does not run shelters specifically for victims of trafficking in persons. Some of the returning victims are housed in orphanages or homeless shelters in Chisinau. The head of the Social, Humanitarian and Interethnic Division at the Chisinau Town Hall explained that, so far, 24 victims of trafficking have benefited from professional training programs run by "Insula Sperantelor" ("The Island of Hope") for young women. This particular program also offers free day care for the children of participants. Fifteen trafficked minors have been housed at centers for rehabilitating orphaned children such as "Casa Gavroche." Chisinau's Town Hall also sponsors programs at a day center for reintegrating adolescents into society after they leave the orphanages. This center received \$75,000 from the Fund for Social Investments and the Town Hall and has helped a total of 30 adolescents over a 6-month period. There is a center in Chisinau that is focused on the rehabilitation of handicapped children as well as a center that provides daytime services to children who are at risk. Lastly, Chisinau's homeless shelter receives persons from all regions of Moldova, however, it can only house 80 individuals, has a staff of circa 14 people, and currently does not offer meals. A medical services program has been established and a food program is planned for the homeless shelter, but such efforts have only recently been initiated.⁶⁶⁹ At the time of this assessment, UNICEF was planning to donate funds to some of the above-mentioned orphanages and local reintegration centers.⁶⁷⁰

While all of above facilities take on more of a preventive role by helping persons who are at risk of being approached by traffickers, none of them are specialized in addressing the needs of returning trafficked victims. IOM established the only shelter in Moldova that focuses solely on victims of trafficking in persons. The shelter is located in Chisinau. Rehabilitation and reintegration services are not available in other regions of Moldova.⁶⁷¹ The IOM shelter opened in September 2001 and houses only women. Other organizations like La Strada and CPTW, as well as government officials refer victims who return from overseas to this particular shelter. Admittance to the shelter is not based on the victim's willingness to testify. Both adult and minor female victims are housed at the shelter for a temporary period. The minor victims are housed in a separate wing. Victims receive medical, psycho-social, and legal assistance during their stay at the shelter. CPTW is involved in providing legal assistance. During the first 3 days of her stay, a victim is subjected to a medical examination (blood tests etc.) and an assessment by a psychologist, and, if it is determined that she needs further treatment, she remains in the shelter for an additional period of 2 to 3 weeks. Her stay can be extended to a month or a month and a half, upon the recommendations of the medical staff. The longest stay has been 6

⁶⁶⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁶⁶⁹ See Interview with Nina Stratulat, Head of the Social, Humanitarian and Interethnic Division, Chisinau Town Hall (Sept. 29, 2004).

⁶⁷⁰ See Interview with Angelina Zaporojan, Anti-Trafficking Projects Coordinator, UNICEF (Oct. 07, 2004).

⁶⁷¹ See Interview with Ludmila Timofte, Senior Specialist, Direction for Education, Youth and Sports in Sipoteni, Moldova (Oct. 04, 2004).

months. The IOM shelter coordinator indicated that they try to avoid prolonged stays so that the victims do not become institutionalized.⁶⁷²

IOM also aids trafficked victims with employment and professional training during and after their stay at the shelter. IOM cooperates with Moldova's National Agency of Employment, the Ministry of Labor and Social Protection, as well as vocational schools in order to enroll victims in job training programs. IOM also guides victims in finding employment and ensures that minor victims have access to education.⁶⁷³ At least 50% of victims that were assisted by IOM underwent vocational training and attempted to secure employment. The shelter coordinator also indicated that 80 small grants were given to victims in order to start their own businesses.⁶⁷⁴ CPTW joins in this effort and finds places of employment for formerly trafficked persons in the private sector. CPTW's director indicated that his organization seeks to place victims in the private sector because those jobs are better paid than public sector positions.⁶⁷⁵

It should be noted that the victims' privacy is maintained at all times while housed at the IOM shelter. The doctor-patient privilege applies and doctors receive files that do not contain the patient's name but solely a number.⁶⁷⁶ However, in cases where victims have been raped, the medical staff is obligated to file a report with the police.⁶⁷⁷

A private security service protects the IOM shelter 24 hours a day, 7 days a week. In order to avoid traumatizing the victims, security guards are not visible but they monitor the premises. In case of emergency the shelter staff can use a panic button and the security forces arrive in one minute. Their response time has been tested, however, since the shelter has opened, there has been no need to use the panic button. The entrance to the shelter is permanently guarded and nurses monitor the hallways during the nighttime. Victims have to sign a roster when coming in and out of the shelter and they follow a curfew. At 9:00 PM the minors' wing closes and at 10:00 PM the adult wing closes.⁶⁷⁸

The shelter staff has medical and psychological expertise as well as background in social work. Their experience with trafficking issues comes from working with victims at the shelter. Current staff hires new staff and IOM is developing a manual on direct assistance for employees to use while performing their duties.⁶⁷⁹

The administrative costs of the shelter and all related programs are covered by IOM funds and other private sources. IOM is planning an exit strategy whereby the Moldovan government will assume responsibility for running the shelter, however, the shelter coordinator was of the

⁶⁷² See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁷³ See *id.*

⁶⁷⁴ See *id.*

⁶⁷⁵ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁶⁷⁶ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁷⁷ See Interview with Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (Sept. 30, 2004).

⁶⁷⁸ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁷⁹ See *id.*

opinion that government officials are not prepared for this yet. The European Union promised funds to maintain the shelter after IOM leaves and the United States government pledged \$110,000 for maintaining psychological services for victims.⁶⁸⁰

The overall problem with the current status of rehabilitation and reintegration services in Moldova is that they are temporary. One interviewee pointed out that international organizations like IOM implement programs and establish shelters on a temporary basis. He worried that if IOM were to pull out of Moldova today, the government would not continue to sustain its efforts.⁶⁸¹ Another interviewee stressed that the stay in the IOM shelter is temporary and victims need more time to readjust. Furthermore, she indicated that proper shelter and other services are only available in Chisinau (at the IOM shelter) and not in other regions of Moldova. Lastly, she pointed out that the existing rehabilitative services do not offer sufficient contact with the families of victims such that they can return home and reintegrate more easily.⁶⁸²

Children

As mentioned above, the Moldovan government does not run shelters specifically designed to adhere to the needs of trafficked victims. The IOM shelter in Chisinau is the only facility that houses trafficked women and, it does, in fact, pay special attention to minor victims. Formerly trafficked children are housed in a separate wing of the shelter. There is more staff dedicated to assist children (at least 4 per shift: an administrative person, a psychologist, a social worker, and a baby-sitter). In the adult section of the shelter there are only nurses who monitor the victims during the nighttime. In the child section of the shelter there are also former teachers and social workers, who engage in evening activities that are socially sensitive and relate to issues concerning minors. IOM also ensures that the children have access to education. Child victims of trafficking receive assistance at the IOM shelter regardless of whether they agree to testify or cooperate with law enforcement officials.⁶⁸³ If such assistance were to be provided by the state, at the present time, children would have to agree to cooperate.⁶⁸⁴ One interviewee noted, though, that children can only stay at the IOM shelter for a period of up to a year.⁶⁸⁵

Save the Children runs an orphanage in Chisinau and handles child trafficking cases *inter alia*. Currently they house 60 to 70 minors who have been trafficked.⁶⁸⁶ Save the Children also has a program on nurturing and child-raising techniques for trafficked victims, who have returned with children or are pregnant. Furthermore, they have a cooperative agreement with a local professional training school that sponsors former trafficked victims to attend classes where they

⁶⁸⁰ *See id.*

⁶⁸¹ *See* Interview with Allan Freedman, Deputy Chief of Mission, International Organization for Migration (Sept. 23, 2004).

⁶⁸² *See* Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁶⁸³ *See* Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁸⁴ *See* Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁶⁸⁵ *See* Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁶⁸⁶ *See id.*

learn accounting, hairdressing, waitressing, and other skills. A Save the Children representative indicated that victims attend such classes and there have been success stories, but that some return to situations where they are re-trafficked.⁶⁸⁷ According to figures recorded by La Strada, 15-20% of the total number of victims who received assistance were re-trafficked.⁶⁸⁸

As mentioned above, the IOM shelter is supported by IOM funds and other private sources. Save the Children is also sustained by private funding. The Moldovan government does not contribute financially to the internationally run shelters or any other programs specifically focused on children that have been trafficked. There are state run orphanages and day-centers where trafficked children may be found⁶⁸⁹ but there are no government efforts specifically focused on trafficked minors.

Physical Safety

When trafficked victims agree to testify, there are certain physical protection measures that Moldovan government officials are under a legal obligation to provide. These measures and the frequency with which they are actually applied are discussed above in the “Witness Protection” section of the de facto analysis.

Measures to provide for the physical safety of all other victims of trafficking are not uniformly applied in Moldova. As described above, victims who are housed at the IOM shelter benefit from the protection provided by private security forces during their stay.⁶⁹⁰ The victims housed by Save the Children depend on the protection offered by local police officers.⁶⁹¹ However, these protections are temporary, as they are available only for the duration of the victim’s stay at the shelters, and do not extend to family members or other persons close to victims that are also susceptible to a trafficker’s threats. Persons interviewed for the purposes of this assessment also indicated that the state does not always ensure the physical safety of victims during the repatriation process or when they are otherwise traveling (i.e. to return to their home towns, villages etc.). For the most part, IOM and other NGOs repatriate victims and provide for their safety.⁶⁹²

Compensation

While legal provisions exist to enable trafficked victims to seek compensation, interviewees indicated that actual damage awards are limited and victims receive very small sums. As noted in the de jure section, neither current law nor the draft anti-trafficking law establishes a fund for

⁶⁸⁷ See Interview with Mariana Prodan, Manager, Save the Children (Sept. 30, 2004).

⁶⁸⁸ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion “La Strada” (Sept. 28, 2004). NOTE: these figures only include victims that La Strada helped the first time they were trafficked. The figure does not include victims that were re-trafficked several times.

⁶⁸⁹ See Interview with Lidia Pogrebnaya, Head of the Division on General Child Issues and Gender Equality, Ministry of Labor and Social Protection (Sept. 21, 2004).

⁶⁹⁰ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁶⁹¹ See Interview with Mariana Prodan, Manager, Save the Children (Sept. 30, 2004).

⁶⁹² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

compensating victims of trafficking. Interviewees also mentioned that reaching traffickers' assets and using them to compensate victims is difficult because such assets are usually not registered under the correct names. There have been some cases where victims sued for compensation but there is no available data regarding the number of suits, the amount of the awards, or whether such judgments were successfully enforced.⁶⁹³

⁶⁹³ *See id.*

Article 7: Status of Victims of Trafficking in Persons in Receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Recommendations:

- Conclude regional and international agreements regarding the legal status and domicile of victims of trafficking such that Moldova and other countries adhere to uniform standards.

De Jure Compliance:

Immigration Status

Before discussing Moldova's immigration laws and their application within the trafficking context, it should be noted that Moldova is a country of origin for victims. Moldovan citizens are trafficked to other nations on a large-scale, and the presence of foreign victims on Moldovan territory is rare.

Nevertheless, the question stands whether Moldova's laws designate a particular legal status to trafficked persons who are citizens of other nations and who, for various reasons, end up on Moldovan soil. Current immigration provisions do not provide for such a specifically situated status. The draft anti-trafficking law seeks to protect foreign citizens and stateless persons and allows them to remain on Moldova's territory for 30 days in order to reflect upon their situation.⁶⁹⁴ During this time period, foreign victims are to be housed in proposed rehabilitation centers where they can receive medical, psychological, social, and legal assistance.⁶⁹⁵ They are also entitled to receive information in their own language about judicial and administrative proceedings in Moldova.⁶⁹⁶ When they are housed at the rehabilitation centers or if they agree to participate in criminal proceedings against their traffickers, foreign victims are to be granted temporary residency status, which can be extended if necessary.⁶⁹⁷ It is important to stress that, according to the draft law, foreign victims will not be forced to participate with law enforcement and/or testify in order to receive the temporary status.⁶⁹⁸ The draft anti-trafficking law does not mention whether such status extends to family members or persons close to the foreign victims, whether there is a quota, or whether there are any other requirements. Overall, though, these new provisions, which will soon become enforceable, will

⁶⁹⁴ See Draft Anti-Trafficking Law, *supra* note 21, art. 24(4).

⁶⁹⁵ See *id.* arts. 24(2).

⁶⁹⁶ See *id.* art. 24(3).

⁶⁹⁷ See *id.* art. 24(6).

⁶⁹⁸ See *id.* art. 20(4).

aid Moldova in better complying with the recommendations of Article 7(1) of the Trafficking Protocol.⁶⁹⁹

Moldovan laws allow for the possibility of asylum. The Law on Refugee Status (“2002 Refugee Law”) devotes 2 chapters on the manner in which individuals from other countries can seek asylum in Moldova.⁷⁰⁰ The law specifies that persons can request asylum for political reasons⁷⁰¹ but does not list additional reasons (i.e. other types of persecution, economic hardship, etc.). The Main Directorate for Refugees in Moldova decides the length of the asylum period and until this decision is made, asylum seekers are issued an identity card for 30 days with the possibility of extension.⁷⁰² When faced with an influx of persons, the Moldovan government has the authority to decide whether to grant asylum to groups rather than to individuals on a case-by-case basis.⁷⁰³

Immigration Issues Within the Context of Humanitarian and Compassionate Factors

Neither Moldova’s current immigration laws nor the draft anti-trafficking law explicitly mention that the process of granting trafficked victims a temporary legal status should take into consideration humanitarian and compassionate factors. Furthermore, the laws do not indicate what those factors should be. One expert argues, though, that the overall effect that such laws have (or will have) is humanitarian and compassionate.⁷⁰⁴ Thus, even though the domestic laws do not specify humanitarian and compassionate factors, Moldova complies with the requirements of Article 7(2) of the Trafficking Protocol.⁷⁰⁵

De Facto Compliance:

Immigration Status

Even though the Moldovan Parliament has not adopted the draft anti-trafficking law yet and its provisions designating a temporary residency status to foreign victims of trafficking are not in force, interviewees indicated that such individuals could currently apply through general procedures and obtain a legal status. Officials from the Department of Migration mentioned that there are certain problems with these procedures but did not go into detail.⁷⁰⁶ Foreign victims can seek assistance from members of the NGO community or the Department of Migration directly when applying for their status. It takes anywhere from 30 to 90 days to receive a designated legal status.⁷⁰⁷

⁶⁹⁹ See Trafficking Protocol, *supra* note 10, art. 7(1).

⁷⁰⁰ See Law of the Republic of Moldova on the Status of Refugees, No. 1286-XV, Jul. 25, 2002, ch. 4, 5, available at <http://www.unhcr.md/article/initilegisl.htm> [hereinafter 2002 Refugee Law].

⁷⁰¹ See *id.* art. 18.

⁷⁰² See *id.* art. 16(2).

⁷⁰³ See *id.* art. 19.

⁷⁰⁴ See Radu Foltea, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁷⁰⁵ See Trafficking Protocol, *supra* note 10, art. 7(2).

⁷⁰⁶ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁷⁰⁷ See *id.*

When asked how many foreign citizens who were trafficked applied for either temporary or permanent legal status in Moldova, interviewees indicated that no such figures have been compiled. When further asked how many persons related to foreign citizens who were trafficked applied for either temporary or permanent legal status in Moldova, the interviewees stated that they have not heard of such cases. Similarly, there are no figures available for how many foreign trafficked victims applied for asylum in Moldova. One explanation for the lack of such numbers could be that not that many victims are trafficked from other countries to Moldova. Victims usually originate from Moldova and are trafficked to other countries.⁷⁰⁸

Immigration Issues Within the Context of Humanitarian and Compassionate Factors

Interviewees mentioned that the general procedures for receiving a temporary legal status in Moldova are, by nature, humanitarian and compassionate. Foreign citizens are not summarily deported and are given the opportunity to apply for such a status. They can remain on Moldova's territory for a period of up to 6 months until a final decision is reached.⁷⁰⁹

In contrast, there are reports of Moldovan victims being deported from countries of transit and destination. Turkey and the United Arab Emirates are in the practice of deporting victims back to Moldova without allowing for a period of time during which they can apply for temporary residence.⁷¹⁰ Other countries of destination like Italy and Portugal have concluded agreements with Moldova granting legal status to Moldovan citizens working illegally on their territory. While not directed specifically at trafficked victims, rather at illegal migrants, such agreements are helpful in limiting opportunities for traffickers to continue exploiting people. Bringing individuals within the scope of a destination country's laws provides for their better protection. Furthermore such agreements benefit countries like Italy and Portugal because they can tax the wages of formerly illegal workers.⁷¹¹

⁷⁰⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷⁰⁹ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁷¹⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷¹¹ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

Article 8: Repatriation of Victims of Trafficking in Persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Recommendations:

- Amend Article 19 of the draft anti-trafficking law to include a reference to any existing international agreements that could potentially govern, in whole or in part, the return of trafficked victims. Currently, Article 24 of the draft anti-trafficking law defers to such international agreements, but Article 19 does not. Article 24 delineates measures for voluntarily and safely repatriating foreign victims of trafficking and trafficked stateless persons found on Moldovan territory while Article 19 ensures the safe repatriation of trafficked Moldovan citizens and stateless persons who have a right to permanently reside in Moldova.
- Amend the draft anti-trafficking law to address the issue of repatriation costs for both adult and minor victims of trafficking. Create a budget for repatriation.
- Gather and verify all data pertaining to the number of victims repatriated to Moldova and centralize it under the auspices of one government entity.
- The Moldovan government should conduct annual training workshops for Moldovan consulate and embassy officials with a particular focus on identification of trafficked victims, verification procedures, and rapid issuance of documents.

- Conclude bi-lateral and multi-lateral agreements with other nations, like Turkey, that specifically govern the repatriation of adult and minor trafficked victims back to Moldova.
- Conclude bi-lateral and multi-lateral agreements with countries of origin such as Pakistan, India, China etc. in order to properly repatriate adult and minor victims that are transported through Moldova to other nations.
- Moldovan government officials should implement special measures for protecting child victims of trafficking during repatriation.

De Jure Compliance:

Right to Return

Article 8(1) of the Trafficking Protocol delineates the right of trafficked victims to return to their country of nationality or permanent residence.⁷¹² In Moldova’s case, this is an important right since significant numbers of Moldovan citizens are trafficked to other countries.

The 1994 Law on Exit from the Republic of Moldova and Entry in the Republic of Moldova (“1994 Exit and Entry Law”)⁷¹³ ensures the right to return of all Moldovan citizens and stateless persons. Article 1(1) of the law indicates that “[c]itizens of the Republic of Moldova and stateless persons, who permanently reside on its territory, have the right to exit from the Republic of Moldova and to entry in the Republic of Moldova on the basis of passports issued by competent bodies.”⁷¹⁴ This provision does not make specific reference to victims of trafficking but it is all encompassing, thus, victims along with others can return to Moldova under any circumstance. The 2002 Law on Migration also ensures the right of repatriation for all Moldovan citizens and their descendants, as well as permanent residents in certain circumstances.⁷¹⁵ These current provisions, however, are not sufficiently detailed in order to comply with Article 8(1) of the Trafficking Protocol, which imposes certain conditions along with upholding the right to return such as ensuring that the return is timely and that the persons who are being returned are safe.⁷¹⁶

Consequently, the draft anti-trafficking law specifically addresses the right of trafficked individuals to return to Moldova. Article 19(1) of the draft law states that Moldovan authorities are obligated to accept and facilitate the return of Moldovan citizens and stateless persons, who have the right to permanently reside in Moldova, without unjustified delay.⁷¹⁷ Furthermore, when repatriating such individuals, Moldovan officials will be required to provide for their

⁷¹² See Trafficking Protocol, *supra* note 10, art. 8(1).

⁷¹³ See *generally* Law on Exit from the Republic of Moldova and Entry in the Republic of Moldova, No. 269-XIII, Nov. 10, 1994 [hereinafter 1994 Exit and Entry Law].

⁷¹⁴ See *id.* art. 1(1).

⁷¹⁵ See Law of the Republic of Moldova on Migration, No. 1518-XV, Dec. 06, 2002, art. 20(1) [hereinafter 2002 Migration Law].

⁷¹⁶ See Trafficking Protocol, *supra* note 10, art. 8(1).

⁷¹⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 19(1).

safety.⁷¹⁸ Thus, once the provisions of the draft anti-trafficking law will come into force, Moldova will be able to better comply with the detailed requirements of Article 8(1) of the Trafficking Protocol.⁷¹⁹

In cases where foreign victims are found on Moldovan soil, the current immigration laws provide for the protective principle of *non-refoulement*. That is, Moldovan authorities are prohibited from expelling or deporting foreign nationals and stateless persons to countries where evidence suggests that they might be persecuted on the basis of their race, nationality, religion, political opinions, or that they might be subjected to inhuman and degrading treatment, torture, or the death penalty.⁷²⁰ Implicitly recognized in Article 14(1) of the Trafficking Protocol, the principle of *non-refoulement* is an important instrument for protecting trafficked victims.⁷²¹

Safety, Legal Proceedings, and the Voluntary Nature of Return

Article 24(1) of the draft anti-trafficking law imposes an obligation upon Moldovan authorities to protect and assist foreign citizens and stateless persons during their return to their country of origin.⁷²² Such return is to be voluntary on the part of the victims and conducted with a sense of urgency (i.e. without undue delay).⁷²³ Moldovan authorities are to ensure the safety of the victims up to when they reach the borders of Moldova.⁷²⁴ Article 24(4) of the draft law indicates that foreign victims are not to be returned to their country of origin if they are implicated in any pending criminal or civil proceedings in Moldova.⁷²⁵ All of these provisions follow the requirements of Article 8(2) of the Trafficking Protocol⁷²⁶ and when they will enter into force, Moldova will be able to fully comply as a State Party.

Verification

Moldova, as a country of origin for victims of trafficking, will be obligated to verify the nationality or residency status of such victims according to the new draft law. Article 19(2) of the draft anti-trafficking law indicates that at the request of another state, Moldovan officials are to check and confirm, without undue delay, that the nationality of trafficked victims is Moldovan or that such individuals have the right to permanently reside in Moldova.⁷²⁷

When Moldovan officials discover foreign victims of trafficking on Moldovan territory, there are certain already existing procedures for checking their legal status with their country of origin (i.e. nationality, permanent residence etc.). These are general procedures that not only

⁷¹⁸ See *id.*

⁷¹⁹ See Trafficking Protocol, *supra* note 10, art. 8(1).

⁷²⁰ See 2002 Migration Law, *supra* note 715, art. 32(7); see also Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova, No. 275-XIII, Nov. 10, 1994, art. 29 [hereinafter 1994 Legal Status Law].

⁷²¹ See Trafficking Protocol, *supra* note 10, art. 14(1).

⁷²² See Draft Anti-Trafficking Law, *supra* note 21, art. 24(1).

⁷²³ See *id.*

⁷²⁴ See *id.*

⁷²⁵ See *id.* art. 24(4).

⁷²⁶ See Trafficking Protocol, *supra* note 10, art. 8(2).

⁷²⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 19(2).

apply to trafficked victims but also to other foreigners, thus they are too numerous to list here. However, they are outlined in the following existing laws and regulations:

- The 1994 Exit and Entry Law⁷²⁸
- The Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova (“1994 Legal Status Law”)⁷²⁹
- Regulations Governing the Stay of Foreign Citizens and Stateless Persons in the Territory of the Republic of Moldova.⁷³⁰

The draft anti-trafficking law together with existing immigration laws and regulations will enable Moldova to better comply with the verification requirements delineated in Article 8(3) of the Trafficking Protocol.⁷³¹

Documentation

When Moldovan citizens or persons who have the right to permanently reside in Moldova are trafficked and find themselves without the proper travel or identification documents in the territory of another state, they are entitled to new paperwork. Existing general provisions in Moldovan law require government officials to replace lost passports.⁷³²

The draft anti-trafficking law is more specific. Article 19(3) of the draft law indicates that Moldovan officials are to issue travel documents or any other authorization needed in order to repatriate its citizens or permanent residents who have been trafficked.⁷³³ This will be done at the request of the state where such individuals are found.⁷³⁴

Furthermore, the draft law will require officials from the Ministry of External Affairs to aid foreign victims found on Moldovan soil in requesting, from their country of origin, identification documents or other permits necessary for travel.⁷³⁵

Thus, once the draft anti-trafficking law comes into force, Moldova will be able to better comply with the documentation requirements outlined in Article 8(4) of the Trafficking Protocol.⁷³⁶

⁷²⁸ See generally 1994 Exit and Entry Law, *supra* note 713.

⁷²⁹ See generally 1994 Legal Status Law, *supra* note 720.

⁷³⁰ See generally Decision of the Government of the Republic of Moldova on Additional Measures for the Implementation of a National Passport System; Annex No. 2: Regulations Governing the Stay of Foreign Citizens and Stateless Persons in the Territory of the Republic of Moldova, No. 376, June 06, 1995 [hereinafter 1995 Government Decision on the National Passport System].

⁷³¹ See Trafficking Protocol, *supra* note 10, art. 8(3).

⁷³² See 1995 Government Decision on the National Passport System, *supra* note 730, para. 21.

⁷³³ See Draft Anti-Trafficking Law, *supra* note 21, art. 19(3).

⁷³⁴ See *id.*

⁷³⁵ See *id.* art. 24(5).

⁷³⁶ See Trafficking Protocol, *supra* note 10, art. 8(4).

Protection of Victims under Domestic Laws

As mentioned above, Article 24(1) of the draft anti-trafficking law ensures the safe and voluntary repatriation of foreign victims of trafficking and trafficked stateless persons who are found within Moldova's territory.⁷³⁷ Such victims are entitled to the same rights as Moldovan citizens who were trafficked and return to Moldova. Article 24(2) indicates that foreign victims are to be placed in rehabilitation centers where they are to receive the same level of protection and assistance as victims who are nationals.⁷³⁸ The centers proposed in the draft law are discussed in detail in the section on "Rehabilitation and Reintegration in Society" of the de jure analysis of Trafficking Protocol Article 6.

Article 19(1) of the draft anti-trafficking law details the repatriation of Moldovan citizens and stateless persons who are entitled to permanently reside in Moldova.⁷³⁹ Article 19(4) explicitly mentions that the proposed repatriation measures are not to prejudice any other right that the Moldovan victims may be entitled to under the laws of the country of destination.⁷⁴⁰

Article 24 and 19 of the draft anti-trafficking law will aid Moldova in better complying with Article 8(5) of the Trafficking Protocol, which specifies that repatriation measures "shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party."⁷⁴¹ The receiving State Party is understood to be the country of destination for victims of trafficking.

Bilateral or Multilateral Agreements Regarding Return

Article 24(1) of Moldova's draft anti-trafficking law establishes measures for safely returning foreign victims of trafficking and trafficked stateless persons who are willing to return to their country of origin.⁷⁴² Article 24(1) stresses that such measures are to be implemented if there are no other similar measures delineated in existing international treaties.⁷⁴³ This follows Article 8(6) of the Trafficking Protocol, which requires that a state's repatriation procedures "shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons."⁷⁴⁴

It should be noted that Article 19 of the draft law, which will govern the repatriation of trafficked Moldovan citizens and stateless persons back to Moldova, does not refer to international agreements in the same manner as Article 24 above.⁷⁴⁵ Perhaps, this provision should be revisited. Nevertheless, once the draft anti-trafficking law comes into effect, Moldova will be well on its way to legislative compliance with the Trafficking Protocol.

⁷³⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 24(1).

⁷³⁸ See *id.* art. 24(2).

⁷³⁹ See *id.* art. 19(1).

⁷⁴⁰ See *id.* art. 19(4).

⁷⁴¹ See Trafficking Protocol, *supra* note 10, art. 8(5).

⁷⁴² See Draft Anti-Trafficking Law, *supra* note 21, art. 24(1).

⁷⁴³ See *id.*

⁷⁴⁴ See Trafficking Protocol, *supra* note 10, art. 8(6).

⁷⁴⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 19.

Children

While Moldova's immigration laws generally recognize the right to return, one expert mentioned that current provisions do not provide special protections for trafficked children during repatriation.⁷⁴⁶

Consequently, Moldova's draft anti-trafficking law includes a provision on the repatriation of child victims to their country of origin.⁷⁴⁷ Article 28(1) of the draft law indicates that a child is to be repatriated solely if it is established that a parent, relative, guardian, or government agency in his/her country of origin has given formal consent to assume responsibility for the child and promises to protect and assist that child.⁷⁴⁸ No judicial proceedings or interrogations by law enforcement officials are to delay the reunification of trafficked children with their parents or with their return in general, if such return is in the best interest of the children.⁷⁴⁹ When repatriation to the country of origin is not possible or is not in the best interest of child victims, they are to be relocated to a third country.⁷⁵⁰ A child victim is not to be reunited with his/her family if, following a risk assessment, it is established that it is too dangerous to return him/her.⁷⁵¹ Thus, child victims will be entitled to a temporary humanitarian visa guaranteeing them the right to remain on Moldova's territory until officials reach a long-term solution with respect to their return.⁷⁵² Article 28(4) of the draft law points out that the opinion of the formerly trafficked child is to be taken into consideration when repatriating or relocating him/her to a third country if s/he is older than 10 years of age.⁷⁵³

Although not explicitly required by Article 8 of the Trafficking Protocol,⁷⁵⁴ these newly proposed repatriation procedures for minor victims of trafficking in persons would aid Moldova in better complying with international anti-trafficking standards once they will come into force.

Statelessness

Both Article 19 and Article 24 of Moldova's draft anti-trafficking law take into consideration stateless persons when setting forth measures for repatriation. Article 19(1) ensures the safe return to Moldova of trafficked Moldovan citizens and trafficked *stateless persons* who have a right to permanently reside in Moldova.⁷⁵⁵ Article 24(1) delineates measures for voluntarily and safely repatriating foreign victims of trafficking and trafficked *stateless persons* found on Moldovan territory back to their country of origin.⁷⁵⁶ Thus, according to the new draft law stateless persons, in both circumstances, will benefit from the same protections and means of

⁷⁴⁶ See Radu Foltea, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁷⁴⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 28.

⁷⁴⁸ See *id.* art. 28(1).

⁷⁴⁹ See *id.* art. 28(2).

⁷⁵⁰ See *id.* art. 28(3).

⁷⁵¹ See *id.* art. 28(5).

⁷⁵² See *id.* art. 28(6).

⁷⁵³ See *id.* art. 28(4).

⁷⁵⁴ See Trafficking Protocol, *supra* note 10, art. 8.

⁷⁵⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 19(1).

⁷⁵⁶ See *id.* art. 24(1).

assistance that are available to other trafficked individuals during repatriation. While not specifically required by Article 8 of the Trafficking Protocol,⁷⁵⁷ protecting trafficked stateless persons during their return is important and the needs of such persons will be better addressed once Moldova's draft anti-trafficking law comes into effect.

Cost

Neither current immigration provisions nor the draft anti-trafficking law designate a particular individual, entity, or government to bear the financial responsibility for repatriating adult or minor victims of trafficking to and from Moldova. In fact, the existing and proposed provisions do not clearly identify what repatriation costs entail (i.e. travel, housing, meals etc.).⁷⁵⁸ Perhaps the Moldovan Parliament should revisit this issue before adopting the newly proposed anti-trafficking law.

De Facto Compliance:

Right to Return

When asked how many trafficked persons were repatriated to Moldova, interviewees pointed out that there are several sets of numbers gathered by various entities. These figures vary because they represent the number of victims aided by those particular entities. Presently, there are no total uniform figures. For example, the IOM mission in Chisinau reports that between 2001 and 2003, 1140 returning victims were registered at its shelter.⁷⁵⁹ The MoI Anti-Trafficking Division reports that 202 victims were repatriated during the first 8 months of 2004.⁷⁶⁰ Some interviewees suggested that existing repatriation figures should be centralized and verified under the auspices of one government entity.⁷⁶¹

Some interviewees also noted that current figures might not be exact because there are victims who escape from their traffickers on their own and do not return through official channels. There are also instances where destination or transit countries, like Turkey, repatriate victims without notifying Moldovan officials.⁷⁶² An interviewee explained that, in other instances, countries, such as the United Arab Emirates, deport victims to the state that appears on their passport without verifying their true nationality. For example, if the passport is false and indicates that a Moldovan victim is a citizen of Kazakhstan, UAE officials repatriate her to Kazakhstan instead of Moldova, thus, exposing her to greater risk.⁷⁶³

⁷⁵⁷ See Trafficking Protocol, *supra* note 10, art. 8.

⁷⁵⁸ See Radu Foltea, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004); *see also* Draft Anti-Trafficking Law, *supra* note 21, arts. 19, 24, 28.

⁷⁵⁹ See IOM Statistics, *supra* note 2.

⁷⁶⁰ See Interview with Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs (Sept. 25, 2004).

⁷⁶¹ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁷⁶² See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocar, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁷⁶³ See Interview with Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs (Sept. 25, 2004).

When victims return to Moldova, governments of destination countries or NGOs usually ensure their safety since there are no funds allocated in the Moldovan national budget for victim repatriation. However, interviewees pointed out that, despite lack of funds, everything possible is being done to repatriate victims without unreasonable and undue delay. One interviewee mentioned, though, that there have been cases where repatriation was not timely.⁷⁶⁴

Safety, Legal Proceedings, and the Voluntary Nature of Return

As mentioned above, the Moldovan government has not allocated funds, thus far, for the protection of trafficked victims during their return to Moldova. Officials from destination countries or representatives from organizations such as IOM, La Strada, and CPTW usually escort victims during their trip ensuring that their repatriation does not impede upon any existing criminal or civil proceedings that require their presence.⁷⁶⁵

In fact, interviewees stated that there is no established repatriation program supported by sustainable funding in Moldova. Repatriation efforts are mostly funded by international organizations and NGOs on an ad hoc basis.⁷⁶⁶

When asked what percentage of Moldovan trafficked victims were voluntarily returned and what percentage were summarily deported from destination countries, interviewees were not able to provide concrete answers.⁷⁶⁷ Representatives from the Department of Migration reiterated that it is difficult to estimate such percentages since currently there is no uniform data on returning victims that is being gathered by one centralized government entity.⁷⁶⁸

On a separate note, the representative from La Strada indicated that 15-20% of the total number of victims aided by her organization were re-trafficked. She stressed, though, that these figures only include victims that La Strada helped the first time they were trafficked. These figures do not include victims that were re-trafficked several times. She indicated that the reason such a high number of victims were re-trafficked is because, upon their return, they were not properly assisted and protected by the state. They could not find means for earning a sustainable income in Moldova, thus, when traffickers offered them a chance to make more money overseas, they accepted.⁷⁶⁹

Verification

If a Moldovan citizen is to be repatriated from a country of destination or transit, a representative from the Moldovan consulate or embassy in that particular country is assigned to his/her case and immediately begins the procedure for verifying his/her personal data in order

⁷⁶⁴ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷⁶⁵ See *id.*

⁷⁶⁶ See *id.*

⁷⁶⁷ See *id.*

⁷⁶⁸ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁷⁶⁹ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion “La Strada” (Sept. 28, 2004).

to issue a visa. The consulate or embassy representative contacts the proper authorities in Moldova and accesses the State Population Register via computer in order to check the victim's name, status etc. This procedure can be delayed and is more difficult to accomplish if the victim is found in a country where Moldova does not have an embassy or consulate⁷⁷⁰ or if s/he provides false information to the Moldovan authorities.⁷⁷¹ The representative from La Strada indicated that verification procedures can take anywhere from 2 days to 3 weeks.⁷⁷²

When asked how many requests for verification have been received and how many have been granted, thus far, one interviewee indicated that the Ministry of External Affairs is presently attempting to compile these numbers.⁷⁷³

The same interviewee indicated that Moldovan consulate and embassy officials undergo government training regarding the newest immigration laws, normative acts, technology, and identification and travel documents. These seminars are done on an ad hoc basis, though, and do not necessarily touch on the dangers of trafficking in persons. He suggested that the government conduct anti-trafficking training workshops on an annual basis.⁷⁷⁴ Presently, La Strada and the OSCE conduct seminars on victim identification, the appropriate manner in which such victims are to be treated, and rapid document issuance.⁷⁷⁵

Documentation

Upon successful verification, officials at Moldovan consulates and embassies in countries of destination issue the requisite travel documentation for trafficked victims to return to Moldova. If the victim is missing his/her passport, s/he receives a "Travel Title," commonly known as a white passport, which is valid only for one designated trip (i.e. the trip back home).⁷⁷⁶ The fees related to such documentation are waived. NGO representatives confirmed that Moldovan officials are prompt in issuing white passports for victims. In fact, such documents are issued on the premises of Moldovan consulates and embassies in countries of destination.⁷⁷⁷ As mentioned above, data as to how many travel documents have been issued for Moldovan trafficked victims, thus far, is not available.⁷⁷⁸

⁷⁷⁰ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

⁷⁷¹ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁷⁷² See *id.*

⁷⁷³ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

⁷⁷⁴ See *id.*

⁷⁷⁵ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004); see also Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁷⁷⁶ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

⁷⁷⁷ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004); see also Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁷⁷⁸ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

Protection of Victims under Domestic Laws

Interviewees were asked whether the fact that victims exercise their right to return to their country of origin diminishes, replaces or otherwise changes their ability to assert other rights and immunities available to them. They answered that, in practice, no other rights are impeded upon when a victim is repatriated to Moldova.⁷⁷⁹

Bilateral or Multilateral Agreements Regarding Return

Interviewees indicated that Moldova is a party to bilateral and multilateral agreements for mutual legal assistance that include provisions addressing repatriation issues. Some interviewees indicated that such provisions are respected.⁷⁸⁰ One NGO representative disagreed and indicated that the rights of repatriated victims as delineated in international treaties are not always upheld.⁷⁸¹

Children

Currently there are no special measures that are being implemented by the state in order to protect trafficked children during repatriation.⁷⁸² IOM and other NGOs that conduct repatriations offer special protections. For example, if a victim is between 13 and 14 years of age, an IOM representative accompanies him/her at all stages during the repatriation process. If the victim is between 17 and 18 years of age, an IOM representative might not always be present for the duration of the flight back to Moldova.⁷⁸³

Some interviewees noted that one mechanism might help, from a preventive aspect. Moldovan children under the age of 16 are now required to travel with their own passports (separate from their parents) and can only leave Moldova if *both* parents give their written consent before a notary.⁷⁸⁴ However, another interviewee saw this as a restriction of a child's freedom of movement.⁷⁸⁵

Statelessness

Interviewees confirmed that they did not know of any cases that involve the return of stateless persons to Moldova.⁷⁸⁶ One interviewee mentioned that even if there are such cases, there are no current procedures for repatriating stateless persons.⁷⁸⁷

⁷⁷⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷⁸⁰ See *id.*

⁷⁸¹ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁷⁸² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷⁸³ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁷⁸⁴ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁷⁸⁵ See Interview with Nadeja Velicico, Child Protection Division, Ministry of Education (Sept. 22, 2004).

⁷⁸⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁷⁸⁷ See Interview with Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs (Oct. 01, 2004).

Cost

There was an overall consensus among interviewees that the Moldovan government does not bear the cost of repatriation for trafficked victims returning to Moldova. For the most part, destination countries or organizations like IOM cover the costs. The only financial contribution on the part of the Moldovan government is the fact that consulate and embassy officials waive the fees required for the issuance of new travel documentation.⁷⁸⁸

⁷⁸⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

Article 9: Prevention of Trafficking in Persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article, shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Recommendations:

- The Moldovan government should fund and implement more long-term preventive measures (i.e. information campaigns, etc.).
- Gather and compare all concrete data from all entities presently working on trafficking issues in Moldova (government offices, international organizations, and NGOs) under the auspices of one government entity.
- The statistics departments at the local government level in Moldova should keep track of trafficked victims by age (number of children vs. number of women and men), by time period (the length of time that they were trafficked), and by status (single persons vs. families).
- Incorporate anti-trafficking classes and training seminars for professionals within the framework of women's rights and the rights of children.
- Moldovan government officials should increase their attendance at current seminars that are focused on the prevention of trafficking in persons and are run by NGOs like La Strada.
- The Moldovan government should fund and implement a preventive program targeting at-risk groups such as orphaned children (as envisioned in the Anti-Trafficking National Plan of Action).
- The Moldovan government should fund and implement a preventive program targeting persons who are in danger of being re-trafficked.

- Address the issue of illegal migration in destination countries. More destination countries should consider legalizing the status of Moldovan citizens who work illegally on their territory by issuing either temporary or permanent work permits.
- Draft legislation addressing the issue of domestic violence (a causative factor).
- Address the issue of demand in destination countries.

De Jure Compliance:

Preventive Policies, Programs, and Other Measures

Article 9(1) of the Trafficking Protocol requires States Parties to establish comprehensive policies, programs, and other measures that aim to prevent and combat trafficking as well as protect trafficked persons from becoming re-victimized.⁷⁸⁹ From a legislative perspective, Moldova complies with this provision since it has an Anti-Trafficking National Plan of Action that delineates measures for preventing trafficking, better apprehending and prosecuting traffickers, protecting victims, reforming existing laws, training officials, and cooperating at the international level.⁷⁹⁰ The draft anti-trafficking law reaffirms the existence of the national plan of action establishing a term of 2 years for its renewal⁷⁹¹ and devoting an entire chapter to preventive measures.⁷⁹² The preventive measures outlined in the plan and the draft law will be discussed throughout the sections below.

Research, Information, Mass Media Campaigns, and Other Initiatives

Moldova's Anti-Trafficking National Plan of Action calls upon state officials to establish a research center, which will cooperate with all government agencies and conduct research and sociologic surveys related to the issue of trafficking in persons.⁷⁹³ The results of the center's research endeavors (statistical or otherwise) are to be published and circulated annually.⁷⁹⁴ The plan further stresses the need to establish a standard database that is to be used by the police, welfare agencies, labor force agencies, and healthcare institutions in order to keep track of trafficked victims and the phenomenon in general.⁷⁹⁵

The plan also calls for awareness raising measures. Moldovan officials are to organize information campaigns about the dangers of trafficking and illegal migration as well as initiate media coverage of the trafficking problem, targeting audiences consisting of potential female migrants starting at the age of 14 to 15.⁷⁹⁶ The government is under an obligation to develop and disseminate anti-trafficking statistics, brochures, videos, flyers, information posters, and

⁷⁸⁹ See Trafficking Protocol, *supra* note 10, art. 9(1).

⁷⁹⁰ See generally Anti-Trafficking National Plan of Action, *supra* note 8.

⁷⁹¹ See Draft Anti-Trafficking Law, *supra* note 21, art. 7(2).

⁷⁹² See *id.* ch. II.

⁷⁹³ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁷⁹⁴ See *id.*

⁷⁹⁵ See *id.*

⁷⁹⁶ See *id.*

other materials both at the national and regional level.⁷⁹⁷ Information concerning the health risks caused by sexual exploitation is also to be distributed.⁷⁹⁸ In order to educate individuals who belong to high-risk groups, the national plan of action instructs government officials to include anti-trafficking programs in the public school curricula.⁷⁹⁹ The proper authorities are also obligated to develop special programs that target marginalized youth and are meant to reach those who are not part of the regular school system (i.e. children housed at orphanages etc.).⁸⁰⁰

Lastly the plan requires Moldovan officials to undertake socio-economic initiatives to address the high level of unemployment and poverty in Moldova. Officials are also to counsel persons seeking employment on the dangers of trafficking and potential assistance information in destination countries (addresses and telephone numbers of reception centers for victims etc.).⁸⁰¹

The draft anti-trafficking law assigns the various preventive measures delineated above to public officials representing the National Anti-Trafficking Committee,⁸⁰² local anti-trafficking commissions throughout the different regions of Moldova,⁸⁰³ as well as all other appropriate branches of government.⁸⁰⁴ When the draft law comes into effect, it will be clear who, in the Moldovan government, is responsible for each of the preventive measures and such individuals will be under a legally enforceable obligation to perform their duties.

From a legislative perspective, Moldova more than likely complies with Article 9(2) of the Trafficking Protocol, which requires states “to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.”⁸⁰⁵

Cooperation with NGOs, Other Organizations, and Elements of Civil Society

Moldova’s Anti-Trafficking National Plan of Action implicates NGOs in the implementation of most measures including preventive campaigns, distribution of anti-trafficking materials, and other socio-economic measures.⁸⁰⁶ The draft anti-trafficking law ensures that international organizations and NGOs have free access and can contribute to the establishment of an anti-trafficking infrastructure and to prevention campaigns in Moldova.⁸⁰⁷ The draft law explicitly mentions that international organizations and NGOs can collaborate with public officials in order to distribute anti-trafficking information and to warn individuals about the dangers of trafficking.⁸⁰⁸ The draft law also allows NGOs to establish centers for the protection and

⁷⁹⁷ See *id.*

⁷⁹⁸ See *id.*

⁷⁹⁹ See *id.*

⁸⁰⁰ See *id.*

⁸⁰¹ See *id.*

⁸⁰² See Draft Anti-Trafficking Law, *supra* note 21, art. 8.

⁸⁰³ See *id.* art. 9.

⁸⁰⁴ See *id.* art. 10, 11.

⁸⁰⁵ See Trafficking Protocol, *supra* note 10, art. 9(2).

⁸⁰⁶ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁸⁰⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 6(3).

⁸⁰⁸ See *id.* art. 12(1).

assistance of trafficked victims.⁸⁰⁹ Lastly NGOs are recognized for their ability to identify victims in destination countries, repatriate victims, as well as protect and represent victims in court.⁸¹⁰ The incorporation of NGOs in the Anti-Trafficking National Plan of Action and the draft anti-trafficking law acknowledges the important role that such entities play in combating trafficking and allows Moldova to better comply with the requirements of Article 9(3) of the Trafficking Protocol.⁸¹¹

Root Causes

The Anti-Trafficking National Plan of Action requires government officials to promote programs that seek to improve the social and economic conditions of persons who are at risk of being trafficked.⁸¹² According to the plan such programs include schemes to combat poverty and unemployment, in particular among women and youth, special welfare programs to support impoverished individuals, and programs for combating illiteracy.⁸¹³ In fact, Moldova has a separate anti-poverty strategy entitled “The National Plan for Sustainable Development and Poverty Reduction”⁸¹⁴ and a “Strategy for Reforming the System of Social Assistance.”⁸¹⁵ These instruments seek to address the needs of all Moldovan citizens, not just victims of trafficking.

The Anti-Trafficking National Plan of Action also recognizes gender inequality as a possible cause of trafficking and bans sexist expressions in the Moldovan press, on the radio, or on TV.⁸¹⁶ Likewise the plan bans all violent, degrading, and pornographic publications.⁸¹⁷

The draft anti-trafficking law tasks the Ministry of the Economy to work together with other ministries and appropriate government departments in order to develop and implement socio-economic programs that seek to address the causes and economic conditions that favor illegal migration and trafficking in persons.⁸¹⁸ The draft law also tasks the Ministry of Labor and Social Protection to distribute employment information and develop professional training seminars for at-risk groups⁸¹⁹ and, together with the Ministry of Finance, create incentives for employers to hire them.⁸²⁰

An expert points out that both the existing Anti-Trafficking National Plan of Action⁸²¹ and the draft anti-trafficking laws⁸²² stress cooperation with other states in order to prevent and combat

⁸⁰⁹ See *id.* art. 12(2).

⁸¹⁰ See *id.* art. 12(3).

⁸¹¹ See Trafficking Protocol, *supra* note 10, art. 9(3).

⁸¹² See Anti-Trafficking National Plan of Action, *supra* note 8.

⁸¹³ See *id.*

⁸¹⁴ See generally Anti-Poverty Plan, *supra* note 18.

⁸¹⁵ See generally Hotarirea Parlamentului Republicii Moldova pentru Aprobarea Strategiei de Reforma a Sistemului de Asistenta Sociala [Decision of the Parliament of the Republic of Moldova to Approve the Strategy for Reforming the System of Social Assistance], No. 416-XIV, May 28, 1999 [hereinafter Social Assistance Reform Strategy].

⁸¹⁶ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁸¹⁷ See *id.*

⁸¹⁸ See Draft Anti-Trafficking Law, *supra* note 21, art. 10(10).

⁸¹⁹ See *id.* art. 10(4)(a).

⁸²⁰ See *id.* art. 10(4)(c).

⁸²¹ See Anti-Trafficking National Plan of Action, *supra* note 8.

trafficking in persons as well as to protect the trafficked victims. He reads these cooperative efforts to include inter-state strategies to address the causes and conditions that favor trafficking.⁸²³

Given the above efforts, it can be argued that Moldova more than likely complies, on paper, with the obligation to address the causes of trafficking suggested in Article 9(4) of the Trafficking Protocol (i.e. poverty, underdevelopment, and lack of opportunity).⁸²⁴ However, there are many other, more specific causes that could be addressed if they are indeed appropriate within the Moldovan context. Such causes may include:

- women's inequality in the labor market
- violence against women
- lack of access to education
- globalization and its effects
- increased movement of people
- economic exploitation
- advancements in technology and communications and their effects
- economic crises
- regional armed conflicts
- rise of organized crime.⁸²⁵

Demand

Moldova is primarily a country of origin for victims of trafficking and is not necessarily responsible for addressing the issue of demand. Consequently, its laws do not explicitly enumerate measures for discouraging the demand for victims of trafficking as required by Article 9(5) of the Trafficking Protocol.⁸²⁶ One expert argues, though, that efforts delineated in Moldova's Anti-Trafficking National Plan of Action and the newly proposed anti-trafficking law will have such an effect that, indirectly, they will address demand as well.⁸²⁷

De Facto Compliance:

Preventive Policies, Programs, and Other Measures

Currently, the main government bodies that are in charge of implementing Moldova's preventive policies and programs are the Ministry of Education and the Department of Migration. However, most of the interviewees indicated that the existing preventive measures

⁸²² See Draft Anti-Trafficking Law, *supra* note 21, ch. V.

⁸²³ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁸²⁴ See Trafficking Protocol, *supra* note 10, art. 9(4).

⁸²⁵ See John Cerone, *The Human Rights Framework Applicable to Trafficking in Persons and Its Incorporation into UNMIK Regulation 2001/4*, 7 Y.B. INT'L PEACE OPERATIONS 42, 97 (2002), reprinted in 11 HUM. RTS. BRIEF 20 (2003) (summary); see also INTERNATIONAL CENTRE FOR MIGRATION POLICY DEVELOPMENT & THE AUSTRIAN MINISTRY OF INTERIOR, REGIONAL STANDARD FOR ANTI-TRAFFICKING; POLICE TRAINING IN SEE 13 (2003), available at http://www.undp.ro/governance/Best%20Practice%20Manuals/docs/Police_Manual_Final.pdf.

⁸²⁶ See Trafficking Protocol, *supra* note 10, art. 9(5).

⁸²⁷ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

are funded and implemented by international organizations and NGOs like IOM, La Strada, and CPTW. Government officials cooperate in these efforts but no state funds are donated to sustain preventive programs and initiatives.⁸²⁸ The existing measures will be discussed in the appropriate sections below.

When asked about the overall effectiveness of preventive efforts in Moldova, interviewees explained that they have a limited impact. The IOM mission accomplished close to 80% of its preventive goals.⁸²⁹ However, the Moldovan government, on its own, needs to sponsor more long-term measures given the magnitude of the trafficking problem.⁸³⁰ One interviewee placed the trafficking issue in perspective by pointing out the high level of vulnerability in her province. She indicated that in the province of Calarasi, 668 children are living without parents. That is, both parents left the region in order to seek better paying jobs and left the children behind with relatives and friends. In her opinion, the existing preventive measures are not sufficient and will not be able to thwart the efforts of traffickers to recruit such at risk children.⁸³¹

One interviewee pointed out that some of the preventive measures that are being undertaken in Moldova tend to impede upon the rights of individuals. Currently Moldovan children under the age of 16 cannot travel without obtaining the written notarized consent of both parents. She saw this as a restriction upon their freedom of movement.⁸³²

Research, Information, Mass Media Campaigns, and Other Initiatives

As mentioned above, organizations such as IOM, La Strada, and CPTW have taken the lead in funding and implementing preventive measures in Moldova. From interviewing high school students in Sipoteni (Calarasi province), the assessor concluded that information campaigns and various other anti-trafficking efforts have reached their targeted audiences. The students interviewed were familiar with some of the efforts listed below and knew how to protect themselves if approached by a trafficker.⁸³³

IOM, in particular, developed a comprehensive information and mass media campaign that targets both male and female youth. Based on funding from its members, IOM created and distributed anti-trafficking posters that are displayed on billboards in Chisinau as well as in twenty universities throughout Moldova. In 2002, IOM together with the United States Department of State, the European Union, La Strada, and private entities such as Lakarmissionen, Voxel and SunTV, sponsored free viewings of "Lilya 4-ever," a 2-hour movie about the personal experience of a young woman from the former Soviet Union who was trafficked to Sweden. 300,000 people attended the viewings. There was also a play written for children on the trafficking issue. IOM established a hotline that potential victims and persons

⁸²⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸²⁹ See Interview with Allan Freedman, Deputy Chief of Mission, International Organization for Migration (Sept. 23, 2004).

⁸³⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸³¹ See Interview with Ludmila Timofte, Senior Specialist, Direction for Education, Youth and Sports in Sipoteni, Moldova (Oct. 04, 2004).

⁸³² See Interview with Nadeja Velicico, Child Protection Division, Ministry of Education (Sept. 22, 2004).

⁸³³ See Interview with high school students, Sipoteni, Calarasi (Oct. 04, 2004).

who have been trafficked can call for free and receive information about their rights. La Strada operates the hotline and reported that, between September 1, 2001 and September 1, 2004, 11,027 calls were received, 28% of which represented requests for specific information regarding employment abroad.⁸³⁴ During the summer of 2004, IOM ran an information campaign in all the regions of Moldova meeting with summer camps for children 10 years of age and above, distributing materials and cards with the hotline number, and briefing local government authorities. IOM also trained border guards to use passport inserts with anti-trafficking information for targeted age groups. Moldovan border guards are now required to give such information to females between the ages of 16 and 35 and to anyone else who might request it.⁸³⁵ One IOM representative indicated that the Moldovan government does not contribute financially to the above efforts but participates with human resources.⁸³⁶

La Strada has conducted research on the trafficking problem in Moldova⁸³⁷ and trained teachers, school principals, as well as government officials on the dangers of this phenomenon. Between February and June 2004, La Strada held 208 prevention seminars, which were attended by 7,165 people in all of Moldova's major regions as well as in Transnistria.⁸³⁸ Participants received a handbook on combating trafficking that includes the Trafficking Protocol's definition of the offense, its human rights context, the international and national legal basis for countering the phenomenon, a description of the status of victims of trafficking, the rights of victims, and means for assisting them.⁸³⁹ Participants also received a booklet focused on the prevention of trafficking that targets pre-university teachers.⁸⁴⁰ The representative from La Strada mentioned that despite all these efforts, results are limited for various reasons. First off, the Moldovan government has not studied or applied the results of La Strada's research. In addition, the attendance of government officials at training seminars, while frequent initially, has dwindled over time. Furthermore, even if certain individuals attended La Strada's seminars, the employment turn over rate is high and information is not passed on to their replacements (i.e. there is no continuity). At times, teachers distribute the information received from La Strada to their students without giving detailed explanations. An additional problem can be the conservative attitude of some teachers, which limits their discussion of sexual relations, prostitution, and other sensitive topics that are necessarily related to trafficking. Lastly, La Strada does not receive financial contributions from the Moldovan government and does not have sufficient private funds to run its training programs in every city, town, and village in Moldova.⁸⁴¹

⁸³⁴ See La Strada, Hot Line Statistics.

⁸³⁵ In fact, when leaving Moldova, a border guard showed the assessor, upon her request, the information that he inserts in Moldovan passports.

⁸³⁶ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁸³⁷ See, e.g., La Strada, *Studiu Sociologic pe Problemele Migratiei si Traficului de Femei* [Sociological Study of the Problems of Migration and Trafficking in Women], 2003.

⁸³⁸ See La Strada, *Geographical Distribution of Prevention Seminars*.

⁸³⁹ See generally LA STRADA, *HANDBOOK: COMBATING TRAFFICKING IN PERSONS* (2004).

⁸⁴⁰ See generally LA STRADA, *PREVENIREA TRAFICULUI DE FEMEI: CULEGERE DE MATERIALE IN AJUTORUL PROFESORULUI PREUNIVERSITAR* [PREVENTION OF TRAFFICKING IN WOMEN: COMPILATION OF MATERIALS ASSISTING THE PRE-UNIVERSITY TEACHER] (2003).

⁸⁴¹ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

Other current preventive measures include efforts by local NGOs such as CPTW who issues a monthly bulletin that includes the latest news on trafficking patterns, exploitative purposes (i.e. reporting a recent increase in trafficking of children and organ removal), counter-trafficking measures in Moldova and in the region, as well as employment and migration related issues.⁸⁴² CPTW also distributes preventive materials regarding the dangers of trafficking and the type of information one should know before agreeing to work overseas.⁸⁴³

The Department of Migration maintains a hotline where Moldovan citizens can receive advice about legal migration and documents that are necessary for working overseas. Hotline operators also provide information regarding legitimate vs. illegitimate job offers and issues related to employment contracts.⁸⁴⁴ The Department of Migration has also held seminars regarding the dangers of illegal migration overseas but not necessarily focusing on trafficking in persons. Such efforts are limited by the fact that the state does not provide a separate budget for prevention measures. In the opinion of representatives from the Department of Migration, more needs to be done in the area of prevention.⁸⁴⁵

One interviewee indicated that starting on September 1, 2005, a mandatory class entitled “Deprinderi de Viata” (“Life Skills”) will be included in the school curriculum for grades 1-12. The course will be a permanent component of the curriculum and will include a chapter on the dangers of trafficking in persons. The Global Fund (not the Moldovan government) will cover the costs associated with “Deprinderi de Viata.”⁸⁴⁶ This course will be an improvement in comparison to the current ad hoc classes that target students in the 10th and 11th grade (16 to 19 years of age). The representative from La Strada indicated that most returning trafficked victims have a 9th grade education.⁸⁴⁷

Cooperation with NGOs, Other Organizations, and Elements of Civil Society

As noted above international organizations and NGOs fund and implement the majority of the preventive measures in Moldova. Interviewees indicated that government officials participate in the various activities of the NGOs by giving speeches during information campaigns, attending seminars, and helping distribute anti-trafficking information. However, the Moldovan government does not provide funding for prevention efforts.⁸⁴⁸

⁸⁴² See Buletin Informativ at Centrului de Prevenire a Traficului de Femei [Information Bulletin of the Center for the Prevention of Trafficking in Women], at http://www.antitraffic.md/materials/bulletins/information_bulletin_cptf/.

⁸⁴³ See Brosura Traficul de Femei: Ce Trebuie sa Stii [Trafficking in Women Pamphlet: What You Must Know], at http://www.antitraffic.md/materials/booklets/ce_trebuie_sa_stii/.

⁸⁴⁴ Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁸⁴⁵ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁸⁴⁶ See Interview with Nadeja Velicico, Child Protection Division, Ministry of Education (Sept. 22, 2004).

⁸⁴⁷ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion “La Strada” (Sept. 28, 2004).

⁸⁴⁸ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

Root Causes

The main cause of the trafficking phenomenon in Moldova is poverty. According to IOM's statistics, an average of 81% of trafficked persons (who they interviewed) went abroad in order to secure a job.⁸⁴⁹ 52% of the individuals who were trafficked came from poor families and 22% came from very poor families.⁸⁵⁰ According to the World Bank, the poor and very poor in Moldova earn less than 202 Lei (\$17) per month. These numbers are based on interviews with 1140 trafficked victims who returned to Moldova during 2001-2003. IOM qualifies these statistics with the following statement:

Traffickers continue to target the young and the poor, and overwhelmingly girls and women. The vast majority of the target group earns less than \$1 a day and lack high school or university education. Consistently, the traffickers capitalize on economic desperation and unstable family situations, with the vast majority of those trafficked reporting that they suffer from domestic violence before going abroad.⁸⁵¹

The government responded to the drastic economic conditions in Moldova by developing an anti-poverty strategy.⁸⁵² While this strategy exists on paper, interviewees indicated that very little is actually being done to identify vulnerable individuals, develop standards, create jobs, spur development, and provide viable economic opportunities.⁸⁵³ One interviewee pointed out that there are several susceptible groups who are not properly aided by the government's existing anti-poverty strategy. For example, orphans must leave the premises of state-run orphanages at the age of 16. They cannot formally join the workforce on a full-time basis until the age of 18, but they are eligible to sign part-time contracts. Thus, between the ages of 16 and 18, orphaned children are vulnerable to traffickers. Furthermore, single mothers with children are eligible to receive state assistance in the amount of 54 Lei (\$5) per month if they can prove that their total monthly income is 36 Lei (\$3) or less. Mothers of handicapped children are entitled to receive state assistance in the amount of 64 Lei (\$5.41) per month, if they can prove that their total monthly income is 36 Lei (\$3) or less.⁸⁵⁴ These figures are well below the lowest income in Moldova, which is 202 Lei (\$17) per month and which "allows bear subsistence, including a diet of 2,100 calories per day and a few additional commodities, such as soap, shampoo or the occasional purchase of a shirt or shoes."⁸⁵⁵

Another factor that prompted trafficking activities in Moldova was the government's delayed response to illegal migration. One interviewee indicated that Moldovan officials began addressing the issue of illegal migration in 1994. Before that time, leaving Moldova legally was costly (\$1,500 to \$2,500 per person) and traffickers provided individuals with "cheaper" alternatives, thus, coercing them into exploitation.⁸⁵⁶

⁸⁴⁹ See IOM Statistics, *supra* note 2.

⁸⁵⁰ See *id.*

⁸⁵¹ See *id.*

⁸⁵² See Anti-Poverty Plan, *supra* note 18.

⁸⁵³ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸⁵⁴ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁸⁵⁵ See IOM Statistics, *supra* note 2.

⁸⁵⁶ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

Some of the interviewees also identified gender inequality and domestic violence as factors that make women vulnerable to traffickers. One interviewee pointed out that there are gender sensitivity trainings in the workplace but, in reality, women are still treated unequally.⁸⁵⁷ Furthermore, there are certain professions that are considered to be well suited for women, such as teaching and nursing, but the salaries are much lower than for male oriented professions.⁸⁵⁸ Another interviewee indicated that potential victims come from families plagued by alcoholism, sexual abuse, and domestic violence.⁸⁵⁹ IOM's position is that trafficking not only has economic roots but also psychological roots estimating that 90% of victims experience domestic violence before they go abroad. There is a parliamentary commission on domestic violence that is currently working on drafting legislation but its activity is limited.⁸⁶⁰

A few interviewees indicated that there are some causes that the government still needs to address such as the potential for armed conflict in Transnistria and the overall security of Moldova's borders.⁸⁶¹ One interviewee mentioned that persons in Transnistria are currently even more vulnerable to being trafficked since they do not have access to IOM's free hotline, prevention materials, or any other assistance. Recently, she noticed an increase in the number of women who are being trafficked from Transnistria.⁸⁶²

Demand

As mentioned above, Moldova is primarily a country of origin for victims of trafficking and is not necessarily responsible for addressing the issue of demand. However, Moldovan officials have reached out to authorities in destination countries and asked them to address the problem of demand.⁸⁶³

⁸⁵⁷ See Interview with Ludmila Timofte, Senior Specialist, Direction for Education, Youth and Sports in Sipoteni, Moldova (Oct. 04, 2004).

⁸⁵⁸ See Interview with Natalia Lazareva, Representative of NGO in Gagauzia, Moldova (December 2004).

⁸⁵⁹ See Interview with Jana Costachi, National Project Coordinator, International Labour Organization (Oct. 05-06, 2004).

⁸⁶⁰ See Interview with Olga Colomeet, Counter-Trafficking Coordinator, International Organization for Migration (Oct. 07, 2004).

⁸⁶¹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸⁶² See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁸⁶³ See Interview with Allan Freedman, Deputy Chief of Mission, International Organization for Migration (Sept. 23, 2004).

Article 10: Information Exchange and Training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Recommendations:

- Amend the draft anti-trafficking law to include more specific measures mirroring the requirements delineated in Article 10(1) of the Trafficking Protocol. Article 10(1) obligates states to cooperate in order to identify the trafficked and their traffickers, the travel documents used, and trafficking patterns of organized criminal groups and others.
- Amend Article 34 of the draft anti-trafficking law in order to explicitly empower Moldovan officials to place restrictions upon data or information exchanged for the purposes of trans-border trafficking investigations. Thus, they will be able to better protect the privacy and identify of trafficked victims or other implicated persons.
- Increase the number of bilateral and multilateral agreements in order to be able to better anticipate and prevent traffickers from furthering their illicit goals across Moldova's borders. The agreements should seek to establish a continuous exchange of information and evidence between Moldovan officials and authorities in countries of transit and destination.
- Establish a common databank with other countries in order to facilitate the exchange of information and evidence related to trafficking cases across borders.

De Jure Compliance:

Upholding the Rights of Individuals

One of the main concerns behind the various measures for identifying victims and their traffickers at international borders required by Article 10(1) of the Trafficking Protocol⁸⁶⁴ is whether such measures respect the rights of individuals. Such rights, although not delineated in Article 10 of the Protocol,⁸⁶⁵ include freedom of movement, the right not be discriminated against, and the right to privacy.

Moldova's Criminal Procedure Code ensures such rights during all stages of criminal proceedings. Article 10(1) requires all officials and parties involved in a criminal case to respect basic rights, freedoms, and human dignity.⁸⁶⁶ Thus, if a trafficker is identified and captured at Moldova's borders, his/her rights are guaranteed throughout the investigation, trial, sentencing hearing, and any other related procedure. Any victim that agrees to testify is also entitled to the same protection. Article 10(4) of the code indicates that *any person* can defend his/her rights, freedoms, and dignity if they have been prejudiced or limited in any way during criminal proceedings.⁸⁶⁷

The draft anti-trafficking law focuses more on the rights of trafficked victims. The law generally states that when undertaking any measure to combat trafficking, officials must respect the fundamental rights and freedoms of human beings,⁸⁶⁸ not discriminate against anyone,⁸⁶⁹ and ensure the safety and equitable treatment of trafficked victims.⁸⁷⁰ More specifically, Article 5 of the draft law indicates that when protecting victims, especially, officials are not to discriminate on the basis of gender, race, color, language, religion, political opinion, other type of opinion, social or national origin, ethnicity, or any other status.⁸⁷¹ Thus, when a trafficked victim is identified at Moldova's borders, his/her rights will automatically be protected (once the draft law comes into effect).

Cooperation and Information Exchange/Identification

The Anti-Trafficking National Plan of Action calls for international cooperation and information exchange with other states in order to pursue traffickers who are crossing Moldova's borders and to protect the individuals who are being trafficked.⁸⁷² The draft anti-trafficking law specifically tasks the Department of Border Guards to undertake measures in order to prevent, detect, and stop traffickers from attempting to cross Moldova's borders and victims from either legally or illegally crossing the borders.⁸⁷³ These provisions broadly govern border crossings

⁸⁶⁴ See Trafficking Protocol, *supra* note 10, art. 10(1).

⁸⁶⁵ See *id.* art. 10.

⁸⁶⁶ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] art. 10(1) (Mold.).

⁸⁶⁷ See *id.* art. 10(4).

⁸⁶⁸ See Draft Anti-Trafficking Law, *supra* note 21, art. 4(1).

⁸⁶⁹ See *id.* art. 4(5).

⁸⁷⁰ See *id.* art. 4(7).

⁸⁷¹ See *id.* art. 5.

⁸⁷² See Anti-Trafficking National Plan of Action, *supra* note 8.

⁸⁷³ See Draft Anti-Trafficking Law, *supra* note 21, art. 10(3).

and do not quite comply with the specific requirements of Article 10(1) of the Trafficking Protocol that obligate states to cooperate in order to identify

- the trafficked and their traffickers
- the travel documents used
- trafficking patterns of organized criminal groups and other smaller-scale operations.⁸⁷⁴

While imposing general obligations, neither the existing Anti-Trafficking National Plan of Action nor the draft anti-trafficking law clarifies how Moldovan officials are to cooperate with authorities in other countries in order to prevent trafficking at Moldova's borders. Article 10(1) of the Protocol calls for detailed measures and such measures are not evidenced in Moldova's current plan or draft anti-trafficking legislation. Perhaps the draft law should be revisited in order to include more detailed provisions.

Training

The Anti-Trafficking National Plan of Action delineates several types of trainings for Moldovan officials. The plan calls for training seminars for welfare agents, labor force services, healthcare employees, and teachers such that they can learn how to cooperate with the judiciary in order to effectively combat trafficking.⁸⁷⁵ The plan also calls for training programs aimed at improving the cooperation between public officials working on the trafficking issue and NGOs.⁸⁷⁶

The draft anti-trafficking law creates a legal obligation to conduct the trainings proposed in the plan above. Article 14(1) of the draft law indicates that the state is to ensure professional training and instruction for law enforcement officials, immigration officials, and other authorities such that they can learn how to prevent and combat trafficking in persons.⁸⁷⁷ The seminars are to train participants in using

- the most advanced criminal investigation techniques in order to pursue cases involving adult and child trafficking
- measures to uphold the rights and interests of trafficked victims
- the most advanced measures for protecting trafficked victims.⁸⁷⁸

Lastly, the draft law emphasizes the importance of including international and regional organizations, NGOs, and other members of civil society in conducting the above trainings and the importance of transnational cooperation with other countries in order to train together.⁸⁷⁹

Moldova's laws already provide for certain criminal investigation techniques that are to be used in the pursuit all offenses (not just trafficking offenses). For example, Articles 109-112 of the Criminal Procedure Code establish special techniques for interviewing witnesses, injured parties, and civil parties involved in criminal cases with an emphasis on protecting their rights.⁸⁸⁰ The 1994 Investigations Law delineates methods for conducting undercover

⁸⁷⁴ See Trafficking Protocol, *supra* note 10, art. 10(1).

⁸⁷⁵ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁸⁷⁶ See *id.*

⁸⁷⁷ See Draft Anti-Trafficking Law, *supra* note 21, art. 14(1).

⁸⁷⁸ See *id.* art. 14(2).

⁸⁷⁹ See *id.* art. 14(3).

⁸⁸⁰ See CRIMINAL PROCEDURE CODE [CRIM. PRO. C.] arts. 109-12 (Mold.).

investigations of criminal matters.⁸⁸¹ The 1994 law also provides for wire-tapping procedures and other means of legally interfering with communications in cases where a person's life, health, or property are in danger.⁸⁸² These and other measures delineated in the 1994 Investigations Law must respect the rights and freedoms of persons implicated in criminal cases.⁸⁸³

Once the draft anti-trafficking law comes into force, it will strengthen existing legal provisions as well as the Anti-Trafficking National Plan of Action and will enable Moldova to better comply with the training requirements delineated in Article 10(2) of the Trafficking Protocol.⁸⁸⁴

Restrictions

Article 10(3) of the Trafficking Protocol indicates that when governments cooperate and exchange information with one another in order to pursue traffickers and identify victims, the country providing the information may limit the manner in which such information is used.⁸⁸⁵ This is mainly done in order to protect the privacy and identity of trafficked victims.

Neither current Moldovan laws nor the draft anti-trafficking law explicitly denote such restrictions in connection with trafficking cases. Article 34 of the draft law designates special law enforcement officers within the Ministry of Internal Affairs and prosecutors within the State's Prosecutor Office to exchange data and information related to trafficking investigations with appropriate authorities in other countries.⁸⁸⁶ This article does not specifically indicate that Moldovan officials are entitled to place restrictions upon the exchanged data or information in order to protect the privacy or identity of victims or other implicated persons.⁸⁸⁷ Perhaps Article 34 of the draft law should be revised in order to better comply with Article 10(3) of the Trafficking Protocol.⁸⁸⁸

De Facto Compliance:

Upholding the Rights of Individuals

It was unclear from the interviews the extent to which Moldovan officials protect the fundamental rights of individuals when exercising preventive measures at the borders (i.e. identifying traffickers and victims etc.). However, interviewees confirmed that respect for human rights as well as sensitization to child and gender issues have been mainstreamed in anti-trafficking trainings. Law enforcement officials, immigration officials, and other authorities who attend such seminars are taught to protect the rights and freedoms of trafficked victims as

⁸⁸¹ See 1994 Investigations Law, *supra* note 132, art. 1(2).

⁸⁸² See *id.* art. 8(2).

⁸⁸³ See *id.* art. 5.

⁸⁸⁴ See Trafficking Protocol, *supra* note 10, art. 10(2).

⁸⁸⁵ See *id.* art. 10(3).

⁸⁸⁶ See Draft Anti-Trafficking Law, *supra* note 21, art. 34.

⁸⁸⁷ See *id.*

⁸⁸⁸ See Trafficking Protocol, *supra* note 10, art. 10(3).

well as the due process rights of apprehended traffickers.⁸⁸⁹ One interviewee noted that increasingly, public authorities have been referring trafficked victims to NGOs for special protection and assistance, thus, indicating that the training seminars are making a difference for those who participate.⁸⁹⁰

Cooperation and Information Exchange/Identification

When asked whether Moldovan officials cooperate and exchange information in order to identify trafficked victims and their traffickers, their travel documentation, and overall trafficking patterns of organized criminal groups or other smaller-scale operations, one interviewee indicated that such cooperation and exchange are weak. That is, given the lack of bilateral and multilateral agreements with many countries, Moldova cannot properly engage in continuous trans-border efforts in order to anticipate and prevent traffickers from furthering their illicit goals. There are some treaties with countries like Macedonia and Serbia, however, they are not sufficient. Furthermore, there are no mechanisms for detecting and pinpointing patterns of the traffickers' activities. Lastly, the interviewee mentioned that there is no common databank with other countries that would facilitate the exchange of information and evidence across borders.⁸⁹¹

Some of the other interviewees indicated that Moldova has joined in cooperative law enforcement efforts through the Southeast European Cooperative Initiative ("SECI"), which is headquartered in Bucharest, Romania, and through Interpol. However, interviewees were not able to provide further details as to the number of times Moldova cooperated with other countries either through SECI, Interpol, or on an independent basis.⁸⁹²

Training

Interviewees stated that law enforcement officers, immigration officials, and other pertinent authorities in Moldova are trained on a regular basis in matters related to trafficking in persons. It should be noted, however, that customs officials are not invited to such trainings. There are mandatory anti-trafficking courses at the Police Academy and recommended professional trainings that occur on a weekly basis within the Ministry of Internal Affairs and in all but 2 provinces in Moldova. The professional training seminars include 2 hours on trafficking. Officials from the Ministry of Internal Affairs, State Prosecutor's Office, and the Ministry of Justice together with representatives from international organizations and NGOs conduct the recommended trainings. The seminars are funded by international organizations (not the Moldovan government).⁸⁹³

The subject matter of the trainings is developed according to the recommendations of the international community and NGOs and includes instruction on:

⁸⁸⁹ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸⁹⁰ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁸⁹¹ See Interview with Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office (Oct. 06, 2004).

⁸⁹² See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸⁹³ See *id.*

- preventive methods
- means for prosecuting traffickers
- measures for protecting the rights of victims
- measures for protecting trafficked victims
- measures for identifying victims and traffickers.⁸⁹⁴

One interviewee pointed out that seminar participants (in particular law enforcement officers) are already trained in general criminal investigation techniques such as evidence gathering, crime scene preservation, undercover techniques, wire-tapping, securing, evaluating and disseminating intelligence, arrest procedures, search and seizure procedures, witness protection, interview techniques, and record keeping. All of these procedures are taught at the Police Academy and are not necessarily rehashed in seminars focused on trafficking issues.⁸⁹⁵

When asked whether it is common for trainees to be sensitized to human rights as well as to child and gender issues, the interviewees indicated that international organizations and NGOs have mainstreamed such notions into the subject matter of the seminars. Participants also receive information on organizations that can assist trafficked victims and are made aware of the fact that IOM has established a shelter for trafficked victims in Chisinau.⁸⁹⁶

The representative from La Strada, who is directly involved in the above-mentioned training seminars, expressed certain concerns. She indicated that lately the number of participants has dwindled. Furthermore, she mentioned that there is a high-turn over rate among law enforcement officers and other authorities who deal with trafficking on a daily basis. Thus, information is not being passed down to new employees and trainers have to start from zero with them.⁸⁹⁷

It should be noted that in addition to the above trainings that target law enforcement officers and others that are likely to come into direct, initial contact with victims and their traffickers, there are also trainings for judges and prosecutors. International organizations (OSCE, IOM etc.) have conducted general trainings, with a session on trafficking in persons, in Chisinau and in Moldova's other provinces.⁸⁹⁸ La Strada together with CPTW have conducted trainings on pro bono representation and gender sensitization for prosecutors and judges at the Supreme Court's Center for Perfecting Professionals in the Judiciary. The purpose of these seminars was to stress the legal obligation of prosecutors to represent victims of crimes such as trafficking at no cost and to sensitize the audience to certain issues specifically related to the vulnerability of female victims.⁸⁹⁹

⁸⁹⁴ See *id.*

⁸⁹⁵ See Interview with Ghenadie Astrahan, Head of the Operational Unit for the SECI Anti-Trafficking Focal Point in Moldova, Ministry of Internal Affairs (Sept. 23, 2004).

⁸⁹⁶ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁸⁹⁷ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

⁸⁹⁸ See Interview with Otilia Bologan-Vieru, Legal Assistant, & Tatiana Cojocaru, Legal Assistant, The Organization for Security and Co-operation in Europe Mission in Moldova (Oct. 07, 2004).

⁸⁹⁹ See Interview with Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada" (Sept. 28, 2004).

Restrictions

When asked whether, in practice, Moldovan officials place any restrictions on the use of information exchanged for the purposes of a trans-border trafficking investigation or other preventive measures, one interviewee indicated that the identity of victims is kept secret. Furthermore, any information about the traffickers themselves is not divulged until a formal investigation is opened. Various officials within the Ministry of Internal Affairs and the State Prosecutor's Office authorize such restrictions.⁹⁰⁰

⁹⁰⁰ See Interview with Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs (Sept. 25, 2004).

Article 11: Border Measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Recommendations:

- Amend Article 13 of the draft anti-trafficking law and define the term “international transport agencies and entities.”
- Amend Article 13 of the draft anti-trafficking law and include civil, administrative or, if appropriate, criminal sanctions such that international transport agencies and entities will respect their new obligation to verify passenger documentation. Including the appropriate sanctions will enable Moldova to comply with the requirements of Articles 11(3) and 11(4) of the Trafficking Protocol.
- Amend the draft anti-trafficking law to include detailed provisions regarding cooperation between Moldova’s border guard officials and border guard officials in transit and destination countries. Such provisions should seek to establish direct channels of communication and other specific measures in order to identify traffickers and their victims, as well as to protect and assist the victims.
- Improve border security measures, at *all* checkpoints, such that border guards can better identify traffickers and their victims.
- Equip Moldovan border guards, at *all* checkpoints, with the proper technology such that they can detect false travel and identification documents.

De Jure Compliance:

Border Controls

Moldova's Law on Migration requires "[c]entral public governance bodies, within their competence in the area of migration"⁹⁰¹ to, *inter alia*, "suppress illegal migration and trafficking in human beings and take measures aimed at preventing them"⁹⁰² and to "identify persons connected to . . . trafficking in human beings . . . and take measures prohibiting their entrance or deport such people from the country."⁹⁰³ More specifically, public entities are to "ensure control over the state border check-points, and ensure registration of persons who cross the state border."⁹⁰⁴ Pertinent officials are also required to enter data on persons who cross Moldova's borders into the new integrated national information system,⁹⁰⁵ which will be discussed in greater detail in the analysis of Articles 12 and 13 of the Trafficking Protocol below. The Law on Migration dictates that all border safety measures must respect fundamental human rights and freedoms stipulated in the Moldovan Constitution, pertinent normative acts, and international treaties to which Moldova is a State Party.⁹⁰⁶

The draft anti-trafficking law also emphasizes respect for fundamental human rights and freedoms⁹⁰⁷ and clarifies exactly what branch of the government is responsible for preventive measures at the state's borders. Article 10(1)(3) of the draft law indicates that the Department of Border Guards will be required to develop and implement measures in order to prevent, detect, and stop traffickers from attempting to cross Moldova's borders and victims from either legally or illegally crossing the borders.⁹⁰⁸ Furthermore, the draft law obligates the Ministry of External Affairs, Information and Security Service, Department of Border Guards, and Department of Migration to deny access to foreign citizens and stateless persons who are suspected of engaging in trafficking activities.⁹⁰⁹

Thus, when the draft anti-trafficking law comes into effect, it will supplement already existing legal obligations to secure Moldova's borders and prevent trafficking activities. Consequently, Moldova will be able to better comply with Article 11(1) of the Trafficking Protocol, which states that "[w]ithout prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons."⁹¹⁰

⁹⁰¹ 2002 Migration Law, *supra* note 715, art. 9(1).

⁹⁰² *Id.* art. 9(1)(d).

⁹⁰³ *Id.* art. 9(1)(f).

⁹⁰⁴ *Id.* art. 9(1)(k).

⁹⁰⁵ *See id.* art. 9(1)(l).

⁹⁰⁶ *See id.* art. 3(a).

⁹⁰⁷ *See* Draft Anti-Trafficking Law, *supra* note 21, art. 4(1).

⁹⁰⁸ *See id.* art. 10(1)(3).

⁹⁰⁹ *See id.* art. 10(1)(2).

⁹¹⁰ *See* Trafficking Protocol, *supra* note 10, art. 11(1).

Commercial Carriers

Current Moldovan law does not impose any legal obligation upon commercial carriers with respect to the specific scenario of trafficking in persons. The draft anti-trafficking law will require international transport agencies and entities to verify whether passengers possess the identification documents required to enter a transit or destination country.⁹¹¹ Such verification is to occur when tickets are issued.⁹¹² The draft law does not exactly define what the term “international transport agencies and entities” entails but it will enable Moldova to better comply with Article 11(2)⁹¹³ and, at a minimum, with Article 11(3) of the Trafficking Protocol which requires States Parties to establish an “obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into [a] receiving State.”⁹¹⁴

Sanctions

The draft anti-trafficking law, while imposing an obligation upon international transport agencies and entities to verify passenger documentation, does not delineate the sanctions that will apply if this obligation is breached.⁹¹⁵ The draft law should be reviewed and civil, administrative or, if appropriate, criminal sanctions should be included in order to hold such agencies and entities responsible and, thus, comply with Article 11(4) of the Trafficking Protocol.⁹¹⁶

Denial of Entry and Visa Revocation

As mentioned above, Moldova’s existing Law on Migration requires pertinent state officials to “identify persons connected to . . . trafficking in human beings . . . and take measures prohibiting their entrance or deport such people from the country.”⁹¹⁷

The draft anti-trafficking law goes into more detail and obligates the Ministry of External Affairs, the Information and Security Service, the Department of Border Guards, and the Department of Migration to deny access to foreign citizens and stateless persons if they have information that such persons are suspected of engaging in trafficking activities.⁹¹⁸ Article 30(4) of the draft law indicates further that any persons implicated in trafficking will be refused entry on Moldovan territory or their visas will be revoked.⁹¹⁹

Thus, when the draft anti-trafficking law comes into effect, it will complement already existing laws and enable Moldova to better comply with Article 11(5) of the Trafficking Protocol which

⁹¹¹ See Draft Anti-Trafficking Law, *supra* note 21, art. 13.

⁹¹² See *id.*

⁹¹³ See Trafficking Protocol, *supra* note 10, art. 11(2).

⁹¹⁴ See *id.* art. 11(3).

⁹¹⁵ See Draft Anti-Trafficking Law, *supra* note 21, art. 13.

⁹¹⁶ See Trafficking Protocol, *supra* note 10, art. 11(4).

⁹¹⁷ 2002 Migration Law, *supra* note 715, art. 9(1)(f).

⁹¹⁸ See Draft Anti-Trafficking Law, *supra* note 21, art. 10(1)(2).

⁹¹⁹ See *id.* art. 30(4).

recommends that States Parties take measures to deny entry to or revoke the visas of individuals suspected of trafficking.⁹²⁰

Cooperation

The Anti-Trafficking National Plan of Action generally requests that Moldova negotiate bilateral and multilateral agreements with countries of destination, or, at least, memorandums between counterpart ministries, in order to prevent and combat trafficking and ensure the return of the trafficked persons.⁹²¹

The draft anti-trafficking law affirms such international cooperation⁹²² and designates liaison officers within the Ministry of Internal Affairs and the State Prosecutor's Office who are to directly communicate with law enforcement officials and prosecutors in other countries in order to detect traffickers, coordinate criminal investigations of traffickers, as well as protect and assist trafficked victims throughout criminal proceedings.⁹²³ The same personnel is tasked to oversee the exchange of data and information (i.e. evidence) for the purposes of trafficking investigations.⁹²⁴ Thus, if these provisions come into force, Moldova will be able to comply with the requirements of Article 27 of the Transnational Organized Crime Convention, which outline law enforcement cooperation.⁹²⁵

None of the existing or proposed laws in Moldova delineate the same sort of close cooperation on trafficking matters between Moldovan border guards and border guards in other countries. The 2002 Law on Migration empowers the Department of Migration to draft international agreements regarding migration matters, however, the law does not call for cooperative efforts specifically related to trafficking and does not implicate the Department of Border Guards in such cooperation.⁹²⁶ Consequently, Moldova does not comply with Article 11(6) of the Trafficking Protocol, which encourages States Parties "to consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication."⁹²⁷ Perhaps, the draft anti-trafficking law should be revised to include detailed provisions on border guard cooperation in trafficking matters.

De Facto Compliance:

Border Controls

IOM reports that presently a total of 1200 officers guard Moldova's borders.⁹²⁸ A representative from the Department of Border Guards indicated that traffickers use all of

⁹²⁰ See Trafficking Protocol, *supra* note 10, art. 11(5).

⁹²¹ See Anti-Trafficking National Plan of Action, *supra* note 8.

⁹²² See Draft Anti-Trafficking Law, *supra* note 21, art. 33.

⁹²³ See *id.* art. 34(1).

⁹²⁴ See *id.* art. 34(2).

⁹²⁵ See Transnational Organized Crime Convention, *supra* note 15, art. 27.

⁹²⁶ See 2002 Migration Law, *supra* note 715, art. 8(2)(g).

⁹²⁷ See Trafficking Protocol, *supra* note 10, art. 11(6).

⁹²⁸ See International Organization for Migration, Safer Borders: Border Management Program in Leuseni.

Moldova's border checkpoints to transport their victims overseas or to traffic victims into Moldova. The circumstances under which Moldova's current borders were formed perpetuate the trafficking phenomenon. The interviewee explained that when Moldova was part of the Soviet Union, there was no official eastern border with Ukraine. There was only a western border with Romania. The checkpoints along the western border are numerous and well equipped. In 1991, an official border was established with Ukraine. However, checkpoints are not as numerous on the eastern border as on the western border and they are less equipped. Furthermore, it is difficult to monitor traffickers as they cross Moldova's natural border, or "green border," with Romania demarcated by the Prut River in the west. Lastly, Moldovan officials have no control over their country's border with Transnistria.⁹²⁹

Trafficking patterns vary depending on the strengths of the above checkpoints. In 2004, the Department of Border Guards retained 7 or 8 victims who were being trafficked out of Moldova and were found without the proper travel documentation. The victims were detained at the airport in Chisinau as well as in various towns: Leuseni, Sculeni, Costesti, and Palanca. Palanca is a town in Moldova on the trafficking route to Russia. The interviewee noted that there is also a general pattern whereby Moldovan victims travel with their own national passports to Romania, where they are entitled to enter without a visa. From Romania, traffickers give the victims false passports or place a falsified visa in their original passports and send them to other countries. Thus, there are not that many cases where victims leave Moldova with false passports. From a border guard's perspective, who is checking documentation, victims leave Moldova legally. The interviewee also indicated that, increasingly, there are victims being trafficked into Moldova from Ukraine. Groups from Odessa are brought through Transnistria and across weaker border checkpoints with Ukraine.⁹³⁰

When faced with a trafficking case, the usual procedure undertaken by Moldova border guards is as follows:

- border guards establish that there is a possible case of trafficking in persons
- border guards inform law enforcement officials
- until law enforcement officials arrive, victims are detained at the border
- law enforcement officials formally take over the case and begin their investigation by arresting the traffickers, confiscating their vehicles and other goods used in the commission of the crime, etc.

If trafficked victims are found to carry false passports, they are transferred to the Operative Unit of the Department of Border Guards.⁹³¹ Members of the Customs Department, who are in charge of checking goods and money transported across borders, inform border guards of persons traveling overseas without funds or of confiscated parcels containing suspicious items (i.e. bag full of false passports etc.).⁹³²

When asked about the efficiency of the border control procedures described above, the answers were mixed. Some of the interviewees were of the opinion that border guards are well trained,

⁹²⁹ See Interview with Adrian Manzatu, Head of Border Protection Division, Department of Border Guards (Sept. 29, 2004).

⁹³⁰ See *id.*

⁹³¹ See *id.*

⁹³² See Interview with Grigore Ciubuc, Head of Prosecutorial Division, and Alexandru Vdovii, Specialist from the Prosecutorial Division, Customs Department (Oct. 05, 2004).

able to identify trafficked victims, and have developed an expertise in detecting false passports. However, as noted above, there are not that many victims who travel out of Moldova with false documentation. Other interviewees pointed out that there are no established identification procedures for victims and that Moldovan border guards do not have the requisite technology to detect false documentation. In fact, at Moldova's natural borders, no such technology is used. IOM together with the US Embassy in Moldova donated funds to renovate a center in Ungheni where border guards undergo training, however, according to one interviewee, such efforts are only a beginning and more needs to be done.⁹³³

Some of the interviewees noted that existing border security measures have been tightened in order to prevent trafficking activities. In their opinion such measures are applied equally and without violating fundamental rights, such as the free movement of people. Other interviewees disagreed and indicated that there were instances where the rights and freedoms of individuals have been violated.⁹³⁴

There were some cases where Moldovan border guards were implicated in trafficking activities. Such individuals were removed from their posts but they were not prosecuted for their illicit involvement.⁹³⁵

Commercial Carriers

As mentioned above, currently, Moldovan laws do not impose any legal obligation upon commercial carriers (airplanes, trains etc.) in connection with trafficking in persons. Thus, in practice, commercial carriers do not undertake any measures to prevent trafficking, check passengers who are suspected of being victims, or notify passengers, in general, of the dangers of trafficking.⁹³⁶

Sanctions

Since there are no obligations delineated in Moldovan law for commercial carriers in connection with the trafficking phenomenon, no corresponding sanctions are imposed.⁹³⁷

Denial of Entry and Visa Revocation

When foreign citizens or stateless persons are suspected of trafficking in persons across Moldova's borders, Interpol and other law enforcement units track their activities and notify border control officials in order for them not to issue visas to the suspected traffickers. Interviewees were not able to provide concrete figures as to the number of times traffickers were denied entry into Moldova or the number of times their visas were revoked subsequent to

⁹³³ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

⁹³⁴ See *id.*

⁹³⁵ See *id.*

⁹³⁶ See *id.*

⁹³⁷ See *id.*

entry. Furthermore, interviewees could not indicate whether it was easy for traffickers to illicitly obtain entry visas into Moldova.⁹³⁸

Cooperation

While representatives from the Ministry of Internal Affairs and Interpol indicated that a certain level of cooperation occurs between Moldova's law enforcement officers and law enforcement officers in other countries,⁹³⁹ one interviewee stressed that the existing cooperative efforts are not sufficient. He indicated that police officers solely cooperate under the auspices of rogatory commissions in order to exchange information and evidence for the purposes specific trafficking cases. Such rogatory commissions occur on an ad hoc basis and there is no continuous cooperation to combat trafficking across borders otherwise. Furthermore, there is no exchange of law enforcement personnel, such as experts or liaison officers, between Moldova and other states. Moldovan police officers and prosecutors visited other countries to study means of addressing the trafficking phenomenon but there is no continuous trans-border communication regarding specifics such as the patterns of organized criminal groups and other traffickers. Thus far, Moldovan officers have not coordinated efforts with their counterparts in other countries for early detection of trafficking offenses. Combating trafficking through the use of modern technology (computers, telecommunications networks etc.) is a novelty, but it is rarely practiced. Lastly, Moldova has not established any direct channels of communication between its border guards and border guards in other countries.⁹⁴⁰ IOM recently established a "Border Improvement Initiative," which seeks to facilitate cooperation among border control units in Moldova with units from neighboring countries and simulate the improvement of border guard standards. The initiative is funded through a coalition of states and other donors (not by the Moldovan government).⁹⁴¹

⁹³⁸ *See id.*

⁹³⁹ *See* Interview with Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs (Sept. 25, 2004); *see also* Interview with Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs (Oct. 01, 2004).

⁹⁴⁰ *See* Eugen Rusu, Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁹⁴¹ *See* International Organization for Migration, Safer Borders: Border Management Program in Leuseni.

Article 12: Security and Control of Documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Recommendations:

- Increase the existing security measures for passports and identity documents by establishing a biometric screening system, introducing digitized fingerprints in passports, and creating the ability to analyze the signature of the holder.
- Participate in the aviation security measures of the International Civil Aviation Organization (“ICAO”).

De Jure Compliance:

Quality of Travel and Identity Documents

Moldova’s Law Concerning Identity Documents from the National Passport System of 1994 (“1994 Identity Documents Law”) outlines the criteria for passports, national identity cards, residence permits, and travel documents for Moldovan citizens, foreign citizens, refugees, and stateless persons.⁹⁴² This summary solely focuses on passports and national identity cards of Moldovan citizens, however, the reader should note that the law delineates security and control measures for the rest of the above enumerated documents as well.

The 1994 Identity Documents Law indicates that Moldovan citizens need passports in order to travel to countries other than the Newly Independent States (“NIS”) and to return to Moldova.⁹⁴³ The law further indicates that Moldovan citizens can travel to NIS countries and return to Moldova solely based on their national identity cards.⁹⁴⁴ Passports and national identity cards are defined generally as identity documents.⁹⁴⁵

The 1994 Identity Documents Law outlines certain measures to ensure the quality of passports such that they cannot be misused, falsified, or unlawfully altered, replicated, or issued by perpetrators like traffickers. For example, the law dictates that each passport is to be designated

⁹⁴² See generally *Legea Republicii Moldova Privind Actele de Identitate din Sistemul National de Pasapoarte* [Law of the Republic of Moldova Concerning Identity Documents from the National Passport System], No. 273-XIII, Nov. 09, 1994 [hereinafter 1994 Identity Documents Law].

⁹⁴³ See *id.* art. 2(1); see also Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁹⁴⁴ See 1994 Identity Documents Law, *supra* note 942, art. 3(1); see also Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁹⁴⁵ See 1994 Identity Documents Law, *supra* note 942, art. 1(1).

a number, which is part of a series,⁹⁴⁶ and is to reference the code of the issuing state (i.e. Moldova).⁹⁴⁷ Passports are also to contain a photograph of the holder,⁹⁴⁸ his/her name,⁹⁴⁹ signature,⁹⁵⁰ nationality,⁹⁵¹ identification number,⁹⁵² and pertinent bio-data such as the date of birth,⁹⁵³ place of birth,⁹⁵⁴ gender,⁹⁵⁵ and blood type.⁹⁵⁶

The 1994 law also seeks to ensure the quality of national identity cards by requiring that they contain a photograph of the holder,⁹⁵⁷ his/her name,⁹⁵⁸ signature,⁹⁵⁹ nationality,⁹⁶⁰ identification number,⁹⁶¹ and pertinent bio-data such as the date of birth,⁹⁶² place of birth,⁹⁶³ gender,⁹⁶⁴ blood type,⁹⁶⁵ height,⁹⁶⁶ and eye color.⁹⁶⁷ More details related to national identity cards are included in the 1995 Decision of the Government of the Republic of Moldova Regarding Supplementary Measures for Establishing a National Passport System.⁹⁶⁸

The above legislative measures comply with the minimum requirements of Article 12(a) of the Trafficking Protocol.⁹⁶⁹ That is, on paper, Moldova sets forth certain criteria that seek to prevent the misuse, falsification, and unlawful alteration, replication or issuance of travel and identity documents.⁹⁷⁰

Integrity and Security of Travel and Identity Documents

The Department of Information Technologies is the central government entity that issues passports and oversees the origination of all other types of identity documents in Moldova.⁹⁷¹ The Department was established as a result of a government decision in 2001.⁹⁷²

⁹⁴⁶ See *id.* art. 2(7)(a).

⁹⁴⁷ See *id.* art. 2(7)(c).

⁹⁴⁸ See *id.* art. 2(7)(e).

⁹⁴⁹ See *id.* arts. 2(7)(g), 2(7)(h).

⁹⁵⁰ See *id.* art. 2(7)(f).

⁹⁵¹ See *id.* art. 2(7)(i).

⁹⁵² See *id.* art. 2(7)(k).

⁹⁵³ See *id.* art. 2(7)(j).

⁹⁵⁴ See *id.* art. 2(7)(m).

⁹⁵⁵ See *id.* art. 2(7)(l).

⁹⁵⁶ See *id.* art. 2(7)(r).

⁹⁵⁷ See *id.* art. 3(5)(e).

⁹⁵⁸ See *id.* arts. 3(5)(g), 3(5)(h).

⁹⁵⁹ See *id.* art. 3(5)(f).

⁹⁶⁰ See *id.* art. 3(5)(i).

⁹⁶¹ See *id.* art. 3(5)(k).

⁹⁶² See *id.* art. 3(5)(j).

⁹⁶³ See *id.* art. 3(5)(m).

⁹⁶⁴ See *id.* art. 3(5)(l).

⁹⁶⁵ See *id.* art. 3(5)(s).

⁹⁶⁶ See *id.*

⁹⁶⁷ See *id.*

⁹⁶⁸ See generally Hotarirea Guvernului Republicii Moldova cu Privire la Masurile Suplimentare de Realizare a Sistemului National de Pasapoarte [Decision of the Government of the Republic of Moldova Regarding Supplementary Measures for Establishing a National Passport System], No. 376, Jun. 06, 1995, available at http://www.registru.md/act_md/.

⁹⁶⁹ See Trafficking Protocol, *supra* note 10, art. 12(a).

⁹⁷⁰ See *id.*

⁹⁷¹ See Legea Republicii Moldova cu Privire la Informatizare si la Resursele Informationale de Stat [Law of the Republic of Moldova Regarding Computerization and State Information Resources], art. 25, No. 467-XV, Nov. 21, 2003, available at

Upon issuance, documents are registered in an integrated national information system, or “National Population Register.” The government established the National Population Register in 2002 as the only source of personal data of individuals for all administrative bodies in Moldova.⁹⁷³ Article 13(1) of the Law Regarding Computerization and State Information Resources (“2003 Information Law”) indicates that the National Population Register is an automated system that integrates information about Moldovan citizens who are living in Moldova and overseas, as well as foreign citizens and stateless persons permanently or temporarily residing in Moldova.⁹⁷⁴ Article 13(2) explains that the purpose of the National Population Register is to collect, store, implement, and analyze information about physical persons including their personal data.⁹⁷⁵ Currently, Moldovan border guards and other officials checking passports and other documents can scan them through a computer connecting immediately to the National Population Register and, thus, confirming their validity.⁹⁷⁶

Article 10(1) of the 2003 Information Law imposes an affirmative obligation upon public administration officials to ensure the security of passport and other identification information that is introduced in the National Population Register.⁹⁷⁷ There are also criminal penalties available for those who attempt to forge passports and identification documents. Article 361 of the Criminal Code punishes the creation, detainment, sale, or use of falsified documents with a fine of up to 300 conventional units (currently 1 unit equals circa 20 Lei) or with imprisonment up to 2 years.⁹⁷⁸ The sanctions increase to a fine of 200 to 600 conventional units (currently 1 unit equals circa 20 Lei) or with imprisonment from 1 to 5 years, if the above offense is committed repeatedly, by 2 or more persons, involves a document of high importance, or impedes upon public interests or the rights and interests of physical and legal persons.⁹⁷⁹ The documents referred to in Article 361 are generally defined as documents that allot rights or exempt obligations.⁹⁸⁰ A passport or identity card could be considered to fit this type of documents in Moldova.

Given all of the above legislative efforts, Moldova complies, from a *de jure* perspective, with Article 12(b) of the Trafficking Protocol which requires States Parties “[t]o ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.”⁹⁸¹

http://www.registru.md/legi_md/ [2003 Information Law].

⁹⁷² See Hotarirea Guvernului Republicii Moldova cu Privire la Departamentul Tehnologiei Informationale [Decision of the Government of the Republic of Moldova Regarding the Department of Information Technologies], No. 398, June 06, 2001, available at http://www.registru.md/act_md/.

⁹⁷³ See Hotarirea Guvernului Republicii Moldova Pentru Aprobarea Conceptiei Sistemului Informational Automatizat “Registrul de Stat al Populatiei” si Regulamentului cu Privire la Registrul de Stat al Populatiei [Decision of the Government of the Republic of Moldova for the Approval of the Concept for the Automated Information System “National Population Register” and the Regulation Regarding the National Population Register], No. 333, Mar. 28, 2002, available at http://www.registru.md/act_md/.

⁹⁷⁴ See 2003 Information Law, *supra* note 971, art. 13(1).

⁹⁷⁵ See *id.* art. 13(2).

⁹⁷⁶ See Eugen Rusu, ABA/CEELI Moldova Human Trafficking Assessment Report: De Jure Analysis (Sept. 2004).

⁹⁷⁷ See 2003 Information Law, *supra* note 971, art. 10(1).

⁹⁷⁸ See CRIMINAL CODE [CRIM. C.] art. 361(1) (Mold.).

⁹⁷⁹ See *id.* art. 361(2).

⁹⁸⁰ See *id.* art. 361(1).

⁹⁸¹ See Trafficking Protocol, *supra* note 10, art. 12(b).

De Facto Compliance:

Quality of Travel and Identity Documents

As mentioned above, one of the many responsibilities of the Department of Information Technologies is to plan and ensure the production of all types of identity documents in Moldova (including passports).⁹⁸² Passports, however, are created outside of Moldova at the request of the Department.⁹⁸³ To date, 1,500,399 passports and 3,649,656 identification cards have been issued. The number of falsified documents is low by comparison. Thus far, the Department of Information Technologies found circa 20 passports that were falsified, unlawfully altered, replicated or issued.⁹⁸⁴

Moldovan passports and other identity documents contain certain features to ensure their uniqueness and safety, such as serial numbers, photographs, original signatures, and specific bio-data of the holder. The pictures are not glued onto passports, rather scanned directly onto the first page.⁹⁸⁵ However, some of the interviewees indicated that more security measures need to be undertaken. For example, they suggested that the Moldovan government establish a biometric screening system.⁹⁸⁶ This would entail inserting “biometric identifiers that measure unique physical characteristics, such as facial features, fingerprints, or iris scans, and reduce them to digitized, numerical statements called algorithms” into passports.⁹⁸⁷ The same interviewees suggested introducing digitized fingerprints in passports and creating the ability to analyze the signature of the holder.⁹⁸⁸ The General Director of the Department of Information Technologies indicated that electronic chips, digitized fingerprints, and iris traces will be introduced in Moldovan passports in 2006.⁹⁸⁹

Integrity and Security of Travel and Identity Documents

All passports and identity documents that belong to Moldovan citizens, foreign citizens, and stateless persons who reside in Moldova for a period of 3 months or more are entered in the National Population Register. Thus when border guards or other officials perform their routine checks, in addition to using traditional methods, they can scan the documentation through a computer, which instantaneously checks the information against the National Population Register.⁹⁹⁰

⁹⁸² See Functions of the Department of Information Technologies, at http://www.registru.md/function_dit_md/.

⁹⁸³ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁹⁸⁴ See Interview with Vladimir Molojen, General Director, Department of Information Technologies (Oct. 10, 2004).

⁹⁸⁵ See *id.*

⁹⁸⁶ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁹⁸⁷ THE 9/11 COMMISSION REPORT 386 (2004), available at <http://www.9-11commission.gov/report/index.htm>.

⁹⁸⁸ See Interview with Olga Poalelungi, General Director, and Ion Moraru, General Vice-Director, Department of Migration (Oct. 02, 2004).

⁹⁸⁹ See Interview with Vladimir Molojen, General Director, Department of Information Technologies (Oct. 10, 2004).

⁹⁹⁰ See *id.*

The General Director of the Department of Information Technologies explained some of the details of the National Population Register. The register operates in three languages, Russian, Romanian and English, and contains a record of all existing and expired documentation for each person entered into the system. Thus, if a passport is expired the register automatically evidences this fact and prevents the individual from utilizing the document to cross Moldova's borders. The system also contains information regarding vehicles and business titles and verifies their validity in the same manner. Other personal data includes the jobs that individuals hold, their positions in a particular company, and the overseas partners of that company. Children are introduced into the system at birth. In cases where mothers postpone registration for more than 3 days due to illness or other reasons, local police officers are required to seek out the family and register the children. The register can detect the falsification of passports and identity cards through the removal of pictures. The system also indicates if the holder of the documentation is wanted by authorities by automatically connecting to Interpol's databanks. Each person has a unique identification number, which appears in their national identity card, passport, and other documents such as state tax forms.⁹⁹¹

Such are some of the ways in which the National Population Register seeks to secure passports, identity cards, and other personal data of Moldovan citizens and others. Some interviewees suggested that this system of protection could be fortified if Moldova agrees to participate in the aviation security measures of the International Civil Aviation Organization ("ICAO").⁹⁹² "The international community arrives at international standards for the design of passports through . . . ICAO. The global standard for identification is a digital photograph; fingerprints are optional."⁹⁹³ ICAO also launched a Universal Security Audit Programme in June 2002, which inspects participating states on a regular basis and assists them in securing their aviation system. "The audits identify deficiencies in each State's aviation security system, and provide recommendation for their mitigation or resolution."⁹⁹⁴

⁹⁹¹ *See id.*

⁹⁹² *See generally* International Civil Aviation Organization, at <http://www.icao.int/>.

⁹⁹³ *See* 9/11 COMMISSION REPORT, *supra* note 987, at 389.

⁹⁹⁴ *See* International Civil Aviation Organization: Universal Security Audit Programme ("USAP"), at <http://www.icao.int/icao/en/atb/asa/index.html>.

Article 13: Legitimacy and Validity of Documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

De Jure Compliance:

Legitimacy and Validity of Documents

Article 13 of the Trafficking Protocol indicates that a state can request of another state to verify whether travel and identification documents issued in its name are legitimate and valid.⁹⁹⁵ Article 20(1) of the 1997 Law Regarding Registers requires persons who administer Moldova's recording systems, such as the newly established National Population Register, to provide information on Moldovan citizens and other persons registered in the system upon the formal request of "any person."⁹⁹⁶ This obligation is balanced with the obligation to keep the information introduced into systems, such as the National Population Register, secure.⁹⁹⁷ Consequently, if an official from another state contacts a Moldovan public administration official via authorized channels and requests to verify a passport or identity card that has been recorded in the National Population Register, s/he is obligated to comply within the limits of imposed security measures. In this respect, Moldova complies with the requirement of Article 13 of the Trafficking Protocol.⁹⁹⁸

De Facto Compliance:

Legitimacy and Validity of Documents

The procedure for verifying the legitimacy and validity of passports and identity cards recorded in the National Population Register begins with a formal request through Moldova's embassies to the appropriate officials who administer the system. The request can come from officials of another state or from entities such as Interpol. If a Moldovan embassy exists in the state that is requesting verification, then the procedure is rapid as officials have up to 3 days to respond.⁹⁹⁹ If Moldova does not have diplomatic representation in the requesting state, then the process is delayed.¹⁰⁰⁰

⁹⁹⁵ See Trafficking Protocol, *supra* note 10, art. 13.

⁹⁹⁶ See Legea Republicii Moldova cu Privire la Registre [Law of the Republic of Moldova Regarding Registers], art. 20(1), No. 1320-XIII, Sept. 25, 1997 [hereinafter 1997 Registers Law].

⁹⁹⁷ See 2003 Information Law, *supra* note 971, art. 10(1).

⁹⁹⁸ See Trafficking Protocol, *supra* note 10, art. 13.

⁹⁹⁹ See 1997 Registers Law, *supra* note 996, art. 20(1).

¹⁰⁰⁰ See ABA/CEELI Moldova Human Trafficking Assessment Report: De Facto Interviews (Sept.-Oct. 2004).

APPENDIX 1

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APPENDIX 2

List of Respondents

1. Ghenadie Astrahan, SECI Anti-Trafficking Focal Point, Ministry of Internal Affairs
2. Valentina Bodrug, Director of NGO supported by UNIFEM
3. Otilia Bologan-Vieru, Legal Assistant, OSCE Mission in Moldova
4. Raisa Botezatu, Judge, Penal Collegium, Supreme Court of Justice
5. Grigore Ciubuc, Head of Prosecutorial Division, Customs Department
6. Tatiana Cojocaru, Legal Assistant, OSCE Mission in Moldova
7. Olga Colomeet, Counter-Trafficking Coordinator, IOM Mission in Moldova
8. Jana Costachi, National Project Coordinator, ILO Mission in Moldova
9. Gheorghe Cucos, First Secretary, General Consular Department, Ministry of External Affairs
10. Nicolae Dobos, Head of Special Missions Division, Ministry of Internal Affairs
11. Allan Freedman, Deputy Chief of Mission, IOM Mission in Moldova
12. Lilia Ionita, Director, Order and Justice Division, Legislation Department, Ministry of Justice
13. Natalia Lazareva, affiliated with an NGO in Gagauzia, Moldova
14. Oxana Lipcanu, Project Assistant, ILO/IPEC Mission in Moldova
15. Valentina Litvinov, Director, Interpol, Ministry of Internal Affairs
16. Adrian Manzatu, Head of the Border Protection Division, Department of Border Guards
17. Irina Martiniuc, Director, Civic Initiative (NGO)
18. Ala Mindicanu, President, The National Council of Women of Moldova (NGO)
19. Vladimir Molojen, General Director, Department of Information Technologies
20. Ion Moraru, General Vice-Director, Department of Migration
21. Ion Nedelcov, Head of the Witness Protection Section, Ministry of Internal Affairs
22. Efim Obreja, Transparency International Moldova
23. Olga Poalelungi, General Director, Department of Migration
24. Lidia Pogrebnyaya, Head of the Division on General Child Issues and Gender Equality, Ministry of Labor and Social Protection
25. Lidia Popescu, Director, "Daruire" (charity association)
26. Galina Precup, Director, National Center for Studies and Information for Women's Issues (NGO)
27. Mariana Prodan, Manager, Save the Children Mission in Moldova
28. Sergiu Purcica, Head of the Analytical Section, Division for Combating Trafficking in Persons, General Division for Combating Organized Crime, Ministry of Internal Affairs
29. Eugen Rusu, Head of the Division on Ecology and Juveniles, State Prosecutor's Office
30. Viorelia Rusu, Social Assistance Manager, International Center for Women Rights Protection and Promotion "La Strada"
31. Vladimir Soltanici, Head of the Documentation Division, Department of Information Technologies
32. Liliana Sorrentino, Officer on Anti-Trafficking Issues, OSCE Mission in Moldova
33. Nina Stratulat, Head of the Social, Humanitarian and Interethnic Division, Chisinau Town Hall
34. Ludmila Timofte, Senior Specialist, Direction for Education, Youth, and Sports (Sipoteni)
35. Alexandru Vdovii, Specialist from the Prosecutorial Division, Customs Department
36. Nadeja Velicico, Child Protection Division, Ministry of Education
37. Ion Vizdoaga, Director, Center for the Prevention of Trafficking in Women (NGO)

38. Angelina Zaporozhan, Anti-Trafficking Projects Coordinator, UNICEF Mission in Moldova

APPENDIX 3

Complete List of Recommendations

Article 1:

- The Moldovan government should cover all costs related to witness protection.
- Augment the financial and technological capabilities of the Witness Protection Section at the Ministry of Internal Affairs, which currently protects witnesses in all criminal cases, by increasing and stabilizing its budget as well as providing security cameras, telephones, and other equipment.
- Create a special government unit that specifically focuses on the physical protection of trafficked victims and their families and establish concrete long-term procedures for such a unit.
- Conduct trainings on the latest measures that are available for protecting witnesses.
- Undertake drastic economic measures in order to prevent public officials from engaging in corrupt acts (i.e. increase their salaries) because mere prosecution for such acts is not a sufficient deterrent.
- Implement measures to prevent corruption and *then* prosecute persons suspected of engaging in corrupt acts when such measures fail. Preventive measures include conducting public education campaigns, imposing an obligation on public officials to periodically declare their income and assets, and enforcing conflict of interest laws and regulations.
- Ensure that persons who combat corruption (police officers, prosecutors, and judges) are independent. Ensure that the staff of the Center for Combating Economic Crimes and Corruption (governmental body) is independent.
- Amend the offenses of trafficking in persons as defined by Moldovan law to include corruption as an aggravating circumstance.

Article 2:

- Link all of the ad hoc efforts on prevention, prosecution, protection, and cooperation that are currently being undertaken by the Moldovan government, international organizations and local NGOs in order for these entities to be more effective and combat trafficking in persons together.
- Continue all of the programs initiated by international organizations in Moldova (i.e. when international organizations leave, build upon their legacy).

- The Moldovan government should contribute financially to prevention, prosecution, protection, and cooperation measures. The national budget should include a line item specifically for combating trafficking in persons.
- Combine the funds that are being donated to local NGOs (not the government) in Moldova to pursue anti-trafficking measures and develop an overall plan where certain NGOs are tasked to pursue prevention measures, others protection measures etc. (and thus better complement the government's efforts).
- Fund research studies to measure the impact of preventive campaigns, prosecution efforts, protection and assistance measures, and overall cooperation efforts in Moldova.
- Present all written reports regarding trafficking issues in Moldova to the government not just to international donors (this applies to international organizations conducting assessments as well as local NGOs).
- Conclude more bi-lateral and multi-lateral treaties in order to better prevent the trans-national phenomenon of trafficking from occurring, better prosecute suspected traffickers across borders, and better protect trafficked victims. Countries of origin (such as Moldova) *together* with countries of destination must undertake comprehensive measures to combat trafficking by signing bi-lateral treaties and establishing common financial resources.
- Create an overarching regional initiative to combat trafficking in persons by establishing centers of information for victims and potential victims in Moldova and its neighboring countries and instituting clear communication channels among these centers.

Article 3:

- Amend provisions of the Moldovan Criminal Code criminalizing trafficking in human beings (Article 165) and trafficking in children (Article 206) such that they correspond with the comprehensive definition of trafficking included in the draft anti-trafficking law and better comply with the Trafficking Protocol.

Article 4:

- Study the issue of internal trafficking further. Programs need to be established in order to address the trafficking of persons within Moldova's borders.

Article 5:

- Amend the provisions of the Moldovan Criminal Code and Criminal Procedure Code such that assets, which are seized from traffickers and are not primarily used to compensate victims, can be collected in a fund created to support

intergovernmental bodies in their efforts to combat trafficking in persons. Create and maintain such a fund.

- Amend the Moldovan Criminal Code to include a provision delineating the criminal responsibility of legal persons. The draft anti-trafficking law solely imposes administrative and civil responsibility upon such entities.
- Establish procedures specifically designed to enable authorities to seize the assets of businesses that act as fronts for trafficking activities.

Article 6:

- Draft more detailed provisions establishing a victim identification process. These provisions need to create more comprehensive means of identifying trafficked victims than the means proposed in the draft anti-trafficking law.
- Create a unit within the Ministry of Internal Affairs that is strictly in charge of identifying trafficked persons and distinguishing between witnesses who are victims and those who are not victims in a trafficking case.
- Amend Article 165(4) and 206(4) of the Moldovan Criminal Code such that they cannot be easily challenged in practice and trafficked victims are no longer exposed to criminalization.
- Establish confidentiality procedures from the moment that a person is defined as a victim of trafficking and maintain such confidentiality during the trial of his/her trafficker and after trial. The draft anti-trafficking law presumes all individuals to be victims of trafficking, regardless of whether they testify or not, thus persons are not defined as victims solely when a formal investigation is undertaken. However, the draft law solely maintains their identity and personal data confidential for the length of the trafficker's trial.
- Draft more comprehensive provisions that ensure the physical safety of trafficked victims regardless of whether they are willing to testify or otherwise cooperate with law enforcement officials. While the draft anti-trafficking law ensures police protection of proposed centers where both cooperating and non-cooperating victims are to be housed, such protection is temporary and does not extend to members of their family or other persons close to them.
- Create a special government unit that specifically focuses on the physical protection of victims of trafficking in persons and their families and establish concrete long-term procedures for such a unit.
- Increase state-sponsored pro bono legal assistance for victims of trafficking when they appear in court or otherwise.

- The Moldovan government should commit to undertake, in the near future, the responsibilities of running the IOM shelter for victims of trafficking in Chisinau and should develop similar shelters throughout Moldova, paying special attention to the needs of trafficked children.
- The Moldovan government should provide funding to local NGOs for rehabilitation and reintegration efforts.
- Develop a manual focused on the psycho-social rehabilitation of children who have been trafficked that is to be used by all implicated authorities in Moldova.
- Create an inter-state fund between Moldova, which is a country of origin for victims of trafficking, and countries of destination and use this fund solely for victim compensation.

Article 7:

- Conclude regional and international agreements regarding the legal status and domicile of victims of trafficking such that Moldova and other countries adhere to uniform standards.

Article 8:

- Amend Article 19 of the draft anti-trafficking law to include a reference to any existing international agreements that could potentially govern, in whole or in part, the return of trafficked victims. Currently, Article 24 of the draft anti-trafficking law defers to such international agreements, but Article 19 does not. Article 24 delineates measures for voluntarily and safely repatriating foreign victims of trafficking and trafficked stateless persons found on Moldovan territory while Article 19 ensures the safe repatriation of trafficked Moldovan citizens and stateless persons who have a right to permanently reside in Moldova.
- Amend the draft anti-trafficking law to address the issue of repatriation costs for both adult and minor victims of trafficking. Create a budget for repatriation.
- Gather and verify all data pertaining to the number of victims repatriated to Moldova and centralize it under the auspices of one government entity.
- The Moldovan government should conduct annual training workshops for Moldovan consulate and embassy officials with a particular focus on identification of trafficked victims, verification procedures, and rapid issuance of documents.
- Conclude bi-lateral and multi-lateral agreements with other nations, like Turkey, that specifically govern the repatriation of adult and minor trafficked victims back to Moldova.

- Conclude bi-lateral and multi-lateral agreements with countries of origin such as Pakistan, India, China etc. in order to properly repatriate adult and minor victims that are transported through Moldova to other nations.
- Moldovan government officials should implement special measures for protecting child victims of trafficking during repatriation.

Article 9:

- The Moldovan government should fund and implement more long-term preventive measures (i.e. information campaigns, etc.).
- Gather and compare all concrete data from all entities presently working on trafficking issues in Moldova (government offices, international organizations, and NGOs) under the auspices of one government entity.
- The statistics departments at the local government level in Moldova should keep track of trafficked victims by age (number of children vs. number of women and men), by time period (the length of time that they were trafficked), and by status (single persons vs. families).
- Incorporate anti-trafficking classes and training seminars for professionals within the framework of women's rights and the rights of children.
- Moldovan government officials should increase their attendance at current seminars that are focused on the prevention of trafficking in persons and are run by NGOs like La Strada.
- The Moldovan government should fund and implement a preventive program targeting at-risk groups such as orphaned children (as envisioned in the Anti-Trafficking National Plan of Action).
- The Moldovan government should fund and implement a preventive program targeting persons who are in danger of being re-trafficked.
- Address the issue of illegal migration in destination countries. More destination countries should consider legalizing the status of Moldovan citizens who work illegally on their territory by issuing either temporary or permanent work permits.
- Draft legislation addressing the issue of domestic violence (a causative factor).
- Address the issue of demand in destination countries.

Article 10:

- Amend the draft anti-trafficking law to include more specific measures mirroring the requirements delineated in Article 10(1) of the Trafficking Protocol. Article 10(1) obligates states to cooperate in order to identify the trafficked and their traffickers, the travel documents used, and trafficking patterns of organized criminal groups and others.
- Amend Article 34 of the draft anti-trafficking law in order to explicitly empower Moldovan officials to place restrictions upon data or information exchanged for the purposes of trans-border trafficking investigations. Thus, they will be able to better protect the privacy and identify of trafficked victims or other implicated persons.
- Increase the number of bilateral and multilateral agreements in order to be able to better anticipate and prevent traffickers from furthering their illicit goals across Moldova's borders. The agreements should seek to establish a continuous exchange of information and evidence between Moldovan officials and authorities in countries of transit and destination.
- Establish a common databank with other countries in order to facilitate the exchange of information and evidence related to trafficking cases across borders.

Article 11:

- Amend Article 13 of the draft anti-trafficking law and define the term "international transport agencies and entities."
- Amend Article 13 of the draft anti-trafficking law and include civil, administrative or, if appropriate, criminal sanctions such that international transport agencies and entities will respect their new obligation to verify passenger documentation. Including the appropriate sanctions will enable Moldova to comply with the requirements of Articles 11(3) and 11(4) of the Trafficking Protocol.
- Amend the draft anti-trafficking law to include detailed provisions regarding cooperation between Moldova's border guard officials and border guard officials in transit and destination countries. Such provisions should seek to establish direct channels of communication and other specific measures in order to identify traffickers and their victims, as well as to protect and assist the victims.
- Improve border security measures, at *all* checkpoints, such that border guards can better identify traffickers and their victims.
- Equip Moldovan border guards, at *all* checkpoints, with the proper technology such that they can detect false travel and identification documents.

Article 12:

- Increase the existing security measures for passports and identity documents by establishing a biometric screening system, introducing digitized fingerprints in passports, and creating the ability to analyze the signature of the holder.
- Participate in the aviation security measures of the International Civil Aviation Organization (“ICAO”).

Article 13: No recommendations.