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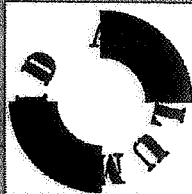
women's human rights abuses and protection in
'safe list' countries: Albania, Jamaica and
Ukraine

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Refugee Women's Resource Project
June 2004

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Section one Introduction

1.1. Background: the restrictions on rights to appeal for asylum seekers

Until 2002, all asylum seekers in the UK whose claims had been refused by the Home Office had the right to appeal from within the UK to an adjudicator of the Immigration Appellate Authority (IAA).

However two major changes introduced with the 2002 Nationality, Immigration and Asylum (NIA) Act have since seriously curtailed the right of appeal to asylum seekers.

- First, the Act reinstated the concept of a 'white list', with the adoption of a list of countries considered to be safe ('safe country list'), initially European Union (EU) accession states, in November 2002.¹ Asylum applicants from these countries are fast-tracked in days through Oakington reception centre and have no right of appeal in the UK if their claims are refused. Some applicants may be able to challenge this decision by applying for judicial review but almost all cases on the 'safe country list' are initially refused and almost all applicants are then expected to leave the UK and lodge their appeal from their country of origin or a 'safe' third country.

The 'safe country list' was extended to seven new countries in February 2003 (Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia and Montenegro) and a further seven in June 2003 (Bangladesh, Bolivia, Brazil, Ecuador, South Africa, Sri Lanka and Ukraine), bringing the total number to 24.² As Asylum Aid highlighted at the time these additions were announced, the Home Office's own country assessments from October 2002 onward demonstrate that these countries cannot be properly

¹ The list was announced on 7 October 2002 and included 10 countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
² Home Office, 'Safe country list expanded to cut asylum abuse', 17 June 2003 at www.ind.homeoffice.gov.uk/news.asp?NewsId=283.

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presumed safe.³ Despite this, all cases from countries on the 'safe country list' are currently fast-tracked at Oakington and dealt with within seven days.⁴

- In addition, sections 94 and 115 of the 2002 NIA Act extended the power of the Home Office to remove the right to in-country appeal (known as the 'non-suspensive appeals' procedure⁵) from safe third country cases to all cases certified as 'clearly unfounded'. Certification takes place at the time the claim is refused and the applicant will be removed from the UK. S/he will have then 28 days to lodge an appeal from abroad. The certification process is thus of crucial importance in deciding which appeal process is made available and which denied and can only be challenged by applying for judicial review (in which case removal may be suspended).

In practice, Home Office instructions to caseworkers make it clear that it is presumed that a refused claim from a country on the 'safe list' will be clearly unfounded, so that a certificate will be issued and the applicant required to leave the UK before lodging an appeal.⁶ At the same time, Home Office caseworkers are instructed to consider cases from the 'safe country list' on their individual merits. Yet the presumption that all such cases, if refused, are clearly unfounded discourages objective and accurate assessment of the risk an asylum seeker may face if sent back. Even where the Home Office's country report does record human rights

³ See 'Asylum Aid's response to the Government's extension of the Asylum 'safe list' countries', June 2003 available online in section Press Statements and Policy Work at www.asylumaid.org.uk/Press%20Statements/White%20list%20June%2003.htm.

⁴ For details of how the fast-track process operates at Oakington, see Baldacchini, A., 'Providing Protection in the 21st Century', Asylum Rights Campaign (ARC), London, 2004, p. 29.

⁵ The House of Commons Constitutional Affairs Committee explains the difference between suspensive and non suspensive appeals (NSA) as follows: 'Appeals that are exercisable from within the UK generally have a suspensive effect: they suspend any requirement to leave the UK and/or the power to remove. This contrasts with those appeals which can only be exercised from outside the UK, i.e. after removal, and are therefore described as "non-suspensive".' See R. (Razgar) v SSHD [2002], EWHC Admin 2554 at par. 1, as cited by the Constitutional Affairs Committee at para 79, p. 25.

⁶ See Home Office, APU notice 2/2003, 'Under the provisions of Section 94 of the NIA Act 2002 asylum or human rights claims from persons who are entitled to reside in one of the 24 states listed at Section 94 (4)(as amended), if refused, are to be certified as clearly unfounded unless the Secretary of State is satisfied that they are not clearly unfounded. This is so unless the certificate would not affect a person's appeal right in which case it need not be issued.' (at www.ind.homeoffice.gov.uk/default.asp?DocId=4536)

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violations, the designation of that country as safe prevents such evidence from being given proper weight.

Requiring applicants to appeal from abroad is clearly unsafe for all asylum seekers who fear persecution or serious harm if returned to their countries of origin. They could already have suffered detention, torture or even death before they are able to bring an appeal and have it heard. In 2002, the House of Commons Joint Committee on Human Rights recommended:

*'In our view, it should not be possible to remove a person before he or she has had the opportunity to challenge, before an independent and impartial tribunal, the Secretary of State's certificate asserting that the person's claim to have had a Convention right violated is clearly unfounded. Removing a person in such circumstances might sometimes give rise to a violation of ECHR Article 13 (the right to an effective remedy before a national authority for an alleged violation of a Convention right). We draw this to the attention of each House.'*⁷

In addition, conducting an appeal after removal from the UK imposes a series of practical obstacles for appellants, and has been described by Mr Justice Richards as *'plainly a very serious disadvantage as compared with an in-country appeal'*.⁸ Besides the difficulties of finding and instructing an English-speaking legal representative, the hearing process of an out-of-country appeal deprives the applicant of the opportunity to present oral evidence to an independent adjudicator who can better assess the credibility of the case.

'Most successful appeals to asylum adjudicators involve first-instance decision maker's adverse finding of credibility that are reversed on appeal. Since somebody who is removed cannot give evidence in person in front of an adjudicator, it follows that the main practical effect of the non-suspensive procedure is to deprive many asylum seekers of the benefit of an assessment of their credibility by an independent and impartial decision-maker. As a substantial proportion of appeals are allowed (22 per cent in 2002), the fear is that many appellants who

*quality for refugee status could lose their appeal under the new system.'*⁹

Available figures on the success of appeals under the new restrictions suggest that this is indeed a well-founded fear. Reporting to the Standing Committee on the Asylum and Immigration (Treatment of Claimants etc.) Bill, the then minister Beverley Hughes said that at the end of 2003, of 155 appeals lodged out-of-country, 135 had been heard, 133 dismissed and two allowed by an adjudicator. She further said: *'[one] may be surprised by those figures, but a substantial number of people avail themselves of out-of-country appeals, and some—albeit a small number—get through.'*¹⁰

As the minister's comments on the use of a *'safe country list'* clearly indicate,¹¹ these measures were introduced as part of a continuing drive by the Government to cut what it considered to be abuses of the asylum system (as also suggested by the title of its press release on the extension of the *'safe country list'*)¹² at a time when asylum application had reached a peak.¹³

However, as in previous reforms, there has been no plans to address the quality of initial decisions despite continuous campaigning on the issue of poor initial decision-making for nearly a decade by Asylum Aid and other practitioners and human rights organizations working in the field.¹⁴

⁹ Baldacchi A., *'Providing Protection in the 21st Century, Refugee rights at the heart of UK asylum policy'*, Asylum Rights Campaign, London, 2004.

¹⁰ House of Commons Standing Committee B, Asylum and Immigration (Treatment of Claimants, etc.) Bill, 9th Sitting, 22 January 2004, Columns number 333-334.

¹¹ *'This is an important measure in terms of our ability not to deter people who genuinely have a case under the convention but to deter the vast majority who come here from those countries and claim asylum but who are not the people—if there are such—who are being persecuted in those countries'*, House of Commons Standing Committee B, op. cit.

¹² Home Office, *'Safe country list expanded to cut asylum abuse'*, op. cit.

¹³ 84,130 asylum applications were made in 2002 excluding dependants, an increase of 18% from the previous year. See Home Office Asylum Statistics, United Kingdom 2002, www.homeoffice.gov.uk/ids/dafs2/hosp803.pdf.

¹⁴ For a review of the quality of initial decision-making level, see Amnesty International recent publication: *'Get It Right: How Home Office decision making fails refugees'*, Amnesty International, London, February 2004. See also Asylum Aid's reports *'No Reason at All'*, 1995 and *'Still No Reason At All'*, May 1999 as well as *'Women's Asylum Seekers in the UK: a gender perspective, some facts and figures'*, February 2002 (all available on www.asylumaid.org.uk).

2. women asylum seekers subject to the NSA procedures

There is no doubt that the rights of all asylum seekers have been seriously undermined by the 2002 NIA Act, breaching a fundamental principle according to which each asylum case should be treated on its own merits. Women asylum seekers face two additional disadvantages if they find themselves subject to the NSA procedure.

The first concerns the initial assessment of their claim in the light of the Home Office interpretation of the situation in their country: research conducted by the Refugee Women's Resource Project (RWRP) has demonstrated the extent and nature of gender-based persecution often encountered by women asylum seekers in their own countries¹⁵ and which can be the basis for a claim to asylum under the 1951 Refugee Convention.¹⁶ It is also RWRP's experience that for many countries, information on practical access to protection against women's rights abuses is generally scarce.

The Home Office's own reports on the countries concerned not only fail to address this issue but are also often so flawed or limited as to provide a distorted account of the overall human rights situation in these countries. In these reports, the specific risks for women are masked by the overall description of the country as one where *'there is in general...no serious risk of persecution'*. The country is thus generally considered *'safe'*, whilst ignoring evidence which goes to show that women asylum seekers generally face disproportionate lack of protection in their countries of origin due to the lack of women's rights in general.

This lack of information on women's rights and access of protection often leads to a failure of protection in the UK, especially but not exclusively at initial decision-making level. Often only on appeal can this failure to provide them with international protection be redressed. In *'Women asylum seekers in the UK'*, RWRP showed that two thirds of cases that had been granted protection were granted it only after having lodged an appeal or after an appeal hearing.¹⁷

¹⁵ Ibid. For a list of all our publications, see www.asylumaid.org.uk, publications section.

¹⁶ See for instance Crawley, H., *Refugees and Gender, Law and Process*, Jordans, London, 2001 and *Women as Asylum Seekers: A Legal Handbook*, ILPA, RWLG, London 1997.

¹⁷ See in particular RWRP, *Women's Asylum seekers in the UK: a gender perspective, some facts and figures*, op. cit.

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This directly links to the second disadvantage of women asylum seekers subjected to the NSA procedure, namely the special difficulties facing women attempting to bring appeals from outside the UK. It is RWRP's opinion that the removal of a right of appeal in the UK for women asylum seekers from countries on the *'safe list'*, will make it more difficult for them to obtain the protection they might have otherwise been granted through the courts.

The disadvantages met by women subject to the NSA procedures are those they face in their countries of origin simply because they are women – all the accumulated forms of discrimination that add to their difficulties in bringing an appeal: The problems any asylum seeker encounters in lodging an out-of-country appeal are compounded for women by additional financial, logistical, social and cultural barriers. For instance, a woman is unlikely to have the independent means necessary for contacting and engaging a lawyer, still less one in the UK.

3. reports aim

In view of the appeal rights restrictions and fast-track process introduced by the NIA Act 2002, the report aims to draw attention to the situation of women asylum seekers at risk of being returned to their countries of origin without having been able to exercise their rights of appeal within the UK.

In particular, the report aims to provide a comprehensive overview of the key human rights violations suffered by women in three selected countries subject to the non-suspensive appeals procedure, as well as an overview of the protection available to them.

4. research objectives

1. To provide detailed information which can be used to assess the quality of information currently relied on by the Home Office in its decision-making on gender-related asylum claims from women from countries included in the *'safe country list'*.

2. To provide a detailed source of reference for practitioners representing female clients from countries included in the *'safe country list'* on the key

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gender-based human rights violations presently taking place in these countries.

3. To raise awareness amongst practitioners and all those involved in the asylum process of the significance of gender-related persecution as an issue for women asylum seekers.

This research is a survey of key gender-based human rights violations suffered by women from three designated list countries and highlights only the key elements of each issue covered. The references and web sites provided should always be consulted for more detailed information if required.

This publication does not examine the particular difficulties faced by women in either fast track or NSA procedures. Nor does it consider in detail Home Office decision-making on asylum claims made by women from designated countries.

3. Research methodology

1. selection of countries

The selection of countries to be covered in this publication was determined by four factors:

- the number of female applicants from countries in the '*safe country list*', based on gender disaggregated statistics for Quarters 1-3 of 2003 provided by the Home Office Statistics Unit (see appendix in Section six).
- the outcome of informal discussions with fourteen RLC caseworkers based at Oakington who were asked to identify which countries included in the '*safe country list*' they considered to produce the most gender-related asylum claims by women. Even though several had not worked with female NSA clients, there was strong anecdotal evidence to support the choice of Jamaica, Albania and Moldova. Others countries specifically mentioned as producing applicants with strong gender-based claims were Sri Lanka, the Czech Republic and South Africa.

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- that the countries selected should still produce applicants (as one purpose of the research is to assist practitioners representing clients likely to be subject to NSA procedures).

- that a range of geographical areas should be represented in the research.

For each country selected, the research aimed to focus on a limited number of gender-based human rights abuse which were determined by the outcome of conversations with RLC caseworkers: certain forms of gender-based persecution were identified as particularly prevalent amongst Albanian, Jamaican and Ukrainian female applicants. These were: domestic violence in all three countries, trafficking for sexual exploitation in Albania and Ukraine, and discrimination against lesbians in Jamaica. These issues were then taken as the central focus of country background research.

2. sources of information

The report is based on secondary sources and draws on the most up to date sources available on the internet during the research period (December 2003 – April 2004¹⁵). A wide range of authoritative sources was consulted, including research by governmental, non-governmental and international organisations, local NGO web sites and recognised local media. Domestic legislation was directly cited wherever possible.

Note that the reports are a synthesis of existing available information and are not intended to represent an exhaustive survey of the situation facing women in the countries selected. The research has also identified gaps on particular issues due to the lack of systematic information and research available on such issues at the time of writing (for example the treatment of lesbians in Jamaica). Where information or statistics important for an assessment of human rights conditions was simply unavailable, note is made in the relevant section.

¹⁵ with the exception of a press release from Amnesty International dated 1st June 2004.

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6. report's structure

The report is divided in six sections:

Section two includes conclusion and recommendations.

Sections three, four and five review the women's human rights situation and access to protection in Albania, Jamaica and Ukraine respectively.

Section six includes a list of references and an appendix.

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Section two conclusion and recommendations

1. conclusion

This report covers information on women's rights abuses in three countries included on the Home Office 'safe country list'. In these particular countries, the research conducted by RWRP shows that women's rights continue to be systematically violated whilst women have very little recourse to protection and/or legal redress.

Girls and women who have been trafficked from Albania may be returned to family members who trafficked them in the first place or to the very same situation from which they were trafficked and often this leads to re-trafficking.

Lesbian women in Jamaica have been subjected to vigilante action by the community including being beaten, cut, burned, raped and shot on account of their sexuality.

Ukrainian law against domestic violence refers to a victim's behaviour in provoking outbreaks of domestic violence and this can serve as an excuse for the perpetrator's behaviour.

Yet the presumption is that women asylum seekers from these countries are 'safe' so, on the basis of their nationalities only, they are automatically deemed not to be in need of international protection under the terms of the 1951 Refugee Convention.¹

Extensive women's rights abuses and lack of access to meaningful protection is not limited to the three countries covered in this report. On the basis of our own past research, RWRP believes that further research

¹ 'a self-fulfilling prophecy inevitably operates whereby asylum claims from designated countries are treated as "clearly unfounded" before consideration, rather than being determined to be "clearly unfounded" after consideration: a case of "sentence first verdict afterwards"', see Baldacchini, A., op. cit., p. 31.

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In many other countries included in the 'safe country list' would reveal a similar situation.²

inaccurate country information and potentially 'damaging' impact on asylum claims

As far as women asylum seekers are concerned, the presumption that the countries included in the 'safe list' are safe suggests that this is based on a biased assessment of the country situation.

For years Asylum Aid but also other practitioners and human rights organizations alike have highlighted the poor quality of such reports³ and how a decision based on them could have extremely serious consequences for asylum seekers. The Home Office country information reports were recently described as 'dangerously inaccurate and misleading' following a research by the Immigration Advisory Services published in 2003⁴ whilst Amnesty International's own report, published in 2004 and based on an analysis of refusal letters, revealed 'the shockingly poor quality of initial decision making 'based on inaccurate and out-of-date country information'.⁵ Another report, published at the same time by the Medical Foundation Caring for the Victims of Torture, and also based on an analysis of refusal letters, reaches the same conclusions.⁶

Following such criticism but also due to the rate of successful appeals against poor-quality initial decisions based on inadequate country information, the Home Office announced recently that it has taken some steps to improve its country information reports (known as and thereafter referred to as Home Office CIPU country reports).⁷ An Advisory Panel on Country Information (APCI) was set up as an 'independent' body

² For a range of publications by RWRP, see our website at www.asylumaid.org.uk, then click on 'Publications'.

³ See Asylum Aid, 'No Reason At All', 1995, followed by 'Still No Reason At All', 1999.

⁴ Immigration Advisory Service, 'Home Office Country Assessment: an analysis', October 2003, 240p and 'IAS Addendum to report 'Home Office Country assessments: an analysis', London, December 2003 at www.iasuk.org.

⁵ Amnesty International 'Get it right: how Home Office Decision Making fails refugees', AL, London, February 2004. See www.amnesty.org.uk/action/campaigns/getitright.shtml

⁶ Smith, E., 'Right First Time?', MF, London, 19 February 2004, see synopsis and conclusions at www.torturecare.org.uk/publications/reportHomeOffice.htm.

⁷ Home Office Press Release, 'HOME OFFICE ACTS TO IMPROVE ASYLUM INFORMATION', 30 April 2004 at www.homeoffice.gov.uk/in_story.asp?item_id=933.

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established under the NIA Act 2002, 'to consider and make recommendations to the Secretary of State about the content of country information'.⁸ In one of its two first papers on country information (covering Somalia and Sri Lanka) the Panel concludes:

*'The October 2003 CIPU report on Somalia raises a number of questions about the overall quality of the work of CIPU. A number of instances are found in which material in the report is either lacking in comprehensiveness, or presented in an inaccurate or potentially misleading way. This could have a damaging impact on asylum claims if relied upon in evidence.'*⁹

Numerous examples of selective use of source material; lack of independent analysis; exclusion of relevant material; use of outdated sources; plagiarism and inaccuracy of referencing are provided by the APCI. In response to the paper, the Home Office writes:

*'The APCI paper identifies concerns in five main areas (selective use of source material; lack of independent analysis; exclusion of relevant material; use of outdated sources; plagiarism and inaccuracy of referencing). The Home Office has accepted some of the individual comments made in the paper and made amendments for the April 2004 Report where appropriate. Some of the points made in the paper have also been addressed through the procedural changes to the way that Country Reports are produced, set out in paper APCI.2.1. But the Home Office does not accept some of the comments made; neither does it wholly accept the general conclusions reached.'*¹⁰

This response suggests to us that the Home Office is not prepared to accept the criticism raised by an 'independent' panel set up under its own powers and chaired by one of the UK's leading scholars on refugee issues.

⁸ The Panel was set up in September 2003. Its terms of reference include bi-annual meetings to review country information produced by the Home Office and help ensure it is 'as accurate, balanced and up to date as possible'. The Panel is chaired by Prof. Stephen Castles, Director of the Refugee Studies Centre, Oxford University. The first papers produced by the panel on Somalia and Sri Lanka were published on 30 April 2004 and are available at: See www.ind.homeoffice.gov.uk/default.asp?pageid=4420.

⁹ Advisory Panel on Country Information, *Commentary on October 2003 CIPU report on Somalia*, 2nd meeting, 2nd March 2004, APCI.2.2., at www.ind.homeoffice.gov.uk/filesstore/APCI.2.1.doc.

¹⁰ Home Office, 'response to paper APCI.2.2 and comments made in discussion', APCI, 2nd meeting, 2nd March 2004, par.4, at www.ind.homeoffice.gov.uk/filesstore/APCI%20Somalia%20-%20HO%20response.doc.

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This does not augur well for the current and future of decision-making in the UK. Coupled with the fact that many asylum seekers' right of appeal have been seriously curtailed by the latest legislation, there is no doubt that many could be put at risk of further harm if decisions on asylum claims continue to be based on inadequate information provided in the Home Office CIPU reports.

Unless based on objective references, totally independent from policy makers at the Home Office, we believe that the use of a 'safe country list' contravenes a basic human rights principle embodied in the 1951 Refugee Convention according to which each asylum case should be assessed on its individual merits, with an objective assessment of the nature of the claim and the human rights abuses to which it refers, not on the basis of nationality alone.

We contend that the use of a concept such as a 'safe country list' is a purely political act¹¹ and has nothing to do with ensuring that asylum claims are fairly assessed. And as a signatory to the 1951 Refugee Convention, the use of a 'safe country list' by the Home Office constitute a breach of the UK's international obligations whilst at the same time putting asylum seekers at serious risks of further persecution if not death. In the context of a European Union meeting to discuss EU asylum legislation on 'safe countries' in 2003, the UNHCR expressed its concerns that 'if "safe country" concepts were introduced without sufficient safeguards, they could seriously compromise the protection of refugees and deviate from international standards'.¹²

safe list country' unworkable and random

We also think that the current use of exemptions – cases that the Home Office recognizes as 'unsuitable' for fast-tracking (currently women from Ghana, Nigeria and Kenya with claims based on female genital mutilation, female claims from China based on child policy, claims from Pakistani women¹³) – shows that the use of a 'safe country list' is unworkable and random. As all women from Pakistan are exempted from the NSA

¹¹ Current ministers had been very critical of the concept of a 'white list' as it was called under the previous, Conservative government.

¹² UNHCR News Stories, 'Safeguards needed for EU asylum rules on "safe countries"', warns UNHCR, 1st October 2003, at www.unhcr.ch/cdl-bin/txjs/txjnews.

¹³ According to information provided by the Refugee Legal Centre, one of the two organizations which provide legal advice at Oakington. The other one is the Immigration Advisory Service.

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procedure, regardless of the nature of their asylum claims, we do not understand why women from all other (23) countries could not be exempted in the same way?

This particularly research report shows that the state in Albania, Jamaica and Ukraine is not able or willing to provide protection to women who experience serious harm.

RWRP has had access in the course of this research to a selection of Home Office refusal letters relating to applicants from Jamaica, Albania and Ukraine whose asylum claims have been processed at Oakington. While the sample is not large enough to draw any systemic conclusions, it is notable that the decision to certify as clearly founded in some cases and not in others has little, if anything, to do with the facts of a particular case or the complexity of issues it raises.

In some cases the reasons given for refusal are inconsistent with the Home Office's own recent guidance to caseworkers on assessing gender elements in a claim. For example, in one Albanian case of a young woman who had escaped attempted rape and murder and was vulnerable to trafficking after the killing of both her parents, the refusal letter states:

'You are young, and single, and in good health, which indicates that it would not be unduly harsh for you to relocate within Albania. In addition, your representative's comments that you have no family or home you can return to has been considered, however, having no suitable accommodation or means of support are not reasons for granting a person asylum.'

In general, the Home Office claims that there is a sufficiency of protection in these countries even where there is clear objective evidence to the contrary. In one Jamaican case of a police informer who feared reprisals from criminal gangs and claimed not to be able to access police protection, the refusal letter states:

'It is noted that you have claimed that the police informed you to 'leave the island' and that you would be safer abroad when

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you went to seek their help. However, it is considered that as a police informer of 15 years standing the police would have been able to offer you protection. [...] In conclusion, it is considered that the authorities of Jamaica are presently able to offer you a sufficiency of protection against the activities of criminal gangs and that you have failed to evince convincing evidence that this help and protection would be denied to you in the future.'

Similarly, in a Ukrainian case based on fear of reprisals by the Mafia, the refusal letter states:

'You maintain that the local police failed to protect you as they were influenced by criminals whom you fear (...). [I]t is accepted that the authorities of Ukraine are alarmed at the growth of organised crime and corruption, and regard it as a threat to national security (...). However [I]t is believed that the present Government is determined to address criminal activity and corruption in the Ukraine and you have not established that they would deny you help and protection if you were to make a more concerted effort to seek it.'

In a Jamaican case of domestic violence, the refusal letter acknowledges that the police and authorities do not effectively enforce laws protecting women against domestic violence:

'According to the Canadian IRB, although the laws to protect women exist, they are not enforced. This is mainly attributed to the 'traditional attitudes' held by the police towards women.'

However, despite also noting 'the known attitude of the Jamaican authorities to the problem of gender-based violence', the Home Office goes on to state that 'it is considered that there is a sufficiency of protection in Jamaica for those at risk of the sort of abuse and threats you have described.'

In relation to a Jamaican case based in part on the applicant's sexuality, the Home Office again acknowledges that a considerable problem exists, yet maintains that a sufficiency of protection exists. The refusal letter states:

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'Some prominent politicians, media personalities, and churchmen have publicly voiced homophobic views (...). There are numerous reports of acts of violence against suspected homosexuals, carried out by members of the public. The police are widely perceived as homophobic and there are credible reports of homosexuals being denied police protection from angry citizens. Nevertheless, it is understood that this attitude is not universal; police officers in Jamaica have protected homosexuals from violent assaults and Jamaica's Public Defender, who has publicly condemned homophobic violence, has stated that the perpetrators must be punished but had cited the reluctance of the victims of assault to come forward as a reason for the failure of many investigations into homophobic attacks (...).

In light of the initiatives detailed above, it is believed that were you to encounter problems in Jamaica due to your sexuality...then you would be able to report these problems to the authorities and seek assistance.'

2. Recommendations

In light of all the above, we urge the government to take into consideration the following recommendations:

- The government should abandon the 'safe country list' as the use of such list contravenes the UK obligations under the 1951 Refugee Convention.
- The government should reinstate appropriate procedural safeguards in particular the right to appeal a negative decision with suspensive effect (i.e. without being removed). An in-country right of appeal should be available to all asylum seekers in the UK.
- The Home Office should ensure that its decision-makers abide by its own recently published gender guidance on asylum claims according to which:

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'Gender-specific harm is not different from other forms of ill treatment and violence that are commonly held to amount to persecution. (...) Each case should be considered on its own merits against country information (...).'⁴⁴

- The government should ensure that time limits allow for the provision of experts reports and adequate preparation of appeals
- The government should set up an independent documentation center for country specific reports and with special sections on women and gender-based human rights abuses.¹⁵
- In the meantime the government should take into account the findings made by the advisory panel on country information set up by the Home Office, and revise all of its country information reports accordingly.

In addition, Asylum Aid and RWRP fully endorse the recommendations made by the Asylum Rights Campaign in its recent publication 'Providing Protection in the 21st Century. Refugee rights at the heart of UK asylum policy' (2004)¹⁶, including:

*'Recommendation 1
An independent panel should carry out a comprehensive and systematic review of the whole asylum system, based on an objective evaluation of evidence taken from all parties involved (...).'*¹⁷

*'Recommendation 6
'(...) The government should resist new approaches to asylum that adversely affect claims to protection in the UK expressed by spontaneous arrivals, as well as attempts to restrict the scope and interpretation of the 1951 Refugee Convention.'*

¹⁴ Home Office, 'Gender issues in the asylum claims', under par. 3. Gender and persecution at www.ind.homeoffice.gov.uk/default.asp?id=4790.

¹⁵ A recommendation made by Asylum Aid on many occasions in the past, most recently in its report by RWRP 'Women asylum seekers in the UK: a gender perspective, some facts and figures', February 2003.

¹⁶ The report was written and researched by Anneliese Baldacchini, op. cit.

¹⁷ For all subsequent recommendations, see Baldacchini, A., op. cit., pp. 6 - 49.

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Recommendation 7

'The UK government should adopt a broad and purposive interpretation of the 1951 Refugee Convention, to encompass newly recognized forms of persecution and developing human rights standards.'

Recommendation 10

'The Home Office should ensure that all asylum applications are processed in a reasonable time, through a fair and efficient process (...).'

Recommendation 12

'(...) It should be acknowledged that those who have been trafficked have suffered human rights abuses and may be at risk if returned.'

Recommendation 16

'We deplore the use of detention as the basis for fast-track schemes' (...).'

Recommendation 17

'Accelerated procedures to determine asylum applications, at present raise serious issues of procedural fairness and safety for asylum seekers.'

'(...) The Home Office should, as a matter of urgency, commission an independent review of the fast-track schemes it currently operates. The result of this review should be published and inform further policy decisions in this area.'

Recommendation 21

'Certification powers risk undermining protection rights guaranteed under the 1951 Refugee Convention and Article 3 of the European Convention on Human Rights and should be removed or narrowed.'

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Section five

women's rights abuses and protection in Ukraine

1. Introduction

This report provides country background information on women's human rights in Ukraine, focusing in detail on information relating to two specific gender-related human rights abuses faced by Ukrainian women: trafficking for the purposes of sexual exploitation, and domestic violence.

Some references are made in this report to the information provided on trafficking in women for sexual exploitation and on domestic violence by the Home Office's Country Information & Policy Unit (CIPU) *Country Report on Ukraine* published in April 2003.¹ The current Operational Guidance Note (OGN) used by the Home Office in all decision-making on Ukraine is largely sourced to the Country Report of April 2003.²

The Ukraine OGN does not provide any guidance on gender-based asylum/human rights claims involving domestic violence or trafficking in women for the purposes for sexual exploitation. Minimal information is provided on women in the Home Office CIPU assessment.

¹ Country Reports on 35 countries producing the most asylum applicants in the UK are produced by the Home Office CIPU in April and October of each year. According to the Home Office, these reports cover the 35 countries producing the largest number of asylum applications in the UK. No Home Office country information was published on Ukraine in October 2003. At the time of writing, the April 2003 report was no longer publicly available, and was provided to Asylum Aid by the Home Office: Home Office Country Information & Policy Unit, *Ukraine Country Assessment* (Immigration & Nationality Directorate, United Kingdom, April 2003). On file with the author.

² Home Office Asylum and Appeals Policy Directorate, 'Operational Guidance Note: Ukraine', effective from July 24 2003, accessed 28 March 2004, available at www.ind.homeoffice.gov.uk/default.asp?pageId=4045.

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2. Ukraine's system of government & court structure

Ukraine declared its independence from the Soviet Union in August 1991. Its first post-Soviet Constitution was adopted on June 28, 1996, and establishes a democratic, multi-party political system, guaranteeing protection of basic human rights.

Ukraine is a republic and the system of government can be described as presidential-parliamentary. The President of Ukraine is head of state and appoints the Prime Minister with the agreement of more than half of the constitutional membership of the parliament. The 450 member-Parliament (*Verkhovna Rada*) is unicameral and initiates legislation, ratifies international agreements, and approves the budget. Its members are elected to four-year terms.³ According to the Economist Intelligence Unit:

*'The 1996 constitution entrenched strong powers in parliament, but also provided the presidential administration with considerable powers of its own. Moreover, in many areas the constitution is ambiguous, leading to frequent disputes between the branches of power. Political parties have yet to develop into viable and stable institutions. The lack of party consolidation has produced a destabilising degree of political fluidity and precluded the emergence of a durable majority in parliament.'*⁴

The political parties in Ukraine encompass former communists, socialists, agrarians, liberals, nationalists and various centrist and independent forces. Political life is largely male-dominated. After the most recent parliamentary elections held in 2002, the proportion of women in parliament remained low at 5.1%.⁵

In 2001 and 2002, important changes were made to the court system. According to the US Department of State's 2004 *Country Report on Human Rights Practices in Ukraine*:

'The amendments provided for a unified system of courts consisting of a Constitutional Court, a system of courts of general jurisdiction that includes the Supreme Court and specialized commercial (formerly arbitration) courts, and military courts. General jurisdiction

³ US Department of State, *Background Note: Ukraine* (Bureau of European and Eurasian Affairs, December 2003, available at www.state.gov/r/pa/ei/bgn/3211.htm).

⁴ Economist Intelligence Unit, *FactSheet: Ukraine*, (February 2004) available at www.economist.com/countries/Ukraine/profile.cfm?iId=Profile-FacSheet.

⁵ CEDAW, *Concluding Observations: Ukraine*, UN Doc. A/57/38 part II (2002), par. 295.

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courts are organized on four levels: local courts, regional appellate courts, specialized high courts (the High Commercial Court), and the Supreme Court.⁶

However, these changes have not addressed all the criticisms made about the judiciary. For example, the US Department of State's 2004 report also notes that although Ukrainian law does provide for an independent judiciary:

'[T]he judiciary lacked sufficient staff and funds, which engendered inefficiency and corruption and increased its dependence on the executive, since the judicial system received all its funding from the Ministry of Justice.'⁷

The report also concludes that:

'In a report to the Rada [Parliament] on April 18, the Ombudsman for Human Rights stated that judicial reform has not improved individuals' ability to protect their rights in court. The judiciary remains underfunded, overburdened, and inefficient. In 2002, the Office of the Ombudsman received approximately 270,000 appeals, half of which concerned the denial of judicial protection. Almost half of the lawsuits that were considered by the courts were significantly delayed.'⁸

⁶ US Department of State, *Country Reports on Human Rights Practices: Ukraine* (2003) (Released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004), available at www.state.gov/g/drl/rls/hrrptv/2003/22871.htm.

⁷ Ibid.

⁸ Ibid.

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3. Human rights in Ukraine: an overview

3.1 International and regional obligations

Ukraine has signed and ratified all the UN's core human rights Treaties, except the 2003 *Migrant Workers Convention*.⁹ As a signatory to the 1999 *Optional Protocol of the Convention on the Elimination of All Forms of Discrimination against Women*, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) may also receive individual and group complaints about violations of the Convention where no effective domestic remedy for these violations is available. In July 2003, Ukraine ratified the 2000 *2nd Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*.

Ukraine signed the 2003 *UN Convention against Transnational Organised Crime* and its supplementary *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* in December 2000 and November 2001 respectively. However, as of March 2004, these had still not been ratified.¹⁰

The Ukrainian government has been praised for its incorporation of the Convention on the Elimination of Discrimination against Women into the 1996 Constitution and giving the Convention precedence over conflicting legislation.¹¹

On 9 November 1995 Ukraine became a member of the Council of Europe. In 1997 it acceded to a number of regional human rights instruments, most notably the *European Convention of Human Rights* and its Protocols 1 and 2 on the prevention of torture and inhuman and

⁹ 1966 International Covenant on Civil and Political Rights (entry into force March 3 1976), 1966 Convention on the Elimination of Racial Discrimination (entry into force April 6 1969), 1966 International Covenant of Economic, Social and Cultural Rights (entry into force January 3 1976), 1979 Convention on the Elimination of All Forms of Discrimination Against Women (entry into force September 1981), 1984 Convention against Torture (entry into force June 29 1987), 1989 Convention on the Rights of the Child (entry into force 27 September 1991), further information on ratification history at www.davestsky.com/html/ukraine_11_ratifications.pdf.

¹⁰ Stop Violence Against Women (SVAW), 'Ukraine: Treaty Obligations', available at www.stopvaw.org/Ukraine.html.

¹¹ CEDAW, *Concluding Observations*, op. cit., par. 273

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degrading treatment or punishment. In 2003 it signed Protocol 13 on the unconditional prohibition of death penalty.¹²

3.2 Human rights protection in practice

According to the most recent overviews available of the human rights situation in Ukraine, the government continues to violate many of its international and regional obligations. In its 2003 Annual Report, Human Rights Watch highlights some key areas of concern:

*'Despite progress in recent years, the human rights situation in Ukraine in 2002 remained uneven. Numerous irregularities were reported during the March parliamentary elections. Virtually all major media owners depended on state ties for survival and were thus subject to censorship. Opposition media and activists continued to face harassment. Prison conditions and torture in detention received attention from the national ombudsman, but remained serious problems. Racism, trafficking in persons, and discrimination against women, migrants, refugees, and persons living with HIV/AIDS persisted.'*¹³

Despite adopting a new Civil Code, Civil Procedure Code and new legislation on the judiciary, the Parliamentary Assembly of the Council of Europe has expressed a 'deep concern with the slow progress made by the Ukrainian authorities to implement the principles and standards of the Council of Europe' illustrated, amongst other things, by 'the numerous cases of prosecution by the General Prosecutor's Office and the High Council of Justice of judges attempting to arrive at decisions in accordance with the law.'¹⁴

Implementation of economic and social rights has also been undermined by the Ukraine's difficult transition to a market-based economy since the collapse of the Soviet Union in 1991. According to Human Rights Watch:

'The World Bank notes that real income decline over the transition period has resulted in an increase in poverty, leaving some 27

¹² Ibid.

¹³ Human Rights Watch, *World Report 2003: Ukraine, Human Rights Developments* (HRW, 2003), covering events between November 2001 and November 2002, available at www.hrw.org/wr2k3/ukraine15.html.

¹⁴ Legislationonline, 'CoE Parliamentary Assembly scrutinizes compliance by Ukraine with its obligations and commitments', 3rd October 2003, available at www.legislationline.org/index.php?parent=0&mon=0&year=2003&sc=2&country=39&int=0.

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percent of the population poor—more than one out of four people; 18 percent of Ukrainian households are considered extremely poor. Official statistics report average monthly wage at approximately U.S. \$60 per month, with nearly 81 percent of the population earning less than U.S.\$90 per month. Employers in both the public and private sectors persistently fail to pay wages. Employment has shown a consistent downward trend, falling from 70.8 percent in 1997 to 62.7 percent in 2001. Officially registered unemployment is recorded at 4 percent, while real unemployment stands at over 10 percent, as determined by ILO methodology.¹⁵

Organised crime and government corruption are both major obstacles to realising human rights in Ukraine. The US Department of State observes that throughout 2003:

*'The pervasiveness of corruption, connections between government officials and organized crime, and the political activities of organized crime figures often blurred the distinction between political and criminal acts.'*¹⁶

4 Women's position in Ukraine: context

4.1 Women's status in society

Whilst under the Communist system, Ukraine's government promoted formal equality between men and women, in practice women were not treated as equals and a strong patriarchal culture remained in place. As a 2000 study on domestic violence conducted by the US-based human rights group, the Minnesota Advocates for Human Rights, comments:

*'Although official Soviet policy was aimed at improving women's participation in public life, including politics and education, the role of women in the family remained effectively unchanged. Women were still expected to take primary responsibility for raising children and maintaining the household. While the government encouraged women to become educated and to increase their participation in the professional labor force, lack of investment in the consumer economy meant women still had to spend long hours cooking, cleaning, sewing and laundering without the benefit of modern, time-saving conveniences like washing machines.'*¹⁷

¹⁵ Human Rights Watch (2003), *World Report*, op. cit.

¹⁶ US Department of State (2004), *Country Report*, op. cit.

¹⁷ Minnesota Advocates, *Domestic Violence in Ukraine*, (December 2000) pp. 8-9, at www.mnadvocates.org/Eastern_Europe.html.

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Since Ukraine's transition to a market economy, new difficulties have also been encountered in eliminating gender stereotypes and ensuring equality. Another Minnesota Advocates report explains that:

*'[In] Ukraine, the female role has become much more circumscribed in the name of tradition. Women in the earliest phases of transition from communism showed signs of developing a new social force that would break with the discriminatory aspects of tradition, but ultimately women have emerged to face strengthened levels of misogyny, discrimination and inequality.'*¹⁸

While the unemployment and under-employment caused by economic transition have affected the entire population of Ukraine, women have been disproportionately affected.¹⁹ The Minnesota Advocates describes how the effects of economic transition have fostered gender stereotypes, reporting that:

*'Many political, economic and social policies enacted since 1991 have overturned communist-era policies without providing for the social consequences. (...) Employers are often hesitant to hire women because of outdated gender stereotypes or fear that they will become pregnant or leave to care for their children. In addition, the social services that the Soviet government once provided to facilitate women's labor force participation have disintegrated. Many state run child-care centers have been forced to close or lack so many resources that mothers hesitate to place their children in them.'*²⁰

Furthermore:

*'The transition process in Ukraine has emphasized strong nationalist and traditional beliefs that reinforce the characteristics of a strictly patriarchal society. "The move toward a market economy has been accompanied by a celebration of masculinity, both literally and metaphorically, and the denigration of the strong and capable woman worker glorified in the first decades of Soviet history."*²¹

¹⁸ Minnesota Advocates for Human Rights, *Trafficking in Women: Moldova and Ukraine* (December, 2000), p. 7, at www.mnadvocates.org/vertical/sites/%7B68367445-9AEB-444E-8059-C7B93DF089%7D/uploads/TraffickingReport.pdf.

¹⁹ *Ibid.*, p. 10.

²⁰ Minnesota Advocates, *Domestic Violence*, op. cit., p. 9.

²¹ Minnesota Advocates, *Domestic Violence*, op. cit., p. 10, citing Lynne Attwood, 'The Post-Soviet Woman in the Move to the Market in Women in Russia and Ukraine', p. 255 (1996).

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In 2002, the continued existence of traditional stereotypes regarding the role women in the family and wider society was highlighted as an issue of concern by the CEDAW Committee in its review of Ukraine's implementation of its obligations under the UN Women's Convention.²²

4.2 Family and property rights

A new Family Code was approved by Ukraine's Parliament on January 10th 2002 and entered into force January 1st 2004. The Code eliminates discrimination against women, children and men in several areas of family law. Changes to the law include legal recognition of paternity for fathers of children born to unmarried children, a broadening of the definition 'family' to include unmarried women and men who are cohabiting and guaranteed equal rights to any property acquired during marriage.²³ The new Family Code also strengthens the rights of the fathers.²⁴

4.3 Anti-discrimination legislation

Under the Ukrainian Constitution, all citizens are equal before the law and have equal rights and freedoms. Article 24 provides:

*'There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.'*²⁵

In addition, the Constitution clearly requires that sex equally be ensured by:

'(...) providing women with opportunities equal to those of men, in public and political, and cultural activity, in obtaining education and in professional training, in work and its remuneration; by special measures for the protection of work and health of women; by establishing pension privileges, by creating conditions that allow

²² Article 24, *Constitution of Ukraine*, adopted at the Fifth Session of the Verkhovna Rada of Ukraine, 28 June 1996, available at www.rada.kiev.ua/const/conengl.htm.

²³ UNDP, *Gender Issues in Ukraine: Challenges and Opportunities*, (UNDP, Kyiv 2003), p. 18, available at <http://www.un.kiev.ua/en/docs/2mdg3>.

²⁴ Article 24, *Constitution of Ukraine*, op. cit.

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women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, including the provision of paid leaves and other privileges to pregnant women and mothers.²⁵

In relation to employment, article 2(1) of the Labour Code guarantees freedom from all forms of discrimination, including on the basis of sex. Labour laws also provide for the legal equality of men and women, including equal pay for equal work.²⁶

4.3.2 Shortcomings of anti-discrimination provisions

Although Ukraine's Constitution has incorporated the UN Women's Convention, Ukrainian legislation does not define discrimination against women and does not provide effective enforcement procedures or remedies for women who experience sex discrimination.²⁷

A draft law 'On State Guarantees of Equal Rights and Opportunities for Men and Women' prepared by the 'Gender Initiative Group' of the Supreme Council of Ukraine is currently under consideration.²⁸ Amongst other things, the draft legislation aims to ensure equal rights and opportunities in all spheres of social life and creates the position of 'Commissioner of Gender Equality' to supervise its enforcement and review individual complaints about sex discrimination.²⁹ However, at the time of writing the law had still not been adopted by the Ukrainian Parliament.

Although discrimination in the labour force is illegal, in practice the Ministry of Labour does not effectively enforce the law. Since Ukraine's transition to the market-based economy began in 1991, women are more likely to be laid off than men and discriminatory employment practices have become a widespread problem for women.³⁰ In a major new report

²⁵ Ibid.

²⁶ US State Department (2003), *Country Report*, op. cit.

²⁷ CEDAW, *Concluding Observations*, op. cit., para. 281.

²⁸ Stop Violence Against Women (SVAW), 'Ukraine', at www.stopvaw.org/Ukraine.html.

²⁹ Government of Ukraine, 'Law on State Guarantees Of Equal Rights And Opportunities For Men And Women', available at <http://gender.undp.sk/indexaction.cfm?module=databas&action=getFile&docum&docID=33505>.

³⁰ US State Department (2003), *Country Report*, op. cit., Section 5, 'Discrimination Based on Race, Sex, Disability, Language or Social Status'.

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published by Human Rights Watch in 2003, attention is also drawn to sex discrimination throughout the recruitment process. The NGO reports that:

'In the economic stagnation and failed reforms of the post-Soviet transition period, Ukrainian women have faced many obstacles to their full and equal participation in the labor force. Widespread employer discrimination against women in the recruitment process limits women's access to jobs, including many high-paying and prestigious jobs. [For example] employers in both the public and private sectors regularly specify gender when advertising vacancies and use information they require in interviews regarding family circumstances to deny women employment.'³¹

Human Rights Watch concludes that:

'The failure of the Ukrainian government to enforce these laws and commitments puts it in breach of its [international] obligation to prevent discrimination against women.'

Unequal access to employment also influences women's choice to go abroad to seek better economic opportunities, 'a choice that may leave them vulnerable to being trafficked into the commercial sex industry or other forms of forced labor.'³²

4.4 Economic & social rights (including health and fertility)

Despite the fact that women's education opportunities remain the same as those enjoyed by men, since 1991, women have experienced higher rates of unemployment. As Human Rights Watch explains:

'During the Soviet period, over 90 percent of women were employed or engaged in study, and women's share in the labor force exceeded men's in the 1970's and 1980's. Women continue to graduate from secondary schools and universities at rates equal to, or exceeding, the rates for men. However, their experience in the labor market differs significantly from that of men. Gender based segregation by sector and level of responsibility is pronounced. Women tend to be concentrated in a few, primarily low-wage sectors, including

³¹ Human Rights Watch (HRW), *Women's Work: Discrimination Against Women in the Ukraine Labour Force*, 'Summary', (August 2003, HRW, New York), available at www.hrw.org/reports/2003/Ukraine0803/.

³² Ibid.

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*healthcare, trade, public catering, education, and agriculture, as well as in the informal sector.*³³

Indeed, according to the US Department of State, in mid-2003, the real unemployment rate amongst women was 9.2% compared to 9.7% amongst men. However, industries dominated by female workers have lowest wages and are most likely to be affected by wage arrears problems. According to statistics from the State Committee for Family and Youth released in June, women's average pay in 2002 was 17.5% lower than the average wage for men.³⁴

Human Rights Watch reports the negative impact of economic instability on women's health:

*'Women's health has suffered under harsh economic conditions, and medical services, particularly for pregnant women, are often inadequate. The prohibitive cost of contraceptives and a lack of knowledge about family planning results in a high rate of abortion. High rates of infant mortality, maternal mortality, miscarriages, and sexually transmitted diseases also reflect unsatisfactory reproductive and sexual health care.'*³⁵

4.5.1 Rape

Although the majority of rapes are unreported, in 2000 the International Helsinki Federation for Human Rights reported that 20% of women aged 17 to 21 had faced attempted rape. In 2001 1,051 rape cases were opened under Article 117 of the old Criminal Code and another 152 under the new Criminal Code. The US Department of State's 2003 country report on Ukraine also clearly states that:

*'Past surveys by women's groups indicated that between 10 and 15 per cent of women had been raped and that more than 25 percent were abused physically in their lifetimes.'*³⁶

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Rape is a criminal offence under Ukraine's new Criminal Code. The revised Code was approved by Parliament in April 2001 and became effective on 1 September 2001.³⁷

Article 152 of the Criminal Code defines rape as 'sexual intercourse with the use of physical strength, threat of its using, or using the helplessness of a victim' and punishment ranges from three to five years. Punishment increases to up to fifteen years if a rape occurs under aggravating circumstances. Article 152(2) provides that:

*'Rape, where it was repeated, or committed by a person who previously committed any of the offences provided for by Articles 153 to 155 of this Code, - shall be punishable by imprisonment for a term of five to ten years.'*³⁸

Under article 152(3), rape 'committed by a group of persons, or rape of a minor - shall be punishable by imprisonment for a term of seven to twelve years'. Finally, under article 152(4) 'Rape which caused any grave consequences, and also rape of a young child, - shall be punishable by imprisonment for a term of eight to fifteen years.'³⁹

Figures on prosecutions or sentences were not available at the time of writing.⁴⁰

4.5.2 Child abuse

Articles 155 and 156 of the Criminal Code criminalise acts of sexual abuse against children under 16 years old. Article 155(1) states that:

*'Sexual intercourse with a sexually immature person, - shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.'*⁴¹

In addition, article 156(1) on 'Debauchery of minors' also requires that:

³⁷ Available at Legislationline: www.legislationline.org/view.php?id=document=55244.

³⁸ Chapter IV Criminal Code, CRIMES AGAINST SEXUAL FREEDOM AND SEXUAL INVOLABILITY OF A PERSON, at www.legislationline.org/view.php?id=document=55244.

³⁹ Ibid.

⁴⁰ SVAW, 'Ukraine', op. cit.

⁴¹ Chapter IV, Criminal Code, op. cit.

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*'Debauched actions committed in regard of a person under 16 years of age, - shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to three years.'*⁴²

However, the failure of the Ukrainian Criminal Code to provide protection against sexual abuse for those older than 16 has been highlighted by the World Organisation against Torture (OMCT) as an area of concern.⁴³

4.5.3 Sexual harassment

Sexual harassment and coerced sex in the workplace are reported to be widespread. According to the US State Department:

*'some sociological studies show that up to 50 percent of women are victims of sexual harassment, although it goes largely unrecognized or is considered something women must simply endure.'*⁴⁴

Although article 119 of the Criminal Code prohibiting forced sex with a 'materially dependent person' does apply between employers and employees, this is generally considered an inadequate legal safeguard against sexual harassment.⁴⁵

No statistics were available on the number of prosecutions for sexual harassment under this law.

According to Article 43 of the draft *'Law on State Guarantees Of Equal Rights And Opportunities For Men And Women'*, currently under consideration by the Ukrainian Parliament, sexual harassment would be defined as *'insulting verbal or physical behaviour of sexual nature with regard to a subordinate with whom the offender has working, business or other relations'*. Article 42 creates the position of Commissioner for Gender Equality, giving him or her authority to investigate complaints of sexual harassment.⁴⁶

Experts appointed by the Council of Europe to review the draft law have commented that the law could be improved by creating an obligation for

⁴² Ibid.

⁴³ Pettit, *Rights of the Child*, op. cit., p. 8.

⁴⁴ US State Department (2002), *Country Report*, op. cit., Women'.

⁴⁵ See for example SVAW site on Ukraine, 'Ukraine', op. cit.

⁴⁶ See Chapter V of the Draft law, available at <http://gender.undp.sk/indexaction.cfm?module=database&action=getFileAction&docum entID=3505>.

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employers to ensure sexual harassment does not occur in the work place.⁴⁷

5. Trafficking in women for the purposes of sexual exploitation

5.1 Profile of trafficking victims

The majority of victims of human trafficking in Ukraine are typically young women trafficked abroad for the purposes of sexual exploitation.⁴⁸ However, according to a 2003 study on gender issues in Ukraine conducted by the United Nations Development Programme (UNDP), changes can be observed in victims' profiles. The study states that:

*'While the average victim of trafficking from Ukraine is typically female and between the ages of 22 and 27 years old, a worrying trend is the increase in the relative numbers of minor victims of trafficking. In Ukraine while only 1 minor was assisted in 2001, 9 minors were assisted in 2002, and in just the first 4 months of 2003, IOM has already assisted 8 minor victims of trafficking. The majority of minors trafficked that have been assisted by IOM were between 16-17 years of age. And a significant proportion of these were boys.'*⁴⁹

Victims of trafficking generally have low economic status and only a basic level of education. UNDP explains how:

*'The difficult socio-economic situation in Ukraine creates preconditions for exclusion of women from the "normal and regulated labour market". Many women have no legitimate job opportunities in Ukraine. Facing difficult socio-economic conditions and massive unemployment, women from Ukraine seek unskilled, low wage employment abroad such as waitressing, housekeeping, au pairing and dancing. [...] The overwhelming majority of victims come from low income families. These women often come from single parent families and are known to have dependants, including mothers, minor brothers or sisters, disabled fathers, and children. The average victim usually possesses a low level of education, and sometimes has not completed secondary education.'*⁵⁰

⁴⁷ SVAW, 'Ukraine', op. cit.

⁴⁸ US Department of State, *Trafficking in Persons Report 2003*, (Released by the Office to Monitor and Combat Trafficking in Persons, June 11, 2003). The TIP Report covers the period Apr 2002 - Mar 2003. At www.state.gov/g/tiprpts/tiprpt2003/21272.htm.

⁴⁹ UNDP, *Gender Issues*, op. cit., p. 54

⁵⁰ Ibid. p. 54

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This picture is confirmed by recent EU research on Ukrainian women trafficked into Belgium which found that 57% of victims had been motivated to accept work abroad to meet the bare necessities of life, 36% wanted to earn money for the family and 29% sought better prostitution conditions.⁵¹

3.1.1. Method of recruitment and control

A range of methods is used to recruit women and girls into the foreign sex industry, including newspapers advertisements for tourist and employment agencies as well as marriage brokers. Roughly 70% of women are trafficked using sophisticated deceptions, with traffickers presenting credible, step-by-step plans that leave victims with little suspicion that their destination will be the sex industry.⁵² A study conducted by the University of Rhode Island in 2002 describes how women are deceived:

'One method of recruitment is advertisements in newspapers offering lucrative job opportunities in foreign countries for low skilled jobs, such as waitresses and nannies. Some advertisements promise good salaries to young, attractive women who will work as dancers and hostesses. (...) It is estimated that 20 per cent of trafficked women are recruited through media advertisements.'

*Another method of recruitment is "marriage agencies," sometimes called mail-order-bride agencies or international introduction services. (...) This route into the sex industry can take several forms. The recruiters may be traffickers or work directly with traffickers. The woman may meet with a man who promises marriage at a later date. The man may use the woman himself for a short period of time, then coerce her into making pornography and later sell her to the sex industry, or he may directly deliver the woman to a brothel.'*⁵³

⁵¹ B. Meens, 'Country Report: Belgium' in Research based on case-studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands pp. 8-11, p. 45, fig. 2.9, (European Commission, DG Justice & Home Affairs Hippokratates, JAI/2001/HIP/023, 2003), available at www.lcibp.be/uploaded/leidrapport%20hipokratates.pdf.

⁵² D. Hughes, & T. Denisova, *Trafficking in Women from Ukraine*, (University of Rhode Island & Zaporozhia State University, 2002) hereafter University of Rhode Island, pp. 14-15, available at www.cdp.usdoj.gov/nij/international/programs/ukrainetraf_finalreport.pdf.

⁵³ Ibid, p. 43.

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The most common way women are recruited in Ukraine is through a friend or acquaintance, who gains the woman's confidence. An increasing phenomenon is called "the second wave," in which trafficked women return home to recruit other women. (...) According to one report, for instance, in Ukraine, 70 per cent of plimps are women. A recruiter gets from US\$200 to \$5,000 for each woman recruited.'

Recent research in Italy suggests that the families of Ukrainian women are less often involved in the trafficking process.

*'The largest group of women who had no relationship at all with the recruiters were those coming from Ukraine, Russia, Moldova, Belarus and Romania. Generally, they directly approached the recruiter and, in most cases, he/she turned out to be a person of the travel or employment agency they had contacted usually through word of mouth or a classified advertisement published in the local papers.'*⁵⁴

According to UNDP, only the minority of women accepting work abroad expect that they will end up working in the sex industry. The organisation concludes as follows in their 2003 report:

*'It is also worth mentioning that less than 30% of women assisted by IOM actually knew or intended to work in the sex industry before being trafficked. The vast majority of women were trafficked abroad under the pretext of false job offers and were leaving Ukraine with the intention of finding conventional employment. Nonetheless (...) no matter why a woman may have intended to travel abroad, all victims of trafficking suffer deplorable treatment at the hands of their traffickers.'*⁵⁵

In recent years, recruitment patterns have changed in response to growth in public awareness about the risk of being trafficked when travelling abroad to work. Leading anti-trafficking NGO, the International Women's Rights Centre - La Strada, observes how traffickers have started to target people living in smaller towns and villages:

'In 1997-1998 Kyiv newspapers were full of information about employment abroad. Now, we can observe some changes in the orientation of firms specialized in hiring people for work abroad in the rural area. It is connected with the information access about real

⁵⁴ I. Orfano, 'Country Report: Italy' in Research based on case-studies, op. cit., pp. 126-224, p. 193.

⁵⁵ UNDP, *Gender Issues*, op. cit., p. 54.

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opportunities of employment abroad, which is more available to town-dwellers, though it is more difficult to deceive them.

The next tendency is transition from the recruitment with the help of advertisements in mass media to the recruitment with the help of personal contacts. It is also connected with the strengthening of distrust to the firms that deal with employment. It is easier to recruit a person to go abroad, if the information about the opportunity of employment comes from a neighbor, a friend or even a relative.⁵⁶

The organised criminal networks operating throughout Ukraine are often involved in trafficking activities. According to research published by the University of Rhode Island, large, highly organised criminal groups from Ukraine, with connections to corrupt officials, carry out approximately 65% of the trafficking of women in Ukraine.⁵⁷ These criminal groups are usually involved during the initial stages of trafficking. As a 2004 report published by the European Commission reports:

[Ukrainian criminal gangs] in fact perform the role of recruiters and travel organisers through the management of (often fake) travel and/or employment agencies that offer convenient tours or well-paid jobs in Western European countries. The phases of travel and exploitation in the transit and/or destination countries are actually referred - through consolidated agreements - to other ethnic criminal groups of East Europe and - in the last stage - of Albania.⁵⁸

After arriving in the destination country, traffickers' methods for controlling their victims vary. The University of Rhode Island study of Ukrainian victims found methods included confiscation of travel documents,⁵⁹ violence, threats to harm family members and debt bondage.⁵⁹

3.1.3 Trafficking routes

UNDP describe the various routes used to traffic women from Ukraine:

'The major trafficking routes go from Ukraine to the Russian Federation, or to countries of the Balkans and Central Europe, especially countries of the former Yugoslavia and Albania, or to the

⁵⁶ International Women's Rights Centre - La Strada Ukraine, 'The ways of recruitment' www.lastrada.kiev.ua/ko.caj?lng=en&id=159.

⁵⁷ University of Rhode Island, *Trafficking*, op. cit., p. 38, p. 4.

⁵⁸ Orfano, 'Country Report: Italy', op. cit., pp. 164-5.

⁵⁹ University of Rhode Island, *Trafficking* op. cit., p. 16.

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wider Middle East, including Turkey, Israel, Syria, UAE and Cyprus. Another commonly observed pattern is the trafficking of women originating from Central and Eastern European countries and countries of the Former Soviet Union (FSU) into EU Member States and other developed countries, including Greece, Italy, Germany, Belgium, the United States and the Netherlands, using EU candidate [accession] countries for transit such as Poland, the Czech Republic or Hungary. [...] Finally, there have been reported cases of trafficking to the Far East including Japan and Korea.⁶⁰

Women from the different regions of Ukraine are likely to be trafficked to different destination countries.⁶¹ A variety of different travel documents can be used including legal ones applied for by the woman, counterfeits or authentic papers issued by corrupt officials.⁶²

3.1.4 Prevention of trafficking for sexual exploitation

The lack of official figures means there are significant variations between estimates about the number of Ukrainian women trafficked. However, the country is recognised as one of the major country of origin and transit for women trafficked for the purposes of sexual exploitation.⁶³ In the words of the International Organisation for Migration (IOM), trafficking in Ukraine has assumed 'enormous dimensions'.⁶⁴

IOM research on victim protection in the Ukraine reports that:

'Hundreds of thousands of Ukrainian women and children have been trafficked for sexual exploitation or domestic work to Western, Central and Eastern Europe, the Middle East and elsewhere. In March 2001, Ukraine estimated that 400,000 of its women had been sold into prostitution in the last decade, from both urban and rural areas. An IOM report 'Information campaign against Trafficking in women

⁶⁰ UNDP, *Gender Issues*, op. cit., p. 56.

⁶¹ University of Rhode Island, *Trafficking*, op. cit., p. 36.

⁶² University of Rhode Island, *Trafficking*, op. cit., p. 4-5.

⁶³ See for example, US Department of State (2003), *Country Report*, op cit; See also reports in local media, for example, *Nashe Misto* ('Our City'), 'Hands off our Women!', No. 51, Dnipropetrovsk, no author cited, (April 1 2003), available at www.winnock.org.ua/DOS/En/media/media.dnp#d4.

⁶⁴ J. Apap & F. Medved, *Protection schemes for victims of Trafficking in Selected EU Member countries and Third countries*, see chapter on Ukraine, (IOM, 2003), p. 82, at www.iom.int/DOCUMENTS/PUBLICATION/EN/protection_schemes.pdf.

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from Ukraine: Research report', 1998, p. 16] refers to 420,000 women having been trafficked out of the country.⁶⁵

According to one conservative estimate from Winrock International estimates, in 2002 alone between 8,000 and 10,000 individuals were trafficked overseas.⁶⁶

5.5.1 Trafficking and the law

5.5.1 Legislation to combat trafficking

Article 149, Ukrainian Criminal Code (2001)

Ukraine was one of the first European countries to criminalise trafficking in human beings when it introduced an anti-trafficking provision to its Criminal Code in 1998.

The new *Ukrainian Criminal Code* which entered into force on 1st September 2001 also contains a specific anti-trafficking provision.⁶⁷ Article 149 makes trafficking in human beings an indictable criminal offence which is punishable by three to eight years' imprisonment. Article 149(1) defines trafficking in human beings as the:

'Sale, other transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movement of that person, with or without his/her consent, across the border of Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation, use in pornography, engagement in criminal activities, peonage, adoption for commercial purposes, use in armed conflicts, labor exploitation.'⁶⁸

The presence of aggravating factors can increase the penalty to up to fifteen years. Article 149(3) of the Criminal Code states that:

⁶⁵ Ibid., pp. 82-86.

⁶⁶ US State Department (2003), *Country Reports*, op. cit.

⁶⁷ IOM, *Press Briefing Notes*, Ukraine – Victims of Trafficking as Witnesses: Interview Best Practices', 6 February 2004, Christopher Lom, at www.iom.int/en/news/obno50204.shtml#item4.

⁶⁸ Article 149(1), Special Part, Chapter III Criminal Offences against Liberty, Honour and Dignity of a Person Ukrainian Criminal Code, available at www.legislationline.org/view.do?document=55244.

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'Any such actions as provided for by paragraphs 1 and 2 of this Article, where committed by an organized group, or involving illegal taking of children abroad or failure to bring them back to Ukraine, or for the purpose of removal of the victim's organs or tissues for transplantation or forcible donor purposes, or where these actions caused any grave consequences, – shall be punishable by imprisonment for a term of eight to fifteen years with the forfeiture of property.'⁶⁹

Trafficking in children is prohibited under article 149(2) which provides that:

'The same actions committed in respect of a minor, or several persons, or repeated, or committed by a group of persons upon their prior conspiracy, or through abuse of office, or by a person on whom the victim was financially or otherwise dependent, – shall be punishable by imprisonment for a term of five to twelve years, with or without the forfeiture of property.'⁶⁹

Although the new Criminal Code brought Ukraine's anti-trafficking legislation further in line with the *UN Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Human Beings especially Trafficking in Women and Children*, it still does not fully meet their requirements.⁷⁰

Other laws used to punish trafficking

Several other provisions of Ukraine's Criminal Code may be used to prosecute those involved in trafficking, including article 302 (pimping), article 190 (fraud) and article 146 (unlawful imprisonment).⁷¹ Most

⁶⁹ Ibid., Article 149(2).

⁷⁰ International Helsinki Federation for Human Rights (IHF), *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America Report 2002* (Events of 2001), see 'Women's Rights: Trafficking in Human Beings', pp. 330-332, this section is based on information provided by K. Levchenko, president of La Strada-Ukraine, Kiev, 19 April 2002. The International Helsinki Federation for Human Rights is a self-governing group of non-governmental, not-for-profit organizations that act to protect human rights throughout Europe, North America, and the Central Asian republics formed from the territories of the former Soviet Union. Available at www.ihf-ht.org/vlewdblibrary/lawdocument.php?doc_id=1026.

⁷¹ Anti-Slavery International, *Human Rights: Redefining Witness Protection*, Ukraine, pp. 199-210, p. 199 (October 2002). Chapter based on information provided by the non-governmental organisation International Women's Rights Centre La Strada – Ukraine, available at www.antislavery.org/homepage/resources/humantraffickukraine.pdf.

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activities related to prostitution are prohibited under article 303 which criminalises *prostitution or compelling and engaging in prostitution*.⁷²

Prostitution through coercion, deception, threats, violence, destruction or damage to property, blackmail or fraud is punishable by one to three years in prison. Article 303(2) states:

'Compelling to or engaging in prostitution, that is to provide sexual services for a fee by use of violence or threats of violence or destruction or endangerment of property, or by blackmail or deceit, - shall be punishable by a fine of 500 to 1000 tax-free minimum incomes, or arrest for a term up to six months, or imprisonment for a term of one to three years.'

Penalties increase to between 3 and 5 years imprisonment if those responsible are part of an organised group. Article 303(3) provides:

'Any such acts as provided for by paragraph 1 or 2 of this Article, if committed in regard of a minor, or by an organized group - shall be punishable by imprisonment for a term of three to five years.'

Under article 303(4), the term is raised to between 5 and 7 years if an organised group aims to profit from prostitution:

'Trading in prostitution, that is creating, leading or participating in an organized group which supports activities related to the provision of paid sex services by males and females for gainful purposes - shall be punishable by imprisonment for a term of five to seven years.'

Individuals working as prostitutes ('the gainful provision of sexual services') are also criminalised and must pay a fine or perform community service under Article 303(1).

5.5.2 Further government measures to combat trafficking

Ukraine's government has introduced a range of measures in an attempt to combat trafficking. Its initiatives have been praised by international organisations such as the IOM and UNDP, the latter of which observes:

'The Ukrainian government has made serious and sustained efforts to combat trafficking and to comply with international minimum standards. The Government does not condone trafficking and has

⁷² Ibid.

*taken a set of concrete measures in order to respond to this severe problem in Ukraine, and can now be said to be at the forefront of criminalizing trafficking in Europe.*⁷³

Two separate anti-trafficking councils have also been created by the government: the National Coordination Council for the Prevention of Trafficking in Human Beings, established by the Human Rights Ombudsman in 1999, and the Inter-Ministerial Coordination Group (ICG) established in 2001 and chaired by the Deputy Prime Minister of Ukraine.⁷⁴

In addition, in June 2002 a 'Comprehensive Programme for Combating Trafficking in Persons for 2002-2005' developed by and made up of NGOs, intergovernmental organisations and government officials was approved by the Cabinet of Ministers and entered into force the following month.⁷⁵

*'This updated programme aims at three main objectives: 1) Prevention of Trafficking, 2) Protection of Victims/Witnesses and 3) Prosecution of criminals involved in trafficking. Another subsidiary objective consists in the future allocation of financial resources to various organisations for the relocation, rehabilitation and reintegration of victims of trafficking.'*⁷⁶

The government has also taken action to regulate the employment agencies involved in recruiting women for trafficking. The IOM reports that:

*'In February 1999, the Licensing Chamber of Ukraine, the State Employment Centre of Ukraine and the Ministry of Labour and Social Policy issued an order authorizing the suspension of licenses for businesses that arrange for work abroad when they were found to be in violation of Ukrainian law. The order targets employment agencies only. A certain number of licences were suspended, but apparently none because of connections with trafficking.'*⁷⁷

The government receives assistance with its anti-trafficking policy from different regional and international actors, such as the Organisation for

⁷³ UNDP (2003), *Gender Issues*, op. cit., p. 60-61.

⁷⁴ US Department of State, *TIP Report*, op. cit.

⁷⁵ CABINET OF MINISTERS OF UKRAINE, *Resolution of June 5, 2002, No. 766, KVV*, available at www.lustrada.kiev.ua/content/doc/program2005enr.pdf.

⁷⁶ UNDP (2003), *Gender Issues*, op. cit., pp. 60-61.

⁷⁷ Apap & Medved, *Protection Schemes*, op. cit., p. 83.

Security and Cooperation in Europe (OSCE) and the IOM. The IOM's 2003 review of anti-trafficking measures in Ukraine notes that:

*'The OSCE Project Coordinator in Ukraine and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) serve as focal points both for a national strategy and for international cooperation, jointly with IOM and the European Commission. It is aimed at giving technical assistance to support the National Coordination Council against Trafficking. Special emphasis is placed on anti-trafficking legislation and enforcement. Another task is to support counselling hotlines, established in five major cities in Ukraine.'*⁷⁶

In terms of law enforcement, in 2000, specialised counter-trafficking units were created under the Criminal Investigation Department of the Ministry of Interior.

In 2003, UNDP reports that there were 170 counter-trafficking police officers working throughout Ukraine. Anti-trafficking units are found in each of the 27 administrative regions (*oblasts*) and consist of between three and thirty 'operational officers', depending on local crime rates. Their work is overseen by a Ministry of Interior 'investigator', a lawyer with responsibility for reviewing evidence and preparing the criminal case for the prosecutor. Investigators responsible for trafficking cases have reportedly been assigned to each *oblast* since November 2001.⁷⁵

Measures have also been taken to prevent the involvement of employment agencies in trafficking. In February 1999, the Licensing Chamber of Ukraine, the State Employment Centre of Ukraine and the Ministry of Labour and Social Policy issued an order authorising the suspension of the licenses of employment agencies arranging overseas work if an inspection committee finds violations of Ukrainian law.⁸⁰

5.6.1 Failure effectively to enforce anti-trafficking legislation

Since the adoption of the anti-trafficking legislation and introduction of enforcement mechanisms, the number of trafficking cases investigated

⁷⁶ Ibid., p. 86.

⁷⁵ UNDP (2003), *Gender Issues*, op. cit. p. 61.

⁸⁰ Minnesota Advocates, op. cit.

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and prosecuted has grown steadily.⁸¹ According to the Ministry of Interior, 289 cases were opened against traffickers in 2003, an increase on the 169 filed in 2002.⁸²

Government statistics on the number of traffickers prosecuted were not available at the time of writing. However, the IOM reports that by the end of 2002 there had been 41 trafficking convictions, 10 in 2001 and 28 in 2002. Although the organisation notes that convictions have increased, it also emphasises that the total number of convictions remains low.⁸³

In addition to prosecutions under article 149 of the Criminal Code, offenders have also been prosecuted for offences associated with trafficking such as brothel keeping and organized crime. No details about these were available at the time of writing.⁸⁴

Although government information on average sentences for those convicted of trafficking was also not available, the US Department of State *Trafficking in Persons Report* does report that of the 28 defendants convicted during 2002, only 17 received prison terms.⁸⁵ Some information is also given in the US State Department Country Report on human rights in Ukraine which states that in 2002, 'sentences for those convicted of trafficking ranged from fines to up to 9 years in prison'. The UN Special Rapporteur on violence against women reported in 2003 that sentences for those convicted of trafficking 'generally were not severe and usually consisted of fines'.⁸⁶

In general however, the impact of anti-trafficking work by Ukraine's police units has been 'limited' with Ukraine still failing to prosecute suspected traffickers on a routine basis.⁸⁷ In addition, although other

⁸¹ UNDP, *Gender Issues*, op. cit., pp. 59-60; US Department of State (2004), op. cit.

⁸² US Department of State (2004), *Country Reports*, op. cit.

⁸³ Appa & Medved, *Protection Schemes*, op. cit., p. 58.

⁸⁴ UNDP (2003), *Gender Issues*, op. cit., p. 61.

⁸⁵ US Department of State, *TIP Report* (2003), op. cit.

⁸⁶ US Department of State (2003), *Country Report*, op. cit.; R. Coomaraswamy, *Report of the UN Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, International, regional and national developments in the area of violence against women 1994-2003*, submitted in accordance with Commission on Human Rights resolution 2002/52, Addendum 1, (27 February 2003), UN Doc. E/CN.4/2003/75/Add.1, p. 389, par. 2133, available at [www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2003.75.Add.1.EnOpen.docum.ent](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2003.75.Add.1.EnOpen.docum.ent).

⁸⁷ US Department of State (2003), *Country Report*, op. cit.; UN Special Rapporteur, *Report of Special Rapporteur*, Ibid., p. 390, par. 2136.

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forms of trafficking do take place, cases initiated under article 149 have only concerned trafficking for the purposes of sexual exploitation.⁸⁸

In terms of other anti-trafficking measures, doubt has also been cast on the success of government investigations into licensed employment agencies suspected of illegal business practices. The IOM describes how the policy has:

'(...) prompted criminal groups to act as tourist agencies rather than employment agencies. (...) Although the committee responsible for inspecting registered travel agencies suspects that some of them are involved in the trafficking business, it is not empowered to suspend their licences. Moreover, many suspicious travel agencies operate without licences. However there has been no official investigation of the practices of these firms.'⁸⁹

The Ombudsman of the National Co-ordination Council for the Prevention of Trafficking in Human Beings also lacks enforcement powers and is not generally thought to be an effective mechanism for preventing trafficking.⁹⁰ The US Department of State observes in its February 2004 country report on Ukraine that:

'The relevant authorities [involved in the 2002 anti-trafficking programme], had yet to budget for any new activities. The Inter-Ministerial Coordination Council for Combating Trafficking in Persons had not yet held a substantive meeting.'⁹¹

Overall, the US Department of State TIP Report ranks Ukraine as a 'Tier 2' country, noting that although the government has made a significant attempt to prosecute and convict more traffickers, it still fails to meet minimum standards on the elimination of trafficking.⁹²

The Home Office CIPU material on trafficking fails to address any of these details, stating only that *'the government did not routinely prosecute suspected traffickers, although the number of such cases has increased in the last year'*. This analysis is based on a US State Department report covering the events of 2001.⁹³

⁸⁸ Anti-Slavery International, *Human Traffic*, op. cit., p. 203.

⁸⁹ AAP & Medved, *Protection Schemes*, op. cit., p. 83.

⁹⁰ UN Special Rapporteur, *Report of UN Special Rapporteur*, op. cit., pp. 388-392, par. 2136.

⁹¹ US Department of State (2004), *Country Reports*, op. cit.

⁹² US Department of State, *TIP Report*, op. cit.

⁹³ CIPU, *Country Assessment*, op. cit., paras. 6.30, 6.64.

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5.6.1.1 Lack of resources for police and judiciary

One factor contributing to the low level of trafficking prosecutions is the lack of resources designated to anti-trafficking police. In 2003, anti-trafficking units not only experienced cash shortages and lack of personnel but were also required to conduct other criminal investigations, in addition to the trafficking related ones for which they were originally assigned.⁹⁴

Major resource shortages also affect the functioning of the judiciary. The International Helsinki Federation, reports that:

'Most courts struggled with a serious work overload. While one judge dealt with an average of 35 cases per month in 1996, the corresponding figure was 90 in 2002. In Kyiv the number was as high as 113. As a result, legal proceedings were often very lengthy. In extreme cases, defendants had been waiting for their cases to be taken up in court for five years or more.'⁹⁵

5.6.1.2 Corruption in the police and judiciary

In their April 2003 *Country Report* on Ukraine, the Home Office observes that:

'public officials have aided and abetted or assisted organised criminal groups in trafficking women abroad.'⁹⁶

With a rating of less than 3 out of 10 on the anti-corruption organisation Transparency International's 2003 'Corruption Perceptions Index', Ukraine is widely considered to suffer from very high levels of corruption.⁹⁷ Corruption amongst state officials exists at all levels, undermining the

⁹⁴ Anti-Slavery, *Human Traffic*, op. cit., p. 203; US Department of State (2004), *Country Reports*, op. cit.

⁹⁵ IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2003 (Events of 2002)*, 'Judicial system and independence of the judiciary' pp. 5-6, (06/24/03), available at www.hrf.hr.org/documents/doc_summary.php2?sec_id=8&id=1322.

⁹⁶ CIPU, *Country Report*, op. cit., par. 6.64.

⁹⁷ Transparency International, *2003 Corruption Perceptions Index*. The index relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt). Available at www.transparency.org/cpi/2003/cpi2003.en.html.

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implementation of anti-trafficking legislation in a variety of ways and allowing traffickers to operate with impunity.⁹⁸

According to a report on trafficking published by the Minnesota Advocates, bribery of border guards is widespread and local officials assist the criminal groups who traffic women by issuing travel documents.⁹⁹ The International Helsinki Federation elaborates on police involvement in trafficking in the region:

*'NGOs have reported that police in Bulgaria, Moldova and Ukraine have allegedly extorted bribes from trafficked women, their families or others in order to continue to investigate against reported traffickers. Police may also collude with traffickers, for example in forcing women back to brothels from which they escaped, receiving sexual favours and bribes in return for such "cooperation".'*¹⁰⁰

Lack of sufficient funds and staff also encourages corruption amongst the judiciary.¹⁰¹

At the time of writing, no information was available about the prosecution of law enforcement and border guards for their involvement in trafficking activities.

5.6.2 Shortcomings of existing anti-trafficking legislation

According to the April 2003 CIPU report, the effectiveness of the government's new anti-trafficking legislation remains 'unclear'.¹⁰² However, a range of other international sources makes it plain that there are serious short-comings with the legislation in question.

Although more trafficking cases are now being investigated and prosecuted, Ukraine's anti-trafficking legislation has been criticised on several grounds. Reviewing the legal protection offered to trafficking victims in the Ukraine, the IOM describes how article 149 does not provide a clear and wide-ranging legislative base for prosecution of trafficking offences:

⁹⁸ US Department of State, *TIP Report*, op. cit.; UNDP, *Gender Issues*, op. cit., p. 55.

⁹⁹ Minnesota Advocates (2000), *Trafficking in Women*, op. cit., p. 13.

¹⁰⁰ *IHE, Interventions and Recommendations by the International Helsinki Federation for Human Rights (IHF)*, OSCE Human Dimension Implementation Meeting Warsaw, 6-17 October 2003, p. 57, available at www.ihf-hr.org/documents/index.php.

¹⁰¹ US Department of State (2003), *Country Reports*, op. cit.

¹⁰² CIPU, *Country Assessment*, op. cit., par. 6.64.

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*'The definition of trafficking is brought more closely in line with the Trafficking Protocol. However, the law is too uncertain and vague and this may impede its effective implementation. There are concerns about the new definition of trafficking in human beings. The legislation does not cover all cases of trafficking and the requirement for trafficking to involve crossing a border and "the aim of a further sale or paid transfer" is unnecessarily restrictive. Terms such as "sexual exploitation" and "porno business" have not previously appeared in the criminal law and are not defined. The law only targets those directly involved in sale or transfer, and ignores other intermediary roles.'*¹⁰³

As the IOM states, Ukrainian anti-trafficking legislation does not cover all cases of trafficking. Although article 149 of the revised 2001 criminal code prohibits international trafficking and related crimes, internal trafficking is not proscribed and must be prosecuted using related offences.¹⁰⁴ Furthermore, article 149 requires the initial sale or illegal transfer of victims to have occurred inside the country, often not the situation with trafficking cases in Ukraine.¹⁰⁵ Given these limitations, UNDP concludes:

*'Although this new article is more in accordance with the definition of trafficking and other international standards stipulated in the Trafficking Protocol than the previous one, Ukraine still has to amend Article 149 and other parts of its legislation in order to fully comply with its international obligations.'*¹⁰⁶

Even though a Working Group has drafted new legislation to implement these changes, at the time of writing it had still not been adopted by the Ukrainian Parliament (*Verkhovna Rada*).¹⁰⁷

Furthermore, although Ukraine did sign the *UN Organized Crime Convention in December 2000* and the *Trafficking Protocol* in November 2001, both were still open for ratification by the Ukrainian legislature at the time of writing.¹⁰⁸

Considerable concern has also been expressed about article 303(1) of the Criminal Code, which criminalises prostitution. The International Helsinki Federation for Human Rights writes that:

¹⁰³ Apap & Medved, *Protection Schemes*, op. cit., fig. 2, p. 17.

¹⁰⁴ US *TIP Report* (2003), op. cit., 'Prosecution'.

¹⁰⁵ Anti-Slavery International, *Human Trafficking*, op. cit., p. 199.

¹⁰⁶ UNDP (2003), *Gender Issues*, op. cit., p. 59.

¹⁰⁷ *Ibid*.

¹⁰⁸ UNDP (2003), *Gender Issues*, op. cit., p. 59.

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*'Since the article entered into force, there have been discussions about the first part, which inflicts responsibility for prostitution, and its damaging effect on detecting cases of trafficking. Representatives of some law protection organizations (including foreign ones) have stated that the criminalization of prostitution in Ukraine will create a situation in which trafficked persons will not complain to law enforcement bodies that they were forced to work in sex the business. The article could also be a motive for traffickers to blackmail their victims: if the police learn about pimp actions, then trafficked person will also be accused of prostitution.'*¹⁰⁹

5.6.3 Lack of awareness and understanding of legislation

More cases are now prosecuted under article 149 of the Criminal Code but the lack of legal precedents and inexperience of the police and courts still ensures that cases of trafficking are prosecuted under related laws, and not specifically under Ukraine's anti-trafficking provisions.¹¹⁰ This point is clearly made by research from the University of Rhode Island:

*'Law enforcement agents need training on how to do investigations of traffickers. They need to acquire skills on how to investigate modelling, employment, tourist agencies, and marriage agencies that are the frequent fronts for traffickers. During interviews for this research project, law enforcement agents admitted they were unsure of how to investigate such agencies or determine if they were breaking the law. They said, "We know it is a crime if the girl is under the age of 18. But is it a crime if the woman is poor, or the woman consents?" They also said they were aware that travel agencies were part of organized crime groups, but not sure if they were breaking the law, or how to investigate them for trafficking women. They asked for training in investigative techniques.'*¹¹¹

Prosecutions for trafficking are also undermined by the stereotypical views about women involved in prostitution often held by those involved in court proceedings. The IOM explains:

'A typical and especially deep-rooted stereotype is to assume that the problem of trafficking in persons is one and the same as the problem of prostitution. This stereotype assumes that the victim of trafficking is, herself, responsible for her fate. It derives from the contempt that people feel towards prostitutes, viewing them neither

*as legitimate workers nor exploited victims. The stereotype is based on the assumption that a victim knew about her prospective career as a prostitute. It promotes public indifference to the fate of victims of trafficking and to the problem of trafficking in persons in general. (...) [Such] a view of the trafficking problem limits counter-trafficking actions to combating prostitution. Traffickers themselves are interested in maintaining these stereotypes. In the course of investigations and court proceedings of trafficking cases traffickers often claim that their criminal activities were limited to the exploitation and sale of prostitutes, as if that would be an extenuating circumstance. Unfortunately, these claims promote a negative and biased perception of victims of trafficking by the general public and officials of the criminal justice system who must render verdicts in trafficking cases.'*¹¹²

In general, training on how to address the special needs of trafficking victims is required for the police, for prosecutors and for judges in order to ensure higher levels of convictions are obtained.¹¹³

5.6.4 Lack of legal representation and advice for victims

Whilst the government's 'Comprehensive Programme 2002-5' against trafficking, establishes that free legal assistance for victims of trafficking-related offences should be provided by government reintegration centres, in practice, these measures have not been implemented.¹¹⁴ Legal assistance and advice on a range of issues are therefore provided to trafficking victims by NGOs (such as Winrock International) and by the IOM. UNDP reports that:

*'NGOs and IOM Rehabilitation Centre staff inform victims about legal options available to protect them as witnesses, whether it is appropriate to cooperate with law enforcement bodies, the possibility of serving as witnesses in criminal cases, as well as the possibility of pressing civil charges against their traffickers for the restitution of their assets and compensation for damages.'*¹¹⁵

Such advice is very important in order to ensure that victims cooperate with Ukrainian law enforcement agencies.

¹⁰⁹ IHF (2002), *Annual Report*, op. cit., p. 59-60.

¹¹⁰ UNDP (2003), *Gender Issues*, op. cit., p. 60.

¹¹¹ University of Rhode Island, *Trafficking*, op. cit., p. 60.

¹¹² Apap & Medved, *Protection schemes*, op. cit., p. 57.

¹¹³ Anti-slavery, *Human Trafficking*, op. cit., p. 209.

¹¹⁴ Anti-slavery, *Human Trafficking*, op. cit., p. 208.

¹¹⁵ UNDP, *Gender Issues*, op. cit., p. 60.

*'Proper guidance and assistance helps bridge the gap of trust and confidence between victims and law enforcement, thus encouraging victims to cooperate in the identification of traffickers and to testify in criminal proceedings.'*¹¹⁶

If trafficking victims do choose to act as witnesses in criminal proceedings, article 52 of Ukraine's Criminal Procedure Code guarantees their right to legal representation when they testify. Since victims are most often unable to afford their own legal representation, NGOs and the IOM again provided the necessary representation.¹¹⁷

However, statistics published by the NGOs involved suggest that only a small number of women actually benefit from their free legal assistance. La Strada Ukraine reports that between June 2001 and January 2003, 31 women received 'legal assistance' at the NGO's different Centres.¹¹⁸

5.6.5 Absence of effective witness protection system

Obtaining the testimony of a victim/witness against their trafficker is central to successful trafficking prosecutions. While only 12% of trafficking victims who return to Ukraine choose to report their experiences, even those who do report the offence committed against them are generally unwilling to co-operate with prosecutors and testify in court.¹¹⁹

Fear of retaliation by their trafficker means the great majority of victims and their families are afraid to report their experiences to the police and testify in criminal cases. As the 2004 US Department of State country report on human rights in Ukraine comments:

*'Criminal groups routinely used intimidation to induce victims and witnesses to withdraw or change their testimony.'*¹²⁰

Figures provided by UNDP show that in 2001 only 84 victims of trafficking testified compared to 202 in 2002 and 278 in 2003.¹²¹ However, although

¹¹⁶ IOM, *Press Briefing Notes*, op. cit.

¹¹⁷ UNDP, *Gender Issues*, op. cit. Failure to enforce anti-trafficking legislation pp. 59-60.

¹¹⁸ La Strada, 'Other kinds of assistance', at www.lastrada.kiev.ua/fo.cq?lng=en&id=195.

¹¹⁹ University of Rhode Island, *Trafficking in Women*, op. cit., pp. 42-3. 68 victims of trafficking were interviewed in 6 different cities across Ukraine for this research.

¹²⁰ US Department of State, *Country Report (2004)*, at www.state.gov/g/drl/rls/hrrpt/2003/27871p1.htm.

¹²¹ UNDP, *Gender Issues*, op. cit., p. 60.

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the number of victims testifying has increased, it remains a fraction of the total number of women trafficked.

Despite the importance of securing testimonies from victims, Anti-Slavery observes that 'trafficked persons returning to Ukraine in most cases remain unprotected'.¹²² UNDP also explains:

*'The only form of victim protection currently in existence in Ukrainian law is the support and assistance directly related to criminal proceedings, such as witness protection.'*¹²³

Under the 1994 *Law on Provision of Safety for Persons Acting in Trials* a variety of safety and protection measures are guaranteed to victims willing to testify as witnesses against their offenders. However, whilst victim-witness protection provisions do exist, they are widely criticised for not specifically addressing trafficked persons and rarely being available in practice because of lack of funding. According to Anti-Slavery International's 2002 report:

*'The witness protection law has provisions regarding confidentiality, anonymity and closed trials for witnesses; however, these are rarely used in trafficking cases. Upon request from a witness via the prosecution, a judge can order a closed trial in cases involving sex crimes or in the interests of safety of the witnesses, but witnesses are rarely informed of this possibility. There have been only three closed trials in trafficking cases. Problems still exist in closed trials, because this still does not prevent relatives of the defendant from being present outside the court and abusing or intimidating victims there. NGOs assist in an informal way, by accompanying witnesses to court and preparing them for the trial.'*¹²⁴

In addition, La Strada reports that:

*'[T]hrough the court session may be a closed one, the accused and his lawyer are present in the courtroom, and they try different kinds of pressure upon the trafficked woman-witness to menace her.'*¹²⁵

Protection during trafficking investigations is also infrequent. Shelters to house and protect witnesses are only used during the investigation and trial of a few trafficking cases. These shelters are not run by the

¹²² Anti-Slavery, *Human Traffic*, op. cit., p. 209.

¹²³ UNDP, *Gender Issues*, op. cit., p. 60.

¹²⁴ Anti-Slavery, *Human Traffic*, op. cit., p. 206-9.

¹²⁵ La Strada, 'Other kinds of assistance', op. cit.

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government but by NGOs. The 2003 Trafficking in Persons Report states that:

*'In the absence of a functioning [witness protection] program at the central level, NGOs collaborate with local police and secure ad hoc witness and victim protection. In specific cases, they provide mobile phones to call police, apartment relocation assistance, and police and victim joint surveillance of the potential movement by traffickers.'*¹²⁶

Furthermore, while this type of protection does fall under the witness protection law, there is no legal provision or protocol regarding provision of long-term protection for trafficked persons after a trial, nor are NGOs able to provide this type of assistance.¹²⁷

Successful witness protection is also undermined by the fact that many law enforcement officials do not consider trafficked women to be victims in need of such protection during an investigation and trial. Anti-Slavery comments:

*'Interviews with law enforcement officials revealed a clear perception on their part that there was no need to provide trafficked women with protection. Police and prosecutors believed that the women were not at serious risk of any danger from traffickers. However, in practice it seems they underestimate the risk of reprisals because of the relative success of NGO involvement in providing safe and secure shelters. Threats from traffickers or their associates to the victim witness were reported in two of the interviews with trafficked women. Police were aware of these threats, but the trafficked women were never informed whether any action was taken.'*¹²⁸

5.7.1 Stigma associated with return to families

In 2002, the University of Rhode Island's research on attitudes to trafficked women in the Ukraine suggested that the public generally viewed trafficked women who were forced into prostitution as victims. It found that 78% of those interviewed believed such women were victims

¹²⁶ US Department of State, 'Trafficking in Persons Report', released by the Office to Monitor and Combat Trafficking in Persons, 11 June 2003, at: www.state.gov/g/rlp/rls/hipr/2003/21277.htm.

¹²⁷ Anti-Slavery, *Human Traffic*, op. cit., p. 204.

¹²⁸ *Ibid.*, p. 209.

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of a crime who required assistance and only 22% saw the trafficked women as 'guilty' and felt no sympathy for what happened to them. However the same research revealed that there was still a strong stigma attached to women who had been trafficked into sexual exploitation:

*'Almost half of those surveyed said that the cause of prostitution was the economic problems in society. About one third said the primary cause of trafficking was men's demand for women in prostitution. Approximately 20 percent said the cause was women's "depravity." Of those surveyed, only 25 percent said they would maintain contact with a daughter if they knew she was in prostitution.'*¹²⁹

Harsh societal attitudes toward trafficking deterred women from pursuing legal action against traffickers.¹³⁰ The NGO La Strada reports that:

*'The majority of the trafficked persons had not told their families of their real problems, on the contrary, they sent letters in which informed that everything was all right with them. Most often, having found out, that the woman (a mother, a daughter or a wife) rendered sexual services, such families may reject the woman.'*¹³¹

5.7.2. Government failure to identify & assist returned victims

As the April 2003 CIPU country report acknowledges, Ukraine's government is:

*'unable to assist the victims [of trafficking] effectively, primarily due to a lack of funds, and other support services also suffer from a shortage of money.'*¹³²

However, the Home Office CIPU assessment also reports the following misleading information on the Ukraine's 2002 anti-trafficking programme, based on outdated 2002 US Department of State Report on human rights practices in Ukraine which cover events from 2001:

'In May 2002, the Cabinet of Ministers approved a programme against people trafficking to run until 2005, to increase efforts against sex industry and donor trafficking. (...) The programme will

¹²⁹ University of Rhode Island, *Trafficking*, op. cit., p. 5. Researchers interviewed 395 people in 6 cities across Ukraine.

¹³⁰ US Department of State (2003), *Country Report*, op. cit.

¹³¹ La Strada, 'Placing to a rehabilitation center', available at www.lastrada.kiev.ua/ua.cgi?lng=en&id=159.

¹³² CIPU *Country Assessment*, op. cit., para. 6.64

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*concentrate on helping victims through support services and crisis centres throughout the country.*¹³⁷

More recent information supplied by the US Department of State notes that notwithstanding Ukraine's 'significantly increased' efforts to fight human trafficking, in 2002, the government is still unable to provide effective social assistance to returning trafficking victims.¹³³ UNDP's 2003 study also comments that:

*'[G]overnmental assistance to victims is still inadequate. Ukraine still faces problems such as: limited financial resources, limited international and national inter-agency cooperation, overly complex bureaucracy and sporadic cases of corruption. Therefore, in spite of the Ukrainian government's achievements, it still does not fully comply with international standards.'*¹³⁴

Since such assistance is vital to ensure trafficked persons can recover from their experience, amongst the action mandated by Ukraine's 'Comprehensive Programme' for 2002-5 is the creation of State Reintegration/Rehabilitation Centres to provide medical, psychological and legal assistance for victims of trafficking offences. Due to a lack of funds, such government centres had not been opened at the time of writing, leaving NGOs to provide access to recovery services.¹³⁵

Police referrals of returning victims to NGOs have also been criticised:

*'[T]he problem remains that many trafficked persons who contact the police and report traffickers, are not considered to be either trafficked persons or victims of crime and so are not referred to NGOs. (...) [In other cases the police recognise that women need] legal assistance and social assistance (particularly psychological counselling and financial assistance) but they did not refer her to any help, due to their lack of knowledge and understanding about the existence of relevant NGOs and the role they can play.'*¹³⁶

To address this problem, the NGO La Strada has developed an application form for trafficked persons to be given to victims when they first contact police. The form explains the availability of NGO assistance and has been

¹³³ US Department of State (2003), *Country Reports*, op. cit., 6(f), Anti-Slavery, *Human Trafficking*, op. cit., p. 207.

¹³⁴ UNDP, *Gender Issues*, op. cit., p. 58.

¹³⁵ La Strada, 'Placing to a rehabilitation centre', op. cit.

¹³⁶ Anti-slavery, *Human Trafficking*, op. cit., p. 208.

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successful in encouraging trafficked persons to contact NGOs and to cooperate with law enforcement bodies.¹³⁷

5.7.3 Limited capacity for support and assistance by women's support networks

In the absence of effective government measures for victim protection or assistance, non-governmental and international organisations provide a variety of reintegration services for trafficking victims returning to Ukraine, including medical, psychological, and legal assistance, and training and advice on employment possibilities.¹³⁸

In co-operation with the national NGO network, the IOM gives support to an increasing number of victims. According to the IOM:

*'National non-governmental organizations (NGOs) are crucial partners for the government of Ukraine in its overall strategy to combat trafficking in human beings. (...) In 2001, IOM organized these NGOs into national network trained to provide reintegration assistance to victims of trafficking coming back to Ukraine. The majority of NGOs in this network have been active in combating trafficking in Ukraine for at least three years. Today, this national network of 22 NGOs covers almost the entire territory of Ukraine. (...) These organisations finance their activities with the support of various donors and partners such as ILO, IOM, OSCE, and Winrock International.'*¹³⁹

However, relatively small numbers of women are reported to have benefited from the network of rehabilitation centres. During 2000, 42 victims took assisted voluntary return and received 'reintegration assistance'. This figure increased to 254 in 2001 and to 332 in 2002. Between January and September 2003, 293 victims were assisted.¹⁴⁰

Two leading NGOs involved in this network are the International Centre for Women's Rights - La Strada, and Winrock International, a US-based NGO working in the region since 1992. In July 1998, Winrock International started a 'Trafficking Prevention Programme' in Ukraine,

¹³⁷ Apap & Medved, *Protection Schemes*, op. cit., p. 85.

¹³⁸ Anti-slavery, *Human Trafficking*, op. cit., p. 208.

¹³⁹ Apap & Medved, *Protection Schemes*, op. cit., p. 86.

¹⁴⁰ UNDP, *Trafficking*, op. cit., p. 62, Table 3.2, 'Ukrainian Victims of Trafficking provided with assisted voluntary return and reintegration assistance by IOM Kyiv in cooperation with the national NGO network.'

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operated by a network of seven 'Women for Women' centres' in cities across Ukraine. These centres offer rehabilitation programmes for trafficking survivors. Winrock International also addressed domestic violence issues as part of the trafficking prevention programme.¹⁴¹

Since the centres have been established, Winrock International reports that about 45,000 women had used their different services. Of these, 222 were reported to be victims of trafficking or relatives of a trafficking victim who had not returned.¹⁴²

According to La Strada, which is based in Kyiv, between January 2001 and January 2003, the NGO provided 'social assistance' to 183 trafficking victims. 125 women had been met on returning to Ukraine, 89 had used its shelter, 45 received physiological [sic] assistance, 90 received medical assistance, 58 attended professional courses and 31 been given legal assistance.¹⁴³

However, at the time of writing there were few reports of NGOs that provided temporary shelters for returning victims. According to La Strada, the rehabilitation centre 'Assol' in Odessa has capacity to receive 4 women at one time, and at the 'Mir Zhenshchir' ('The Word of Women') NGO, a shelter for up to 25 women has been set up for trafficked persons and women suffering from domestic violence.

In 2002, the IOM opened a 'Reintegration Centre' for trafficked persons. This centre has places for 14 people and provides mostly medical and psychological assistance. The residence time is up to 1 month.¹⁴⁴ In 2002 the IOM Centre provided assistance to 173 trafficking victims, and during the first 9 months of the 2003 it assisted 144 women.¹⁴⁵

No information was available at the time of writing about longer-term support networks for trafficked women who had returned.

¹⁴¹ See Winrock International's web-site, at www.winrock.org.ua/ITP/En/index.html.

¹⁴² Winrock International, 'Statistical analysis of surveys of human trafficking victims who sought assistance at the seven regional Women for Women Centers of the Trafficking Prevention Project' December 2003, figures as of as of December 2003 available at www.winrock.org.ua/ITP/En/Victims_notes_e.pdf.

¹⁴³ Figures available from La Strada, La Strada Program 'Prevention trafficking in women from Central and Eastern Europe', available at www.lastrada.kiev.ua/showstatistics.cgi?lng=en&ld=3.

¹⁴⁴ See La Strada at www.lastrada.kiev.ua/ld.cgi?lng=en&ld=159.

¹⁴⁵ US Department of State, *Country Report* (2004), op. cit.

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No information is available on the percentage of returning victims accessing re-integration and assistance programmes. However, as the US Department of State makes clear in its 2003 report on human rights conditions in Ukraine, the number of women reported to be accessing re-integration assistance of some type represents a 'small fraction of the total number of women trafficked abroad'.¹⁴⁶

5.7.4 Lack of socio-economic prospects

Even for women who benefit from the vocational training courses run by some local NGOs, employment opportunities remain scarce.¹⁴⁷

The University of Rhode Island's research conducted in 2002 revealed that even women who had already been trafficked still considered travelling abroad to find work in the future due to economic hardship. It comments:

*'Overwhelmingly, young women of Ukraine perceive the solution to their problems is to be found abroad. The belief that they can succeed if they try hard or are lucky is very strong. Even women who are previous victims of trafficking say they are willing to try again. Sixty-three percent of the 84 victims interviewed said that although they suffered while abroad, they would try again and hoped to have better luck next time.'*¹⁴⁸

Whilst Ukrainian law does require that victims be awarded financial compensation under certain circumstances, Federal Treasury bureaucracy and the lack of awareness amongst victims about compensation mechanisms have complicated implementation of the relevant legislation in practice. Anti-Slavery International has recently recommended that free legal advice and assistance about the right and procedure for compensation be given to trafficking victims.¹⁴⁹

¹⁴⁶ US Department of State, *Country Report* (2003), op. cit.

¹⁴⁷ La Strada, 'Vocational training courses', at www.lastrada.kiev.ua/ld.cgi?lng=en&ld=159.

¹⁴⁸ University of Rhode Island, *Trafficking*, op. cit., p. 53.

¹⁴⁹ Anti-Slavery International, *Human Trafficking*, op. cit., p. 208-9.

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6. Domestic Violence

6.1 Prevalence of domestic violence

The US Department of State reports that domestic violence is 'pervasive' in Ukraine.¹⁵⁰ In spite of this, the official collection of data on the number of domestic violence incidents has been carried out only since Ukraine's new 'Law on the Prevention on Family Violence' entered into force in 2002.¹⁵¹

According to a UNDP study published in 2003, statistics collected by the district police inspectors handling issues of domestic violence show that from March 2002, 41,063 people have been 'registered as having initiated domestic violence in the family'.¹⁵² However, information provided by the Ministry of the Interior published in the same report are still unclear as to the extent of domestic violence in Ukraine. They show that between January and June 2003, 137,233 incidents of 'domestic violence' were recorded nationally by Ukrainian police, 12,148 cases of 'beating', 3032 cases of 'physical' abuse and 47,167 cases of 'family violence' and 725 cases of 'economic' violence.¹⁵³ Despite the large number of incidents recorded, it is believed these figures fail to reflect the full scale of domestic violence due to underreporting.¹⁵⁴

Data obtained by the Minnesota Advocates for Human rights before new legislation was introduced and based on interviews carried out with police in Berdychiv revealed that between 30% and 40% of all daily calls to police were related to domestic violence. The human rights group also reports that one policeman interviewed in Dnipropetrovsk estimated that an average of 20 domestic violence calls were received in their district on every 24-hour duty shift, with approximately 60% of the calls being made by women who experiencing violence and 40% from neighbours complaining about the abuse.¹⁵⁵

Other research published in 2001 by Winrock International, women and children are the most frequent victims of domestic violence. 68 percent of

¹⁵⁰ US Department of State, *Country Reports* (2004), op. cit.

¹⁵¹ UNDP, *Gender Issues*, op. cit., p. 64.

¹⁵² The report does not indicate until when these statistics were collected. Ibid. p. 63.

¹⁵³ Ibid. Table 3.3, 'Statistics of the Ministry of Interior reflecting the implementation of the law on prevention of domestic violence, January - June 2003', p. 64.

¹⁵⁴ UNDP, *Gender Issues*, op. cit., p. 64.

¹⁵⁵ Minnesota Advocates for Human Rights, *Domestic Violence*, op. cit., p. 11.

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Ukrainian women suffer from domestic violence, of whom 25 percent 'as a rule', or 'often' suffer from beating.¹⁵⁶

According to the Ukrainian National Academy of Interior, cited by the NGO Winrock International, the number of murders committed on domestic violence grounds has nearly tripled between 1997 and 2000.¹⁵⁷

6.2 Social characteristics of domestic violence

Women of all ages and from all social and economic backgrounds are subject to domestic violence in Ukraine. As the UNDP explains:

[D]omestic violence takes place in all kinds of families. It occurs in every social group and class, in families with high levels of education as well as in those with low, in families with alcoholism as well as in families without addiction problems.¹⁵⁸

While the existence of domestic violence cannot be specifically attributed to Ukraine's economic transition from a state-led economy, the incidence of domestic violence is particularly high in Donetsk, Ivano-Frankivska and Luhanska, regions which have suffered most from industrial and economic decline.¹⁵⁹ NGOs such as Winrock International also consider that this type of gender-based violence makes Ukrainian women more vulnerable to trafficking.¹⁶⁰

6.3 Attitudes towards domestic violence

Although it is illegal, domestic violence is still widely considered an acceptable and normal aspect of domestic life.¹⁶¹

¹⁵⁶ Winrock International, *Three Months of a Woman's Life*, (Lviv 2001), p. 1, citing statistics from the Institute of Sociological Studies of the Ukrainian National Academy of Science. Available at www.winrock.org.ua/DOS/research/3months.pdf.

¹⁵⁷ Ibid., Citing information provided April 17-18, 2000 by the Lviv-based Interior Institute under the Ukrainian National Academy of Interior.

¹⁵⁸ UNDP, *Gender Issues*, op. cit., p. 65.

¹⁵⁹ Ibid., p. 65; Minnesota Advocates, op. cit., *Domestic Violence*, op. cit., p. 18.

¹⁶⁰ See for example, details of Winrock International's Trafficking Prevention project, available at www.winrock.org.ua/TTP/EN/index.html.

¹⁶¹ Council of Europe, 'Legislation in the Member States of the Council of Europe in the field of violence against women', Ukraine, (Strasbourg November 2002), EG (2001) 03rev, Fig. 1.2. Information provided by the Department for Cultural and Humanitarian

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While recent, detailed information was not available on this topic at the time of writing, the Minnesota Advocates cites research which suggests that many people, including victims themselves, believe those who suffer domestic violence provoke, or in some way deserve the treatment. In some cases, it is believed that women not only provoke violence, but also even manipulate men into fighting in order to gain an advantage during divorce proceedings.¹⁶²

In general, domestic violence is considered a private matter, rather than a public problem. Nonetheless, some evidence does exist to show the erosion of the traditional stereotypes which blame women for domestic violence.

In a Winrock International survey of more than 268 women carried out in 2001, 59% of women surveyed were found to have experienced violence from a relative or sexual partner. The organisation reports that:

*'It was pleasant to learn that of those surveyed, 100 percent of young ladies under 15, 86.5 percent of ladies aged between 15 and 20 years, 88.5 percent of women aged between 20 and 35 years, and 87.9 percent of women older than 35 years consider domestic violence a crime.'*¹⁶³

However, the study admits that the women surveyed had 'a rather high education level', possibly explaining their higher level of awareness of domestic violence.¹⁶⁴

Although a majority of these women did believe domestic violence to be a crime, when asked if they had contacted any government bodies or NGOs after they had experienced domestic violence, only 25.7% of women surveyed said they had, while 73.1% said they had not, and 1.1% gave no answer.¹⁶⁵

Co-operation in December 2000 and taken from "Gender Analysis of Ukrainian Society" presented by the Ukraine Gender in Development Programme. Available at [www.soe.lviv.ua/Human_Rights/Equality/04_Violence_against_women/096_FGI\(2001\)03ex.asp#TOPPage](http://www.soe.lviv.ua/Human_Rights/Equality/04_Violence_against_women/096_FGI(2001)03ex.asp#TOPPage).

¹⁶² Minnesota Advocates, pp. 18-9, citing research by UNDP, *Gender Analysis of Ukrainian Society*, United Nations Development Program, (1999), p. 221.

¹⁶³ Winrock International, 'Three Months', op. cit., pp. 2-6. This survey was carried out in 2001 by the Women's Perspectives Centre in Lviv, Ukraine. 268 women were surveyed in 6 different women's centres. The survey adopts a broad definition of domestic violence, including economic control, verbal and emotional abuse.

¹⁶⁴ Ibid.

6.4 Domestic Violence and the law

6.4.1. Prevention of Domestic Violence Act (2001)

Prior to the adoption of Ukraine's 'Law on the prevention on domestic violence' in November 2001, no Ukrainian law specifically criminalised domestic violence and domestic violence cases were prosecuted under legislation on assault.

The Act, which entered into force in March 2002, defines domestic violence broadly, as any intentional actions committed. The law defines domestic violence as 'any intentional actions committed by one family member toward another family member which violate constitutional rights and freedoms of a family member as of a citizen and cause harm to his or her physical, mental or moral health or to the development of a child'.¹⁶⁶ According to the International Helsinki Federation for Human Rights, the law:

*'[H]ad been worked out over a period of several years by lawyers and representatives of women's organizations. The law defines the legal and organisational basis for preventing domestic violence, as well as those bodies and organisations responsible for its implementation. The law also adopts a wide definition of violence by including terms such as physical, sexual, psychological, and economic violence in the family. According to the law, violence in the family is defined as "all deliberate acts of a physical, sexual, psychological or economic nature by one family member towards another family member, if such acts violate the constitutional rights and freedoms of the family member and citizen and cause moral damage, or damage to physical or psychological health." The law is gender neutral in this regard, since it does not specify the sex of the victim.'*¹⁶⁷

Preventive measures are to be carried out by the regional, city and local departments of the State Committee of Ukraine for Family and Youth Issues. District police officers and the criminal police on youth issues from the Ministry of Interior, as well as orphan guardian bodies, centres of medical rehabilitation of victims of domestic violence and special crisis centres are also participate in preventive work.¹⁶⁸

¹⁶⁶ SVAW, 'Ukraine', op. cit.

¹⁶⁷ IHF, *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America Report 2002 (Events of 2001)*, 2002, p.332, available at www.hf-hr.org/kievlibrary/viewdocument.php?doc_id=1026.

¹⁶⁸ Ibid., p. 332.

The topic of violence against women is also addressed in the 2001-2005 National Action Plan for the advancement of women and the promotion of gender equality in society.¹⁶⁹

6.4.2 Criminal Code of Ukraine (2001)

Rape and child abuse committed by parents or surrogate parents are criminalised by the Ukrainian Criminal Code, which became effective on 1 September 2001. Although marital rape is not explicitly addressed under Ukraine's new 2001 Criminal Code, spousal rape may be prosecuted under article 154 of the Criminal Code which outlaws coerced sex with a dependent person.¹⁷⁰ Article 154(1) prohibits:

'Compulsion of a female or male to natural or unnatural sexual intercourse by a person on whom such female or male is financially or officially dependent.'

This crime:

*'[S]hall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months.'*¹⁷¹

If committed under aggravated circumstances, punishment increases. According to article 154(2):

'The same actions accompanied with threats to destroy, damage or seize property of the victim or his/her close relatives, or to disclose information defaming the victim or his/her close relatives, – shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to three years.'

Articles 155 and 156 of the Criminal Code criminalise acts of sexual abuse against children under 16 years old.

Article 155(2) on sexual intercourse with a sexually immature person (i.e. under aged 16) provides for a three to five year prison sentence if a 'parent or surrogate parent' has sexual intercourse with a 'sexually immature person'.

¹⁶⁹ Coomaraswamy, *Report of the UN Special Rapporteur*, op. cit., par. 2134, p. 389.

¹⁷⁰ US Department of State, 'Women'; See extracts from the Criminal Code, available at <http://www.legislationline.org/view.do?document=55244>.

¹⁷¹ Criminal Code, op. cit., Chapter IV, 'Compulsion to sexual intercourse'.

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Article 156(2) on the 'debauchery of minors' provides that 'debauched actions' with a child under 16 by a parent or surrogate parent: *'[...] shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term up to three years.'*

6.5 Seeking protection in practice

6.5.1 Shortcomings of Prevention of Domestic Violence Act (2001)

Although the 2002 Act has been praised for finally providing a legal definition of domestic violence and for prioritising the prevention domestic violence, the law fails to offer sufficient protection in certain key areas and has been criticised for incorporating many prevalent myths about domestic violence, most notably that a victim often provokes the violence they experience.¹⁷²

Article 18, entitled '*reduction of victimity as a measure of domestic violence prevention*', provides that that, '*victim behaviour prevention*' is to be carried out through two means: 1) measures aimed at eliminating situations that provoke outbreaks of domestic violence, and 2) measures that enable the enforcement of personal security for a potential victim.

Article 19 further provides that after three cases of 'provocation behaviour' the district police officer or criminal police department on youth are allowed to issue an official warning notice to people whose '*victim behaviour intentionally creates conditions that contribute to committing domestic violence*'.¹⁷³

According to the International Helsinki Federation in their 2002 report on human rights in the OSCE region, '*This statement is subjective [sic] and serves more to protect the perpetrator*', rather than focusing prevention efforts on those who perpetrate such crimes. Stop Violence against Women has also commented that articles 18 and 19 give an excuse for perpetrators' behaviour and undermine their accountability, while '*in*

¹⁷² UNDP, *Gender Issues*, op. cit., p. 65. Prior to the adoption of the Act, the controversial wording was criticised by Ukrainian legal professionals and NGOs such as the Charity Fund for Protection of Victims of Violence criticised. These views were not accepted by Verkhovna Rada deputies.

¹⁷³ SVAW, 'Ukraine', op. cit.

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general, the law fails to identify any particular circumstances where police intervention is appropriate.¹⁷⁴

Furthermore, according to Minnesota Advocates, the law fails to address the specific obstacles that are created for victims by the Criminal Code, the Criminal Procedure Code, or prosecutorial practice when they seek redress.

6.5.2 The stigma of reporting domestic violence

In general, the feelings of shame experienced by women who suffer from domestic violence discourage them from reporting their experience to the police. Other factors responsible for underreporting include the process of normalization which leads victims of violence to believe that what they experience is normal, fear of the offender [and] lack of knowledge among those who meet the victims, for instance hospital staff.¹⁷⁵

Interestingly, a survey conducted by Winrock International in 2001 reports that 78.5% of women who had experienced domestic violence from a relative or a sexual partner considered it a crime which should be punished. However, of these women, only 25.7% had contacted any government bodies or non-governmental organizations in relation to the violence they experienced.¹⁷⁶

6.5.3 Police inaction

Despite the formation of new law-enforcement 'militia' (police) to tackle domestic violence, information available on the attitude of the police to preventing and punishing domestic violence indicates that their low level of understanding about this type of violence hinders implementation of domestic violence laws.

¹⁷⁴ SVAW, 'Ukraine', op. cit.; IHF, *Human Rights in the OSCE Region (2002)*, op. cit., p. 332.

¹⁷⁵ UNDP, *Gender Issues*, op. cit., p. 63.

¹⁷⁶ M., Semenyuk, *Attitude of Militiamen to the Problem of Domestic Violence*, (Winrock International, 2002), p. 6. The research was conducted during the period of December 11-20, 2002 at three centres working as partners of the Winrock Community Response Project and based in Luhansk, Dnipropetrovsk and Lviv. Conclusions were based on 24 interviews conducted with district militia inspectors and patrol force officials in Lviv. At www.winrock.org.ua/DOS/EN/research/research1.dnb.

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Research conducted by Winrock International in December 2002 into the attitudes of Ukrainian police towards domestic violence reports on the need for police training on the issue:

*'The attitude of militiamen to the problem of domestic violence depends on their awareness level. District inspectors who participated in the trainings worry about the problem more and emphasize on its importance.'*¹⁷⁷

The research also concludes that:

'Domestic violence is estimated by militiamen mainly as physical actions and as something that happens in families with low income and social status, and in families one member of which is an alcohol abuser or a drug addict.'

Furthermore, according to those police interviewed for the study, if new domestic violence legislation has highlighted the serious nature of domestic violence, it has also had little impact on how efficiently they are able to tackle such cases due to its 'declarative' nature and to the continuous resource constraints experienced by police.¹⁷⁸

The International Helsinki Federation similarly concludes that although changes to the law in 2001 led to a range of government bodies being involved in prevention of domestic violence, staff in these agencies are 'not ready for this work, and there is no knowledge, understanding or recognition of this problem as important.'¹⁷⁹ Commenting on events during 2003, the US State Department describes how Ukraine's authorities often pressured women not to press charges against their husbands, a point also very briefly made by the Home Office's country report.¹⁸⁰

According to statistics provided by the Ministry of Interior, between January and June 2003 police registered 137,323 cases of 'domestic violence' and 47,167 cases of 'family violence'. 23,786 'family aggressors' received an 'official warning' from police, 15,917 cases were 'officially registered' and information about 2,530 cases was given to the local authorities.¹⁸¹

¹⁷⁷ Semenyuk, M., *Attitude of Militiamen*, op. cit., p. 1.

¹⁷⁸ Ibid.

¹⁷⁹ IHF, *Human Rights (2002)*, op. cit. p. 332; CIPU, *Country Assessment*, op. cit., par. 6-64.

¹⁸⁰ US Department of State, *Country Report (2004)*, op. cit.

¹⁸¹ UNDP, *Gender Issues*, op. cit., p. 64-5, figure 3.3, citing the Ministry of the Interior.

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Further statistics are provided by the US State Department report (February 2004) covering year 2003 events:

*'According to the State Bureau for Family and Youth, the Interior Ministry constantly monitored the 17,900 individuals officially charged with domestic violence. Of these, 13,600 were cases of physical abuse and 3,500 were cases of mental abuse. Prior to monitoring, individuals received first and second notices from authorities. As of October, 27,200 persons had been issued official warnings for the first time, and 3,500 received second warnings. According to authorities, the total number of registered domestic violence cases through October was 49,400, of which 19,000 were registered in the first half of the year.'*¹⁸²

There were also 3,268 cases in which an 'Official Warning for Victims like behaviour' was given. Unfortunately, these statistics were not disaggregated by gender.¹⁸³

These statistics are particularly revealing when considered in the light of comments on the police attitudes made when domestic violence cases were still prosecuted under Ukraine's assault laws. The Minnesota Advocates research published in 2000 reports that:

'Interviews repeatedly revealed that the police often simply do not respond to women's calls for help. When they do respond, the most common action taken by the police is so-called "preventive work." Preventive work may take a variety of forms. In cases when police are called to the scene of the abuse, they may speak with the abuser in the home. One police officer reported that in 8% to 10% of domestic violence calls, the police respond by taking the man to jail for his actions, but in 20% of the cases, they leave him in the home and try to persuade him to change his behaviour. Here, preventive work was described as "telling the abuser that he is breaking the law and that he should change his view of the matter. The police will threaten the man with future punishment if he doesn't stop abusing his wife."

Police officials also have the discretion to put an abuser on an official "warning list" as an administrative penalty for domestic violence and another form of preventive work. This list is maintained by the local (district or regional) police station. A perpetrator can be placed on

¹⁸² US Department of State, *Country Report (2004)*, op. cit.
¹⁸³ Ibid.

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this list after he is brought to the police station and officially warned to stop the violence. Perpetrators are placed on this list to be monitored by the police, meaning the police will occasionally visit the family's home to assess the man's behavior. A Berdychiv police officer estimated that the police have a 70% success rate using the warning list. Police in Lviv, however, stated that while this measure can "make the man respect the law," the preventive measures they may take are limited. Although eight families had been registered for the year in a district with a population of 21,000, the same police representative reported that other families in which domestic violence occurred had not been included on the warning list.

*Given continuing high levels of domestic violence, the preventive measures taken by the police appear to be largely ineffectual. Unfortunately, this monitoring is one of the only measures taken by district or regional police to protect a woman victim of violence from the perpetrator.'*¹⁸⁴

No information was available on the number of arrests made since the introduction of the new law in 2002.

6.5.4 Obstacles in the courts

Clear, official statistics on prosecutions for domestic violence or average sentences were not available at the time of writing. However, according to Ministry of Interior statistics, 2,723 court protection orders were issued between January and June 2003. These orders were reported to forbid offenders following, approaching or calling the victims in question.¹⁸⁵

Information on the attitudes of the judiciary and state prosecutors since the changes to Ukrainian law was also unavailable at the time of writing. However, considering the position prior to the adoption of the 2001 *Domestic Violence Act* when domestic violence cases were still prosecuted under Ukraine's assault laws, one study describes how a perception of domestic violence as a private matter meant many victims were denied redress. The 2000 report states:

'When women victims of violence turn to prosecutors for assistance, they are most often faced with the same resistance and traditional beliefs about domestic violence they face in addressing the police.'

¹⁸⁴ Minnesota Advocates, *Domestic Violence*, op. cit., pp. 29-30. Report based on research from over 100 interviews conducted in Ukraine during May and June 2000 by researchers from Minnesota Advocates for Human Rights.
¹⁸⁵ Ibid.

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(...) Ukrainian prosecutors almost universally revealed an unwillingness to take domestic violence cases seriously. Prosecutors also maintained that in most domestic violence cases women are partially to blame, because they often provoke the violence. Finally, there was an overall sense among prosecutors that domestic violence cases were not a priority in an overworked and underfunded office with more important cases to be pursued. In addition, prosecutors appeared to resist bringing serious charges in domestic violence cases because they perceived them as private matters that should receive lighter sentences than cases that violate public order.¹⁸⁶

6.5.5 Financial dependency

Given Ukraine's current economic situation, a shortage of affordable housing is an obstacle for women wishing to live independently of violent partners.

*'The housing shortage precludes many women from seeking alternative living arrangements and can thus expose them to continued violence. Whereas in the Soviet era, housing was all state-administered, most housing has now been privatized. Contrary to expectations, privatization itself has contributed to the housing shortage.'*¹⁸⁷

6.5.6 Shortage of women's support networks

The government's 'Comprehensive Plan 2002-5' on trafficking mandates that both trafficking victims and 'other victims of violent actions' should receive a range of support and assistance, including legal advice. However, as noted above in relation to trafficking, so far this national plan has not been implemented.

Home Office CIPU material is both out of date and misleading on this important issue, writing:

*'In 1998, the Kiev municipal authorities opened the country's first state-funded shelter and the government announced plans to establish a network of shelters throughout the country, but it does not appear to have been implemented yet.'*¹⁸⁸

¹⁸⁶ Minnesota Advocates, *Domestic Violence*, op. cit., pp. 31-32.

¹⁸⁷ Minnesota Advocates, *Domestic Violence*, op. cit., p. 19.

¹⁸⁸ CIPU, *Country Report*, op. cit., par. 6.63.

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However, as US Department of State's 2003 report clearly states:

*'Municipal authorities in Kiev ran a women's center, the only municipally supported shelter in the country. NGOs attempted to provide services for abused women through the establishment of women's support centers in seven cities.'*¹⁸⁹

The Kiev Centre offers psychological and legal counselling for women victims of violence, operating a hotline and also running the only state-sponsored shelter for women in Ukraine. Based in the capital, its services are only accessible to a limited number of women as the center has a capacity for only 15 people.¹⁹⁰

As the Minnesota Advocates report on Ukraine states, in this context, NGOs play a crucial role. The organisation writes that:

*'Whilst the state's support of the Women's Center is laudable, it is currently not sufficient to respond to the problem of domestic violence in Ukraine as a whole, or even to the problem of domestic violence in Kyiv. Therefore NGOs are attempting to fill the gaps. They currently provide the most comprehensive response to the problem. Many of their services are designed to meet the needs of victims and to assist them with developing alternatives to staying in abusive relationships. NGOs typically operate hotlines and counseling centers in cities across Ukraine.'*¹⁹¹

Since domestic violence is recognised as a major factor encouraging the trafficking of women, legal assistance for victim of domestic violence is one of the services offered by the seven Women for Women Centres affiliated to Winrock International as part of their trafficking prevention programmes.

Winrock International reported that since 1998, 12,000 women received legal consultations at the seven Centres. On average, 30% of consultations related to domestic violence and 20% to prevention of trafficking in women, work abroad or trafficking cases. 80% of legal assistance given at the Centres is individual consultations and advice with the lawyers then referring women to the court and to state agencies, such as the police and prosecutor's office.¹⁹²

¹⁸⁹ US Department of State, *Country Report (2003)*, op. cit.

¹⁹⁰ UNDP, *Gender Issues*, op. cit., p. 65.

¹⁹¹ Minnesota Advocates, *Domestic Violence*, op. cit., p. 21.

¹⁹² Winrock International, information available at

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However, the research published by the Minnesota Advocates in 2000 reported that a lack of knowledge about legal rights, including divorce and property laws, was a still a widespread problem amongst women who experience domestic violence.¹⁹³

At the time of writing, very little information could be found about NGOs that provided emergency shelter facilities. The UNDP reports that, other than the Women's Centre in Kyiv, there is only one other shelter located in Kharkiv. The shelter, set up in 2000 and run by the local NGO, 'The Word of Women', can accommodate up to 25 women who have experienced domestic violence or trafficking.¹⁹⁴

www.winrock.org.ua/ITP/En/index.html.

¹⁹³ Minnesota Advocates, *Domestic Violence*, op. cit., p. 22.

¹⁹⁴ UNDP, *Gender Issues*, op. cit., p. 65; La Strada, 'Placing to a rehabilitation center', op. cit.

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number of designated country-list
applicants accepted at Oakington by
nationality and sex (2003)

According to the Home Office figures provided for Asylum Aid, the designated country-list applicants (excluding dependants) accepted at Oakington can be broken down by nationality and sex as follows:¹

1st Quarter 2003

Nationality	Female	Male
South Africa	15	5
Romania	15	30
Jamaica	10	30
Sri Lanka	10	35
Ukraine	10	20
Albania	5	25
Czech Republic	5	15
Latvia	*	5
Lithuania	*	5
Macedonia	*	5
Moldova	*	15
Poland	*	5
Serbia & Montenegro	*	20
Slovak Republic	*	*
Bangladesh	0	20

Designated-list countries producing no applicants of either sex in Quarter 1 were Cyprus, Estonia, Hungary, Malta, Slovenia, Bulgaria, Bolivia, Brazil and Ecuador.

¹ Based on figures provided for Asylum Aid by the Home Office IRSS. According to the Home Office, figures are provisional and rounded to the nearest 5, with * = 1 or 2.

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2nd Quarter 2003

Nationality	Female	Male
Jamaica	45	75
Serbia & Montenegro	25	50
Sri Lanka	15	105
South Africa	15	10
Albania	10	60
Moldova	10	35
Romania	10	40
Ukraine	10	25
Czech Republic	5	5
Poland	5	10
Bangladesh	5	60
Latvia	*	5
Lithuania	*	*
Bolivia	*	5
Macedonia	0	10

Designated-list countries producing no applicants of either sex in Quarter 2 were Cyprus, Estonia, Hungary, Malta, Slovenia, Slovak Republic, Bulgaria, Brazil and Ecuador.

3rd Quarter 2003

Nationality	Female	Male
Jamaica	25	80
Serbia & Montenegro	25	35
Ukraine	20	40
South Africa	15	20
Romania	10	55
Sri Lanka	10	20
Albania	5	35
Czech Republic	5	5
Ecuador	5	5
Lithuania	5	10
Moldova	5	25
Latvia	*	5
Bangladesh	*	45
Bolivia	*	5

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Brazil	*	*
Poland	0	5

Designated-list countries producing no applicants of either sex in Quarter 3 were Cyprus, Estonia, Hungary, Malta, Macedonia, Slovenia, Slovak Republic and Bulgaria.

4th Quarter 2003

Nationality	Female	Male
Jamaica	15	55
South Africa	10	10
Sri Lanka	10	25
Albania	5	35
Hungary	5	*
Moldova	5	15
Poland	5	5
Romania	5	30
Serbia & Montenegro	5	20
Ukraine	5	25
Bangladesh	*	50
Bulgaria	*	5
Czech Republic	*	5
Ecuador	*	5
Slovakia	*	5
Brazil	0	5
Macedonia	0	5

Designated-list countries producing no applicants of either sex in Quarter 4 were Cyprus, Estonia, Malta, Slovenia, Latvia, Lithuania and Bolivia.

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