

*TRAFFICKING OF WOMEN
FOR SEXUAL EXPLOITATION:
A GENDER-BASED WELL-FOUNDED FEAR?
An examination of refugee status determination
for trafficked prostituted women
from CEE/CIS countries
to Western Europe*

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ABSTRACT

Approximately 120,000 women and children are trafficked into the European Union every year.¹ Worldwide, estimates range from 700,000 to an astounding 4,000,000 women and children trafficked annually.² To put this number into perspective, in the last decade of what is being called 'Modern Slavery', Southeast Asia alone has produced three times as many victims of trafficking than the entire history of slavery from Africa.³

Human trafficking takes on many forms, including international sexual exploitation. Trafficking, as opposed to smuggling, is most often involuntary and targets young, poor females. Although many of the women trafficked into prostitution are aware that they will be migrating, they are deceived about the nature of the work they will be forced to perform and their inability to leave at will, as well as their future working conditions.

The gendered aspect of trafficking brings about particular concerns for these migrants. A factor relevant to trafficking survivors is the need for State protection, as it is not uncommon for trafficking survivors to face violence or the threat of violence by the organized crime groups in control of human trafficking. These reprisals are more likely to occur in the country of origin upon repatriation than the host country. In cases where protection of trafficking victims is weak, traffickers have corrupted officials, and trafficking victims retain debts to their traffickers or have testified against them, their fear of physical harm or further exploitation is palpable.

The international community is striving to address the issues of trafficking through legal instruments, including most recently the commitments at the UN Millennium Summit to Fight Transnational Crime including Trafficking in Human Beings, in Palermo Italy. However, governments too often focus on strategies that target the legal and immigration-based issues of trafficking, but don't address the human rights of trafficked people.

Although some States have developed legislation specifically addressing the protection needs of trafficked persons, implementation is sporadic. Some precedent has been set, however, toward the extension of refugee protection to trafficking survivors.

In cases where a well-founded fear of persecution exists, as members of a particular social group trafficking victims should be entitled to enjoy the protection afforded to other persecuted groups through existing refugee mechanisms. Trafficked prostituted women are rarely granted refugee status, although there is growing consensus that they should be allowed access to refugee determination proceedings. If trafficking survivors are afforded the possibility of asylum in their host country, the benefits may also extend to national governments, as more survivors may be willing to testify against their traffickers.

This paper is not a call for asylum for all trafficked women. It does, however, present arguments regarding gender-based persecution, and call for the inclusion of trafficked women in refugee-determination proceedings on the grounds of membership of a particular social group. In case-by-case interviews, it is possible to assess whether a particular victim of trafficking, as an individual, has a well-founded fear of persecution and is in need of international protection. Although being a victim of trafficking does not guarantee blanket refugee status, survivors should be afforded the possibility to be heard for refugee status determination, having passed the threshold on one of the five convention grounds, that of membership of a particular social group. If trafficking survivors are afforded the possibility of asylum, benefits could also extend to governments, as more survivors may be willing to testify against their traffickers.

In light of the upcoming European harmonization of migration and asylum policy in 2004, policy makers might be wise in exploring the possibility of updating the international refugee regime to protect the victims of trafficking with a well-founded fear of persecution, and therefore assume responsibility for those suffering what Kofi Annan calls 'The most egregious form of human rights violation that the United Nations now confronts'.

¹ According to the European Commission. Osborn, Andy. (2001). *Sex Traffic is Europe's Shame*. The Guardian, March 9.

² U.S. Department of State (2002). *Victims of Trafficking and Violence Protection Act 2000, Trafficking in Persons Report*. June. p. 1.

³ From statement by Pino Arlacchi, UN Office for Drug Control and Crime Prevention. 400 years of slavery from Africa produced 11.5 million victims; victims of trafficking in the 1990s in Southeast Asia are estimated to be 33 million. As quoted in *Refugee Reports* (2000) Vol. 21. No. 5.

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About the Author

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Ms. Shearer Demir has worked with immigration law in the United States, Kosovar and Bosnian refugees in Turkey, Kurdish internally displaced child laborers in Turkey, and refugees and immigrants in the United States, as well as having conducted fieldwork in Paraguay. She is currently working on research for minority return to Kosovo. In addition to her Master degree in International Cooperation and Development, she holds a bachelor's degree in Cultural Anthropology from the University of Massachusetts at Amherst, in the United States.

Research Methods

Research for this paper was conducted through literature review and interviews. Covered literature included books on gender, human development, economic development, migration and asylum. Further, position papers from experts in law, refugees, and migration were consulted. Relevant articles were sought out from human rights organizations, women's rights organizations, children's rights organizations, migrants' rights organizations, unions of sex workers, mainstream and alternative news sources. Particularly relevant were available documents from governments, the European Union, UN agencies and international organizations, above all the International Organization for Migration. Additionally, interviews were conducted with IOM representatives working directly with trafficking survivors.

Although it is absolutely necessary to examine the legislation and application of this legislation while examining precedence, this paper aims to explore the arguments on both sides of the gender-based persecution debate in a holistic fashion, rather than in a purely legal-based manner. Although much has been written regarding gender-based persecution in general, as well as on the topic of trafficking of refugee women, in the research conducted for this paper the author was not able to locate any one document that discussed in depth the concept of availing trafficking victims of the opportunity to access refugee status determination proceedings.

Limitations

Many of the research materials were made available by the Counter-Trafficking service at the International Organization for Migration's Rome mission, where the author has recently completed an internship. As the CT unit of IOM Rome has responsibilities for the covered area, this paper focuses upon women from particular CEE and CIS countries trafficked to Western Europe for the purpose of prostitution. A limitation of this paper is that women of other nationalities were not specifically addressed, such as Nigeria and Colombia, who are also trafficked to Western Europe in great numbers. Additionally, the author has chosen not to fully analyze the situation of minors trafficked into prostitution. Trafficked girls have significantly different needs than trafficked women, and host countries have increased protection responsibilities for exploited minors.

A further limitation of this paper is the lack of direct interviews with trafficked women in need of international protection. Due to reasons of confidentiality and voluntary repatriation by the women assisted by IOM's CT unit, the appropriateness of inclusion of their personal testimonies in this study was problematic. The author has attempted to include the voices of trafficked women through interviews conducted by other researchers in the field.

All figures regarding trafficking and smuggling should be interpreted as estimates. The lack of accuracy is the result of inadequate data collection due in part to the reluctance of trafficking victims to report crimes or testify against their traffickers, lack of incentives for authorities to act against traffickers, the lack of data sharing, and police staffing shortages. Further, there is no central body responsible for the collection of data on trafficking, resulting in often widely divergent estimates in trafficking. Official statistics are most probably much lower than the actual number of victimized trafficked persons.⁴

⁴ Laczko, Frank (2002). 'Human Trafficking: The Need for Better Data'. International Organization for Migration. November 1.

Abbreviations and Explanations of Terms⁵

Asylum Seeker	A person seeking refugee status, prior to refugee status determination
CIS	Commonwealth of Independent States
Economic Migrant	A person who has come to a foreign country for employment
ECRE	European Council on Refugees and Exiles
Environmental or Economic Refugee	Fleeing poverty, environmental degradation or catastrophe, these persons are not always recognized as refugees
Global North/Global South	Also described as developed/developing countries, poor/rich countries, western/non western countries.
IDP	Internally Displaced Person. Often meets the same criteria as a refugee, but has not migrated across the border of their State of origin.
ILO	International Labour Organisation
IOM	International Organization for Migration
Irregular Migrant	A person who has entered a country without proper documentation. Some will be refugees, others undocumented workers or economic migrants.
NGO	Non-governmental Organization
Organized Crime	A structured group of three or more persons existing for a period of time and having the aim of committing a serious transnational crime through concerted action by using intimidation, violence, corruption or other means in order to obtain, directly or indirectly, a financial or other material benefit.
Persecution	The sustained or systematic failure of State protection in relation to one of the core entitlements recognized by the international community. Persecution=Serious Harm + The Failure of State Protection
Prostitution	The offering and selling of sexual services. Advocates often consider this and related terminology biased and prefer 'sex work', as prostitution has gained negative connotations.
Refoulement	A violation of the UN Convention and Protocol on Refugees, whereas governments forcibly return refugees to places where they would be persecuted.
Refugee	Defined by the UN as one with a 'well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion'.
Sex work	Defined by advocates as all types of work in the sex industry.
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
Trafficking Survivor	This paper prefers the use of the term 'trafficking survivor' to 'trafficking victim' while discussing the protection needs of prostituted women, when appropriate. As explained in Crawley (2000), the use of the term 'victim' represents women as uniformly poor, powerless and vulnerable, which leads to the depoliticization and decontextualization of women's experiences of persecution and their conceptualization as passive beings.

⁵ Sources: International Organization for Migration/United Nations (2000). *World Migration Report 2000*, U.S. Committee for Refugees (2002). *World Refugee Survey 2002*, Washington DC.; *New Internationalist* Issue 350, October 2002 p. 10; Crawley, Heather (2000). *Refugees and Gender: Law and Process*. Forced Migration Review. Issue 9; Article 2 of the Revised draft United Nations Convention against Transnational Organized Crime, United Nations General Assembly, [AC.254/4/Rev.5], 16 November 1999; Amnesty for Women (2002). *Geography, Climate, Politics*; Forced Migration Review 9 (2000). *Gender and Displacement*.

1. INTRODUCTION

"The trafficking of persons, particularly women and children, for forced and exploitative labor, including sexual exploitation, is one of the most egregious violations of human rights which the United Nations now confronts." So stated the United Nations Secretary-General Kofi Annan⁶ at a recent international conference on transnational crime. Experts disagree on the full scope of the problem, as figures are difficult to ascertain due to the illicit nature of the exploitation. However, it is generally accepted by the International Organization for Migration, agencies of the United Nations and other relevant organizations attempting to tackle the problem that trafficking in human beings is a rapidly expanding, and incredibly profitable, violation of human rights.

Human trafficking is the third most lucrative activity of organized crime groups worldwide, following the trafficking of arms and drugs.⁷ Trafficking for the purposes of sexual exploitation is also the least punished of the three above mentioned forms of trafficking; when human traffickers are made to serve time, which is rare, their sentences have been much lighter than those served by drug and arms traffickers.⁸

Human
trafficking is a
lucrative activity

Although human trafficking has been the focus of world attention since the first international counter-trafficking treaty was signed in 1904,⁹ attention in the international arena has increased dramatically since the 1990s. Regardless of the international commitments to diminishing trafficking in humans, studies show that the phenomenon is increasing as the disparity between wealth and poverty grows between and within countries.¹⁰ As poverty disproportionately affects women and their children,¹¹ it is not surprising that, following trends in migration, women would be pushed to migrate in the hopes of acquiring economic security for themselves and their families. Although the push and pull factors of migration are similar for men and women, their migration experience can differ greatly. For millions of women this economic migration ends in sexual exploitation and debt bondage, with no international legal framework in place to address their protection needs.

⁶ From statement released December 12 2000, Palermo Italy. Deen, Talif (2000). *Trafficking in Human Beings Reprehensible, Says UN's Kofi Annan*. IPS.

⁷ United Nations Children's Fund/United Nations Office of the High Commissioner for Human Rights/Organization for Security and Cooperation in Europe-Office for the Democratic Institutions and Human Rights (UNICEF/UNOHCHR/OSCE-ODIHR). (2002). *Trafficking in Human Beings in Southeastern Europe*.

⁸ According to a UNHCR Working Paper (Morrison & Crosland, 2001), surveys show that in recent years, when convictions for human trafficking have occurred, the sentences have become more aligned with other forms of trafficking.

⁹ 1904 International Agreement for the Suppression of White Slave Traffic, Amended by the 1949 Protocol. As per Refugee Reports (2000). 'Trafficking in Women and Children: a Contemporary Manifestation of Slavery'. Volume 21, No 5.

¹⁰ UNICEF/UNOHCHR/OSCE-ODIHR (2002). Op. cit.

¹¹ 70% of the world's poor are women and their dependent children, according to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Lantigua, J. (2000). 'Globally, Women's Condition not Sugar, Spice', Contra Costa Times, March 12.

Although the majority of trafficked women could be safely repatriated, a number of trafficking survivors suffer a well-founded fear of persecution at the hands of their traffickers upon return to their country of origin. Legislation to meet the protection needs of trafficked people is sparse and inconsistently implemented. The international refugee regime now in place could serve as a back-up protection mechanism for this particular social group, but at present trafficked women are rarely recognized as refugees. At a time when international organizations are stressing the importance of addressing the protection and human rights needs of trafficked women, European governments are striving to harmonize their migration and asylum laws. It is presently an opportune period for the European Union to consider an interpretation of asylum laws that respects the protection and human rights needs of women trafficked into prostitution against their will, which could also work in the favor of European governments by decreasing organized crime activity within their borders¹².

This paper will examine the root causes of migration, and how migration and poverty are rapidly becoming feminized. It will consider how the uprooting caused by rural to urban migration can lead to international migration, and the vulnerability this can create in female migrants taking advantage of pre-existing migrant networks. It will analyze how the poverty of CIS/CEE countries following capitalist transition has contributed to the structural nature of trafficking. It will discuss recruitment of women for trafficking purposes, methods of trafficking, work conditions, and manners of exit. This paper will further discuss characteristics of both traffickers and clients. Finally, it will detail protection concerns based on corruption and reprisals suffered by trafficked women and their families upon repatriation.

Although research has taken place regarding the refugee-trafficking nexus, these studies have uniformly concentrated on the trafficking of women who have already been granted refugee status.¹³ This paper strives to address this junction from another perspective: that of granting refugee status to trafficked women with a well-founded fear of persecution. In so doing, this paper will analyze the 1951 Geneva Convention and the 1967 New York Protocol, as well as the arguments for gender-based persecution as a determining factor for refugee status. International precedent for protection mechanisms addressing the needs of trafficked women, and alternatives to refugee status will be

¹² As of December 2002, European Union members include Austria, Belgium, Britain, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. As per Granier, Karine (2002). *The European Union's Big Bang*. International Herald Tribune. December 14-15. p. 5.

¹³ i.e., the trafficking of refugees directly out of refugee camps or urban refugee centers

discussed. Finally, this paper will address the upcoming European harmonization, and will argue for European acceptance of gender-based persecution as a factor to access refugee determination proceedings.

2. MIGRATION

2.A. ROOT CAUSES OF MIGRATION

'Human history is the history of migration and the most sophisticated civilizations arose where human traffic was heaviest. The Ancient Near East, the Indian sub-continent, China, the Americas, Europe – all had constant influxes of migrants bringing new ideas and change.'¹⁴

If one analyzes the current phenomenon of migration, the causes are not significantly different than those that have encouraged migration throughout human history. War, hunger, and the desire to better one's situation has always been a driving factor of migration.

Why do people migrate?

According to the International Organization for Migration, 2.5% of the world's population are international migrants.¹⁵ Theories abound regarding why people migrate across national borders. One of these theories, belonging to the *neoclassical* school, speculates that migration is an individual decision, taken in the interest of maximizing the migrant's earning potential. This theory assumes that due to unemployment, underemployment, low wages, poor working conditions and the absence of economic opportunities, migrants concerned with their personal betterment choose in a rational and calculated way the destination country which will reap the most benefit.

Individualist
Human Capital
Approach

A second economic theory of migration is the *New Economics of Migration*. In the interest of diversifying risk, families choose to gain different training for each worker in the family unit. Further, these workers may be sent abroad to test the opportunities in the country of destination, before advising the rest of the family to join him/her. This bypasses one of the criticisms of the neo-liberal model, which questions why the poorest of the poor in countries of origin do not tend to migrate. For economically disadvantaged families, according to the New Economics of Migration theory, the risk of migration is too high, without labor diversification and basic financial security.

Individualist
New Economics
of Migration
Approach

Alternatively to the Individualist based approaches outlined above, Structuralist theory also attempts to explain the root causes of migration. *Structuralist approaches* focus

¹⁴ New Internationalist (1991). *Simply – The History of Borders*, Issue 223.

¹⁵ International Organization for Migration/United Nations (2000). *World Migration Report 2000*, p 18. This number rises to 7% if one includes estimates of undocumented migrants. Harris, Nigel (2002). *Thinking the Unthinkable*. IB Taurus. As per Baird, Vanessa (2002). *Fear eats the Soul*. New Internationalist, issue 350. October. p. 9.

upon the idea that people make their decisions to migrate based on political, social and economic forces that are out of their control. Therefore, the choice to migrate is not necessarily a logical, carefully weighed out, economically tested decision, but rather occurs as a result of circumstances over which the migrant has little power.

'In the sending country the structural forces pushing emigrants out could be population pressure, or land shortage, or gender discrimination. In the receiving country the structural forces attracting the immigrant could be a shrinking population, or a shortage of people to work on the land, or the demand for domestic servants. In these circumstances, the daughter of a landless Sri Lankan farmer might find it difficult to resist the forces 'impelling' her to work in Kuwait or Singapore.'¹⁶

According to the structuralist *Dual Labor Market Theory*, there are two tiers of jobs produced by a capitalist system. The tier generally attractive to nationals of the destination country is one with jobs that are secure, permanent, well paid and require formed skills. The tier that is increasingly unattractive to nationals is one with jobs that are temporary, unclean, perilous and poorly paid. These positions have, in past generations, been filled by female or teenage labor. However, as countries have become more industrialized, educational patterns and population dynamics have changed. As each generation receives a better education than the last and has fewer children on average, receiving countries often find women and teenagers refusing or unable to fill these positions. This could be remedied in part by raising salaries for these jobs; however, employers in destination countries are generally resistant to the idea of decreasing their profits. Therefore, to the benefit of employers and to the temporary benefit of migrants, these 3-D jobs (dirty, difficult and dangerous) are increasingly filled by foreign labor.¹⁷

Structuralist Dual
Labor Market
Approach

'Waves of economic migrants have always been necessary to 'dampen inflationary pressures' – a tendency which the U.S. is more prepared to recognize than Europe. The six-million-or-so illegal immigrants in the U.S., many working at levels of bare survival, serve to lower wages and check inflation. Their illegal status is redeemed by economic legitimacy – an equation as yet apparently too advanced for a Europe preoccupied with racisms old and new. So the official ideology remains. Money and goods – and some vital personnel – are unstoppable in the perpetuum mobile of globalization. But poor people must stay at home.'¹⁸

A final structuralist approach, the *World Systems Theory*, claims that 'modern' economic development destabilizes populations. Annually, partially due to economic development policies supported by the current power of neoliberal economists at the World Bank and the International Monetary Fund, 30 million people migrate from the countryside to cities in their own countries.¹⁹ By 2025, 60% of the world's population will be living in cities,²⁰ estimates the United Nations. As employment and infrastructure in the world's cities are

Structuralist
World Systems
Approach

¹⁶ Stalker, P. (2001). *The No-nonsense Guide to International Migration*, New Internationalist Publications. p. 22.

¹⁷ Stalker, P. (2001). Op. cit. p. 23.

¹⁸ Seabrook, J. (2000). *The Migrant in the Mirror*. New Internationalist Magazine, UK. September.

¹⁹ United Nations (1994). *World Urbanization Prospects: the 1994 Revision*, United Nations Population Division, New York.

unable to absorb this mass migration, most of these workers find jobs in the informal sector, resulting in a global figure of 900 million underemployed.²¹ The disappointment of the lack of opportunities in the city, as well as the uprooting effect of the original rural-urban migration acts to break the psychological security barrier to migration abroad. While potential migrants develop networks of family members or acquaintances from home areas who have successfully relocated abroad, the possibility of an international move becomes increasingly attractive and less risky.²²

According to structuralists, a further element contributing to an increase in migration is what has been called the 'shock of the new'.²³ The globalization of the media and telecommunications industries has acted to introduce populations worldwide to a romanticized version of the global north, and serves to make these destinations less alien, and therefore more secure for an impending move.

Globalization

The United Nations Development Program's *Human Development Report* of 2000, while discussing the increasing gap between the poor global south and the rich global north, has argued that the mounting inequalities should be classed as human rights violations.²⁴ As life expectancy is dropping in the global south and rising in the global north, and the wealth of the richest 200 people in the world is ten times that of the combined wealth of the 582,000,000 poorest,²⁵ a transfer of funds from the rich global north to the poor global south is desperately needed. However, as documented in the HDR, there has been a massive shift away from a global-north to global-south allocation of development resources. While these global inequities exist, it is unlikely that we will see any great reduction of migration as citizens from less developed countries seek out economic opportunities.

The international gap between wealth and poverty

Young women are subject to the same push-pull factors for migration as the rest of the population in poor countries. However, as will soon be argued, women can be particularly vulnerable while migrating. In some circumstances, this vulnerability can lead to trafficking for sexual exploitation.

'The end result of tighter border controls and stricter immigration policy is that those who feel compelled to move – driven by economic need – are even more vulnerable to exploitation by third parties who are only too willing to grease the wheels of illegal migration. So far, governments have been reluctant to look at the growing economic

²⁰ United Nations (1994). Op. cit.

²¹ ILO (2000). *World Labor Report*. Geneva, Switzerland.

²² IOM/UN (2000). *World Migration Report*. Op. cit. p. 20. As we will see in the section on trafficking below, these same assistance networks are copied by traffickers in gaining the trust of women and their families for promised work abroad. In many cases, it is only upon arrival that women become aware of the deceit and their debt for having accepted such 'help'.

²³ Stalker, P. (2001). Op. cit. p. 20.

²⁴ Brittan, Victoria and Elliot, Larry. (2000). *Rich Live Longer, Poor Die Younger in a Divided World*. The Guardian, June 29.

²⁵ Brittan, Victoria and Elliot, Larry. (2000). Op. cit.

disparities between rich and poor that fuel the trafficking business. Instead the emphasis has been on attacking organized crime and prosecuting traffickers while those who've been trafficked find themselves re-victimized by the judicial system. They may be pressured into testifying against their exploiters and then shipped home – with no provision for their safety, no adequate support and no access to redress.²⁶

2.B. FORCED MIGRANTS AND VOLUNTARY MIGRATION

One must note that migration is not always a fully voluntary phenomenon, as seen with refugees and internally displaced persons. IOM estimates that there are more people in need of humanitarian assistance and protection than a decade ago, although the actual numbers of persons granted refugee status has decreased from 17 million in 1990 to 14 million in 2000. However, internally displaced persons have increased, outnumbering refugees by more than two to one.²⁷ As the number of asylum seekers worldwide is multiplying, the number of people who are granted refugee status is falling.²⁸ Of those granted refugee status, seven out of ten are hosted by low-income countries.²⁹

Displacement by
Force

The decreasing number of recognized refugees in Europe is seen as a victory by some politicians, but in actuality seems to lead to more asylum seekers trying any means necessary, regular or irregular, to access European soil. As demonstrated in a 1998 UNHCR study, the nationalities of those most often smuggled or trafficked into the European Union closely corresponds to the nationalities most often given asylum worldwide (Annex B).³⁰ According to studies by refugee experts, the majority of asylum seekers arriving in the European Union have been either trafficked or smuggled.³¹ Whereas asylum seekers may utilize the services of human smugglers to assist their movement across borders, they may also face the exploitation of traffickers following their entry into European territory. In some cases, recognized refugees are also trafficked directly from refugee camps.³²

'Methods that deter access to a national territory merely shifts the burden from one country to another... asylum seekers rarely hear or listen to the tough messages sent by governments in Europe, because for them fleeing an unsafe situation is far more important than the destination.'³³

²⁶ Pearson, Elaine (2001). *Trafficking/Slavery*. New Internationalist. Issue 337, August 2001.

²⁷ Internally displaced persons often have similar conditions to refugees, but are not considered refugees as they have not crossed national borders.

²⁸ IOM/UN (2000). *World Migration Report*. Op. cit. p. 15.

²⁹ According to 2002 UNHCR Yearbook. One World South Asia (2002). *Richer Nations Urged to Do More to Help World's Refugees*. November 12.

³⁰ Morrison, John and Crosland, Beth (2001). *The Trafficking and Smuggling of Refugees: the end game in European asylum policy?* UNHCR Working Paper. p. 27.

³¹ Refugee Reports (2000). Op. cit.

³² For further discussion of the difference between smuggling and trafficking, please refer to section 3A of this paper.

³³ European Council on Refugees and Exiles (ECRE). (2002). *Asylum in Europe*. From speech delivered by General Secretary, Peter Baneke, at the ECRE Biannual meeting in Seville, 9 June.

2.C. FEMINIZATION OF POVERTY

'While trafficking is a human rights issue, it is also a socio-political and economic issue, and cannot be separated from issues of nationality, gender and class inequalities.'³⁴

Worldwide, poverty is increasingly and disproportionately affecting women. Of the 1.3 billion absolute poor in the world today, 70% are women and their minor dependents.³⁵ This poverty is due, in part, to women's lack of access to formal education and job opportunities in their countries of origin. Further, women fail to fully benefit from market 'reforms' of today's world economic regime due to the lack of economic power in their communities and families.³⁶ At the same time, women are the principal segment of the population affected by the massive cuts in social spending by governments following structural adjustment or similar reforms. Due to gender inequities and relative powerlessness, 'people who have little to lose may be willing to take great risks'.³⁷

Feminization of
Poverty

Women are also increasingly migrating to cities within their own countries. While this most often occurred in the past as women accompanied their partners, women are progressively migrating for economic reasons and finding that formal sector jobs are even more closed to them than to their male counterparts due to their lack of schooling or other discrimination. Therefore, patterns show that the informal sector is largely receiving female internal migrants, and women are taking jobs with a lack of job security or benefits. Female-headed households are also on the increase in the majority world of developing countries, and these households tend to be poorer and support more dependents than male-headed households. This is resulting in what is being called the 'feminization of poverty'.

'Because members of female-headed households are generally restricted to low-productivity informal-sector employment and experience higher dependency burdens, they are more likely to be poor and malnourished and less likely to obtain formal education, health care, or clean water and sanitation.'³⁸

The internal uprooting, lack of a support network, and increased financial responsibility adds to the vulnerability of women to be recruited by a trafficker, in the hopes of improving her family or personal economic situation.

³⁴ Coalition to Abolish Slavery and Trafficking (1999). *Trafficking of women*. Los Angeles, USA.

³⁵ European Women's Lobby (2001). *Migration, trafficking and social development, what is at stake for women*. Brussels, Belgium.

³⁶ UNIFEM (2002). *Gender and Macroeconomics*.

³⁷ Swedish Ministry for Foreign Affairs (2001). *Trafficking of Women and Children in Asia and Europe*. Stockholm. p. 8.

³⁸ Todaro, M. (2000). *Economic Development*. Addison-Wesley, New York. p. 300.

2.D. FEMINIZATION OF INTERNATIONAL MIGRATION

The European Commission contends that contributing factors to international female migration include female-focused unemployment, extreme poverty, and the marginalization of women in source countries.³⁹ This is particularly true when analyzing countries in transition from a community-based to an individual-based economic system. Following the collapse of communism in the USSR, and in communist states supported by the USSR, economic controls were imposed that led to great unemployment, social and financial insecurity.

'A system of free enterprise without controls was imposed on the new East European States and Russia the like of which had never been tried before, even at the heart of the capitalist world. The U.S.'s... own response to severe economic depression in the 1930s was to invest in federal programs involving strong state intervention and the introduction of a welfare safety net under Roosevelt's new deal... Russia and its satellite states, however, were not to be allowed such supports – here the free market had to reign in all its magnificent implacability. Right-wing economists... were sent in as consultants to ensure that the rules were followed and no soft options adopted. The glorious results of this 'peace settlement' were manifest in 1998, following the collapse of the ruble...'⁴⁰

Those to be most affected by this economic transition were women. According to the U.S. Agency for International Development, between 70 and 80% of currently unemployed Russian workers are women.⁴¹ Similarly, in Ukraine and other Eastern European countries, women make up 70% of those involuntarily unemployed.⁴²

This is equally true for Moldova, considered by IOM to be the main source of trafficked women for Western Europe, the Balkans and the Middle East. At a time when 25% of the workforce has immigrated internationally, news reports contend that the poorest Moldovans are selling their own organs, and 80% of households live below the poverty line.⁴³

'In Albania, Moldova, southern Bulgaria and Romania, entire towns have been robbed of their young female populations, sociologists say. While some victims are kidnapped at gunpoint, others are lured by promises of marriage, jobs and better living conditions.'⁴⁴

Not surprisingly, patterns have also emerged that as women are struggling with poverty and are internally displaced for economic reasons, international migration of women is

Feminization of
Migration

³⁹ Commission of the European Communities (1996). *'Communication from the Commission to the Council and the European Parliament: On Trafficking in Women for the Purpose of Sexual Exploitation'*. Brussels, Belgium.

⁴⁰ Brazier, C. (2001). *The No Nonsense Guide to World History*. New Internationalist Publications. Oxford, UK. p.127.

⁴¹ Refugee Reports (2000). Op. cit.

⁴² Lebed, Mikhail Adamovic (1998). *A Few Observations about Trafficking in Women by a Criminologist*. La Strada, Ukrainian NGO.

⁴³ Baker, Peter (2002). *Moldovan sold kidney to buy dad's medicine*. Toronto Star Newspapers, Ltd. The Hamilton Spectator. November 9.

⁴⁴ Smith, Helena (2002). *'Greece to crack down on sex traffickers'*. The Guardian. April 22

also on the rise. Not only is there a feminization of poverty, but a feminization of migration, as well. Female patterns of migration contribute to the overall patterns outlined previously; women, too are affected by unemployment and poverty, and depend on migrant networks for information regarding how best to migrate to the global north. When one adds into the equation the disproportionately higher levels of poverty among women worldwide, the family responsibility for both their children and elderly relatives,⁴⁵ the lack of formal job opportunities in countries of origin and the lower levels of education available to women, it is not surprising that migrant streams which have typically been male are gradually becoming filled by women.⁴⁶ In fact, according to IOM, over half of the world's migrants are women, and the numbers of unaccompanied women who migrate are on the increase.⁴⁷

The majority of women who migrate internationally do not succumb to traffickers. Discrimination against women continues to affect these migrants during their time outside their country; female migrants generally work in less favorable conditions for less pay than their male counterparts. However, they are able to aid their families financially, and their standings within their own communities tend to increase upon return to their countries of origin.⁴⁸ Due to the relative success of female migrants, who depend upon migrant networks for contacts in their countries of destination, as well as housing, transportation and occasionally financial assistance, it is not surprising that other women would put themselves at risk for trafficking by attempting to follow a similar path. Further, due to the stigma attached to prostitution in most countries of origin, repatriated trafficked women discuss the exact nature of their experiences abroad with difficulty, so the risks are not fully understood by other women considering a similar relocation.

3. TRAFFICKING

In the UN Convention against Transnational Organized Crime (the Palermo Convention), adopted by the UN General Assembly in 2000, trafficking in persons was defined as *'the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability... Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual*

Trafficking
defined

⁴⁵ Women's Commission (2001). *Evaluating the implementation of UNHCR's Guidelines on the Protection of Refugee Women*.

⁴⁶ Castles, S. and M. Miller (1998). *The Age of Migration: International Population Movements in the Modern World*, 2nd ed. Guildford Press, New York, NY.

⁴⁷ IOM/UN (2000). *World Migration Report*. Op. cit. p. 49.

⁴⁸ UNICEF/UNOHCHR/OSCE-ODIHR. Op. cit. p. 7.

*exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*⁴⁹

Human trafficking for purposes of sexual exploitation has existed for many years. The first International Convention on Trafficking was signed in 1904 to address British women being trafficked to brothels in Europe, and Europeans being trafficked to the United States.⁵⁰ Although exact figures are impossible to acquire due to the illicit nature of trafficking, it is estimated that from 700,000 to 4 million people are trafficked across borders every year.⁵¹

Trafficking in human beings takes on many forms, such as forced labor, slavery or similar practices,⁵² indentured servitude, forced marriage or the sale of organs; and victimizes men, women, boys and girls. However, international attention has focused on the trafficking of women for sexual purposes. In fact, international law addressing trafficking, outlined in the Suppression of Traffic Convention, solely addresses trafficking for the purposes of commercial sexual activity. This has been criticized by anti-trafficking advocates, as the problem of human trafficking additionally involves other oppressed groups. It is however important to address the phenomenon of women prostituted against their will for others' profit and pleasure, if nothing else than for the sheer number of exploited women, and to brace against the impending increase of their number and the corresponding international responsibility to fight against the barbarity of this human rights violation. Four hundred years of human trafficking from Africa enslaved 11.5 million people; the last 10 years of what is increasingly being called 'Modern Slavery'⁵³ has produced 30 million victims of trafficking from Southeast Asia alone.⁵⁴

Forms of
Trafficking

Approximately 120,000 women and children are trafficked into the European Union every year,⁵⁵ with half a million trafficked women currently residing in Western Europe.⁵⁶ Of these women, 75% are under the age of 25, of whom a great number are teenagers.

⁴⁹ United Nations (2000). General Assembly. Document A/55/383.

⁵⁰ Refugee Reports (2000). Op. cit.

⁵¹ U.S. Department of State (2002). *Victims of Trafficking and Violence Protection Act 2000, Trafficking in Persons Report*. June. p. 1.

⁵² Slavery is defined in article 1.1 of the UN Slavery Convention as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Practices similar to slavery are defined in the UN Supplementary Convention on the Abolition of Slavery as including debt bondage, serfdom, forced marriage, inheritance of women, and labor exploitation of minors.

⁵³ The Working Group on Contemporary Forms of Slavery in 1998 declared that trans-border trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights. United Nations Human Rights Committee (1998). *Recommendation of the 1998 Session of the Working Group on Contemporary Forms of Slavery*.

⁵⁴ Arlacchi, Pino (2000). UN Office for Drug Control and Crime Prevention. From his statement, as reported in *Refugee Reports*, Vol. 21. No. 5

⁵⁵ European Union Press Release (2002). *EU urges higher priority for fight against trafficking in women and children*. Brussels, Belgium. A tremendous amount of trafficking occurs within CEE and CIS countries, as well. In the Balkans, with the introduction of peacekeeping forces and international aid workers, countries that had never before been destination countries began to receive trafficked women from other, poorer countries in the area.

'Conservative estimates indicate that as many as 120,000 women are trafficked into Western Europe and forced into prostitution annually. The majority of the foreign women in prostitution... are from Albania, Romania, Russia and Poland and an increasing number are from African nations... Belgian authorities believe that up to 50 percent of foreign women in prostitution in Belgium are from Albania... The International Organization for Migration reported that nearly 80 percent of the estimated 10,000 women trafficked into Germany every year are from Central and Eastern Europe and the Newly Independent States. Reports indicate that 40 percent of women in prostitution in the Netherlands are illegal immigrants from Eastern Europe and [Africa].'⁵⁷

The US Central Intelligence Agency estimates that traffickers earn approximately \$250,000 in profit from the work of each trafficked prostituted woman.⁵⁸ Prostituted women earn traffickers from \$800 to \$5,000 every time they are resold to another organized crime ring.⁵⁹

Every country in the world is affected by trafficking, either as a country of destination, transit or origin, or in combination. With an ever widening gap between the rich and the poor both nationally and internationally, declining socioeconomic status of women in CEE/CIS countries of origin, increasing profits for traffickers, lack of government action and, in some cases, government complicity, the trafficking in women is on the increase.⁶⁰ According to a UNHCR study, the CEE/CIS area is particularly affected as it has become the fastest growing source region for trafficked people.⁶¹ Established trafficking routes are constantly changing as flexible traffickers change tactics and entry points in order to continue their exploitation of millions of people. Identified trafficking and smuggling routes from the CEE/CIS region to the European Union include:⁶²

- *Albania and 'the Balkan Route'*. Widely used by organized crime rings.
- *The 'Eastern Route'*. With transit in Moscow, Belarus and Poland. Mainly used by African and Asian migrants. Poland is a transit country.
- *The 'Southern Route'*. Used by Balkan residents and Romanians. Poland is a transit country.
- *via Croatia and Slovenia*. With Hungary as the most significant transit country into Austria;

Routes in
CEE/CIS region

⁵⁶ Quoting IOM figures. United Nations Economic and Social Council (2000). *Integration of the Human Rights of Women and the Gender Perspective*. February. p. 24.

⁵⁷ The Protection Project (2002). *A regional snapshot on trafficking in Persons, Especially Women and Children in Western Europe*. November.

⁵⁸ Osborn, Andy (2001). *Sex Traffic is Europe's Shame*. The Guardian, March 9. The German Organized Crime Bureau estimates that traffickers earn \$21,000 for each trafficked woman within three months of her arrival. Caldwell, Gillian; Galster, Steven; and Steinzor, Nadia (1997). *Crime and Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States*. Global Survival Network. p. 10.

⁵⁹ Lord, Jennifer (2002). *EU Expansion could fuel human trafficking*. United Press International. November 9.

⁶⁰ Caldwell, Gillian; Galster, Steven; and Steinzor, Nadia (1997). *Crime & Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States*. Global Survival Network. Washington, D.C.

⁶¹ Morrison, John and Crosland, Beth (2001). *Op. cit.* p. 8.

⁶² It should be noted that the Balkan region is also a significant destination point for trafficked women. Further, the EU is a transit region for some routes where the United States serves as a destination country.

- *via the Czech and Slovak Republics:* With transit through the Ukraine. Used by migrants from the Middle East, Far East and the Soviet Union;
- *via Albania, Hungary or the Czech Republic:* With Turkey, Bulgaria and Romania as significant transit countries;
- *The Mediterranean 'Blue Route':* crosses the Mediterranean. Migrants from Africa and Asia. Transit through North Africa to Europe via Greece, Italy, Spain and more recently Portugal;
- *The 'Northern or Baltic' routes:* with transit through Moscow and the Baltic States into Scandinavia.⁶³

An upcoming challenge for the European Union will be stemming the flow of trafficked people in new member States following European Union enlargement. With the Czech Republic, Slovakia, Slovenia, Hungary, Poland, Cyprus, Malta, Estonia, Lithuania and Latvia set to join the European Union in 2004, and Romania, Bulgaria and Turkey anxious to join as well, observers fear the worst with a massive growth of trafficking activities within the newly defined borders. Countries that have had the role of areas of origin or transit may find themselves at the receiving end of human trafficking following European Union expansion. A further challenge is the emerging phenomenon of trafficking through the Internet, with traffickers buying and selling their victims on-line. Both European Union expansion and the use of the Internet for the sex business are set to assist the growth of trafficking and affect trafficking routes in coming years.

Although trafficking routes frequently change, the general direction of trafficking remains the same. As movements of raw materials flow from poorer countries to richer countries, so do movements of migrants, both legal and illegal. As stated at the UN World Conference against Racism in Durban, South Africa, "[Trafficking victims] are the commodities in a multi-billion dollar global industry, dominated by highly organized criminal groups operating with impunity."⁶⁴ Mary Robinson, the UN High Commissioner for Human Rights continued by commenting,

'Trafficking is... inherently discriminatory. In the case of trafficking into the global sex industry, we are talking about men from relatively prosperous countries paying for the sexual services of women and girls – and sometimes men and boys – from less wealthy countries. This is more than a labor rights issue or an issue of unequal development. It is a basic human rights issue because it involves such a massive and harmful form of discrimination.'⁶⁵

Women as
Commodities

⁶³ Secretariat of the Budapest Group (1999). *The Relationship between Organized Crime and Trafficking in Aliens*. ICMPD, Vienna.

⁶⁴ United Nations World Conference against Racism, Racial Distribution, Xenophobia and Related Intolerance. (2001). *The Race Dimensions of Trafficking in Persons – Especially Women and Children*. Durban, South Africa.

⁶⁵ United Nations World Conference against Racism, Racial Distribution, Xenophobia and Related Intolerance. (2001). Op. cit.

Not only does trafficking take place between separate nation states, but also occurs within a nation state. This 'internal trafficking' has not been as much of a focus of intense international attention as cross-border trafficking, but remains a violation of the human rights of women that must be addressed. Internal trafficking also follows patterns of traditional migration flows, originating in the poorer countryside and concluding in the more affluent cities.

Human exploitation in the form of trafficking is not limited only to adults. Unfortunately, children are targets of traffickers, as well. Two separate prototypes emerge in the trafficking of minors. Teenage girls are recruited and exploited in a similar manner to young adult women for the purposes of non-consensual sexual activity. It has been estimated that up to 80% of the females trafficked from Albania, for example, are minors.⁶⁶ Reports from NGOs suggest that this number is lower for other CEE countries, making up between 10 and 30% of the total.⁶⁷

It is important to keep in mind the distinction between adult trafficking and child trafficking. Female child victims of trafficking face a double vulnerability due to gender and age.⁶⁸ Although the focus of traffickers for sexual exploitation for the most part may be the gender of the victim rather than their age, prostituted children have radically different protection and reintegration needs than adults.

A second pattern of child exploitation is the trafficking of young boys and girls under 12 for forced labor, as well as begging, adoption, prostitution, and pornography. As with other forms of trafficking, this happens both within the State and internationally. According to UNICEF, there are no specific protections or legal frameworks to address the specific needs of trafficked children.⁶⁹

3.A. TRAFFICKING AND SMUGGLING

Trafficking differs greatly from smuggling, as international bodies and non-governmental organizations are taking pains to point out. Whereas migration through smuggling rings is primarily voluntary and initiated by the potential migrant, trafficking is generally involuntary in nature; victims of trafficking are coerced, sold or at the most rare and extreme, kidnapped into their work. Coercion can take place through deceit, sexual

⁶⁶ Minors are considered children under 18 years of age. Renton, Daniel. (2001). *Child Trafficking in Albania*, Save the Children. p. 9.

⁶⁷ UNICEF/UNOHCHR/OSCE-ODIHR. (2002). Op. cit. p. 11.

⁶⁸ Albano, Teresa (2002). Interview. Project Manager for the Counter-Trafficking Unit, IOM Rome. September 13.

⁶⁹ UNICEF/UNOHCHR/OSCE-ODIHR. (2002). Op. cit.

abuse, torture, starvation, imprisonment, and threats of violence against family members, among some tactics used by traffickers.⁷⁰ Although many of the women trafficked are aware that they will be migrating, they are deceived about the nature of the work they will be forced to perform, as well as their future working conditions.

'Traffickers [in Moldova] turn up in a rural community during a drought or before a harvest, when food is scarce, and persuade poor couples to sell their daughters for a small amount of money...Other girls are kidnapped from their homes and orphanages, while many destitute women are lured to foreign lands by assurances of work, income, and visas, only to find themselves forced into prostitution and slave labor.'⁷¹

An additional difference between smuggled and trafficked migrants lies in entry to the country of destination. Women who are trafficked to be prostituted enter the countries of transit and destination both through legal and illegal avenues. Through the issuance of tourist and student visas, as well as forged documents, many of the women who will later be exploited pass borders through regular means, while accompanied by their exploiters. This differs greatly from the increasingly common picture of smuggling seen in Europe, with hundreds of immigrants being smuggled past borders by boat or truck.

Entry into
receiving country

One of the most striking differences between smuggling and trafficking is that, in the vast majority of cases, smuggled adult migrants are male, while trafficked adult migrants are female. Further, the nature of the action is fundamentally different. Whereas smuggling is an action with the intention to assist in the border crossing (albeit in a sometimes oppressive or life-threatening way, for exorbitant fees) the intention of trafficking is oppression of the victim and the ensuing financial gain following migration. Therefore, the focus of smuggling is entry into the destination country, while the focus of trafficking is the exploitation of the migrant upon arrival.⁷²

Whereas smugglers have in recent years been demonized by governments as wholly exploitative, for many migrants and asylum-seekers, smugglers are seen as providers of an often expensive service. Past examples of well-known smugglers include Varian Fry, Oscar Schindler, Raoul Wallenberg, Frank Foley and Nicolas Winton, as well as various Danish fishermen who smuggled Jewish refugees for a fee to safe havens in the 1930s and 1940s. More recently, the 'Snakeheads', an organized crime ring in Asia, smuggled Tianamen Square activists out of China into Hong Kong with the knowledge of western

⁷⁰ Raffonelli, Lisa (2002). Op. cit.

⁷¹ Lee, Martin. *Women and Children for Sale: The Globalization of Sexual Slavery*. San Francisco Bay Guardian, March 5, 2001. Based on 2001 UNPF study "Lives Together, Worlds Apart".

⁷² Secretariat of the Budapest Group (1999). *The Relationship between organized crime and trafficking in aliens*. International Centre for Immigration Policy and Development (IMPD), Vienna. June. As per Morrison, John and Crosland, Beth (2001). Op. cit.; also UNICEF/UNOHCHR/OSCE-ODIHR. (2002). Op. cit. p. 3.

governments. It is only recently that governments have focused upon the negative aspects of organized crime involvement with migration.⁷³

As detailed earlier, the root causes of migration are similar for both smuggled and trafficked migrants. When immigration is discouraged by governments through visa, financial or passport regulations, determined migrants can turn to illegal means, or are vulnerable to exploiters promising safe passage and opportunities abroad. For women wishing to better their economic situation, the push and pull factors of migration can lead them to accept the assistance of people who intend to exploit them.

'...Stricter immigration regulations are generally an ineffective way to combat the problem [of trafficking]. When the visa applications of single women from poor regions of the world are more carefully scrutinized or routinely denied, the demand for apparently legitimate operations which promise to assist women (who need or want to migrate for economic reasons) to obtain visas increases. Moreover...the increased prosecution of illegal migrants by receiving states make women hesitant to report abuse to authorities because they know they will be treated as illegal migrants and summarily arrested, detained and deported.'⁷⁴

There is a great deal of overlap in the distinction between smuggled migrants and trafficked migrants. In some cases, trafficked migrants may be smuggled into the country of destination. Additionally, smuggled migrants may be victims of abuse and exploitation similar to that which threatens trafficking victims. However, the general patterns that emerge suggest that different approaches are needed to tackle the problems facing smuggled migrants and trafficked migrants. As governments act to reinforce their commitments to impenetrable borders, policy is being developed to counteract illegal migration. However, due to the exploitation and deceit involved in the presence of trafficking survivors, as well as the substantial difference in their security needs, it is essential that decision makers develop policy that also acknowledges the human rights responsibilities of the host state.

Overlap between
smuggling and
trafficking

'Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights.'⁷⁵

3.B. TRAFFICKERS, PARTICULARLY THOSE OPERATING FROM CEE/CIS TO WESTERN EUROPE

⁷³ Morrison, John and Crosland, Beth (2001). Op. cit. p. 55.

⁷⁴ Caldwell, Galster and Steinzor (1997). Op. Cit.

⁷⁵ UNICEF/UNOHCHR/OSCE-ODIHR. (2002). Op. cit. p. xiii.

There is an increasing presence of national and transnational organized crime groups in human trafficking. Human trafficking activities are often combined with other illegal activity, such as drug and arms trafficking,⁷⁶ and profits from trafficking are partly used to procure equipment, legally invested, or used to further the illegal activity through corruption.

Authorities have observed that organized crime groups have moved the focus of their activities from immovable goods such as real estate, to moveable goods such as drugs, arms, and human beings.⁷⁷ Of moveable goods, humans are the least risky; traffickers in humans face little chance of prosecution, relatively lower fines, and a high resale value of the women they traffic for sexual exploitation.⁷⁸ As Brunson McKinley, Director General of IOM, recently wrote in the International Herald Tribune, 'The penalties are far less severe than for drugs, the up front investment much smaller, and the evidence has legs and tends to run away.'⁷⁹ Women have little decision making power or recourse in being sold to another crime ring; this method is often used to break any ties the woman has made in the area where she is working, to increase her debt burden, or to disorient her so that escape is difficult. Repeated trafficking across national borders is also useful from the criminals' point of view, because if the victims are less able to communicate through language, then they are less independent and less likely to incriminate traffickers.

Changing
patterns of
Organized crime
groups

Although recruiting practices differ greatly from one country to another, some common patterns emerge, particularly within the CEE/CIS region. This area is dominated by criminal networks that have taken trafficking out of the hands of individual exploiters for massive financial gain. These crime rings, while previously remaining deeply divided by ethnic origin (including, in part, Albanian, Italian, Turkish and Russian organized crime networks) are now collaborating 'transnationally' to maximize their profits.⁸⁰ Giusto Sciacchitano, the Italian Antimafia Deputy Prosecutor contends,

Organized crime
rings

'This phenomenon somewhat represents the dark side of globalization: it is on the increase also due to the fragile economies of some countries, the huge profits gained by traffickers, the few risks and infrequent convictions upon them, and the social condition of women.'⁸¹

These organized crime groups function by first recruiting potential migrants in their own countries of origin. Trafficked women are often approached by members of their own

⁷⁶ IOM report (2001). *Applied Research and Data Collection on Trafficking in Women for Sexual Exploitation To, Through and From the Balkan Region (A.R.T.B.). Country Report Italy*. Rome. p. 7.

⁷⁷ Vigna, Piero Luigi (2002). *Judicial co-operation in the fight against organised crime, especially with respect to the trafficking in persons*. Report presented at the International Conference on Preventing and Combating Trafficking in Human Beings.

⁷⁸ Vigna, Piero Luigi (2002). *Op. cit.*

⁷⁹ McKinley, Brunson. As quoted in Refugee Reports (2000). *Op. cit.*

⁸⁰ Sciacchitano, Giusto (2002). Italian National Antimafia Deputy Prosecutor, address to the IOM International Conference on Prevention and Fight Against the Trafficking in Persons, Ashford, UK. 20-22 May 2002.

⁸¹ Sciacchitano, Giusto (2002). *Op. cit.*

communities, lured by deceitful promises of jobs in the service sector as waitresses, nannies, or caregivers for the elderly. As already outlined, non-exploitative migrant networks have traditionally served to assist acquaintances who wish to migrate. The approach by traffickers is quite similar to these traditional networks, by utilizing trustworthy members from the same or a similar community who have worked abroad, in order to make first contact with women for the purposes of recruitment. Although most traffickers are male, a growing number are female,⁸² and offer assurances of jobs in the global north, transportation and housing assistance, as well as financial help.

Following recruitment, the original group of traffickers often leave their victims with other crime groups with whom they have working agreements, who assume responsibility for the transfer of the victims across borders. Collaborators also include government officials and businesses that have been corrupted by profits offered by the crime networks.

'It is commonplace for government officials in some countries to accept bribes from traffickers, help provide false documentation, and patronize brothels linked to trafficking rings. In addition, local police often fear reprisals from criminal gangs.'⁸³

Four main systems of exploitation of trafficked women have been identified by IOM in Italy, largely based on the country of origin of the controlling organized crime groups. The *Albanian model*, which encompasses Bosnian, Kosovar, Moldavian and Bulgarian organized crime rings, uses coercion and violence in order to maintain control over its victims. This model also is strongly based on private ownership of the women under its control, and has been called a particularly brutal form of trafficking by the UN High Commissioner for Human Rights. A second model, the *Nigerian model*, including Jamaican, Camerunese, Liberian and Burundese prostituted women, relies on debt bondage. High debts and quickly accumulating interest are used to control its victims, with the faint hope of being able to pay off debts to gain freedom. Women are pressured through psychological and physical means to live up to their debt responsibilities. The *Eastern-European model* includes women originating from Poland, Hungary, Ukraine, the Baltic Republics, the Czech Republic and the Slovak Republic. This system is highly organized and highly mobile, with a defined contract period. Finally, the *Latin American model*, involving women from Peru and Colombia, is semi-voluntary due to economic interests of the women trafficked, and is often part time.

Systems of
Exploitation

'When German citizen "Peter R." was arrested in 1996... police suspected he was responsible for trafficking up to 500 women and girls into Germany under false pretenses. One of Peter R.'s victims was a 16 year old girl, who stated that she was

⁸² UNICEF/UNOHCHR/OSCE-ODIHR. (2002). Op. cit. p. 9

⁸³ Raffonelli, Lisa. (2002). Op. cit.

brought into Germany by two men who confiscated her passport, raped and beat her, and took her to Hamburg, where she was forced to have sex with 10 clients per day.⁸⁴

Although generalization of conditions of trafficked women is necessary on some level in order to comprehend the situation as a whole, it is also important to note that the conditions of trafficked women differ significantly, with a great deal of grey area existing between the slave-like conditions of some forced prostitutes and the semi-voluntary sex work of others.⁸⁵

Conditions of trafficking run the gamut from sexual slavery to semi-autonomy

Once forced into prostitution, women are prohibited from leaving by a variety of methods. Traffickers typically assist victims to transfer abroad by providing for the costs of transportation, passport and visa acquisition. By accepting this arrangement, trafficking victims find themselves in a situation of debt bondage, owing what can be tens of thousands of dollars,⁸⁶ once they arrive at the country of destination. Traffickers typically force their victims to work until the debt is paid off, taking a cut of their profits while the victim's debt regularly mounts to cover the cost of clothing, medical expenses, housing and food, and victims rarely manage to pay off their debt.⁸⁷

Why women stay

Traffickers frequently use threats against family members in the country of origin, brutal beatings and sexual violence to control women who have been trafficked for prostitution. Additionally, traffickers employ deceit, isolation, blackmail and psychological pressure to control the women they have prostituted.⁸⁸ Although many trafficked women enter the country of destination legally, upon arrival their documents are taken by the trafficker for 'safekeeping'. Traffickers instill fear of the authorities on trafficked women due to their lack of working papers, further hindering contact with police. This is particularly effective in destination countries in Western and Eastern Europe where prostitution is illegal and women are afraid of exposure.

The trafficking and smuggling of women already engaged in sex work presents a challenge in the development of a fair and all-encompassing policy for trafficked women. The women's human rights lobby to the United Nations has long been divided on the issue of voluntary prostitution in what is characterized as the good-girl/bad-girl argument. While some feminists contend that all prostitution is forced, albeit financially, others believe that action should be concentrated on women who have been recruited

Can prostitution be voluntary?

⁸⁴ Caldwell, Galster and Steinzor (1997). Op. cit.

⁸⁵ IOM Country Report Italy (2001). Op. cit. p.10.

⁸⁶ Raffonelli, Lisa (2002). Op. cit.

⁸⁷ Refugee Reports (2000). Op. cit.

⁸⁸ Human Rights Watch, Women's Rights Division (2001). *Recommendation regarding the Proposal for a Council Framework Decision on Combating Trafficking in Human Beings.*

into sex work through deceitful means. This debate impacts the number of women defined as 'trafficked', for if the voluntary/forced prostitution argument is accepted, those considered having chosen to follow a career in sex work would be excluded from protection measures for trafficked women.

'Much of the human rights research on women and trafficking is dominated by the prostitution debate. Those who argue that all prostitution is forced prostitution see prostitution itself as a human rights abuse and call for its abolition, whilst those that argue for a distinction between voluntary and forced prostitution concentrate more on the conditions in which prostitution occurs and argue for regularization of the industry, to guard against the exploitation of prostitutes.'⁸⁹

The involuntary aspect of an informed choice to work abroad as a prostitute has been demonstrated in Ukraine. A 2002 Ukrainian report on the subject of trafficking contended that in Ukrainian cities the majority of those recruited for international sex work by organized crime rings were Ukrainians already involved in sex work. These sex workers were informed of their future positions and work conditions. However, the recruitment in the countryside involved targeting poor families with little to lose in the decision to migrate for purposes of prostitution.

'In small towns, and especially in villages and settlements the 'recruiter's' target audience was fundamentally and strategically different. It was the poorest families that were her inexhaustible source. The insulting and humiliating poverty, to which many people are still struggling to get accustomed, is frightening precisely because it makes a person go as far as putting their head in a noose, to say nothing of going to a place from which there may be no return. Psychologically, the situation is especially hard to bear for those who until recently were just like everybody else, but now find themselves among the less fortunate. But traders in 'live merchandise' know full well that poverty in small settlements has reached a critical point.'⁹⁰

As governments develop tactics to identify and prosecute traffickers, recent studies have shown that traffickers operating in Europe are changing their recruiting tactics. Many women find it difficult to identify themselves as survivors of trafficking, as they have established romantic relationships, even resulting in marriage, with their traffickers. Women trafficked by their 'boyfriends' are more apt to blame themselves for bad decision-making rather than recognize their victimization by a trafficking ring.⁹¹

3.C. CLIENTS

⁸⁹ Morrison, John and Crosland, Beth (2001). Op. cit. Footnote 189. For details of the debate within the women's human rights lobby consult *Panel A and Panel B* in NGO Consultation with the UN/IGOs on Trafficking in Persons, Prostitution and the Global Sex Industry, 'Trafficking and the Global Sex Industry: The Need for a Human Rights Framework' June 21-22 1999, Room XII Palais des Nations, Geneva, Switzerland.

⁹⁰ Nechyporenko, M. (2002). Article in *Holos Ukrayiny* newspaper, Aug 12. As per the Protection Project.

⁹¹ Pearson, Elaine (2002). *Human Traffic Human Rights: Redefining victim protection*. Anti-Slavery International. London, UK.

Little is known about the clients creating the demand for young and 'exotic' sex workers, as studies focus more on the foreign supply of prostitutes than on domestic demand. It has been observed, however, that a great number of trafficked women seek and receive aid through their clients to escape their traffickers⁹². In so far as Italy is concerned, there is much lower incidence of street-based sex work in the southern regions where men are under stronger social control. Additionally, IOM contends that as the age of marriage is lower in southern Italy, there is less demand for sex services. (See Annex C)

'This does not mean that when you have more families there is a less need of sexual services against payment. It more implies that some modernization processes... can produce forms of individualism and exacerbated non-communication between feminine and the masculine population components. This closure can determine significant distortions in the female-male relation – and not only in the single component but in the married one as well – with a consequent mutual affective-existential removal.'⁹³

According to the study *The Sexual Behavior of Italians* (2000) 9.0% of men and 0.4% of women in Italy buy sexual services. This activity is more concentrated in the north of Italy, in the cities, among older populations, and with holders of university degrees. The study *Sex for Sale*,⁹⁴ further contends that a driving force behind the use of prostitutes by clients in Italy is inter-gender relations, erotic imagery and the construction of the sexual identity.

Client Sexual
Activity in Italy

Analysis of the symbolism of the relationship between the prostituted woman and her client can be quite enlightening. The poor, uneducated, young, and oppressed female from the global south is involuntarily servicing the older, rich, educated and privileged male from the industrialized global north at her peril for his gratification and well being. As one considers the current trade and resource relationship between the developing and industrialized countries, the symbolism of this relationship is quite striking.

According to this anthropological study, the rationale by male clients for frequenting prostitutes can be generalized into four separate approaches. 'Consumers' approach prostitutes as objects to be bought, and see themselves as the rightful consumers of their services. 'Insecure' clients use prostitution to confirm their sexual ability. A category Leonini describes as 'romantic' are driven by a need to have a female sexual conquest. Others, categorized as 'blasé', recognize the harm done by their actions, but prefer not to cease their purchase of sexual favors due to a general acceptance of the use of prostitutes by their peers, or out of boredom. A final category, the 'faithful', use

Male client
rationale toward
the use of
prostitutes

⁹² Markgjonaj, Emila (2002). Psychologist in Counter-Trafficking, IOM Rome. From interview on August 6.

⁹³ International Organization for Migration (2001). *Applied Research and Data Collection on Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region (ARTB). Country Report Italy*. p. 17.

⁹⁴ Leonini, Luisa (1999). *Sesso in acquisto*, Unicopli. Milano. As per Gruppo Abele (2001). Op. cit.

prostitutes to augment their sexually unfulfilling romantic relationships. According to the study, female clients generally pay for sexual services due to their lack of a partner and an unfulfilling sexual life.

Although many of the information campaigns and projects currently in place throughout Europe target female victims of trafficking, few European countries are targeting the users of sexual services. Sweden, however, is taking a stand much different from its fellow European countries, in suggesting that rather than only focus on limiting the supply of prostitutes, countries should also look at their own residents and focus campaigns on the clients⁹⁵. By addressing issues such as the image of women in the media, male-female power and control, and the damage caused by clients' actions, States could act to minimize demand, as well. This could be particularly important for some destination countries such as Greece, where it is estimated that one third of sexually active males regularly purchase sexual services from prostitutes⁹⁶.

Few European countries focus information campaigns on clients

'As the sex industry grows, so does the market for trafficking... Aggressive marketing seeks to lend an aura of glamour to this lurid business. However, as long as the demand is there, the traffickers will stay in business. Traditional and cultural male behavior, together with the demand for entertainment and sex services, may fuel the sex market and thus feed the trafficking business. Furthermore, the myths in certain cultures regarding the rejuvenating power of sex with virgins and young girls and the wish to avoid AIDS may lead men to seek younger partners.'⁹⁷

3.D. PROTECTION NEEDS

A factor relevant to trafficking survivors is their need for safeguarding, as the organized crime groups increasingly in control of human trafficking regularly threaten the lives of the women who are able to flee from sex work upon their return home. Further, government and/or police collaboration with wealthy traffickers in CEE and CIS countries of origin and transit is widespread, and adds to the fear of repatriation. In a radio address in the late 1990s, Russian President Boris Yeltsin warned that the Russian judicial system is 'defenseless against the pressure of criminal structures', particularly as many of the Russian mafiya members are former KGB agents with strong contacts within the government.⁹⁸ In Southeastern Europe, estimates are that 70% of trafficked women either cannot or do not intend to return home, due to a fear of persecution and the lack of trust in the local authorities to provide adequate protection.⁹⁹

⁹⁵ This position is also supported by the United Nations High Commissioner for Human Rights in a recent report to the UN Economic and Social Council. UNHCHR (2002). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. E/2002/68/Add.1. May 20.

⁹⁶ Athens News Agency (2002). 'Seminar in Athens on human trafficking, sex trade'. December 12.

⁹⁷ Swedish Ministry for Foreign Affairs (2001). Op. cit. p. 11.

⁹⁸ Caldwell, Galster and Steinzor (1997). Op. cit.

Corruption of local authorities and border guards by the moneyed criminal rings has a tremendous impact on the protection of women being trafficked or repatriated following trafficking. Reports by trafficked women include accounts of authorities ignoring the exploitation, delivering repatriated trafficked women back to traffickers, utilizing the sexual services of the women involved and even participating in the trafficking itself. Further, there has been some evidence of collusion by authorities in host governments, as with a Greek official in Moscow caught selling visas to traffickers.¹⁰⁰ The 2001 International Corruption Perceptions Index (Annex D) shows that most of the CEE or CIS countries of origin for trafficking victims included in the survey have a high level of official corruption, where corruption is defined as '...the misuse of entrusted power for private gain.'¹⁰¹ This corruption leads to a genuine fear, for some trafficked women, regarding the ability or willingness of the State to provide for their protection upon repatriation.

According to a report co-sponsored by UNICEF, as governments often tie protection access to incrimination of traffickers and 'voluntary' repatriation, those who refuse to leave the host country or are fearful to turn in their traffickers are not identified as victims of trafficking by police. Without this identification, they are not referred to IOM or other organizations working to meet the needs of trafficked women.¹⁰² This has resulted in numerous cases of trafficking survivors being labeled as illegal migrants and deported, only to be met at the border by their traffickers, and re-trafficked with additional debt burdens.¹⁰³

Identification is often tied to testimony and repatriation

'That I was rescued by the police and returned home immediately, did not change the fact that I had a debt to pay the traffickers. I owed them for the initial travel expense, and then they kept adding on more money for accommodation, food, clothes and medicine. Not only had I failed to earn what I hoped to support my family, but my situation was worse, because now I also had the debt.'¹⁰⁴

Although a number of women escape trafficking rings by requesting the help of clients, a great quantity are arrested during police sweeps. Although this is often represented as a liberation of trafficked women by State authorities, it is not interpreted as such by many of the women who have been 'rescued'. As many trafficked women do not see themselves as 'victims' but rather as people who have made bad decisions or bad contacts, they are not fully cooperative with the authorities they have been taught to avoid.¹⁰⁵ This can lead to misinterpretation of their situation by authorities, and result in deportation.

⁹⁹ UNICEF/UNOHCHR/OSCE-ODIHR (2002). Op. cit. p. 146.

¹⁰⁰ Caldwell, Galster and Steinzor (1997). Op. cit.

¹⁰¹ Transparency International (2002). *Frequently asked questions about Corruption*. Berlin, Germany. April.

¹⁰² UNICEF/UNOHCHR/OSCE-ODIHR (2002). Op. cit. p. 142.

¹⁰³ UNICEF/UNOHCHR/OSCE-ODIHR (2002). Op. cit. p. 142.

¹⁰⁴ Pearson, Elaine (2001). Op. cit. From interview with trafficking survivor.

¹⁰⁵ Pearson, Elaine (2002). Op. cit. p.2.

The grounds for survivor refusal of assisted return are numerous, but certainly include fear of personal persecution. These fears cannot be taken lightly. In Italy, a destination country where protection for trafficking survivors is a priority, 189 foreign sex workers were killed in 1999.¹⁰⁶ However, witness protection programs, when accessible by trafficked women, are often unsuitable for this group as they are based on an assumption that the survivor to be protected can assimilate into a new environment.¹⁰⁷

There is little incentive for women who have been trafficked to cooperate with criminal investigations of their traffickers, as testifying often increases the risks of reprisal upon repatriation. As most countries offer little protection to trafficking survivors, and immediately arrange for their return to their countries of origin, even in the case of an ongoing trial, the benefits for trafficked women of incriminating their exploiters are minimal.

'As a counselor from a German group assisting victims of trafficking to testify in court explained: "Yes, they are afraid... They know that this network is still existing. They get this information from the pimp: 'Even if I am called by the police, for example, there is still my brother and he will find your family when you are returning to your home country, if you will accuse me.' And of course, the women know the pimp is from the neighboring street... they know that there is still the family network."'¹⁰⁸

The cases of reprisals are much more numerous and serious in countries of origin than countries of destination, as even the basic protection mechanisms are often missing. In cases where the protection of trafficking survivors is weak, traffickers have corrupted officials, and trafficking survivors retain debts to their traffickers or have testified against them, their fear of physical harm or further exploitation is palpable. In fact, in Eastern Europe, 30 – 50% of trafficking survivors are eventually re-trafficked following repatriation.¹⁰⁹

Reprisals

Family members of trafficked women are also subject to reprisals in countries of origin. Children that trafficked women have been forced to leave behind with other family members are often the targets of organized crime rings seeking reprisals against women who have chosen to implicate them with authorities.

'The reprisals against family members in countries of origin generally consisted of intimidation by traffickers or alleged officials, threats, bribes, violence and damage to property. Local police seemed ill-equipped to deal with the protection issues involved, and corruption was a particular issue... The most effective way of protecting family

¹⁰⁶ *IOM Country Report Italy* (2001). Op. cit. p. 7.

¹⁰⁷ Pearson, Elaine (2002). Op. cit. p.48

¹⁰⁸ Caldwell, Galster and Steinzor (1997). Op. cit.

¹⁰⁹ UNICEF/UNOHCHR/OSCE-ODIHR (2002). Op. cit. p.144.

members from reprisals was to relocate them either within their own country or in the country of destination.¹¹⁰

In a 2002 study, a European-based non-governmental organization attempted to trace trafficked persons from 8 European countries who had returned to their countries of origin following denouncement of their traffickers. Their attempts, however, were generally unsuccessful.

'Anti-slavery International was unable to contact many trafficked persons who returned home after testifying abroad because they simply disappeared from view, probably out of fear for their own safety... In Poland, a trafficked woman who reported her traffickers in Germany and was deported, subsequently also reported her traffickers in Poland. She suffered threats which forced her to move home three times in one year. The criminal case against the traffickers in Poland was closed after four months due to lack of evidence.'¹¹¹

Strong calls are being heard throughout Europe and other receiving areas for official reform of protection strategies for this particular social group, and some States, such as Italy, are heeding this call with stronger legislation to protect these survivors of human rights abuse. However, the implementation of such protection is discretionary, and largely depends on the government and officials in place at the time of first encounters with foreign sex workers, as trafficked women are rarely otherwise aware of the existing legal framework that could serve to aid them. IOM reported in 2000 that regardless of the legislation in place in Italy, in most cases the Italian police were continuing with immediate deportations of Albanian foreign sex workers.¹¹² As seen in the Associated Press article below (dated August 15, 2002) the targeting, apprehension and deportation of hundreds of prostitutes from the Balkans continues today.

Although laws exist for the protection of trafficked women, implementation is discretionary

'Italian police carried out a sweep targeting street prostitutes and illegal immigrants from Turin in the north to Naples in the south, with more than 400 people set for immediate deportation, authorities said Wednesday. The one week 'Free Streets' operation was part of a new plan to forcefully crack down on street prostitution and track and repatriate illegal immigrants, the Interior Ministry said Tuesday. 'This was intended as a strong signal, in particular against the sad phenomenon of public prostitution, which often makes the streets impassable,' said the ministry, which is in charge of domestic security. The conservative government of Premier Silvio Berlusconi has introduced firm measures to curb illegal migration recently, and says that widespread street prostitution – a trade largely plied by illegal immigrants – is a blight to Italian cities. The operation in 11 of Italy's 20 regions ended Wednesday, and snagged 449 illegal immigrants... Deportations began Wednesday, police said, with many being sent home to Albania and Balkan nations. The operation will include a second phase that will cover Italy's remaining nine regions and will end in late August, said Cagliari police chief Antonio Pitea by phone from the island of Sardinia. Human trafficking for the sex trade has boomed across Europe in the last decade, and Italy has at least 50,000 street prostitutes, most of whom are immigrants, estimates say.'¹¹³

¹¹⁰ Pearson, Elaine (2002). Op. cit. p.48

¹¹¹ Pearson, Elaine (2002). Op. cit. p.46

¹¹² IOM Rome (2000). *Measures to Prevent and Combat Trafficking in Women and Minors for Sexual Exploitation: Emergency Health and Information Campaign*. Final Report to the Italian Ministry of Foreign Affairs. Rome. p. 13.

4. SEEKING SOLUTIONS TO TRAFFICKING

The international community is striving to address the issues of trafficking through legal instruments, including most recently the commitments at the UN Millennium Summit to Fight Transnational Crime, including Trafficking in Human Beings; the UN Convention against Transnational Organized Crime; and the optional UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women. However, governments are too often pursuing strategies that target the legal and immigration-based issues of trafficking, but not fulfilling the human rights protection responsibilities of host states.

4.A. CONVENTIONS

International conventions and agreements regarding trafficking and other modern forms of slavery have been numerous, and include the following:

International
Conventions

- 1904 International Agreement for the Suppression of White Slave Traffic (*Amended by the 1949 Protocol*)
- 1910 Convention for the Suppression of White Slave Traffic (*Amended by the 1949 Protocol*)
- 1921 Convention for the Suppression of Traffic in Women and Children (*Amended by the 1947 Protocol*)
- 1926 UN Convention on Slavery
- 1930 ILO Convention on Forced Labor (No. 29)
- 1933 International Convention for the Suppression of the Traffic in Women of Full Age (*Amended by the 1947 Protocol*)
- 1947 Protocol to amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933
- 1948 Universal Declaration of Human Rights
- 1949 Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of White Slave Traffic
- 1949 UN Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- 1953 Protocol amending the 1927 Slavery Convention
- 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- 1957 Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery
- 1966 The International Covenant on Economic, Social and Cultural Rights
- 1966 The International Covenant on Civil and Political Rights
- 1973 ILO Convention on Minimum Age (No. 138)
- 1975 ILO Convention 143 (the Convention Concerning Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment)
- 1979 UN Convention on the Elimination of All Forms of Discrimination against Women
- 1989 UN Convention on the Rights of the Child

¹¹³ Associated Press World News (2002). *Mass Italian police operation snags hundreds of immigrant prostitutes*. Rome. August 15, 2002. Provided by the Protection Project 2002.

- 1990 UN Convention on the Protection on the Rights of All Migrant Workers and Members of their Families
- 1993 Vienna Convention and Programme of Action
- 1995 Forth World Conference on Women in Beijing, Platform for Action
- 1996 Declaration and Plan of Action from the World Congress against the Commercial Sexual Exploitation of Children, Stockholm
- 1996 European Commission Communication on Trafficking in Women for the Purpose of Sexual Exploitation, COM (96)567 final. Nov. 20.
- 1998 European Commission Communication for Further Actions in the Fight against Trafficking in Women, COM(98)726 final. Sep 12
- 1999 ILO Convention on the Worst Forms of Child Labor (No. 182)
- 1999 OSCE/ODIHR Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings
- 1999 Tampere European Council, Presidency Conclusions
- 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography
- 2000 European Commission Communication on Combating Trafficking in Human Beings and the Sexual Exploitation of Children; two proposals for framework decisions, COM (2000)854
- 2000 ILO Convention No 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor
- 2000 Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings, MC(8)Journal No. 2, Agenda No. 10
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime
- 2001 United Nations Convention Against Transnational Organized Crime

Europe has seen a rise in recent years of negative popular opinion regarding immigrants from non-EU member states. This issue has come to the forefront in Britain, Germany, Austria, Spain, France, Italy, Greece, and the Netherlands. The reluctance toward receiving migrants and refugees occurs at a time when Europe is rapidly aging. The 'greying of Europe' could profoundly affect the European economy as a small working population struggles to meet the needs of a much larger retired population.

European
popular opinion
on immigrants

'The European Commission estimates that the EU working population will start to fall in the next 10 years and decline to 223 million people by 2025 from 225 million in 1995. During the same period, the number of over-65s will continue to rise to reach 22 per cent of the population by 2025 from 15 per cent in 1995. The problems of an aging population, with not enough workers to pay for retired people's pensions, have led many EU leaders to consider relaxing immigration rules.'¹¹⁴

Anti-foreign sentiment has grown in Europe since the attacks in the United States in September 2001, as governments in Europe have justified their anti-immigration and asylum measures with the renewed need to protect their States from terrorism. These

¹¹⁴ Hargreaves, Deborah (2001). *Europe reinvented: common immigration policy – survey*. Financial Times. Brussels, Jan 26.

measures have acutely affected the treatment of migrants and asylum seekers in Europe.¹¹⁵

It is not surprising, therefore, that a strong focus has been put on migrants entering by irregular means into the European Union. Italy, as well as other Mediterranean countries of first entry, has received both internal pressure and external pressure to address the issue of irregular migration. As Italy is often a country of transit for irregular migration, other EU member states would like to assist Italy to stem the tide of Kurds, Albanians, Bangladeshis, and other undocumented migrants.

Tackling both smuggling and trafficking has been the focus of considerable interest on the part of the European Union in the last decade. This attention has been appreciated by advocates for the rights of trafficked women. However, many of the declarations, conventions, and treaties that have been reached since 1990 focus on the needs of the governments and their voters increasingly critical of immigration. While the need to fight the criminal rings is widely acknowledged, with strong legislation enacted in order to counter their migration activity, equally strong legislation is lacking regarding meeting the needs of those who have been victimized by these smugglers or traffickers. In addition, for societal solutions to be durable, governments must also focus their attention on changing societal attitudes.

Focus on smuggling and trafficking concentrates on border crossing, not human rights

'Because addressing the gender inequities that contribute to GBV [Gender-based Violence] is fundamental to addressing the perpetuation of GBV, any programming requires a long-term commitment to awareness-raising and advocacy, as well as recognition that addressing GBV includes providing women and girls access to power. Inasmuch as GBV programming should be integrated across sectors, so should efforts at gender mainstreaming. However, it is more often the case that international institutions and organizations, even if they theoretically support women's empowerment as a goal of programming, do not challenge the structures that reinforce women's subordination.'¹¹⁶

While some States have addressed the lack of EU common legislation on protection needs of trafficking survivors, a cohesive standard practice for dealing with the survivors of trafficking has not yet been reached, although initial discussion regarding this matter took place in December 2000 at the Palermo Convention against Transnational Organized Crime.

4.B. LEGALIZATION

¹¹⁵ Human Rights Watch (2002). *Refugees, Asylum Seekers, Migrants and Internally Displaced Persons: The Year in Profile*.

¹¹⁶ Ward, Jeanne (2002). *If not now, then when? Addressing Gender-based Violence in refugee, internally displaced, and post-conflict settings*. Women's Commission for Refugee Women and Children.

Some States have adopted the legalization of sex-work as a protection measure. Advocates for legalization argue that if prostitution were legal, women would be able to more freely organize themselves into cooperatives or other work systems that would allow them to control their work on their own terms, reducing or eliminating the need for pimps. Further, legalization would enable sex-workers to participate in a work-based health system, reducing some professional health hazards. Finally, the State would benefit from legalization, due to increased tax revenues from the now recognized laborers.

Legalization may improve conditions of legal residents, but worsen conditions of trafficked women

'Situations where sex workers cannot select their clients, nor decide what services they will give, and where exploitation is so severe that they are deprived of virtually all earnings cannot be addressed in law without decriminalization. This would allow the setting of acceptable standards against which such unacceptable working conditions could be judged. To argue for further criminalization of commercial sex to protect the vulnerable ignores the fact that current legislation – also intended to protect the vulnerable – does no such thing. Acceptance of sex work would allow those who are exploited to seek help without fear of being stigmatized, prosecuted or deported.'¹¹⁷

Many advocates of the rights of trafficked women, however, fiercely oppose legalization. The trafficking of women has actually increased in countries with legalized prostitution, according to studies conducted by the European Women's Lobby.¹¹⁸ Legalization has proven to increase the demand for sexual services by decreasing some of the social stigma and lowering the health risks for clients. Further, women lacking working rights in destination countries would continue as illegal residents, even if their industry were legalized. Counter-trafficking advocates further contend that in a legalized context, trafficked women are less visible and therefore less accessible by those wishing to assist this exploited group, and pimps and other managers of sex work are given more legitimacy. Therefore, although legalization may improve the conditions of local women involved in sex work, international trafficked and prostituted women could experience deeper exploitation.

5. THE REFUGEE CONVENTION

In 1951, responding to the massive human rights violations and displacement of millions of people in Europe, official representatives met in Geneva, Switzerland to draft the UN Convention relating to the Status of Refugees. This convention, along with the 1967 New York Protocol establishes the right to asylum due to a well-founded fear of persecution based on five grounds. According to the Convention, a refugee is defined as '*a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the*

1951 Refugee Convention and the optional 1967 Protocol

¹¹⁷ Kinnell, H., Europap-UK(2000). Letters to the Editor, The Guardian newspaper. London, UK.

country of his [sic] nationality and is unable or, owing to such fear, is unwilling to avail himself [sic] of the protection of that country.’¹¹⁹ Therefore, it is not enough to prove a well-founded fear of persecution, but that persecution must be based on reasons of race, religion, nationality, political opinion or membership in a particular social group. Central to the Refugee Convention is the principle of ‘non-refoulement’, prohibiting governments from forcibly returning refugees subject to torture or death upon repatriation.¹²⁰ The flexible Refugee Convention and 1967 Protocol, and the later 1969 OAU Convention and 1984 Cartagena Declaration, have been interpreted to safeguard those requiring international protection due to civil war, international war, conditions of generalized violence, or other serious strife, as humanitarian needs have changed.¹²¹

‘More than perhaps any other area of the [Geneva] Convention, the phrase ‘membership of a particular social group’ has to be left to evolve in line with society’s understanding of groups within it. ...There is no reason, therefore, to assume that the phrase ‘particular social group’ in the Refugee Convention is meant to be confined to narrowly defined, small groups of people... The members of the social group may not know each other, may not even consider themselves part of the social group and the only thing that nominally unites them is the characteristic which gives rise to the persecution.’¹²²

5.A. GENDER-BASED PERSECUTION

The threshold of the five convention grounds has served as a filter to allow refugee determination proceedings to occur only in the cases of some people in need of international protection. People fleeing economic or environmental crises are generally excluded from the possibility of accessing the procedures leading to the granting of refugee status. Further, access to asylum has historically been guided by male protection needs.¹²³ The gender-partial basis for defining the five convention grounds has recently become the focus of much analysis both within agencies working directly with refugees, and within legal and academic circles.

Gender-based
Persecution

To fully understand the concept of gender-based persecution, it is necessary to differentiate between the concepts of ‘sex’ and ‘gender’. Whereas sex is defined on a

Gender v. Sex

¹¹⁸ European Women’s Lobby (2001). Op. cit.

¹¹⁹ IOM/UN (2000). *World Migration Report*. Op. cit. p. 15.

¹²⁰ In 1977, the UNHCR extended the principle of non –refoulement to include those subject to persecution if returned to their country of origin, irrespective of whether they have been granted formal recognition as refugees.

¹²¹ IOM/UN (2000). *World Migration Report*. Op. cit.

¹²² European Council on Refugees and Exiles (ECRE). (2000). ‘Position on the Interpretation of Article 1 of the Refugee Convention’. September. Points 56 - 58.

biological level, gender is a cultural construction taking into account power relationships between men and women. Gender is further defined by how power affects the identity, status, roles and responsibilities of both men and women. The idea of gender is not shared between all people, but holds social meaning for individual cultures, and is adapted as the culture changes.¹²⁴

It is equally important to analyze the concept of 'persecution'. According to UNHCR, it is not necessary to prove that the government is the perpetrator of acts against the asylum seeker, but rather to show the systematic failure of State protection.¹²⁵ Therefore, if the State fails to protect those put at serious risk due to gender, whether or not the State is the direct executor of harmful deeds, such acts can still be considered Gender-based persecution.

Those advocating for the inclusion of gender-based persecution as an entry point for refugee determination proceedings argue that there are specific forms of persecution based on gender-related claims which are not presently covered by the Refugee Convention. These claims have included, but are not limited to, persecution due to homosexuality, female genital mutilation, domestic violence, systematic rape, sexual slavery, forced pregnancy, enforced sterilization and human trafficking for prostitution.

'Case law from around the world provides ample evidence that gender-related claims can be handled within the framework of the existing [Refugee Convention]. Gender-based persecution, and the persecution of women in particular, has emerged from the shadows.'¹²⁶

Focus upon the gaps in the refugee determination system, namely in the exclusion of gender-based persecution as a sixth ground for refugee recognition, is not entirely new. In 1984, a resolution was passed by the European Parliament asking States to allow women who violate religious or societal traditions access to refugee determination proceedings. According to the European Parliament, these women could be considered members of a particular social group, therefore allowing assessment of their need for international protection. This groundbreaking resolution was followed by UNHCR conclusions and consultations on persecution specific to women. In the early nineties, it became increasingly accepted that gender-related claims could fall under the 1951 Convention. Recently, the understanding of the severity of gender-based persecution was underlined by the 1998 adoption of a statute by the International Criminal Court to

¹²³ United Nations High Commissioner for Refugees (2002). *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Document no. HCR/GIP/02/01. May 7.

¹²⁴ Crawley, Heather (2000). *Refugees and Gender: Law and Process*. Forced Migration Review. Issue 9.

¹²⁵ Crawley, Heather (2000). *Op. cit.*

¹²⁶ Kumin, Judith (2001). UNHCR. *Op. cit.* p. 13.

adjudicate gender-related persecution, and the 2001 convictions of Bosnian Serb officers for crimes against humanity due to their use of systematic rape as a form of torture. However, States have adopted varying stances on gender-based persecution, and acceptance of gender-based claims is sporadic.¹²⁷

An ever-growing number of organizations are calling for general recognition of gender-based persecution as the basis for refugee claim. These advocates maintain that due to the fact that gender is not indicated as one of the five grounds laid out in the Refugee Convention, persecution particular to women is often overlooked. Therefore, they contend, women subject to gender-based persecution should be entitled to refugee status as members of a particular social group, if it is possible to prove a well-founded fear of harm and the lack of State protection.

5.B. ARGUMENTS AGAINST GENDER-BASED PERSECUTION

There is a considerable amount of resistance to the extension of refugee protection to survivors of gender-based persecution, as it is feared that granting asylum to those suffering severe forms of gender-based persecution would open the floodgates to a great number of women fleeing domestic violence, female genital mutilation, or other female centered violence that the State may consider a private domestic matter. However, gender-sensitive refugee determination would not automatically lead to a blanket acceptance of refugee status for all women suffering from systematic violence. In fact, in 1999 only one in four asylum seekers were granted refugee status in the European Union¹²⁸. The Refugee Status Appeals Authority of New Zealand has stated that,

Fear of massive
influxes of
gender-based
asylum claims

'The refugee claimant must still establish that the fear of persecution is well-founded, that the nature of the harm anticipated rises to the level of serious harm, that there will be a failure of state protection and that the well-founded fear of being persecuted is for reasons of race, religion, nationality, membership of a particular social group or political opinion. The refugee status inquiry is always individual; it is always particularized.'¹²⁹

¹²⁷ Kumin, Judith (2001). *Gender: Persecution in the Spotlight*. UNHCR Refugees Magazine. Volume 2. No. 123. Geneva, Switzerland. p 12-13.

¹²⁸ Achiron, Marilyn (2001). *A Timeless Treaty under Attack*. UNHCR Refugees Magazine. Volume 2. No. 123. Geneva, Switzerland. p. 20.

¹²⁹ Haines, Rodger, QC., (2001). Op. cit. p.4.

Recent political opinion in destination countries has swayed away from the responsibility-sharing of hosting asylum seekers. Intergovernmental organizations, such as UNHCR and IOM, have therefore been put in the difficult position of balancing the needs of migrants and refugees against the anti-foreigner sentiment rising in the global north. The additional burden of granting asylum to potentially thousands of women fleeing gender-based persecution is indeed a daunting prospect, and it would be difficult to convince host governments of their human rights responsibilities for women who have been trafficked into their States, and even more so toward women who are victims of internal trafficking in third States. UNHCR, therefore, has made a number of public statements regarding repatriation for those not in need of international protection in order to safeguard the commitments by the States to protect those already recognized as refugees. In doing so, UNHCR has singled out trafficked and smuggled migrants as among those who should be targeted for repatriation.

Balancing
refugee and
migrant needs
against a
xenophobic
backlash

'...UNHCR has had to contend with a rapidly changing and complex environment in which the – real or perceived – political, security, economic and social costs of hosting refugees have affected the willingness and capacity of States to receive refugees. ...Problems of illegal migration, smuggling and trafficking of persons in some parts of the world, and the security dimensions of refugee problems in some other regions, have compounded the situation, leading increasingly to politicization of the institution of asylum, and in some states, to a tendency to criminalize refugees and asylum-seekers.'¹³⁰

UNHCR is presently developing a Conclusion providing direction to States regarding the establishment of complementary forms of protection for those trafficked or smuggled. This alternative to refugee status for those in need of international protection is meant to be compatible with protection provided as per the 1951 Convention.¹³¹

A further criticism of asylum for trafficked women concentrates on the difference in the needs between survivors of trafficking and other human-rights abuses leading to refugee status. It has been argued that survivors of trafficking have needs different than those of refugees, including protection within the host country and legal redress of their traffickers, and, in some cases, resettlement in a safe, third country. In addition to safety concerns trafficked women often suffer when returning to their countries of origin, they also have specific needs due to the nature of their oppression, including often severe physical and psychological trauma.

Asylum should
be considered a
last resort in
protection of
trafficked
women

'Trafficking victims suffer from serious physical and emotional effects of their treatment, including both acute and long-term problems such as STDs including untreated syphilis, HIV+ and effects of forced and/or unsafe abortions, tuberculosis and other untreated diseases, injuries from assault, malnutrition and painful dental problems. Post traumatic stress disorder is common as are intense feelings including fear, guilt, anger,

Trafficked
women have
specific
Protection needs

¹³⁰ United Nations General Assembly Executive Committee of the High Commissioner's Programme (UNHCR ExCom). (2000). *Note on International Protection*. Paragraph 3.

¹³¹ UNHCR ExCOM (2002). op. cit. p. 7, point 3.

shame, betrayal, depression, disorientation and lack of trust in the ability to make judgments about others, including those offering assistance. An extensive network of service providers is required in order to meet the urgent medical and mental health needs of trafficking victims.¹³²

Some experts claim, therefore, that although protection should certainly be guaranteed to survivors of trafficking, protection and social assistance should take a different form than that currently secured by refugees. According to these counter-trafficking advocates, asylum for women fleeing gender-based persecution due to resistance to trafficking should be considered only as a last resort in States that have not developed their own comprehensive protection mechanisms for survivors of trafficking.¹³³

5.C. REFUGEE DETERMINATION PROCEEDINGS FOR TRAFFICKING SURVIVORS

UNHCR has taken a cautious stand on the issue of granting asylum to survivors of trafficking in need of international protection, in short writings located in various documents.¹³⁴ UNHCR has stated that providing safe houses in countries of origin for survivors of trafficking should be pursued as much as possible in the interest of maintaining the integrity of the national asylum system¹³⁵ producing an adequate substitute to the determination of refugee status.¹³⁶ Whereas the UN refugee agency has said as recently as 2001 that status as a victim of trafficking should not by itself allow or deny access to refugee status determination,¹³⁷ UNHCR has also encouraged governments to open their asylum processes to claims from individual trafficked persons.¹³⁸

UNHCR's stand
on asylum for
trafficking
survivors

In a joint report with the World Health Organization, UNHCR identified sexual violence as a form of torture,¹³⁹ and has recently called for individual State introduction of gender and age-specific safeguards regarding female victims of torture and gender-based persecution.¹⁴⁰

Sexual violence
as torture

¹³² McMahon, Kathryn (1999). *The Traffic in Women Revisited: Women Speak Out from WWII to the Present*.

¹³³ Albano, Teresa (2002). Interview. Project Manager for the Counter-Trafficking Unit, IOM Rome. September 13.

¹³⁴ UNHCR has concentrated its efforts regarding the trafficking-asylum nexus on 1/ the trafficking of women who have already been given refugee status, i.e. trafficking activity taking place in refugee camps; and 2/ the smuggling or trafficking of asylum seekers as a method of accessing European soil. Little work has been produced by UNHCR regarding the possibility of asylum for victims of trafficking.

¹³⁵ UNHCR/IOM (2001). *Refugee Protection and Migration Control: Perspectives from UNHCR and IOM*. Global Consultations on International Protection, 2nd Meeting. EC/GC/01/11. Paragraph 33.

¹³⁶ UNHCR/IOM (2001). Op. cit. Paragraph 31.

¹³⁷ UNHCR/IOM (2001). Op. cit. Paragraph 32.

¹³⁸ UNHCR ExCom (2002). *Agenda for Protection: Addendum*. A/AC.96/965/Add.1. June 26, 2002. p. 11, point 2.

¹³⁹ UNHCR/WHO (1996). *Mental Health Of Refugees*. Geneva, Switzerland.

¹⁴⁰ UNHCR ExCOM (2002). Op. cit. p. 6, point 2.

Whereas some of the statements issued by UNHCR have been guarded about the possibility of asylum, questioning its effect on the integrity of the international refugee regime, it has increasingly become supportive of the idea of case-by-case refugee determination proceedings for trafficking survivors. In Guidelines issued in spring 2002 on International Protection, UNHCR took up the question of refugee status for trafficking victims, arguing that survivors are entitled to refugee status if their country of origin is unable or unwilling to provide protection.

'Some trafficked women or minors may have valid claims to refugee status under the 1951 Convention. The forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence or abuse that can even lead to death. It can be considered a form of torture and cruel, inhuman or degrading treatment. It can also impose serious restrictions on a woman's freedom of movement, caused by abduction, incarceration, and/or confiscation of passports or other identity documents. In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination. **In individual cases, being trafficked for the purposes of forced prostitution or sexual exploitation could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm.**¹⁴¹

UNHCR supports refugee status for individual trafficked women with a well-founded fear of persecution

Some progress has been made in the establishment of international gender guidelines, in a departure from the political focus of persecution that has favored male refugees in the past.¹⁴² In 1985, UNHCR and the Executive Committee of the High Commissioner's Programme issued a report which called upon the High Commissioner to:

'...support and promote efforts by States toward the development and implementation of criteria and guidelines on responses to persecution specifically aimed at women... In accordance with the principle that women's rights are human rights, these guidelines should recognize as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, **including persecution through sexual violence or gender-related persecution.**¹⁴³

Further, during the 1995 World Conference on Women in Beijing, China, official representatives drafted Strategic Objective E.5 in the Platform for Action. This item called for the recognition of women as refugees, if there is a well-founded fear of persecution due to sexual violence or other gender-related persecution.¹⁴⁴

¹⁴¹ [emphasis added] United Nations High Commissioner for Refugees (2002). *Guidelines on International Protection: Gender-Related Persecution* Op. cit. Additionally, in a 2002 UNHCR Working Paper, authors Morrison and Crosland have called for a sharing of international case law on how the act of trafficking has given grounds for 1951 Convention status. Morrison, John and Crosland, Beth (2001). Op. cit. p. 99.

¹⁴² Crawley, Heather (2000). Op. cit.

¹⁴³ [emphasis added] UN doc A/AC.96/878, IIIa.1(o). and see generally UNHCR's Division of International Protection, 'Gender-Related Persecution: An analysis of Recent Trends' (1997). IJRL Special Issue 79-80. See also the *Platform for Action* adopted at the Beijing Fourth World Conference on Women in September 1995, particularly paragraph 136 recognizing as refugees women who face persecution. As per Haines, Rodger, QC., (2001). *Gender Related Persecution*, New Zealand Refuge Status Appeals Authority. p.3.

¹⁴⁴ Fourth World Conference on Women (the Beijing Conference). (1995). Platform for Action: Strategic Objective E.5 (147(h).)

A number of State precedents exist that are steering the protection of trafficking survivors in the direction of refugee status. In 1996, a U.S. Immigration Judge in San Pedro, California granted asylum to a Chinese woman referred to as Ms. M. Having been internally trafficked in China with the collaboration of local police, Ms. M. managed to escape from the hair salon/brothel where she had been confined, and arranged to be smuggled into the United States. Upon her apprehension by U.S. border officials for illegal entry, she sought asylum due to gender-based persecution. Although the U.S. Immigration and Naturalization Service (INS) appealed the decision granting her refugee status on these grounds, the highest level Board of Immigration Appeals later upheld the verdict, granting Ms. M asylum in the United States.¹⁴⁵

Although advocates hoped that this case would establish precedent for asylum of human trafficking survivors with a well-founded fear of persecution upon repatriation, a U.S. Immigration Judge in 2000 denied a similar case (Ms. O) instead conferring temporary relief under article 3 of the Convention against Torture. Although still protected by the U.S. government, Ms. O has no permanent status and her travel is restricted, therefore has received a more limited form of protection than would be the case if she had been granted asylum.¹⁴⁶ This case was appealed by Ms. O's lawyers, and INS withdrew its opposition to the appeal in November 2001.¹⁴⁷

Although not uniformly enforced, the U.S. Immigration and Naturalization Service adopted Considerations for Asylum Officers Adjudicating Asylum Claims from Women ('Gender Guidelines') that direct INS officials to recognize that gender-specific forms of persecution can be the basis of asylum claims¹⁴⁸. Additionally, the Gender Guidelines advise that if an asylum applicant can prove a well-founded fear of persecution, and the trafficking survivor cannot avail herself of protection from her own government, **she can be considered a member of a particular social group and therefore meets one of the five grounds of the 1951 Geneva Convention.** As stated by Amnesty International,

'Ms. M and Ms. O both meet the definition of a refugee... Forced prostitution is sexual slavery and constitutes rape, which is itself a form of torture... Amnesty International is concerned that asylum adjudicators are failing to provide protection in gender-related asylum cases, even where persons have fled recognized human right violations and, as in these cases, are members of a recognizable groups of resisters to such treatment and thus meet the refugee definition.'¹⁴⁹

U.S. has recognized gender-based persecution as a ground for asylum

Precedents to Gender-based persecution arguments

¹⁴⁵ United States Department of Justice, (1996). *In the Matter of J.M., Applicant in Exclusion Proceedings*. Executive Office for Immigration Review, Immigration Court San Pedro, California. December 3.

¹⁴⁶ Amnesty International USA (2000). *NSA 6/00 Refugee Concern (Fear of Refoulement)*.

¹⁴⁷ Center for Gender & Refugee Studies (2001). *The Case of Ms. O- Update*.

¹⁴⁸ U.S. Immigration and Naturalization Service (1995). *Considerations for Asylum Officers Adjudicating Asylum Claims from Women ('Gender Guidelines')*. May 29.

¹⁴⁹ Amnesty International USA (2000). Op. cit.

Canada has made legal judgments in favor of refugee status for survivors of trafficking, as well. In a recent case involving a Ukrainian survivor of trafficking, refugee status was granted on the basis of her membership in a particular social group. The board of the Canadian Convention Refugee Determination Division stated that

Canadian judgments in favor of refugee status for survivors of trafficking

'...[the] recruitment and exploitation of young women for the international sex trade by force or threat of force is a fundamental and abhorrent violation of basic human rights. **International refugee protection would be a hollow concept if it did not encompass protection of persons finding themselves in the claimants position.**'¹⁵⁰

Additionally, other States have begun to adopt provisions recognizing gender-based persecution in refugee determination, including Denmark, Germany, Ireland, Norway, Sweden, UK, and Australia. The gender guidelines and adopted legislation specifically address women who fall prey to systematic acts of violence.¹⁵¹ Some States have indeed formally recognized non-state and gender specific persecution as grounds warranting international protection under the 1951 Refugee Convention, including most recently Germany, with legislation passed in 2002.¹⁵² (See Annex E)

Denmark, Germany, Ireland, Norway, Sweden, the UK, and Australia all recognize gender-based persecution in some measure

At present, there is little incentive for governments in countries of origin to protect women from trafficking. As the women who are victimized by traffickers are often poor with little political power and low levels of education, they are frequently seen as more of a burden than a benefit to the national economy. In addition, as the traffickers are pulling in an astronomical profit, there is great opportunity for public officials to be bribed to turn a blind-eye to human trafficking. The censure of the government of origin by conferral of refugee status on their citizens abroad, implying the incapability of a government to protect its own people, could work to increase local protection and counter corruption. In the end this could benefit European destination countries by stemming the tide of trafficking victims into Western Europe. As stated by the UNHCR Protection Department, '[The Refugee Convention] is the best we have, at an international level, to temper the behavior of States.'¹⁵³

Country of Origin Incentive

In cases where the well-founded fear of persecution exists, trafficking survivors, as members of a particular social group, should legally be entitled to enjoy the protection

¹⁵⁰ [emphasis added] Neuenfeldt (1997). Canadian Convention Refugee Determination Division, V5-02904. November 26. As per Morrison, John and Crosland, Beth (2001). Op. cit. p. 66.

¹⁵¹ Canadian Council for Refugees (2000). *Refugee Women Fleeing Gender-Based Persecution*.

¹⁵² ECRE (2002). Op. cit.

¹⁵³ Feller, Erika (2001). Director of the Department of International Protection of the UNHCR. As per Achiron, Marilyn (2001). Op. cit. p 6.

afforded to other persecuted groups through existing refugee mechanisms.¹⁵⁴ In addition to putting pressure on countries of origin, if trafficking survivors are afforded the possibility of asylum in their host country, the benefits may extend to national governments, as trafficking survivors will not be identified solely based upon their willingness to testify and return home. With protection in place, more survivors may be willing to testify against their traffickers, which would have a significant impact on the numbers of future women trafficked into the countries of destination, as well as attack the growing strength of organized crime rings.¹⁵⁵

'Trafficked persons should be given full opportunity... to make a claim for asylum, and their claims should be considered on a case-by-case basis with full rights to appeal... In making refugee determinations, gender-based persecution should be recognized as grounds for asylum and consideration should be given as to whether authorities in the country of origin will not or cannot protect the trafficking victim from persecution by his/her traffickers.'¹⁵⁶

5.D. PROTECTION ALTERNATIVES TO REFUGEE STATUS

As seen in the U.S. case of Ms. O, other options to the protection guaranteed to refugees may be applied in the case of trafficking survivors. The recently approved 'T' visa in the United States is one such precedent, giving proven survivors of trafficking a status similar, although not identical, to refugees. The T-visa guarantees 'victims of severe forms of trafficking' access to shelters, social assistance, medical care, compensation, residence, privacy and protection. However, this status is only granted to those who are willing to provide information on traffickers to police. Five thousand trafficking survivors may be granted T-status annually, and are entitled to many of the advantages of refugee status. Additionally, responsibility for T visa holders falls within the Office for Refugee Resettlement.¹⁵⁷

U.S. 'T' visa

¹⁵⁴ A number of organizations support in some measure the access of international refugee mechanisms for victims of trafficking with a well-founded fear of persecution, although the topic remains controversial. See **UNHCR** (2002). *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Document no. HCR/GIP/02/01. May 7. p.5; **UNICEF/UNOHCHR/OSCE-ODIHR** (2002). *Trafficking in Human Beings in Southeastern Europe*. p. 139; **UNHCHR** (2002). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. E/2002/68/Add.1. 20 May. p.5.; **Human Rights Watch**, Women's Rights Division (2001). *Recommendation regarding the Proposal for a Council Framework Decision on Combating Trafficking in Human Beings*; **Amnesty International USA** (2000). *NSA 6/00 Refugee Concern (Fear of Refoulement)*. ; **UNHCR's Division of International Protection** (1997). *'Gender-Related Persecution: An analysis of Recent Trends'* IJRL Special Issue 79-80; **UNHCR ExComm**(1996). *UN doc A/AC.96/878, IIIa.1(o)*; **U.S. Immigration and Naturalization Service** (1995). 'Considerations for Asylum Officers Adjudicating Asylum Claims from Women ('Gender Guidelines')'. May 29.; Official representatives at the **Beijing Fourth World Conference on Women** (1995). *Platform for Action*. Paragraph 136. September.

¹⁵⁵ This has proven to be true in the case of the implementation of Article 18 of the Consolidation Act in Italy, which affords temporary protection to victims of trafficking regardless of whether they choose to testify against their trafficker. Gruppo Abele, (2001). *Annuario Sociale 2001*, Giangiacomo Feltrinelli Editore, Milan. p.726.

¹⁵⁶ Human Rights Watch, Women's Rights Division (2001). *Op. cit.*

¹⁵⁷ Raffonelli, Lisa (2002). *INS Final Rule to Assist Victims of Trafficking*. International Institute of Rhode Island.

Italy has been in the forefront for enacting legislation to meet the needs of women who have been trafficked. Article 18 of the Alien Law¹⁵⁸ departs from legislation in most of the other EU Member States by extending protection to trafficking survivors regardless of their collaboration with state authorities. The protection provided as part of Article 18 is a six-month temporary 'social protection residence permit',¹⁵⁹ with the possibility of extension for up to eighteen months, as required. While under State protection, the holders of this residence permit are given access to social services. Following the expiration of this residence permit, trafficked women may be able to convert their status into a two-year residence permit for study or work.

The enactment of Article 18 is relatively new; residence permits on the basis of trafficked status have been in place for approximately three years. As per the Ministry of the Interior, as of early 2001 there were 726 holders of social protection residence permits,¹⁶⁰ benefiting trafficking survivors from Albania, Moldova, Nigeria, Romania and Ukraine. With an estimated 35,000 to 50,000 foreign sex workers in Italy, the number of women receiving this form of protection is quite low, perhaps due to a reluctance on the part of the Italian police to grant social protection residence permits, particularly in Venice, Foggia and Palermo.¹⁶¹ Besides the obvious human rights benefits such a law has on women escaping oppression, a 2001 report by the Italian Ministry of the Interior has detailed the positive effect that these residence permits have had on the fight against organized crime, with an increase in the incrimination of traffickers from 664 traffickers in 1990, to 2866 in 2000. Additionally, the percentage of foreign traffickers has also increased, from 24% of the total to 56% of the total of all incriminated traffickers.¹⁶² This has been attributed to the temporary protection offered by the Italian state.

In addition to the Italian social protection residence permit, a number of other protection measures have been enacted in Italy, including the establishment of shelters, hotlines and social services to meet the needs of trafficked women. In addition, in Italy there are currently 49 non-governmental organizations working specifically with prostituted women, with activities ranging from street-based outreach to counseling to protection.¹⁶³

Following Italy's lead, Belgium, the Netherlands and Spain have adopted measures to provide temporary residence permits to trafficking survivors. However, they have taken

¹⁵⁸ Art. 18 del Testo unico sull'immigrazione n. 286/98. As per Gruppo Abele (2001). Op. cit. p. 726

¹⁵⁹ The full name of this residence permit is *Permesso di Soggiorno per Protezione Sociale*. Please note that while many of the laws regarding migration have changed in Italy as of July 11 2002, the social protection residence permit remains unaffected.

¹⁶⁰ Gruppo Abele (2001). Op. cit.

¹⁶¹ Gruppo Abele (2001). Op. cit.

¹⁶² Italian Ministry of the Interior (2001). *Rapporto sullo stato della sicurezza in Italia*. Rome, Italy.

the decision to limit these permits to those willing to incriminate their traffickers. If needed, the utilization of witness protection mechanisms, in place for domestic needs, may be considered for the protection of trafficked women in these States. Europe-wide, it is theoretically possible for trafficked women to qualify for residence permits on humanitarian grounds, but the implementation of residence permit distribution for survivors of trafficking is uneven and discretionary.¹⁶⁴ According to the European Commission, the minority of European States that currently hold legislation addressing protection for survivors of trafficking have policy which is vastly divergent.¹⁶⁵

5.E. EUROPEAN HARMONIZATION OF ASYLUM LAWS

The Amsterdam treaty of the European Union came into force on the first of May, 1999. A key element of the Amsterdam treaty was European Union harmonization, including the harmonization of asylum law and policy. The European Union gave itself a deadline of 2004 to realize harmonization of asylum law, establishing common standards but not uniform procedures. Additionally, the Presidency Conclusions of the European Council in Tampere, Finland declared in 1999 that the EU must move past aiming toward the minimal standards of refugee protection and instead target a common asylum procedure and refugee status.¹⁶⁶

European Policy
Synchronization

As Europe studies and debates the commitments they are prepared to make as a union toward the people of the world with a proven well-founded fear of persecution, the analysis of precedents and human rights responsibilities toward the ever-growing phenomenon of trafficked women might be a timely and vital exercise.

Although some States, such as Italy or the United States, have developed their own measures to protect trafficking survivors, UNHCR contends that individual State protection measures may be discretionary or unevenly implemented,¹⁶⁷ as seen in the recent deportations of foreign sex workers by the Berlusconi government in Italy, or the uneven immigration judgments in the United States concerning trafficked women.¹⁶⁸

¹⁶³ Anti-Trafficking Programme (ATP). (2002). *Good Practice Studies*.

¹⁶⁴ Commission of the European Communities (2002). *Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*. Brussels, Belgium. Page 5.

¹⁶⁵ Commission of the European Communities (2002). *Op. cit.* p. 8.

¹⁶⁶ UNHCR ExCom (2000). *Op. cit.* Paragraph 42.

¹⁶⁷ UNHCR ExCom (2000). *Op. cit.* Paragraph 31.

¹⁶⁸ As of October 30, 2000, nine asylum appeals were filed on the behalf of prostituted women in the US, using arguments of 'gender-based persecution'. Five of the nine were denied. Musalo, Karen and Knight, Stephen M. (2000). *'Gender-Based Asylum: An Analysis of Recent Trends.'* Interpreter Releases. Vol.77, No. 42. October 30.

Adherence to an international standard would increase the regularity of implementation, particularly with a common geographical approach to asylum issues.

'UNHCR's active participation in the design of regional approaches has sought to guarantee consistency with universal standards and to ensure burden sharing and international solidarity, while responding to specific regional concerns.'¹⁶⁹

Discussions in the European Union currently include proposals for short-term residence permits for survivors of trafficking. Studies show that States issuing temporary residence permits have a higher success rate of persecution of traffickers than States without such protective measures. This is particularly true if residence permits are not restricted to willingness to testify against traffickers.¹⁷⁰

European
Short-term
residence
permits

Also contributing to successful persecution is a three-month 'reflection period' currently in place in the Netherlands and Belgium. This reflection time allows trafficked women to decide whether or not to testify, as well as to determine if they are willing to repatriate. This period is important to allow trafficked women to fully understand the consequences of testifying against their traffickers, as well as to consider the possible consequences of repatriation, such as further trafficking, reprisals by traffickers, and stigmatization.¹⁷¹ On a governmental level this waiting period is also important, as trafficked women can continue to be influenced by their traffickers immediately after apprehension.

'During the period of immediate interception by authorities, some trafficked persons make decisions that are still heavily influenced by the trafficker. For example... traffickers arrange for lawyers to represent victims and coach them into submitting false asylum applications. In some cases of eastern European women trafficked into prostitution involving Albanian traffickers, where there is a relationship in which the woman perceives the trafficker as her boyfriend, such women rarely consider their 'boyfriend' to be a trafficker... What is key in such cases is the way the traffickers manipulate the isolation and vulnerability of trafficked persons and use and exploit current legal systems, especially the migration laws, to further marginalize and exploit trafficked persons.'¹⁷²

The European Union proposal would, similarly to the Italian Article 18, allow short-term residence for trafficking survivors. Different from the protection given under Article 18, however, the Commission for European Communities proposes that this protection be offered as a reward for cooperation with police authorities and incrimination of traffickers following a reflection period. The Commission itself admits that 'The prime objective of the proposed Directive is to tighten up measures against illegal immigration by introducing a short-term residence permit for victims... who cooperate with authorities.'¹⁷³ By its own admission, the driving factor of proposed EU legislation regarding survivors of trafficking is protection of the integrity of its own borders, rather than its human rights

¹⁶⁹ UNHCR ExCom (2000). Op. cit. Paragraph 39.

¹⁷⁰ As seen in Belgium, Italy, the Netherlands and the U.S. Pearson, Elaine (2002). Op. cit. p. 2.

¹⁷¹ Pearson, Elaine (2002). Op. cit. p. 3 and 7.

¹⁷² Pearson, Elaine (2002). Op. cit. p.43.

responsibilities to women suffering 'the biggest violation of human rights in the world'.¹⁷⁴ The Commissioner for Justice and Home Affairs for the European Commission, Antonio Vitorino, has himself called for further legislation targeting the human rights needs of trafficking survivors. '[This directive] is only one element of a comprehensive strategy which must strike a clear balance between the repressive aspect of fighting crime and respect for human rights and aid for victims.'¹⁷⁵

Temporary protection for trafficking survivors with a well-founded fear of prosecution could be an inadequate form of protection, however. Besides the obvious reservations regarding providing protection solely to those willing to testify against their traffickers, the European Council on Refugees and Exiles has documented that people receiving temporary protection in Europe have experienced mental health problems due to the insecure nature of the protection.¹⁷⁶ Further, the lack of long-term status contributes to the social exclusion of those temporarily protected, particularly those suffering trauma from their experiences. Often temporary protection is not coupled with the right to family reunification, education, basic health care, national identification documents, and travel. Finally, respecting the binding principle of 'non-refoulement', European governments should avoid involuntary return for the trafficking survivor with an ongoing well-founded fear of persecution, if the Refugee Convention is applicable in her case.¹⁷⁷ UNHCR states that temporary protection 'only complements and does not substitute for the wider protection measures, including refugee asylum, offered by the [Refugee] Convention.'¹⁷⁸

European Union harmonization in 2004 would be an appropriate occasion to adopt guidelines recognizing gender-based persecution, specifically addressing the need to offer international protection to trafficked women with a well-founded fear of persecution. If the EU took the opportunity to follow precedents set both within and outside of the borders of its member states, and expanded its interpretation of grounds leading to refugee determination procedures, the benefits would be two-fold. First, the European Union would be fulfilling its human rights responsibilities by extending protection to a growing vulnerable group. Second, it would be aiding in the struggle against organized crime and irregular entry into Europe by enabling victims to testify and seek justice

¹⁷³ Commission of the European Communities (2002). Op. cit. p. 8.

¹⁷⁴ Arlacchi, Pino as per Refugee Reports (2000). 'Trafficking in Women and Children: a Contemporary Manifestation of Slavery'. Op. cit.

¹⁷⁵ European Union Press Release (2002). *Combating illegal immigration and trafficking in human beings: Commission's proposal for a residence permit for victims who cooperate with the authorities reminds the Member States that the phenomenon cannot be tackled at national level alone.* Brussels, Belgium.

¹⁷⁶ European Council on Refugees and Exiles (ECRE) (1997). *Position on temporary protection in the context of the need for a supplementary refugee definition.* March.

¹⁷⁷ Apap, Joanna; Cullen, Peter; and Medved, Felcita (2002). *Counteracting Human Trafficking: Protecting the Victims of Trafficking.* Centre for European Policy Studies. p. 28.

against their exploiters without fear of retaliation. Further, conferring refugee status on victims of trafficking would put pressure on countries of origin to decrease corruption and prosecute organized criminals.

6. CONCLUSION

Protection of trafficked women is, at present, not a strong focus of destination governments who are concentrating their efforts on impenetrable borders. While authorities focus on economic interests and public order, the human rights of victims of trafficking tend to be a less pressing concern. By focusing on diminishing the activities of human smugglers and traffickers challenging the authority and ability of the State to keep unwanted irregular foreign nationals outside their borders, governments are pursuing policies to assuage their national pride, rather than analyzing their responsibilities to protect the human rights of those who have been abused during power struggles between the State and the ethnic mafias controlling trafficking rings. However, as has been shown in countries implementing policy that strives to protect trafficking survivors, the success rate of apprehension of traffickers increases when States put an emphasis on protecting the human rights of trafficked women.¹⁷⁹

Governments are focusing on the integrity of their borders, not human rights protection

The European Union has already taken a strong step toward safeguarding those in need of international protection by requiring that all States joining the European Union sign on to the 1951 Refugee Convention and 1967 Protocol.¹⁸⁰ The Convention, developed at a time of massive displacement due to ethnicity and political ideology, supports the modern idea that people with a well-founded fear of persecution should be able to seek safe haven. As methods of oppression have changed to target victims based on gender, the application of the Convention should embrace massively targeted new groups, such as women with low socio-economic status being regularly sexually assaulted for others' financial gain. At the very least, governments should guarantee the human rights of trafficked women through the Refugee Convention while developing more adequate protection measures specifically suited for this particular social group.

The Geneva Convention must expand to protect victims of emerging forms of human rights violation

In refugee-status determination proceedings, country experts would be necessary to determine survivors with legitimate claims to refugee status. A case-by-case

Need for case-by-case refugee determination

¹⁷⁸ Refugees Magazine (2001). *Most Frequently asked questions about the Refugee Convention*. United Nations High Commissioner for Refugees. Volume 2. Number 123. p. 7.

¹⁷⁹ Pearson, Elaine (2002). *Op. cit.* p. 35.

¹⁸⁰ Morrison, John and Crosland, Beth (2001). *Op. cit.* p. 31.

determination for trafficked women seems to be needed, particularly in light of claims that traffickers have manipulated aid agencies into assisting who they believe to be trafficked women, only to discover that those assisted were working for the trafficker as recruiters. In light of traffickers offering freedom to prostituted women if they recruit young women from their own communities, the problem of deception will need to be addressed by country specialists currently working with refugee determination proceedings.¹⁸¹

This paper is not a call for asylum for all trafficked women, but instead a call for a common understanding that women trafficked for forced sexual services are victims of gender-based persecution. As survivors of trafficking, women and girls who have been prostituted by force form membership of a particular social group. With this classification, a trafficked woman should be entitled to entry into refugee-determination proceedings to assess whether, as an individual, she has a well-founded fear of persecution, and is in need of international protection. Although being a survivor of trafficking does not guarantee blanket refugee status, victims should be afforded the possibility to be heard for refugee status determination, having passed the threshold on one of the five convention grounds. If trafficking survivors as members of a particular social group are afforded the possibility of asylum benefits may also extend to governments, as more survivors may be willing to testify against their traffickers and governments of origin may feel pressured to provide adequate protection of their citizens.

Gender-based
persecution as
one of the five
convention
grounds

7. FURTHER RESEARCH

During this study the following questions emerged, which could be recommended for further research.

- How do female survivors interpret their own protection needs? Would asylum address these needs?
- What are possible steps in sensitizing receiving countries to their responsibilities regarding trafficking; as governments in countries of destination, as clients for prostitutes, as perpetuating female stereotypes that invite the commodification of women? How can attitudes be changed to lessen demand?
- How effective are witness protection programs or safe houses in countries of origin, when they exist? How effective is resettlement in third countries?

¹⁸¹ UNICEF. Op. cit. p. 147.

- What is the long-term effect of trafficking on societies who have suffered exploitation of their young women in this manner? How does trafficking affect their economy, the rate of HIV/AIDS, drug or alcohol use, and relationships within the community?
- How can receiving communities battle the isolation that leads to the purchase of sexual favors? What are the long-term effects on communities who have high incidence of purchasing sex? How does pervasive acquisition of sexual services by males affect the local image of females, self-confidence of local girls, and the physical and psychological health of the community?

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Saniella is an Albanian survivor of trafficking who was transferred numerous times within Europe before working in a brothel in Belgium. Although she and her family have received threats, Saniella is returning home. A Belgian NGO has documented her story.

'Trafficked to Western Europe'¹⁸²

My name is Saniella. I was born in Korçë in Albania in 1984. I live with my family in the outskirts of Korçë. Last summer when I was walking to a friend's house a car drew by and two men offered me to drive to my friend's house. One of the men was a cousin of my brother's friend. Instead of driving me to my friend's place they took me to a house in Vlorë, where a few other girls were staying. They told me that my brother wanted me to go to Italy, where I could work for an Albanian family and earn money to support my family. They also threatened me that bad things could happen to my family if I would resist them or try to run away.

...One evening we were taken from the house and brought to the sea shore. There we waited for two hours before embarking on a boat... There were about 40 people on this small boat. We were not allowed to speak to the other passengers but I heard that we were heading for Italy... We arrived the same night in Italy and had to jump off in the water at about 30 metres from the coastline. There were cars waiting to pick up some of the passengers... The next day two other men took us to the train station and we left for Milan. There a car was waiting for us and we were taken to a house where we stayed for two days.

We then took the train to Paris. The men who had transferred us to Italy didn't go with us. Only me and the girl from Moldova took off to Paris. The other girl from Albania remained in Milan... In Paris we took a train to Brussels where we were picked up by another man... They drove us to a house in Antwerp.

The same night one of the men told us that we had to work in prostitution. I told him that I didn't want to work in prostitution but he threatened me. The very night I was forced by another man to have sexual intercourse. He told me that this would be a preparation for my new job. I cried and said that my brother would never agree upon this. They told me that my brother was in Albania and wouldn't be much of a help.

I worked for one month in a window. I had several clients a day and to hand over all the money they paid me. I was heavily guarded by those people and beaten up on several occasions. They often threatened to kill me or harm my family if I wouldn't comply. I was afraid of them as I knew they carried guns and were on drugs.

One night police came in the window and took me to the police station... They referred me to the Payoke shelter where I have been staying for three weeks now. They helped me to contact my family. My father told me that my brother had been receiving threats by this gang in Korçë... My father is planning to move to another place as it might be dangerous for us in Korçë. The social workers from Payoke are assisting me and are currently arranging my return to Albania.'

¹⁸² OSCE Office for Democratic Institutions and Human Rights (2001). *Trafficked to Western Europe*

Top Ten Countries of Asylum Recognition and Intercepted Irregular Migrants, 1998

<i>1998 Figures</i>	<i>Top ten countries in terms of <u>asylum recognition</u> (resulting in either 1951 Convention Status or a humanitarian status in Europe)</i>	<i>Top ten countries of origin of migrants where the method of irregular entry into <u>the UK</u> was the result of trafficking or smuggling activities intercepted by national authorities</i>	<i>Top ten countries of origin of migrants where the method of irregular entry into <u>Germany</u> was the result of trafficking or smuggling activities intercepted by national authorities</i>
<i>1st</i>	Bosnia and Herzegovina	F.R. Yugoslavia	F.R. Yugoslavia
<i>2nd</i>	Iraq	Sri Lanka	Afghanistan
<i>3rd</i>	F.R. Yugoslavia	Albania	Romania
<i>4th</i>	Turkey	Romania	Iraq
<i>5th</i>	Somalia	Pakistan	Turkey
<i>6th</i>	Iran	India	Macedonia
<i>7th</i>	Sri Lanka	China	Sri Lanka
<i>8th</i>	Afghanistan	Nigeria	Viet Nam
<i>9th</i>	Ethiopia	Poland	China
<i>10th</i>	Viet Nam	Turkey	Bulgaria

Morrison
&
Crosland
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¹⁸³ Morrison, John and Crosland, Beth (2001). Data derived from UNHCR (1999). Table VI.I Asylum applications by origin, Europe, Statistical Overview 1998, UNHCR Geneva, and UNHCR (1999). Figures for 1989-98 Table V.18.

**1998 Estimates of the presence
of immigrant prostitutes in
Italy,
subdivided by Region and
Principal Cities¹⁸⁴**

Region – City	Minimum estimate	Maximum estimate
PIEMONTE	1,200	1,600
Torino	700	900
Alessandria	300	400
Asti	100	200
Other Cities	100	200
LOMBARDIA	3,250	4,150
Milano	2,200	2,700
Brescia	600	800
Bergamo	200	300
Other cities	250	350
VENETO	600	800
Venice	400	500
Vicenza	80	150
Verona	70	100
Other cities	50	50
EMILIA ROMAGNA	1,450	1,950
Bologna	300	400
Modena	200	350
Ravenna	200	350
Rimini	300	400
Piacenza	250	350
Other cities	200	
<i>Northern Italy</i>	<i>7,700</i>	<i>10,130</i>
TUSCANY	900	1,100
Florence	600	700
Prato	200	250
Other cities	100	150
UMBRIA	300	400
Perugia	150	200
Other cities	150	200
MARCHE	387	489

LAZIO	4,000	5,000
Rome	3,000	3,500
Latina	600	800
Frosinone	250	350
Other cities	150	350
<i>Central Italy</i>	<i>5,587</i>	<i>6,989</i>
ABRUZZO	210	300
Teramo	110	150
Other cities	100	150
CAMPANIA	1,000	1,500
Naples	500	700
Caserta	300	500
Other Cities	200	300
BASILICATA	30	50
Potenza	20	30
Other cities	10	20
MOLISE		
PUGLIA	80	100
Bari	60	70
Foggia	20	30
CALABRIA	30	50
Catanzaro	15	25
Other cities	15	25
SICILY	90	120
Palermo	20	30
Catania	60	80
Other cities	10	10
SARDEGNA	30	50
Cagliari	20	30
Other cities	10	20
<i>Southern Italy/Islands</i>	<i>1,470</i>	<i>2,170</i>
	14,757	19,289

¹⁸⁴ Source: Associazione PARSEC (2000), As per Gruppo Abele, (2001). *Annuario Sociale 2001*, Giangiacomo Feltrinelli Editore, Milan. p.730.

ANNEX D

CORRUPTION PERCEPTIONS INDEX 2001

updated July 2002

The Corruption Perceptions Index 2001 ranks 91 countries. The CPI, which Transparency International first launched in 1995, is a poll of polls, this year drawing on 14 surveys from seven independent institutions. The surveys reflect the perceptions of business people, academics and country analysts. The surveys were undertaken over the past three years and no country has been included in the CPI without results from a minimum of three surveys.

The 2001 Corruption Perceptions Index

Country Rank	Country	2001 CPI Score	Surveys Used	Standard Deviation	High-Low Range
1	Finland	9.9	7	0.6	9.2 - 10.6
2	Denmark	9.5	7	0.7	8.8 - 10.6
3	New Zealand	9.4	7	0.6	8.6 - 10.2
4	Iceland	9.2	6	1.1	7.4 - 10.1
	Singapore	9.2	12	0.5	8.5 - 9.9
6	Sweden	9.0	8	0.5	8.2 - 9.7
7	Canada	8.9	8	0.5	8.2 - 9.7
8	Netherlands	8.8	7	0.3	8.4 - 9.2
9	Luxembourg	8.7	6	0.5	8.1 - 9.5
10	Norway	8.6	7	0.8	7.4 - 9.6
11	Australia	8.5	9	0.9	6.8 - 9.4
12	Switzerland	8.4	7	0.5	7.4 - 9.2
13	United Kingdom	8.3	9	0.5	7.4 - 8.8
14	Hong Kong	7.9	11	0.5	7.2 - 8.7
15	Austria	7.8	7	0.5	7.2 - 8.7
16	Israel	7.6	8	0.3	7.3 - 8.1
	USA	7.6	11	0.7	6.1 - 9.0
18	Chile	7.5	9	0.6	6.5 - 8.5
	Ireland	7.5	7	0.3	6.8 - 7.9
20	Germany	7.4	8	0.8	5.8 - 8.6
21	Japan	7.1	11	0.9	5.6 - 8.4
22	Spain	7.0	8	0.7	5.8 - 8.1
23	France	6.7	8	0.8	5.6 - 7.8
24	Belgium	6.6	7	0.7	5.7 - 7.6
25	Portugal	6.3	8	0.8	5.3 - 7.4
26	Botswana	6.0	3	0.5	5.6 - 6.6
27	Taiwan	5.9	11	1.0	4.6 - 7.3
28	Estonia	5.6	5	0.3	5.0 - 6.0
29	Italy	5.5	9	1.0	4.0 - 6.9
30	Namibia	5.4	3	1.4	3.8 - 6.7
31	Hungary	5.3	10	0.8	4.0 - 6.2
	Trinidad & Tobago	5.3	3	1.5	3.8 - 6.9
	Tunisia	5.3	3	1.3	3.8 - 6.5
34	Slovenia	5.2	7	1.0	4.1 - 7.1
35	Uruguay	5.1	4	0.7	4.4 - 5.8
36	Malaysia	5.0	11	0.7	3.8 - 5.9
37	Jordan	4.9	4	0.8	3.8 - 5.7
38	Lithuania	4.8	5	1.5	3.8 - 7.5
	South Africa	4.8	10	0.7	3.8 - 5.6

Explanatory notes

A more detailed description of the CPI methodology is available at www.gwdg.de/~uwww/2001.htm

2001 CPI Score

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).

Surveys Used

refers to the number of surveys that assessed a country's performance. A total of 14 surveys were used, and at least three surveys were required for a country to be included in the CPI.

Standard Deviation

indicates differences in the values of the sources: the greater the standard deviation, the greater the differences of perceptions of a country among the sources.

High-Low Range

provides the highest and lowest values of the sources. Since each individual source has its own scaling system, scores are standardised around a common mean for the subset of countries featuring in the individual survey. As a result, it is possible in rare cases that the highest value exceeds 10.0 and the lowest can be lower than 0.0. Only the aggregate final country scores are restricted to the reported range between 0 and 10.

Text available at <http://www.transparency.org/cpi/2001/cpi2001.html>

40	Costa Rica	4.5	5	0.7	3.7 - 5.6
	Mauritius	4.5	5	0.7	3.9 - 5.6
42	Greece	4.2	8	0.6	3.6 - 5.6
	South Korea	4.2	11	0.7	3.4 - 5.6
44	Peru	4.1	6	1.1	2.0 - 5.3
	Poland	4.1	10	0.9	2.9 - 5.6
46	Brazil	4.0	9	0.3	3.5 - 4.5
47	Bulgaria	3.9	6	0.6	3.2 - 5.0
	Croatia	3.9	3	0.6	3.4 - 4.6
	Czech Republic	3.9	10	0.9	2.6 - 5.6
50	Colombia	3.8	9	0.6	3.0 - 4.5
51	Mexico	3.7	9	0.6	2.5 - 5.0
	Panama	3.7	3	0.4	3.1 - 4.0
	Slovak Republic	3.7	7	0.9	2.1 - 4.9
54	Egypt	3.6	7	1.5	1.2 - 6.2
	El Salvador	3.6	5	0.9	2.0 - 4.3
	Turkey	3.6	9	0.8	2.0 - 4.5
57	Argentina	3.5	9	0.6	2.9 - 4.4
	China	3.5	10	0.4	2.7 - 3.9
59	Ghana	3.4	3	0.5	2.9 - 3.8
	Latvia	3.4	3	1.2	2.0 - 4.3
61	Malawi	3.2	3	1.0	2.0 - 3.9
	Thailand	3.2	12	0.9	0.6 - 4.0
63	Dominican Rep	3.1	3	0.9	2.0 - 3.9
	Moldova	3.1	3	0.9	2.1 - 3.8
65	Guatemala	2.9	4	0.9	2.0 - 4.2
	Philippines	2.9	11	0.9	1.6 - 4.8
	Senegal	2.9	3	0.8	2.2 - 3.8
	Zimbabwe	2.9	6	1.1	1.6 - 4.7
69	Romania	2.8	5	0.5	2.0 - 3.4
	Venezuela	2.8	9	0.4	2.0 - 3.6
71	Honduras	2.7	3	1.1	2.0 - 4.0
	India	2.7	12	0.5	2.1 - 3.8
	Kazakhstan	2.7	3	1.3	1.8 - 4.3
	Uzbekistan	2.7	3	1.1	2.0 - 4.0
75	Vietnam	2.6	7	0.7	1.5 - 3.8
	Zambia	2.6	3	0.5	2.0 - 3.0
77	Cote d'Ivoire	2.4	3	1.0	1.5 - 3.6
	Nicaragua	2.4	3	0.8	1.9 - 3.4
79	Ecuador	2.3	6	0.3	1.8 - 2.6
	Pakistan	2.3	3	1.7	0.8 - 4.2
	Russia	2.3	10	1.2	0.3 - 4.2
82	Tanzania	2.2	3	0.6	1.6 - 2.9
83	Ukraine	2.1	6	1.1	1.0 - 4.3
84	Azerbaijan	2.0	3	0.2	1.8 - 2.2
	Bolivia	2.0	5	0.6	1.5 - 3.0a
	Cameroon	2.0	3	0.8	1.2 - 2.9
	Kenya	2.0	4	0.7	0.9 - 2.6
88	Indonesia	1.9	12	0.8	0.2 - 3.1
	Uganda	1.9	3	0.6	1.3 - 2.4
90	Nigeria	1.0	4	0.9	-0.1 - 2.0
91	Bangladesh	0.4	3	2.9	-1.7 - 3.8

Note on the Bangladesh score:

Data for this country in 2001 was available from only three independent survey sources, and each of these yielded very different results. While the composite score is 0.4, the range of individual survey results is from -1.7 to +3.8. This is a greater range than for any other country. TI stresses, therefore, that this result needs to be viewed with caution.

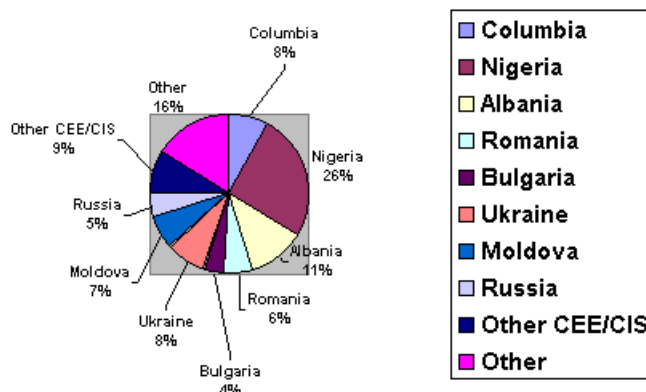
Legislation on Gender-Based Persecution¹⁸⁵

Country	Recognize Gender-Based Persecution for Asylum Claims?
Europe-wide	<i>In progress.</i> At European Union level there are no gender guidelines but some steps have been taken to recognize the issue of gender in asylum claims.
Denmark	<i>Yes and No.</i> Women facing gender related persecution will normally get protection in Denmark – although the status will often be a de facto and not a Convention refugee status.
Germany	<i>Yes.</i> In 2002, Germany formally recognized non-state and gender specific persecution as humanitarian grounds warranting protection under the 1951 Convention.
Ireland	<i>Yes.</i> In Ireland women can get protection from gender-related protection. The definition of a refugee incorporated into Irish Law through the Irish Refugee Act 1996 states that membership of a social group includes, inter alia, 'membership of a group of persons whose defining characteristic is their belonging to the female or male sex'. Under Section 5 of the said Act, a person's freedom shall be regarded as threatened 'if he/she is likely to be subject to serious assault including that of a sexual nature'.
Norway	<i>Yes.</i> In Norwegian practice, gender-related persecution is recognized as a valid basis for seeking asylum. Guidelines effective from January 15, 1998 specifically mention gender-related persecution, exemplified as situations where women through their actions, omissions and statements violate written and unwritten social rules that affect women particularly, regarding dressing, the right to employment, etc. If violations of these rules are punished with sanctions that can be seen as persecution in accordance with the 1951 Convention, asylum should be granted.
Sweden	<i>Yes and No.</i> Sweden has chosen not to identify women as a social group. Instead, a new paragraph was introduced into the law in 1997 which was supposed to offer protection to women facing gender-related persecution. It has hardly been used.
United Kingdom	<i>Yes and No.</i> Gender Guidelines were drafted, and although they were not accepted by the Home Office, the guidelines were adopted by Immigration Appellate Authorities hearing appeals against refusal of asylum.
Australia	<i>Yes.</i> Australia has extended their interpretation of the Convention to women making claims on the basis of gender-related persecution. In July 1996 the Australian Department of Immigration and Multicultural Affairs issued the Guidelines on Women Refugee Claimants Fearing Gender-based Persecution. These guidelines apply to the officers employed by the Department who assess refugee claims. The Guidelines recognize that certain forms of persecution may be inflicted exclusively or more commonly on women.
Canada	<i>Yes.</i> Canada has extended their interpretation of the Geneva Convention to women making claims on the basis of gender-related persecution.
United States	<i>Yes.</i> The United States has extended their interpretation of the Geneva Convention to women making claims on the basis of gender-related persecution.

ANNEX F

¹⁸⁵ Sources: Canadian Council for Refugees (2001). *Network on Women Fleeing Gender-Related Persecution Newsletter*, Issue#1.; Crawley, Heather (2000). *Refugees and Gender: Law and Process*. Forced Migration Review. Issue 9; Berkowitz, Nathalia (2000). *Forced Migration Review. Gender and Displacement*. Issue 9; European Council on Refugees and Exiles (ECRE). (2002). *The Promise of Protection: Progress toward a European Asylum Policy since the Tampere Summit*.

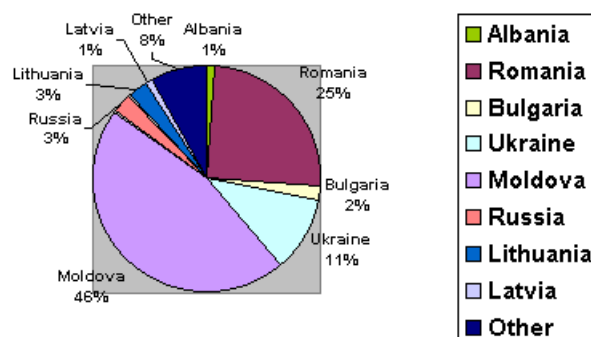
Nationalities of Trafficked Women and Children Detected by Official Sources in 1999 or 2000



Total: 5887

'Other' includes 560 unknown. Data gathered from official sources in: Austria (2000), Belgium, BiH, Bulgaria (2000), FRYOM (2000), Germany (1999), Greece (1999), Italy (March – November 2000), the Netherlands (2000), Spain (1999) and the UK (2000).¹⁸⁶

Nationalities of Victims of Trafficking Assisted by IOM in 2000



'Other' includes 13 from Africa, 4 from Asia and 2 from South America. Excluding IOM's programmes in South-east Asia.¹⁸⁷

¹⁸⁶ Please note that these figures represent an inexact estimate of trafficking victims, largely collected through street and brothel raids, as well as apprehension of migrants illegally entering State territory. See note in 'Limitations' section, (p. iv in this paper) for further explanation. International Organization for Migration (2001). *Victims of Trafficking in the Balkans*. p. 13.

¹⁸⁷ International Organization for Migration (2001). Op. cit.