TRAFFICKING OF WOMEN. PROMOTING INTERNATIONAL HUMAN RIGHTS NORMS THROUGH PREVENTION, PROTECTION, AND PROSECUTION (THREE “P’s”) IN ARMENIA

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Abstract

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This thesis analyses the incidence and nature of the trafficking in people in Armenia. The phenomenon of trafficking is considered to be one of the most pressing and complex issues in the contemporary world. The thesis adopts a human rights approach, contending the promotion of international human rights norms through a Three “P’s” policy that highlights the three most important aspects of any anti-trafficking program: Preventing exploitation from occurring in the first place; Protecting those identified as victims; and Prosecuting those who trafficked and exploited them. Alongside the analysis of the universal and regional instruments and mechanisms available to address the problem of trafficking in the human rights context, this thesis provides an overview of the emergence of Armenia’s NGO sector and its development and describes the NGO sector role and activity against trafficking in women for sexual exploitation. The thesis concludes with recommendations for strengthening the anti-trafficking efforts in Armenia.

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Table of Contents

ABSTRACT ........................................................................................................................... 3
ACKNOWLEDGMENTS ......................................................................................................... 4
TRAFFICKING OF WOMEN, PREVENTION, PROTECTION, AND PROSECUTION .......... 7
PART I: TRAFFICKING IN PERSONS IN ARMENIA ............................................................ 12
1. BACKGROUND .......................................................................................................... 12
   The Worldwide Phenomenon of Trafficking .............................................................. 12
   Armenia: Country of Origin ...................................................................................... 15
   Corruption: The “Most Pernicious” Soviet Legacy .................................................... 17
2. TRAFFICKING IN PERSONS IN ARMENIA ........................................................ 19
   Definition of Trafficking ............................................................................................. 19
   Scope of the Issue in Armenia ..................................................................................... 20
   Causes of Trafficking in Persons ................................................................................ 22
   Groups Most Vulnerable to Trafficking ..................................................................... 24
   Countries of Destination and Abuses Suffered by Victims ......................................... 26
PART II. HUMAN RIGHTS INSTRUMENTS ON TRAFFICKING ......................... 28
1. UNIVERSAL HUMAN RIGHTS INSTRUMENTS ................................................ 28
   Amnesty International ................................................................................................. 28
   Trafficking Victims Protection Act (TVPA) ................................................................. 29
   UN Trafficking Protocol ............................................................................................. 34
   Other UN Instruments ................................................................................................. 36
2. REGIONAL HUMAN RIGHTS SYSTEM ............................................................... 38
   Council of Europe ........................................................................................................ 38
   Organization for Security and Cooperation of Europe (OSCE) ................................. 40
   Country Reports on Human Rights, US State Department ........................................ 41
PART III. ARMENIAN TRAFFICKING LEGISLATION: PREVENTION AND PROSECUTION ................................................................. 44
   General Remarks ........................................................................................................ 44
   The 1995 Constitution ................................................................................................. 45
   The Criminal Code of the Republic of Armenia ......................................................... 46
PART IV. RESPONSE OF NGO COMMUNITY: PROTECTION ........................................... 55
  The Emergence of Armenia’s NGO Sector and its Characteristics ..................... 55
  From GONGOs to NGOs .................................................................................... 57
  Feminization of NGO ........................................................................................ 59
  Why NGOs? ....................................................................................................... 60
  Challenges faced by NGOs ................................................................................ 61
  NGOs Counter-Trafficking Activities in Armenia.............................................. 62

PART V. RECOMMENDATIONS .............................................................................. 66
  Prevention ........................................................................................................... 66
  Prosecution ......................................................................................................... 68
  Protection ............................................................................................................ 70

BIBLIOGRAPHY ..................................................................................................... 73
TRAFFICKING OF WOMEN. PREVENTION, PROTECTION, AND PROSECUTION

The next day our ‘organizer’ came accompanied by an Arab man. They explained to us that we had been sold to him and if we did not do what we were told to he could do with us whatever he wished. It is his country and everybody would believe him. Police or immigration officials would not accept complaints. Everybody used his services and they were all his friends. From that day on my misery started: he was sending around 50 clients a day, sometimes even more. I did not understand what was happening. I had no right to be sick, no right to refuse or choose. I do not know how he had established the terrible conveyor but the line never stopped…¹

Trafficking in human beings, in particular trafficking of women for sexual exploitation, including forced prostitution, has received attention because of the horrible stories about the sexual slavery which came to public attention. Overall trafficking is related to imbalances between rich and poor countries and to the new “iron curtain”, which allows poor people from EU member states to work in rich EU member states, but does not allow for persons of the Commonwealth of Independent States (CIS) to do the same.

To make my point I would like to use the example of a film called “Lilja-4-ever”², which has been widely shown in Armenia and is also well-known worldwide: “Lilja” is allegedly about a real girl who lived in the former Soviet Union and travels to Sweden in search of a new life – concretely to pick strawberries in the middle of the winter. She is, however, caught by brutal pimps, raped and forced into prostitution. In the end she commits suicide.

² “Lilja-4-ever”, film by Lukas Moodysson, 2002
I have been working for the International Organization for Migration (IOM) mission in Armenia almost for eight years. I was involved in preparing a Study on Trafficking in Women and Children from Armenia that was published in 2000. I participated in numerous interviews with women returnees (returning migrants) conducted by IOM representatives along with researchers from the local partner NGO.

I often asked random people whether they saw any comparison with the terrible situation that Lilja had to endure in her home country and the situation in Armenia. Most didn’t see any comparison. An analysis of survey results and more in-depth case studies, however, reveals the resemblance. The study we conducted revealed cases of minors who had been trafficked for sex work abroad, and they were mostly the children from state regulated institutions (orphanages).

I remember the story of a minor whose mother died when she was twelve, her father was imprisoned for drug use, and she was sent by her uncle to the street. As a result she was taken to an orphanage. The girl stated that fourteen girls between 13 and 23 year old were recruited “to go for work to Germany for a fashion magazine”\(^3\), but instead they were transferred to Dubai. As there is a special interest in young virgins, they were sold at very high prices to Arab sheikhs for one night and then forced to work with other clients on regular basis. The pimp took their passports and “beat children violently”\(^4\) when he did not get the expected amount of money. The girl succeeded in escaping from the brothel with the assistance of one of her wealthy clients. Then, she was deported back to Armenia.

\(^3\) See IOM Report, *supra* note 1 at 50
\(^4\) Ibid
Without current prospects of job and being very often subjected to discrimination and violence in their homes and families, young women and sometimes even female children in Armenia can easily fall victim to human trafficking feeding the sex industry with human commodities to make huge profits. Many women turn to middlemen and travel agencies to arrange their travel and work in the underground economies of destination countries, which makes them more vulnerable to exploitation by traffickers.

In fact, the abuse and the exploitation which happens outside Armenia is only the tip of the iceberg. In most cases – the vast majority of cases - the situation in Armenia (and everywhere else) is so difficult for the “future victims of trafficking” that it is not so hard to understand why they took the risks. Some people get irritated and say ‘Why do you spend so much time and effort for a bunch of prostitutes. Some may be trapped, but the majority went voluntarily’. They continue: ‘We don’t even know how many there are’. In my opinion, we should not make any judgment about how many went “voluntarily” and how many of them are migrant prostitutes and how many prostitutes became prostitutes in order to feed their children.

Trafficking does not happen to everybody. So we can look to see to whom it mostly happens, particularly now that the formerly generalized poverty in Armenia becomes more and more a phenomenon afflicting special vulnerable groups. If we agree that it doesn’t happen to everybody, if we agree that we have to work on prevention, if we agree that we are doing a good job if we help “Lilja”, before she leaves, why don’t we try to find her? If we identify risk factors, and through the risk factor – risk groups, we can create alternatives and we can really help vulnerable girls; we can truly prevent trafficking.
The profile of the potential victims of trafficking in Armenia needs to be mapped. As preliminary assessments show, risk factors in Armenia may include social deprivation, being without parents, substance abuse, being divorced or widowed, (including “half divorced” as many husbands are labor migrants and out of the country for many years), domestic violence and even prostitution.

This paper describes the trafficking situation in Armenia through secondary data analysis, as well as my own observations in the field while working as Project Manager at the International Organization for Migration in Armenia. Using an historical-comparative approach, I also review the existing literature (studies, reports, books, articles, etc.) and supplement this with information I have obtained communicating with local NGOs, and the international organizations in Armenia.

Fight against trafficking is a complex process that intertwines with other challenges – anti-corruption, major judiciary reforms, institutional capacity building and others – that have a significant impact on the development patterns in Armenia. Despite this the trafficking should be seen as the separate problem which requires a comprehensive response at local, regional and international levels.

The thesis adopts a human rights approach, contending the promotion of international human rights norms through Three “P’s” policy framework highlights the three most important aspects of any anti-trafficking program: preventing exploitation from occurring in the first place; protecting those identified as victims; and prosecuting those who trafficked and exploited them.

This paper is organized in five parts. Part one describes the worldwide phenomenon of trafficking, outlines the post-Soviet realities in Armenia country,
introduces the current situation on trafficking in women in Armenia, its causes, identifies
groups most vulnerable to trafficking, main countries of destination for trafficked
Armenian women. In part two, I assert that trafficking in persons is a human rights issue.
I analyze the universal and regional instruments and mechanisms available to address the
problem of trafficking in the human rights context.

Part three analyses the Armenian trafficking legislation in a broader context of
legal reform since the independence of the country. This part asserts that, although
governments play a critical role in combating trafficking through adoption of laws and
policies, in circumstances of widespread corruption among government officials at all
levels and non-existence of an independent judiciary, government action may be limited,
slow and ineffective. Part four provides an overview of the emergence of Armenia’s
NGO sector emergence and its development. I also explain why NGOs may be better
poised to take up the lead role in protection of women victims of trafficking, and to put
pressure on the government while at the same time assisting it in complying with its
international obligations and bringing about change in domestic practices. I conclude
with a regional overview of NGO initiatives and contributions.

Based on the analysis in the previous parts, in part five I draw conclusions and
offer recommendations to strengthen the anti-trafficking efforts.
PART I: TRAFFICKING IN PERSONS IN ARMENIA

1. BACKGROUND

The Worldwide Phenomenon of Trafficking

Due to globalization, women are on the move as never before. Millions of women from poor countries migrate to richer ones in an effort to provide for themselves and their families. This pattern of female migration has been called a “world-wide gender revolution.” 5 Fewer families around the world can rely on only one breadwinner (typically male). More and more women join the workforce in their countries and abroad, both through legal channels, and in their absence, illegally.

Trafficking in women is a modern form of slavery, which exists in most countries of the world and is one of the fastest growing criminal enterprises. It is attractive for traffickers because the profits are enormously high and the risks are low. Each year, illicit profits from trafficking in women generate an estimated seven to twelve billion dollars for organized crime groups.6

Trafficking in human beings is one of the most pressing and complex issues in the contemporary world. Every year, hundreds of thousands of women, children and men are trafficked inside and across national boundaries into conditions amounting to slavery. Trafficking in human beings affects virtually all states. It touches on issues of human rights, discrimination, rule of law, crime control, law enforcement, corruption, and migration, and as such requires a multifaceted approach.7

Trafficking in human beings is a multifaceted problem, and it takes various forms – sweatshop labor, domestic servitude, begging, and sexual exploitation. Trafficking in women for the purpose of sexual exploitation is generally a more dangerous form of trafficking in humans, as compared to sweatshop labor or domestic servitude. This is because victims are exposed to serious health risks, including HIV/AIDS, which can be life threatening.

Trafficking in women can be examined from different perspectives. Most of the researches looked at trafficking in women with the concept of female sexual slavery and violation of human rights. This concept is consistent with what feminist theory might predict. The status of women of all regions and the diverse violations to their human rights, which were previously hidden and silenced, have all surfaced, linking local movements to a global women's movement that continues to grow. It is time to close the cycle of victimization and violence, and open one of empowerment. We need to encourage women to recognize themselves as subjects with rights, who have the capacity to confront a justice system which is highly sexist, racist, and homophobic.

The human rights framework is one aspect of the daily lives of women, one dimension of their social relationships and multiple identities. Human rights have meanings which link women to each other and may, at the same time, oppress or empower them. Basing the human rights culture on the ethic of respect, interdependency, and egalitarian human relationships could be a key in deconstructing the mechanisms that threaten to put an end to our planet.

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8 CENSIS, Victims Protection and assistance, European Conference on Preventing and Combating Trafficking in Human Beings, IOM, Brussels, 18-20 September, 2002
One could also look at trafficking through the prism of labor migration connecting the problem with the shadow economic market of trafficking in women for the purpose of sexual exploitation. One of the main dilemmas of the development project is the casualization of labor and the redundancy of people. This is the dilemma of structural unemployment. Each year more people leave their countries as migrant workers and many of them are women. During a study of trafficking from the Commonwealth of Independent States (CIS), one respondent said she knew she would have to engage in prostitution, but she thought it would be similar to the film “Pretty Woman”, in that one man would support her. One could argue that this is an extreme level of naïveté, but considering that the former Soviet countries were totally isolated from the rest of the world for almost seventy years, these kinds of illusions are not surprising.

Another analytical framework for study trafficking in women is the economic model. Some scholars pay particular attention to demand in host countries and to labor exploitation.

There is some literature that presents a perspective on trafficking in women and their subsequent sexual exploitation, which holds that laws that prohibit or regulate prostitution should be abolished. This perspective favors strengthening laws against pimping and procuring, because it is through pimps and procurers that women are forced into prostitution.

A limited amount of literature provides some insight into the link between human trafficking and organized crime groups. These criminal groups intimidate the trafficked

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9 Ibid, supra note 6 p. 636.
women, and threaten retaliation against family members at home if the women do not obey them.\textsuperscript{12}

A major gap in the study of trafficking is the lack of inquiry as to why some women become victims of trafficking, while others do not? Do cultural, religion, or traditions matter? It can be concluded from the reviewed literature that the obvious major push factors are poverty, unemployment, lack of future prospects, and the need to care for the family. However, one should also take into account the demand for prostitution and cheap labor in destination countries.\textsuperscript{13}

The response of the international community to trafficking in human beings has been reflected in a number of global and regional instruments aimed at preventing and combating this complex phenomenon. The UN Trafficking Protocol,\textsuperscript{14} which entered into force on December 25, 2003, was the first comprehensive instrument addressing specifically the crime of trafficking in human beings at the global level.\textsuperscript{15}

\textit{Armenia: Country of Origin}

Armenian statehood dates back to the 9\textsuperscript{th} century BC: the Kingdom of Urartu or Van, was the first Armenian state flourishing in the Caucasus and eastern Asia Minor until 600 BC. Armenia was particularly strong from 95 to 65 BC, during which period it extended its rule from the Caspian Sea to the Mediterranean. In 64 BC it became part of

\textsuperscript{12} Bruggeman, W. \textit{Illegal immigration and trafficking in Human beings seen as a security problem for EUROPE,} 2002.
\textsuperscript{13} Ibid, supra note 6
the Roman Empire and adopted a Western political, philosophical, and religious orientation. In 301 AD, Armenia became the first nation to adopt Christianity as a state religion, establishing a church that still exists independently of both the Catholic and the Eastern Orthodox churches. Between the 4th and 19th centuries, Armenia was conquered and ruled by, among others, Persians, Byzantines, Arabs, Mongols, and Turks. For a brief period from 1918 to 1920, it was an independent republic. In late 1920, the communists came to power following an invasion of Armenia by the Red Army.16

Following a referendum in 1991 Armenia declared its independence from the Soviet Union. Since then the country has encountered enormous hardships, caused by the disrupted economic ties, ethnic conflict in the region17, a blockade imposed by Turkey and Azerbaijan (1992 – 1994)18 and the consequences of the disastrous earthquake of 198819. Yet the country has undoubtedly made significant progress in many ways. It has

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16 See, Department of State, Bureau of European and Eurasian Affairs web site: http://www.state.gov/r/pa/ei/bgn/5275.htm

17 Ethnic conflicts in the post soviet territory are numerous and take their origin in the ethnic policy of the early Soviets of displacing ethnic groups, redrawing boundaries and annexing parts of one ethnic constituent to another. Nagorno Karabakh (NK), historically known as Artsakh, has been part of various Armenian kingdoms and principalities since before the Christian Era. In the early 19th century, when NK was incorporated into the Russian Empire, over 90 percent of its population was Armenian, with minority populations of Caucasus Tatars (now Azeri) and Kurds. When by the decision of the then Soviet Russia’s Minister of Ethic Affairs Joseph Stalin, NK was included within Soviet Azerbaijan as an autonomous region, Armenians constituted 95 percent of the population. Mostly silent during the oppressive Soviet regime, these conflicts, including the one known as Nagorno Karabakh Conflict, came to the fore during the years of Perestroika and after the breakup of the Union. See, e.g. Armenian Assembly of America Research and Information Office Fact Sheet at http://www.aaainc.org/info/NKRConflict.pdf.

18 The blockade was imposed on Armenia by Turkey and Azerbaijan mainly because of the conflict over Nagorno Karabakh. This conflict was further complicated by tensions between Armenia and Turkey due to Turkey’s official denial of the Armenian Genocide, claimed by Armenians to have taken place in the Ottoman Empire during World War I resulting in death of 1.5 million Armenians. A number of multinational organizations, including the European Parliament and the Parliamentary Assembly of the Council of Europe, as well as the parliaments of Belgium, Canada, Cyprus, France, Greece, Italy, Lebanon, Russia and Sweden have officially recognized the Armenian Genocide. See, the Armenian Assembly of America, Research and Information Office Fact Sheet at http://www.aaainc.org/info/Genocide.pdf.

19 The earthquake of 1988 killed 25,000 people (official data) and left over 500,000 homeless. The affected region is still called the Disaster Zone. In the year 2000, approximately 12,000 families still lived in domiks - temporary shelters. See, USAID Armenia fact sheet at http://www.usaid.gov/am/eqzprogram.html.
signed and ratified numerous international treaties, has become member of the Council of Europe and is party to many regional instruments. With its limited resources the Government has been trying to comply with its international obligations. Despite this progress, the economic rehabilitation continues to be very slow. GDP is low and the unemployment rate is very high. These factors have disproportionately affected women: the economic hardships of the transition period have led to cutbacks in social security systems, reduction in family allowances and reduced number of available public child care facilities. Although it is commonly accepted that trafficking in persons cannot be reduced to poverty, poor economic conditions, further exacerbated by the conflict and the earthquake, are, nonetheless, the main root causes of trafficking in Armenia.

**Corruption: The “Most Pernicious” Soviet Legacy**

Endemic corruption is one of the worst legacies that the Newly Independent States (NIS) countries got from the former Soviet regime. According to Transnational Crime and Corruption Center (TRACC), corruption is a serious problem in the post Soviet countries where the phenomenon takes an institutionalized form. It is worth quoting L. Shelley, Director of TRACC, at length on this point, “It is now the common belief that corruption is a major impediment to the development of NIS (Newly Independent States) countries, and that significant portions of foreign aid, World Bank loans and IMF financial transfers never reached their targets and were diverted internally and transferred to offshore accounts.”21 She believes that capital flight and money

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laundering deprived the NIS countries of the possibility of investing in their infrastructure and maintaining the quality of their institutions and social services.\textsuperscript{22} According to TRACC these billions could not have been laundered without the complicity of many Western experts in the banking sector, the legal profession, and the accounting professions.\textsuperscript{23}

According to American Bar Association’s Central European and Eurasian Law Initiative (ABA/CEELI), corruption is especially severe in Eastern Europe and Eurasia, impeding every development objective that CEELI’s host countries are trying to achieve, whether in criminal justice, judicial or administrative reform.\textsuperscript{24}

Corruption is nowadays widely recognized as a major challenge to development undermining democracy, good governance, rule of law and economic development. This recognition was reflected in the Preamble of the UN Convention against Corruption, where the States Parties express their concern about the “seriousness of the problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy… and jeopardizing sustainable development and the rule of law.”\textsuperscript{25}

Corruption has a direct bearing on the problem of trafficking in persons. Corruption facilitates issuance of fraudulent documents required for crossing borders and

\begin{thebibliography}{9}
\bibitem{22} Ibid.
\bibitem{23} Ibid note 11.
\bibitem{24} See http://www.abanet.org/ceeli/areas/anticorruption.html.
\bibitem{25} United Nations Convention against Corruption, adopted by the General Assembly in November 2003 and opened for signature by Member States in Mérida, Mexico, in December 2003. The Convention will enter into force after 30 instruments of ratification, accession or approval are deposited with the UN Secretary General. The text of the Convention is available at http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf.
\end{thebibliography}
passing immigration control, undermines prosecution of trafficking cases, and denies adequate assistance to victims of trafficking. Anti-corruption, therefore, could be viewed as an important element of anti-trafficking efforts.

Corruption along with the concentration of wealth in the hands of the former communist party elite makes it hard to address the problem of trafficking. The leadership in Armenia and other NIS countries lacks commitment and interest in changing the status quo. If they do express such an intention, it is usually in response to external pressure: governments may demonstrate visible anti-corruption efforts, which however, have little success in actually reducing corruption.

Today, anti-corruption programs are a major focus of the US, the EU and other donors. Anti-corruption programs, however, still remain highly fragile, because of lack of political will to address the problem, reluctance to surrender power, and the weakness of the civil society.

The widespread, almost endemic and institutionalized, corruption in the NIS countries, including Armenia, suggests that anti-trafficking projects may not be built on the presumption that corruption can be easily overcome. Suppression of corruption should be seen as a goal rather than means, towards which all relevant efforts should ultimately be geared. Anti-corruption efforts are beyond the ability of any anti-trafficking project. Extensive anti-corruption focus will only weaken anti-trafficking programs and render them ineffective.

2. TRAFFICKING IN PERSONS IN ARMENIA

   Definition of Trafficking
Trafficking in persons is a relatively new term for a phenomenon which has also been described as “trade in human beings” or “a form of slavery”. There was no unanimous consensus on what constituted trafficking until the UN General Assembly adopted the Trafficking Protocol\textsuperscript{26} to supplement the Convention against Transnational Organized Crime.\textsuperscript{27} Trafficking in this instrument is defined as

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

This broad definition covers all forms of trafficking. Purposes of trafficking are not confined to prostitution but include, inter alia, forced labor and slavery. Any of the acts described in this definition alone is enough to constitute a case of trafficking in persons. The UN Trafficking Protocol does not apply exclusively to women and children, but places an emphasis on these two categories as more vulnerable groups to trafficking.

\textit{Scope of the Issue in Armenia}

There are no official statistics on trafficking in persons in Armenia. The clandestine nature of the phenomenon largely hampers attempts of studying it and gathering statistics. One way of determining the scope of the problem in a country is to look at the Trafficking in Persons Report (TIP Report) prepared annually by the U.S. Department of State in accordance with the U.S. Trafficking law.\textsuperscript{28} The 2000 TIP report

\textsuperscript{26} Ibid, \textit{supra} note 14
\textsuperscript{28} The Victims of Trafficking and Violence Protection Act of 2000, 22 USC 7101 [hereinafter referred to as TVPA], is actually two separate laws, the “Trafficking Victims Protection Act of 2000” (TVPA) and the
placed Armenia on tier three, which meant that there was “a significant number of victims of severe forms of trafficking” in Armenia and the government “[did] not fully comply with the minimum standards and [was] not making significant efforts to bring [itself] into compliance”.  

Another reliable source on trafficking in Armenia is a report based on a study carried out by the International Organization for Migration (IOM), Organization for Security and Cooperation in Europe (OSCE) and United Nations Children’s Fund (UNICEF). This study managed to establish that there was widespread trafficking of women and children from Armenia. Fifty-nine women and children were identified and interviewed by the IOM research team, most of whom were recognized by the group as victims of trafficking. A pimp in detention told the IOM research team that she had been transporting a minimum of five women per flight to Dubai over a period of two years. This constitutes about 500 women annually. Armenian Airlines officials operating two flights per week to Dubai reported the presence of at least two Armenian deportee women on every return flight to Yerevan. This indicates that at least 200 women are annually

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29 The scope of the TVPA is narrower than that of the UN Trafficking Protocol. It covers only “severe forms of trafficking in persons” which is defined in Section 103(8) to include sex trafficking and trafficking for purpose of forced labor. Ibid. Art. 103(8).  

30 TVPA provides not only for domestic measures for combating trafficking but also measures designed to promote anti-trafficking efforts internationally. It requires the US Department of State to prepare annual reports on each country assessing their compliance with the minimum standards set by TVPA and accordingly place countries in three tiers. Countries placed on tier three face the risk of sanctions including cut-off of foreign aid. The minimum standards require governments: 1) to prohibit trafficking and punish acts of trafficking; 2) prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; 3) Prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense’s heinous nature; and 4) make serious and sustained efforts to eliminate trafficking. See TVPA, supra note 28, Art. 108.  

31 See IOM Report, supra note 1 at 31.  

32 See IOM Report, supra note 1 at 20.  

33 Ibid. at 19.
deported from Dubai, one of the main destinations for trafficking from Armenia. Together, these sketchy data suggest that trafficking is a serious problem in Armenia.

**Causes of Trafficking in Persons**

In the context of trafficking in persons three categories of countries are involved: origin, transit and destination. For the purposes of this analysis, the first and the third categories are important. Where should the root causes of trafficking be looked, in countries of origin or in countries of destination? Two approaches are possible here. Firstly, to seek out causes of trafficking in poverty and stresses of undeveloped societies of the third world and societies that have undergone conflicts or natural disasters. People, mainly women, in these societies easily fall victim to recruiters who promise them better opportunities in wealthier societies. However, the transnational sex trafficking of women and children is based on a balance between the supply of victims from sending countries and the demand for victims in receiving countries. Sending countries are those from which victims can be relatively easily recruited, usually with false promises of jobs. Receiving or destination countries are those with sex industries that create the demand for victims. A counterargument to a focus on countries of origin may be that supply can always be met as far as there is a demand. According to Donna Hughes, a second approach to counter trafficking and sexual exploitation is to analyze and combat the demand for trafficking in countries of destination.34

She identifies four elements that frame the demand: 1) the men who buy commercial sex acts, 2) the exploiters who make up the sex industry, 3) the states that are

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destination countries, and 4) the culture that tolerates or promotes sexual exploitation. Although trafficking is usually associated with poverty, it is wealthier countries that create the demand for victims for their sex industries. A country of origin may overcome economic hardships or adopt an effective anti-trafficking policy substantially reducing opportunities for trafficking from that country. This will be a solution of the problem at the local level. Globally, however, this will have a limited affect: there will remain a dozen other countries that will effectively meet the demand for persons to be trafficking for purposes of prostitution or cheap or unpaid labor. Therefore some argue that the root causes of trafficking should be looked for in the demand for prostitutes and cheap labor in destination countries. A radical resolution of the problem requires curbing this demand in destination countries. To reconcile these two approaches one could argue that it is necessary to combat trafficking on both fronts in order to achieve a maximum result.

Armenia is a country of origin. The main causes of trafficking in Armenia are the economic hardships of the transition period exacerbated by the consequences of the ethnic conflict in the region and the earthquake of 1988. The economy of the country was severely affected by the disintegration of the Soviet Union resulting in collapse of economic ties with other constituent republics. The economic recovery is very slow and opportunities for decently paid jobs are extremely limited. This has led to mass emigration flows from the Republic in search of better life opportunities. The same tendency is true of other former Soviet republics. In response to these enhanced immigration flows, the developed Western countries tightened their border control

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36 Supra note 17 and 18
policies. Alternative roots to emigration have then established by smugglers and traffickers. Majority of trafficked persons in Armenia are misled about the purpose of the trip. While recruiters promise well paid jobs in Western Europe, the victims find themselves in Dubai, passports taken away, movement restricted, sold, resold and introduced into the sex industry against their will.\(^{37}\)

The logical and straightforward answer to curbing trafficking in Armenia would be by targeting the root cause – i.e. improving the economic situation, addressing poverty and creating a vital social security system thus reducing motives for emigration and risks of falling victim to traffickers. This answer may be construed in two possible ways: 1) there is no need to address the issue of trafficking specifically, because it overlaps with the broader issue of economic rehabilitation: once these objectives are met, trafficking will no more be a “problem”; 2) combating trafficking is such a complex problem that economic rehabilitation is only part of the solution. None of these constructions is satisfactory and/or true. One suggests that no action should be taken. The other suggests taking actions which have little to do with trafficking and will produce result only on the long run.

The real challenge, therefore, is to find short-term solutions to trafficking in persons under unfavorable conditions of poverty and economic distress. One such approach, this paper contends, is identifying the most vulnerable groups.

**Groups Most Vulnerable to Trafficking**

\(^{37}\) See the IOM Report, *supra* note 1 at 22.
The IOM report established that women and children are more vulnerable to trafficking.\textsuperscript{38} As mentioned above, the economic hardships of the transition period have led to cutbacks in social security systems, reduction in family allowances and reduced the number of available public child care facilities. These factors have disproportionately affected women, reducing their ability to integrate into the already limited labor market. Moreover, the profound transformations of the society have deeply affected family relationships resulting in an increase of divorce. According to the IOM report divorced women constitute over 70 percent of trafficked women. All the interviewed women under this category stated that the reason for their departure was the hope to find employment in order to support their children.\textsuperscript{39} Single and widowed women are the next two major categories of women identified by the IOM Report as vulnerable to trafficking.\textsuperscript{40} There were no married women among the trafficked victims interviewed by IOM, which suggests that traffickers target single, more often divorced and widowed women who have children to take care of.

Another group vulnerable to trafficking are street children and children living in state residential institutions.\textsuperscript{41} UNICEF Armenia studies indicate that the vast majority of children placed in these institutions are orphans\textsuperscript{42} and children coming from “socially vulnerable” families that would “gladly care for them if they could”.\textsuperscript{43} These children are frequently abused inside the institutions\textsuperscript{44} and are an easy pray for recruiters who can

\textsuperscript{38} Ibid. at 20 and 30.
\textsuperscript{39} Ibid. at 21.
\textsuperscript{40} Ibid.
\textsuperscript{42} The number of orphans substantially increased after the 1988 earthquake. See supra note 13.
\textsuperscript{43} See IOM Report citing the UNICEF Report, supra note 1 at 31.
\textsuperscript{44} See IOM Report, supra note 1 at 31.
“buy” them from the institutions where nobody cares about them or lure them with prospects of well-paid jobs in Western Europe.45

**Countries of Destination and Abuses Suffered by Victims**

The two main countries of destination of trafficking from Armenia are Turkey46 and the UAE. According to the IOM Report, trafficking to Turkey is mainly for purposes of labor, whereas women trafficked to UAE are mostly forced into prostitution.47 In both cases, women are deceived either about the destination or the nature of the work they will be performing, or both. Occasionally, women are informed that they will be working as prostitutes,48 but even in these cases they are recognized as victims of trafficking because of the exploitative nature and harsh working conditions they are forced into.

Typically, victims of trafficking are stripped of their identity documents, threatened with the immigration police and prospects of detention, sold to brothels, forced to render sexual services or work without or for very little payment. Those who manage to escape face the horrors of the immigration detention centers where they are further abused before being sent back home. The abuse continues at the airport upon arrival, where the immigration officers request payments threatening to disclose their identities as prostitutes to newspapers.49 Initially, Armenia is considered to be the country

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45 A recruiter promised one such girl living in a orphanage a job with a fashion magazine in Germany. The girl was taken to Dubai and sold to a brothel. See the IOM Report, supra note 1, Case study four at 50.

46 For the historical reasons described in this Part, Armenia has no diplomatic relations with neighboring Turkey. At the lower level, however, there are, extensive trade relationships: Yerevan Istanbul flights and buses are always full. It is not surprising, therefore, that Turkey might be a destination for trafficking in persons notwithstanding the historical controversies and hatred: visa issuance procedures are very simple (visas are issued at the border upon payment of the established government fee) and there are no restrictions for young women traveling without accompanying husband or father as in case of the UAE.

47 See the IOM Report, supra note 1 at 23.

48 These women are mainly sex workers who are approached with promises of much greater profits in wealthier countries.

49 These abuses were told to the IOM research team by the interviewed victims, some of which have been documented in the Report. See the IOM Report, supra note 1 at 52 or 55.
of origin. However, based on the information obtained from the IOM in Armenia, as well as other international and local NGOs, Armenia becomes the country of destination for women trafficked from Uzbekistan.\textsuperscript{50}

PART II. HUMAN RIGHTS INSTRUMENTS ON TRAFFICKING

1. UNIVERSAL HUMAN RIGHTS INSTRUMENTS

Trafficking in human beings is a serious violation of human rights. Some of these violations take place even before the process of trafficking is initiated. As a rule, trafficking targets the most vulnerable sectors of the society, those people who have been particularly affected by, among others, stresses of political transition, civil wars or natural disaster.

During the process of trafficking, the victims suffer violations of physical, psychological and sexual violence, involuntary servitude, deprivation of freedom, inhuman and degrading treatment, forced labor, and slavery-like practices - rights covered by a wide array of international instruments signed and ratified by Armenia.

According to international human rights standards, states are not only obliged to refrain from violating the human rights of individuals, but also to take positive steps to ensure that individuals are able to enjoy these rights. This includes the duty to take appropriate measures to protect individuals against human rights infringements by private persons. States are obliged to act with due diligence to prevent, investigate and punish human rights violators and to provide compensation.51

Amnesty International

Amnesty International (AI) was formed in 1961 in United Kingdom and recognized as the first international human rights organization.52 AI is non-political, non-economic and non-cultural organization, and this is reflected in the very approach of the organization to select individual cases from developed, developing and under-developed

51 See CEDAW Committee, General Recommendation No. 19 (section 9).
52 http://en.wikipedia.org/wiki/Amnesty_International
countries. It focuses on the human rights of political prisoners, torture, abolition of death penalty, human rights of marginalized minorities, refugees and asylum seekers, as well as migrants. AI cooperates not only with governments, but also with non-governmental sector and private individuals. AI plays a role in training human rights activists around the world.53

AI considers human trafficking as a pervasive form of violence against human beings and an abuse of their human rights including the rights to physical and mental integrity, the right to life, freedom of movement and security of the person.54

AI reports concerning Armenia have focused on prisoners of conscience, amnesty, persecution of sexual minorities, the death penalty, police ill-treatment and conditions of detention, religious freedom. Unfortunately there is no substantial approach towards trafficking in women in Armenia on the part of Amnesty International, as in the case of Albania, Bosnia, Serbia, and other countries in transition.55

**Trafficking Victims Protection Act (TVPA)**

Recognizing that trafficking is a global criminal activity resulting in violation and deprivation of women’s human rights the United States as well as the international community undertook measures to fight and prevent trafficking in human beings and to prosecute the perpetrators and protect the victims. To that end, President Clinton on October 28, 2000 signed into law the Trafficking Victims Protection Act of 2000.56

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56 See TVPA, *supra* note 28
which is a far reaching and transnational effort to criminalize and prevent trafficking in persons and to protect the human rights of the victims, predominantly women and children.

**Definition:** TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery”. 57 This definition is similar to that of the UN Trafficking Protocol 58 adopted on November 15, 2000, though less comprehensive. 59

TVPA states that the existing laws often fail to protect victims of trafficking 60 because they are illegally in the destination countries and therefore are being more harshly punished than the traffickers themselves.

As stipulated by the TVPA those “who knowingly destroy, cancel remove, confiscate or possess any actual passport or other immigration document, or other identification document to restrict or prevent without lawful authority the persons liberty to travel or move, in order to maintain the labor and services of that person, and when the person is a trafficking victim as defined in TVPA section 103 shall be fined or imprisoned for not more than 5 years or both”. 61 Furthermore the TVPA provides for the imprisonment of those who “knowingly obtain the labor or services of a person (1) by

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57 See TVPA, *supra* note 28, Section 103(8)
58 See UN Protocol, *supra* note 14
59 UN definition: “trafficking in persons’ shall mean the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Trafficcking Protocol, Article 3a). In this definition the term exploitation encompasses sexual exploitation, forced labor, slavery, servitude and removal of organs. Available online at [http://www.unodc.org/unodc/en/trafficking_protocol.html](http://www.unodc.org/unodc/en/trafficking_protocol.html)
60 See TVPA, *supra* note 28, section 102 (17)
threats or physical restrain, (2) by means of any scheme intended to cause the person to believe that if the person did not perform such labor or service that person or another person would suffer serious harm or physical restraint; (3) by means of the abuse or threatened abuse of law or the legal process, - shall be fined or imprisoned not more than 20 years or both. And if death results from the violation of this section the defendant shall be fined or imprisoned for any term of years or life, or both.  

The enactment of TVPA resulted in policy changes of the U.S. Federal Agencies; they started to issue T visas to the victims of severe forms of trafficking. The T visa allows victims of severe forms of trafficking in persons to remain in the United States and assist federal authorities in the investigation and prosecution of their human trafficking cases, but no more than 5,000 T visas are issued each fiscal year. The statute also allows victims of severe forms of trafficking to remain in the United States of America if it is determined that such victims could suffer “extreme hardship involving unusual and severe harm” if they are returned to their home countries. After three years under this status, human trafficking victims may apply for permanent residency status in the United States of America. In addition the regulation allows some victims to apply for non-immigrant status for their family members. Victims under the age of 21 could apply for non-immigration status for their parents.

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62 See TVPA, supra note 28, section 112, 22U.S.C. 7109 § 1589
63 See TVPA, supra note 28, section 107 (C)(i) (ii) (iii)
65 See TVPA, supra note 28, section 103 (8)
Department of Justice regulation published on January 31, 2002\textsuperscript{67} describes the
details for qualification of an alien for T1 status. Besides being a victim of a severe form
of trafficking, one must also be physically present in the United States, American Samoa,
the Commonwealth of the Northern Mariana Islands, and demonstrate that if removed
from the country will be subjected to extreme hardship, is willing to cooperate with the
law enforcement agencies and assist the investigation. The Attorney General grants the T
visas and refers the victims to NGOs extending protection assistance to the victims of
trafficking. When the victim of trafficking is a legal temporary resident in the United
States she may be granted work permit.\textsuperscript{68}

While the TVPA treats the trafficked person as a victim rather than as a criminal,
its provisions for victims trafficked into the US are inadequate. According to U.S.
government estimates 45,000 to 50,000 women and children are trafficked into the
United States annually, and are trapped in modern-day slavery-like situations such as
forced prostitution.\textsuperscript{69}

Besides providing for the human rights protection of the victims, TVPA also
provides for the mandatory restitution of the victims\textsuperscript{70} thorough the appropriate court
mechanisms for the full amount of victim’s losses.

The TVPA provides for the economic empowerment of the potential victims of
trafficking through micro credit lending programs enabling them to start small businesses
and promoting their increased participation in economic decision making. In deterring

\textsuperscript{67} 67 FR 4784 Available online at http://149.101.23.2/lpBin/lpext.dll/inserts/fr/fr-1/fr-79330/fr-83570/fr-
83829?f=templates&fn=document-frame.htm#fr-67fr4784
\textsuperscript{68} Information for Victims of Trafficking in Person and Forced Labor, US Department of Justice, Civil
\textsuperscript{69} Ibid, supra note 64, p. 4784
\textsuperscript{70} See TVPA, supra note 28, section 112, 22 USC 7109, § 1593 (a), (b) (2)(3)
human trafficking it also deems necessary to implement educational programs at schools, carry out public awareness campaigns and information dissemination programs in enlightening the possible victims about the real dangers of trafficking.\footnote{See TVPA, \textit{supra} note 28, section 106, 22 U.S.C. 7104 (a-b)}

The TVPA provides not only for domestic measures for combating trafficking but also measures designed to promote anti-trafficking efforts internationally. The President of the US is authorized to provide assistance to foreign countries either directly or through NGOs\footnote{See TVPA, \textit{supra} note 28, section 112, 22 U.S.C.A 7109 (1-3)} for implementation of programs aimed at meeting the minimum standards.\footnote{See TVPA, \textit{supra} note 28, section 104, 22 USC 2151 (b) (2)} It requires the US Department of State to prepare annual reports on each country assessing their compliance with the minimum standards set by TVPA and accordingly place countries in three tiers.

The first standard requires that the government of the country prohibits severe forms of trafficking and punishes perpetrators (which includes the need for a strict legislation to be in place); the second standard requires appropriate punishments depending on the gravity of the crime (law enforcement requirement), the third standard is that the punishment should be “sufficiently stringent” to deter others and the last – fourth standard is the “Government of the Country should make serious and sustained efforts to eliminate severe forms of trafficking in persons”. Among the criteria for judging about those efforts are the following 3P factors prosecution, protection and prevention: whether the Government of the country vigorously investigates and
prosecutes the traffickers (prosecution), protects the victims (protection) and prevents trafficking through public awareness and educational programs (prevention).\textsuperscript{74}

**Tier 1** presents those countries where the Governments fully comply with the above mentioned standards, **Tier 2** includes those countries where the Government’s make “significant efforts” to meet the standards, however do not fully comply with them. **Tier 3** includes those countries where the governments do not make any to effort to comply with the minimum standards.

Based on those country TIP\textsuperscript{75} reports to the Congress appropriation authorizations are provided by fiscal years for programs to support combating trafficking.\textsuperscript{76}

However, if the foreign governments fail to take necessary measures for elimination of trafficking and therefore are in Tier 3, TVPA provides for sanctions: denial of non-humanitarian aid, non-trade related assistance,\textsuperscript{77} denial of loans and funds from the international financial institutions, in particular from the World Bank and IMF\textsuperscript{78} in response to abuses in human rights. The President can waive the sanctions where necessary to avoid severe effects on vulnerable population, especially on women and children, or when country improves standing in the TIP reports and meets the minimum standards.

**UN Trafficking Protocol**

The most important international declaration of the world’s commitment to address trafficking in persons is the UN Trafficking Protocol, adopted on November 15,
which is the first globally binding instrument explicitly and comprehensively providing for anti-trafficking measures. The UN Trafficking Protocol, however, must be read and construed together with the parent Convention, which was primarily designed as a transnational crime control instrument and applies to the prevention, investigation and prosecution of the crimes covered by it (including trafficking in persons) only if the offence is transnational in nature and involves an organized criminal group.

Another concern is the implementation of the UN Trafficking Protocol. Implementation of international instruments is where many of them have failed. It is too early to assess the effectiveness of the implementation mechanism of the UN Protocol and its parent Convention, given the fact that they have only recently entered into force, and it still remains to be seen how productive the Conference of States Parties can be in its monitoring endeavors. It does not seem, however, that the monitoring mechanism of the Convention (and the Protocol) is sufficient to bring about substantial change. The language of the Protocol seems particularly unsatisfying and weak leaving wide discretion to states when it comes to protection and assistance measures.

79 See UN Trafficking Protocol supra note 14.
80 Ibid. Art. 1.
81 See UN Convention against Transnational Organized Crime, supra note 16 Art. 3. (The same principle is established by the UN Trafficking Protocol Article 4.
82 The implementation mechanism of the UN Convention against Transnational Organized Crime (and the Trafficking Protocol) consists of a Conference of the Parties to the Convention, which will be convened by the UN Secretary-General within a year after the entry into force of the Convention (The Convention entered into force on September 29, 2003 and the Conference has not been convened yet). The Conference of the Parties to the Convention will be entitled, inter alia, to review periodic reports submitted by States Parties. No specific time frame is set for periodic reports and there is no process for verification of country reports. See UN Convention against Transnational Organized Crime, supra note 16, Art. 32.
83 Article 6 of the UN Trafficking Protocol (Assistance to and protection of victims of trafficking in persons) uses the language “in appropriate cases and to the extent possible under its domestic law” or “shall consider implementing”, which States Parties may use to justify inadequate protective measures provided to victims of trafficking. See the UN Trafficking Protocol, supra note 16 Art. 6.
Given these problems, it seems relevant, to look at other international instruments that may provide additional mechanisms to address the issue of trafficking from the human rights perspective. Elements of the human rights abuse of trafficking in persons are addressed by several other international human rights instruments to which Armenia is a party.

*Other UN Instruments*

Under the Universal Declaration of Human Rights\(^{84}\) (UDHR) states have undertaken to abolish slavery, slave-trade and servitude and prohibit torture or cruel, inhuman or degrading treatment. UDHR recognizes everyone’s right to life, liberty and security, freedom of movement and residence within the borders of each state. It further provides for the right to social security, to work, free choice of employment, to just and favorable conditions of work, protection against unemployment, equal pay for equal work, rest and leisure, adequate standard of living, health and well-being, all of which are implicated when people are trafficked. Although UDHR is widely recognized as the most authoritative interpretation of human rights obligations contained in the UN Charter, and thus binding on UN member states, it can still be argued that UDHR is a declaration with no true binding force. Therefore, it is important that states also become party to the other two instruments that make up the International Bill of Rights.

Armenia is party to both the International Covenant on Civil and Political Rights (ICCPR)\(^{85}\) and the International Covenant on Economic, Social and Cultural Rights.\(^{86}\)

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84 Armenia is member to the United Nations and has incorporated most of the provisions of the UDHR in the 1995 Constitution.
Moreover, Armenia has ratified the Optional Protocol to ICCPR thus accepting the competence of the Human Rights Committee to receive individual communications from private parties claiming to be victims of a violation of the Covenant by Armenia. These two Covenants reinforce and give binding force to the provisions of UDHR listed above.87

Other binding documents ratified by Armenia include an explicit reference to trafficking in women or children. The Convention against the Elimination of All Forms of Discrimination against Women obliges states to “take all appropriate measures, including legislation, to suppress all forms of traffic in women.”88 The Convention on the Rights of the Child requires states parties to combat trafficking in children.89 A similar obligation is imposed on states parties by the first Optional Protocol to CRC.

While not legally binding, several more documents express an international consensus to combat trafficking in human beings. The UN Declaration on the Elimination of Violence Against Women (DEVAW) asserts that trafficking in women is a form of violence against women and states must adopt “by all appropriate means and without delay a policy of eliminating violence against women.”90 In the 1995 Beijing Platform of Action, states defined trafficking in women as a form of gender-based violence and committed themselves to “eliminate trafficking in women and assist victims of

87 The UDHR is a resolution of the UN General Assembly [hereinafter GA] and as such has no binding force on member states. Whereas the ICCPR and ICESCR, which spell out the provisions of the UDHR, are treaties binding on states that are party to them. See the Vienna Convention on the Law of the Treaties, G.A. Res.2166(XXI) (1969), Articles 13, 14 and 15.
violence...”⁹¹ At the Beijing+5 session of the General Assembly in June 2000, governments reaffirmed their commitments to the Beijing Platform of Action to address violence against women and took a step forward with regard to the issues of trafficking in women and girls and the associated forms of violence by addressing them in a holistic manner.⁹²

2. REGIONAL HUMAN RIGHTS SYSTEM

Council of Europe⁹³

The European system of human rights is known as the oldest and the most elaborate regional human rights system. As early as 1991, the Conference on Security and Cooperation in Europe, the parent agency of the Organization for Security and Cooperation in Europe (OSCE), in its Moscow meeting on the Human Dimension adopted a document seeking, among other objectives, to “eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures.”⁹⁴ The Council of Europe, having dealt with the issue of trafficking for almost two decades, considers that current anti-trafficking activities are insufficient and it is necessary to elaborate a legally binding instrument, a European

⁹² Further Actions and Initiatives to implement Beijing Platform for Action, A/RES/S-23/3, (2000). (The GA Resolution on Beijing+5 suggests measures to combat trafficking in women and girls ranging from addressing the root factors of the phenomenon, to a comprehensive anti-trafficking strategy which includes legislative and preventive measures, exchange of information, assistance, protection and reintegration of victims, and prosecution of offenders).
⁹³ Council of Europe is a regional intergovernmental organization created in 1949 by ten Western European nations. Available online at http://www.coe.int/DefaultEN.asp.
Convention on Action against Trafficking in Human Beings, which will pursue the United Nations achievements in this field in a European context.95

The center of the European Human Rights System is the European Convention on Human Rights and Fundamental Freedoms (1953)96 drafted under the auspices of the Council of Europe. New members of the Council of Europe are required to automatically become parties to the European Convention and accept the jurisdiction of the European Court of Human Rights, which is entitled to receive claims against states parties from individuals alleging violations of rights provided for in the Convention.

The European Convention has no specific provision on trafficking but Article 4 of the Convention97 prohibits slavery or servitude and compulsory labor, which are directly linked to trafficking in persons. Other provisions related to trafficking are the right to life (Art. 2), right to liberty and security of person (Art. 5), and prohibition of torture or inhuman or degrading treatment (Art. 3.)

The Council of Europe has a primary concern for protection of human rights in the process of trafficking. Its 45 member states include countries of origin, transit and destination of the victims of trafficking.98 This is why the Council of Europe is well placed to ensure that its member states adopt measures to fight trafficking in human beings, paying particular attention to the protection of the rights of victims. Currently, the

95 See the Council of Europe Fact Sheet on Draft European Convention on Action against trafficking in human beings. Available online at http://www.coe.int/T/E/human_rights/trafficking/1_Overview/PDF_Fact_sheet_convention_Trafficking.pdf. (At the regional level, this paper focuses on the European structures, namely, the OSCE and the Council of Europe [hereinafter CE] because Armenia is party to both of these organizations).


97 Article IV was added according to the provisions of Protocol No. 11, which provides that “No one shall be held in slavery or servitude” (§ 1), and “No one shall be required to perform forced or compulsory labor (§ 2).

Council of Europe is drafting a new European Convention on Trafficking with an emphasis on the human rights aspect of the issue.\textsuperscript{99}

The key to the effective regional protection of human rights is not only legal drafting, but also the underlying culture and political will of respecting human rights. In 2001 Armenia joined the Council of Europe and committed itself to reforming the society and bringing its laws and practices into compliance with the European standards. Although this process is slow, almost intangible, it will inevitably bring about considerable change and improvements in the newly adhering countries of Eastern Europe and former Soviet Union. The Council of Europe and the OSCE are open windows for the western values of democracy and the culture of respect for human rights to penetrate into these societies and help these societies overcome the obstacles that hinder development and establishment of rule of law.

\textit{Organization for Security and Cooperation of Europe (OSCE)}

The Organization for Security and Cooperation in Europe (OSCE) is not a strictly European organization, because in addition to all the European states and the former Soviet Countries, Canada and the US are members.

The parent organization of the OSCE, a diplomatic process known as the Conference on Security and Cooperation in Europe (CSCE), was conceived as a compromise instrument to bridge the ideological divide between the West and the East in the 1970s. The Helsinki Final Act, the instrument that created the CSCE, gave human

\textsuperscript{99} The future European Convention will cover all forms of trafficking in human beings making sure that they constitute a violation of human rights that States Parties undertake to combat. An emphasis will be put on establishment of an effective and independent monitoring mechanism capable of controlling the implementation of the obligations taken by Parties under the future Convention. \textit{See} the Council of Europe Fact Sheet on Draft European Convention on Action against Trafficking \textit{supra} note 85.
rights an important place on the political agenda of East-West relations. The CSCE’s significance survived the end of the Cold War: today it enables the OSCE to continue to play an important role and to influence human rights policies in Europe.

A fundamental OSCE principle is that security requires more than the mere absence of war. Creating and maintaining a secure environment must go beyond the resolution of political or military questions. That is why the OSCE’s concept of security also includes, as an integral function, the recognition of human rights, the rule of law, and democracy, as well as economic and environmental issues.  

After the break-up of the Soviet Union, all of its 15 successor States were accepted as independent members of the CSCE. In 1991 Armenia signed the Helsinki Final Act, and as a full CSCE participating State, was obliged to adhere to the CSCE commitments. OSCE member states have committed themselves to eliminate violence against women and trafficking in women in a number OSCE documents, such as the 1991 Moscow Document, the 1999 Istanbul Document and the 2000 Ministerial Council Decision. Although the OSCE documents are not legally binding on member states and non compliance with them may not entail legal sanctions, failure to comply will have political consequences, which may, at times, be even more powerful than legal sanctions.

**Country Reports on Human Rights, US State Department**


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touched upon trafficking in women, pointing out the imperfection of Armenian Criminal Code that did not prohibit specifically trafficking in women and only prohibited the keeping of brothels.\textsuperscript{102} The Country Report on Human Rights issued in 2002 contained more information about trafficking in women in Armenia. The report defines Armenia as country of origin for trafficking, presents some approximate numbers concerning trafficked women provided by the experts from international organizations, sketches out the mechanism of recruitment of women and young girls, identified vulnerable groups, the routes and main countries of destination, as well notes that the facilitation of trafficking is related to corruption by government officials. According to the Report there was no specific law prohibiting trafficking in persons and the traffickers could only be prosecuted under different articles of Armenia Criminal Code such as falsification and selling of documents, false marriages, extortion, coercing of women to perform sexual service, etc. According to the Report there were some women's NGO's that tried to raise public awareness of this problem and obtain funding for assistance programs; however, there were no NGO sponsored assistance programs for victims.\textsuperscript{103}

The Government of Armenia acknowledged the existence of trafficking, but it was focusing more on prostitution within the country rather than on trafficking and there were no trafficking prevention programs run by the Government at that time. Cases of trafficking were difficult to identify as the victims themselves were not willing to testify against their traffickers for fear of violent retaliations.

According to the Country Report on Human Rights Practice (2005) Report the cooperation between International Organization for Migration, local NGOs and the international donors community was established to maintain counter-trafficking activities.\textsuperscript{104} The joint activities cover public awareness campaign, counseling and training workshops for consular and law enforcement officials on identification the victims of trafficking and providing them with the appropriate assistance.

The Country Report on Human Rights Practice released in 2006,\textsuperscript{105} has indicated improvement in some areas of human rights in Armenia. In this Report the issue of trafficking in human beings in Armenia becomes a focus of concern in the light of human rights protection. As a result of amendment of the Criminal Code, the law prohibits trafficking in human beings. However, some courts continue to prosecute traffickers under pimping charges and therefore issued lighter sentences.


\textsuperscript{105} Ibid., supra note 104.
PART III. ARMENIAN TRAFFICKING LEGISLATION: PREVENTION AND PROSECUTION

The following section will analyze the Armenian trafficking legislation with a view of determining adequacy of the government response to the problem of trafficking in Armenia.

General Remarks

The legal system of Armenia is a “civil law system” as opposed to the common law tradition. It consists of a Constitution, laws (acts of the legislative branch) and executive decrees (acts of the executive branch). Most laws are codified in Criminal, Civil, Administrative, Family and a number of other Codes. Judicial decisions have no power of precedence, and judges are entitled to apply the law, but not to interpret it. The law-making power rests exclusively with the legislative branch, namely the unicameral National Assembly.

The Armenian Constitution provides that “International treaties that have been ratified are a constituent part of the legal system of the Republic. If norms are provided in these treaties other than those provided by laws of the Republic, the norms provided in the treaty shall prevail. International treaties that contradict the Constitution may be ratified after making a corresponding amendment to the Constitution.” To simplify, this means that international treaties have supremacy over domestic laws, and even the Constitution. In most cases, legislation is adopted to implement the treaty, but the treaty can be construed as having “direct legal force” as stated in the Rights of the Child Act.

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106 The Armenian legal system was influenced by the Russian legal system and the civil law system of the Continental Europe.
(RCA): “if norms are provided in international treaties ratified by Armenia other than those provided by this law, the norms of the treaty shall prevail.”

The 1995 Constitution

The Constitution declares that the Republic of Armenia is a sovereign, democratic state, based on social justice and the rule of law, where the power lies with the people. Article 4 provides that the state shall guarantee the protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law.

Chapter two of the Constitution provides for human rights and fundamental freedoms. Article 15 entitles all citizens to all the rights and freedoms, regardless of national origin, race, sex, language, creed, political or other persuasion, social origin, wealth or other status. Article 16 guarantees equality before the law and equal protection of the law without discrimination. Article 24 entitles everyone to “freedom of speech, including freedom to seek, receive and disseminate information and ideas…” Article 25 guarantees freedom of association and the right to form political parties. Under Article 32, women and men enjoy equal rights when entering into marriage, during marriage, and upon divorce.

The Constitution does not specifically address the issue of trafficking in persons but Article 43 states that the “rights and freedoms enshrined in the Constitution are not

108 See, e.g. The Rights of the Child Act, (Art. 2), which was enacted, inter alia, to implement the UN Convention on the Rights of the Child. Available online at http://www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm
109 Constitution of Armenia, supra note 107, Articles 1 and 2.
110 Ibid. Art. 4.
111 Ibid., Art. 15.
112 Ibid., Art. 24.
113 Ibid., Art. 25.
114 Ibid., Art. 32.
The Criminal Code of the Republic of Armenia

According to international human rights norms and standards, Armenia was obliged to go beyond criminalization of trafficking and ensure that traffickers are actually punished and victims compensated. If the Government fails to do this, it is in violation of its international obligations, and victims of trafficking are entitled to seek remedy in international bodies.

Before the enactment of the new Criminal Code, trafficking was not a specific offence under the Armenian penal law. The new Criminal Code of Armenia, which became effective in 2003, recognizes trafficking in persons as a criminal offence. Article 132 contained in the Special Part of the Code defines trafficking (“trade in human beings”) as

“recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purposes of prostitution or other forms of

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115 Ibid., Art. 43.
116 Criminal Code of the Republic of Armenia [Hayastani Hanrapetutian Qrenakan Orensgirq ], 010.0528.290403 (2003). Available online at http://www.legislationline.org/upload/legislations/db/3a/bb9bb21f5e6170dadc5efd70578e.htm. The Code consists of a General Part and a Special Part. The General Part spells out the objectives and principles of the Armenian Criminal Law, specifies issues of jurisdiction, defines Crime and its types, Guilt and Punishment, discusses aggravating and mitigating circumstances, juvenile responsibility etc. The Special Part defines and describes individual offences and punishments for each offence. The final judgment in each individual case must reflect the elements of one or more of the articles contained in the Special Part with reference to the relevant provisions of the General Part in so far as they attach to the case.
sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The signatory countries\(^{117}\) of UN Trafficking Protocol make a commitment to criminalize trafficking and protect victims, since currently many governments re-victimize the victims by treating them as criminals and violators of laws. Although States Parties are not obligated to define trafficking in persons as a transnational crime and a crime necessarily involving an organized group in their domestic legislation, this limitation substantially narrows the scope of application of this instrument.

Article of the new Criminal Code of Armenia has adopted the broad definition of the UN Protocol and includes the three essential elements of trafficking in persons:

- **acts**: recruitment, transportation, transfer, harboring or receipt of persons;

- **means**: threat or use of force or other forms of coercion, of abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving of payment or benefits to achieve the consent of a person having control over another person; and

- **purpose**: prostitution or other forms of sexual exploitation,\(^{118}\) forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 132, however, does not define these above-mentioned terms thus leaving judges to prosecute a novel crime with unclear elements. It should also be noted, though, that some of the conditions described in the definition, including forced labor, servitude,


\(^{118}\) The UN Protocol provides for exploitation of prostitution of others and other forms of exploration. See, UN Protocol, *supra* note 14, Art. 3(a).
slavery-like practices and slavery, are defined in international law, definitions that can be borrowed to shed light on alleged cases of trafficking.

Trafficking in persons is punishable with a fine in the amount of 300 to 500 minimum salaries, correctional labor for up to one year, arrest for up to two months, or imprisonment ranging from one to four years. The maximum sentence if the crime is committed under aggravated circumstances, even resulting in death of the victim, is eight years imprisonment. The aggravating circumstances include: trafficking committed 1) by a group of persons, 2) using violence or threat of violence which is dangerous to life and health, 3) against a minor, or 4) against two or more persons. Two further aggravating circumstances are: 1) commission by an organized criminal group, and 2) trafficking that has involuntarily resulted in the death of the victim or entailed other grave consequences.

Comparison of sanctions established by the Criminal Law for trafficking in persons with those of rape suggests that the legislature does not recognize trafficking in persons as an equally serious crime. The sanction for rape without any aggravating circumstance is imprisonment ranging from three to six years. Under aggravated circumstances the sanction is from four to ten years. If the victim of a rape is a minor under the age of fourteen, the punishment is imprisonment from eight to fifteen years. A

119 See, UDHR (Art. 4), ICCPR (Art. 8), Slavery Convention (Art. 1, 2), Supplementary Slavery Convention (Art. 1), ILO Forced Labor Convention No. 29 (Art. 1, Art. 2.1, Art. 4.1).
120 In 2003 the minimum salary was defined at 13,000 drams per month, which is equal to US$23. See “Sustainable Economic Development Policy for Armenia” prepared by Ministry of Trade and Economic Development of the Republic of Armenia”. Available online at http://www.undp.am/docs/publications/2003publications/sedpeng.pdf
121 The sanctions in all these cases include correctional work for up to two years, or imprisonment ranging from four to seven years. See Criminal Code of Armenia supra note 116, Art. 132(2).
122 The sanction in these two cases ranges from five to eight years imprisonment. See Criminal Code of Armenia supra note 116, Art. 132(3).
much lighter sentence is provided for trafficking in a minor, which in most cases does include rape and may, at times, have worse physical and psychological consequences for the child than a single act of rape.

Sanctions do not include confiscation of proceeds of trafficking. Given Armenia’s limited resources, assets confiscated from traffickers could be used to compensate the victims of trafficking and fund anti-trafficking programs.

Article 132 does not criminalize aiding, abetting or instigating trafficking: this is important because it leaves out many possible related actors involved in the process of trafficking. Nor does it contain a provision on attempted trafficking: this is important to ensure that traffickers will be prosecuted even if the trafficking cycle was not completed.

The Criminal Code, however, indirectly criminalizes attempted trafficking: Article 33 contained in the General Part of the Criminal Code requires prosecuting an offender under the relevant provision of the Special Part with a reference to Articles 34 and 65 of the General Part, establishing criminal responsibility for an attempted crime and laying down the rules of determining sanctions for an attempted crime, respectively.123 Likewise, the General Part of the Criminal Code defines complicity,124 parties of a crime125 and establishes liability for each party.126 The Criminal Code contains no specific provision on organized criminal groups either, but, as mentioned, the acts described in paragraph one of each individual article, including Article 132, are qualified as an aggravating circumstance in one of the subsequent paragraphs when committed by such a group.

124 Ibid. Art. 37.
125 Ibid. Art. 38.
Other important offences relating to the crime of trafficking in persons covered by the Criminal Code include Abuse of Office,\textsuperscript{127} Passive and Active Bribery,\textsuperscript{128} Official Fraud,\textsuperscript{129} and Official Negligence.\textsuperscript{130} These are important articles, since, as already mentioned, trafficking in persons is almost always facilitated by some corrupt intervention.

The Armenian Trafficking law, being basically an article in the Criminal Code, fails to discuss the issue of consent. It is, therefore, not clear whether Article 132 would apply in a case of alleged trafficking when the person knew that she would work, for example, as a prostitute and initially consented to it. One could argue that since for establishment of trafficking in persons, the element of threat or use of force or other forms of coercion, abduction, fraud, deception, etc. has to be met, consent becomes irrelevant. If the person has consented and these coercive means have not been used, one might assert that no trafficking in persons has taken place. According to the UN Trafficking Protocol, for establishment of the offence of trafficking in a minor, the coercive means need not necessarily be used.\textsuperscript{131} In this regard, the Armenian law is not in full compliance with the Protocol.

\textit{The Administrative Code of the Republic of Armenia}

The Administrative Code\textsuperscript{132} currently in force in Armenia is a document passed during the Soviet period with a number subsequent amendments. The very first article of the Code, with its frequent references to non-existent former Soviet bodies and already

\textsuperscript{127} Ibid. Art. 308
\textsuperscript{128} Ibid. Articles 311 and 312.
\textsuperscript{129} Ibid. Art. 314.
\textsuperscript{130} Ibid. Art. 315.
\textsuperscript{131} See UN Trafficking Protocol, supra note 14, Art. 3(c).
\textsuperscript{132} See IOM Report, supra note 1 at 64. See The Administrative Code of the Republic of Armenia, RA Supreme Council (1985.)
archaic sounding statements about “strengthening the Socialist legality” and “teaching citizens in the spirit of the Soviet Constitution,” raises serious questions as to what extent this “Soviet relic” can be invoked to impose sanctions on individuals. Nonetheless, this Code is still the law of the country and important to the discussion of trafficking in persons. Prostitution, is covered by this Code. Article 179.1 of the Code makes it a finable offence. This means that in Armenia prostitution is not a criminal offense, but a violation of Administrative law. The fact that prostitution is illegal renders victims of trafficking particularly vulnerable because they continue to be perceived as prostitutes, i.e. violators of the law. This leads to double victimization of victims of trafficking. Trafficking legislation of other countries, e.g. the TVPA, specifically address this issue, stating that victims of trafficking shall not be held liable for any illegal act committed during the process of trafficking. The Armenian law on trafficking is not as comprehensive as the TVPA, and many important issues, such as prevention of double victimization, witness protection, victim assistance, protection of victim and witness privacy and identity, as well as responsibility of legal entities, such as tourist and employment agencies, marriage brokering agencies, newspapers advertising false employment opportunities abroad, etc., remain outside the legal framework.

**The Rights of the Child Act**

Street children and children living in state residential institutions (orphanages, boarding schools) have been identified as one of the primary targets of traffickers. The 1988 earthquake substantially increased the number of orphans who were left to the care

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133 See TVPA, supra note 28
134 See, IOM report, supra note 1 at 13.
of these under-funded institutions. Therefore, protection of rights of these children should be a primary concern for an anti-trafficking policy.

On June 23, 1993 Armenia acceded to the UN Convention on the Rights of the Child (CRC). Ten years later, in September 2003, the Government signed the two optional protocols to CRC. To comply with its obligations under CRC and to give effect to the rights accorded children in the 1995 Constitution, the National Assembly enacted the Rights of the Child Act in 1996. Article 3 of the Act restates the principle of supremacy of the international treaties ratified by Armenia over the national laws.

The Act provides for equality of children before the law, irrespective of the child’s or his/her parents’ or legal guardians’ race, sex, language, religion, social origin, property, education, health or other status. Under this Act, among other rights, children are entitled to life (Art. 5), name and nationality (Art. 6), health care (Art. 7), and on adequate standard of living (Art. 8). Article 9 states that children shall be protected against violence (physical, psychological, etc.). No one, including parents, may subject a child to violence, degrading punishment, or similar treatment. The state and its relevant organs shall protect children against violence, exploitation, engagement in illicit activity, including illicit use of or trade in narcotic drugs, beggary, unlawful sexual activity, gambling, or other violations of the rights of a child. Each of these acts is a criminal offence under the Criminal Code of Armenia.

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137 Ibid. Art. 3.
138 Ibid. Art. 4.
139 Ibid. Art. 9.
140 Articles 165 through 173 of the Criminal Code include offences against minors. See Criminal Code of Armenia, supra note 116.
Article 23 provides for the security of a child, which includes prohibition and legal responsibility for abduction, trading in and illegal movement of children (including across borders). This seems to be an explicit prohibition of trafficking in children, although the word “trafficking” is not used and could not have been used in a statute enacted in 1996. Together with the phrase “illegal movement (including across borders)”, “trading in children” can be construed as an explicit prohibition of trafficking in children, which is in compliance with Armenia’s obligation under CRC.

As already mentioned children in orphanages and boarding schools are a primary target for traffickers. Article 25 (amended as of 2002) addresses the issue of child care and rearing in state residential institutions. A State-authorized entity is charged with monitoring these institutions to insure that minimum standards required for child care be met. Each parentless child is entitled to a stipend to be transferred to his/her personal account.

The 2002 amendment of the Child Statute added an entire Chapter to describe the State Policy on Protection of the Rights of the Child, which shall be implemented through an Annual Program on Protection of the Rights of the Child. The expenses related to

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141 See Rights of the Child Act, supra note 136, Art. 23.
142 The phrase “trading in children” is somewhat confusing. It is unlikely that it was designed to mean “trafficking” not only because in 1996 “trafficking in persons” was a largely unknown phenomenon in the countries that had been behind the “iron curtain”, but also because the new Criminal Code, enacted as late as 2003, which contains a provision on trafficking (“trading in humans”), also contains a separate Article on “trading in children” (under the section on crimes against family and children), which is, however, not defined.
143 See CRC, supra note 135, Art. 35.
144 Right of the Child Act, supra note 136, Art. 25. (The amount or purposes of this stipend is not spelled out in the law: instead a more general language is used stating that these transfers will be made in accordance with the legislation of the Republic of Armenia without specifying where exactly these rules are to be found).
145 Ibid. Chapter IV. (The Annual Program spells out the objectives and principles of the policy on protection of the rights of the child. Each Annual Program will determine the scope and timelines of activities anticipated for the coming fiscal year. Issues covered by the Annual Programs will include child health care services, assistance to handicapped children and children with special needs, scope of assistance
the implementation of the Annual Program shall be reflected in the state budget of a given year.\textsuperscript{146}

These amendments and improvements demonstrate Armenia’s willingness to comply with its international obligations and establish a legal framework to address pressing issues. It remains to see how effectively laws will be transferred into practice\textsuperscript{147} under the current budgetary constraints, and other limitations including, bureaucracy, lack of political will and corruption.

Notwithstanding the shortcomings of the Armenian law on trafficking in persons, criminalization of the offence has been a significant step forward in anti-trafficking efforts. No cases have been prosecuted under the new anti-trafficking article of the Criminal Code so far, however, and it remains to be seen how the law will work in practice. One should also bear in mind that effective prosecution is not readily available even in cases of more “ordinary” offences. The independence of the judiciary and the quality and fairness of the courts are a major concern in the country: the Council of Europe has repeatedly urged Armenia to initiate judiciary reform as a matter of priority.\textsuperscript{148} Without such reform, this problem may largely restrain the prosecution efforts of the Government’s anti-trafficking policy.

\textsuperscript{146} See Right of the Child Act, supra note 136, Art. 33.
\textsuperscript{147} See generally Concluding Observations of the Committee on the Rights of the Child: Armenia, CRC/C/15/Add.119, (2000), § 8 (expressing concern about disparity between law and practice).
PART IV. RESPONSE OF NGO COMMUNITY: PROTECTION

Analysis of the anti-trafficking efforts in Armenia along three dimensions, prevention, prosecution and protection, leads to the conclusion that achievements in the areas of prevention and prosecution are far more satisfactory than achievements in respect to protection. As mentioned above, the most significant limitation of the current anti-trafficking policy is the failure to recognize it as a human rights violation and to treat victims accordingly. In this section I examine several important factor why NGOs have played a vital role in formulating an adequate response to trafficking in women, combating and prevention human trafficking, protection of the victims of trafficking and assisting in reintegration within Armenian society.

The Emergence of Armenia’s NGO Sector and its Characteristics

After the collapse of the former Soviet Union and declaration of independence in 1991, international humanitarian aid organizations such as CARE, Oxfam, Save the Children, and others established resident missions in Armenia and began to engage in long-term activities. While such transnational, foreign, as well as Diaspora organizations proliferated in Armenia during the early post-Soviet years, there still were only forty-four local NGOs operating in Yerevan in 1994. Due to difficult economic conditions in the post-Soviet period, Armenian NGOs generally relied entirely on Western financial support. As a result, the number of NGOs increased rapidly. The USAID reports

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149 Prevention initiatives have been taken primarily at the initiative and in cooperation with international organizations and donor-funded NGOs. These efforts have included publication of brochures warning against dangers of falling victim to trafficking, and advice as to what to do in case it happens, a number of radio and TV programs and establishment of a hotline within the Department for Refugees and Migrants.

indicated that in 1999 there were 1800 NGOs\textsuperscript{151} operating in Armenia, and 2815 in the year 2002, but only half were active.\textsuperscript{152} According to the records in 2003 there were 3565 officially registered NGOs.\textsuperscript{153}

Initially instances of capacity building in the NGO sector were rare. The opening of the USAID-funded Armenian Assembly of America\textsuperscript{154} NGO Training and Resource Center (NGOC) in Yerevan in 1994 was a turning point in the development of Armenia’s NGO sector because it provided locals with a template of how to create NGOs and how to seek funding from donors to sustain them. Individuals who participated in the NGO training programs and seminars learned skills such as grant writing, fundraising, computer use, media relations, and advertising; they also learned the symbolic orders and discourses of the NGO world. This helped to solve the employment issue for many professional people who have a great deal of knowledge, experience, and ability but who are not able to earn money in their regular jobs. The educated professionals are able to maintain a modest standard of living. They do not have to emigrate to work as babysitters, housekeepers, elder caretakers, or jewelry sweatshop laborers in Armenian Diaspora communities in the West.

The reliance of Armenian NGOs on Western funding has not only meant that donors determine the types of projects that are implemented and issues that are addressed

\textsuperscript{151} USAID Sustainability Index 2000: Armenia. 1999 NGO Sustainability Index. Available at http://www.jica.go.jp/usa/activities/pdf/01/arm.pdf


but, equally importantly, how those issues are addressed (i.e., methods and solutions) and how they are discussed (i.e., language and discourses). Although Armenian NGOs are recipients of the ideas, goods, and capital associated with global civil society, they are not passive consumers who accept these imports automatically and in their pure form. Instead, local NGO members interpret, criticize, and customize the global to the local, and they adapt projects to meet local needs.\textsuperscript{155} In Armenia, NGOs address a wide variety of issues, including human rights, women’s issues, children’s rights, health care, peace, the environment, and cultural preservation. As soon as domestic violence became an issue in Armenia’s NGO sector the relationships between NGOs and donors shaped knowledge-production, information-circulation, and decision-making.

\textit{From GONGOs to NGOs}

A strong civil society is vital to promotion of democracy, rule of law and human rights. Non-governmental organizations (NGOs) are an integral component of a strong civil society and play a fundamental role in advocating legislative changes and voicing the basic needs of the population. This NGO role is equally crucial in combating trafficking in persons and protecting victim rights. The question is how prepared the Armenian NGO sector is to meet this challenge.

Under the Soviet system, freedom of assembly and association were subject to thorough restrictions. Notwithstanding the reformist stance of the late Soviet leadership, practices in this field differed greatly from the international norms. The USSR Law on Public Associations of 1990 created burdensome registration requirements for NGOs and

\textsuperscript{155} \textit{Ibid, supra} note 153
regulated virtually all aspects of NGO activity.\textsuperscript{156} Most successor states inherited the tendency to control NGOs and adopted their respective versions of the 1990 USSR law, applying the same restrictive provisions. The governments of the NIS countries were still influenced by the traditional Soviet strategy of controlling grass-roots activities by co-option and organization from above, principally to create support amongst the general population for the regimes’ courses of action. NGOs that took part in these endeavors have been characterized as “GONGOs (Government organized NGOs)\textsuperscript{157} to emphasize the extent to which government controls these non-government organizations. Although the 2001 Public Organizations Act of the Republic of Armenia\textsuperscript{158} simplified the registration process and allowed NGOs to establish branches as legal entities, it imposes burdensome paperwork, reporting and accounting requirements leaving less time and resources for NGO program implementation.

Unlike Western democracies, where civil society has gradually formed over many years, the NGO sector in the NIS, including Armenia, developed rapidly after 1991 based on criteria which were quite different from what existed under the Soviet regime.\textsuperscript{159} In many cases NGO organizers, lacking experience, did not quite realize their role as intermediaries. They tended to address problems in a highly critical manner, thus inducing governments to perceive them as enemies and deepening government unwillingness to cooperate with them. Many NGO reports reacted to overly “positive” Governmental reports, tending to exaggerate situations and depict them in a highly

\textsuperscript{156} See OSCE/ODIHR Background Paper 2000/1 on NGOs in the Caucasus and Central Asia: Development and Co-operation with the OSCE (Oct. 2000), at 5.
\textsuperscript{157} Ibid. at 6.
\textsuperscript{159} See the OSCE/ODHIR Background Paper, supra note 156 at 9.
pessimistic manner. As one official of an international organization has remarked, “reading women’s organizations’ reports one might get an impression that all women are prostitutes in Armenia, and all men are batterers.”

The influx of international aid has also had some negative consequences. The new-found possibilities for funding have sometimes led to the establishment of NGOs solely to seek donor funding and resulted in competition within the NGO community. This in turn has a negative impact on the still fragile perception by the population of the important role reserved to NGOs and results in loss of confidence in them.

**Feminization of NGOs**

Most NGOs in Armenia are run by women. This can be explained by several factors. NGOs became an alternative method for public participation and express concerns for those women who were important actors during independent movement but were excluded from the political arena of the newly independent country. Generally, men chose to enter the business sector, as NGOs were less profitable, associated with small grants and micro-credits. Further, women perceived non-governmental sector as less corrupt and non-political. Finally, the international donor community has a preference to support women’s organizations and women’s initiatives.

The number of women’s NGOs and NGOs run by women in Armenia increased markedly after the Beijing Conference in 1995. The conference not only provided local women with an introduction to the international world of NGOs, it also stimulated greater funding and interest in the role of women in development. Although many women involved in NGO sector accept the “gender in development” approach, they do not

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consider themselves feminist. Armenian women see NGOs as organizations that allow women to speak loudly about social, educational, health care and human rights problems rather than follow feminist agenda.

Family and kinship issues are of utmost importance in Armenia. The issue of domestic violence that was traditionally considered to be a private family issue, became a popular initiative among international donors. The donors sometimes put Armenian NGOs in a difficult situation as they try to reconcile the interests of international donors with the interests of their local community. International donors consider domestic violence and trafficking in women as important issues, and local NGOs comply in order to get funds. But Armenian NGOs cannot address domestic violence and protection of victims in the same way that it is addresses in the West. They must work within the local environment taking onto consideration cultural, traditional and historical background.

Why NGOs?

The most significant shortcoming of the current anti-trafficking policy in Armenia is the tendency to view trafficking as a matter of crime control, failing to recognize it as a serious human rights issue. Government officials demonstrate little or no interest in addressing trafficking issues within their authority thus hindering the effective implementation of anti-trafficking programs and reducing them to mere window dressing to avoid domestic criticism and foreign pressure.

For these reasons the NGO community has a critical role to play in raising awareness, providing different kind of assistances: social, medical of psychological, and cooperating with international organizations. Furthermore, many women do not trust government organizations upon their return (both voluntarily or being deported) as in
most cases they entered the country of destination with false documents, have either
violated the immigration law by overstaying, or their documents have been seized to
restrict their movement inside the country. They distrust law enforcement officials also
due to the high level of corruption and involvement of the police in the illegal
activities.\textsuperscript{161} Secondly, many women prefer to discuss their concerns with female
representatives; therefore the NGOs run by women or employed by women have
generally played the role of the first line of action for victims.

\textit{Challenges faced by NGOs}

The insufficiency of social security funds, formalized referral mechanisms
concerning the victims of trafficking, the existence of patriarchal traditions in the society,
and limited access for women to viable economic opportunities, create difficulties in
providing full re-integration assistance to victims of trafficking.

Local NGOs have limited financial capacity. Their projects are usually funded by
foreign donors directly or through international organizations. This allows NGOs to
provide short-term housing assistance, temporary shelters for returning victims and
reintegration assistance as well as counseling and legal advices. Although, the Armenian
NGO community is still very young and largely inexperienced, they do assist women in
re-integration process alone or with the assistance from international organizations, such
as the International Organization for Migration (IOM), UNDP, OSCE, WHO and others.

However, many victims of trafficking prefer not to reveal the most distressing and
degrading elements of their experiences, because of fear, shame, and stigma. Trafficked
women can not easily be reintegrated into traditional community attitudes that tolerate

\textsuperscript{161} M. Tzvetkova. NGO Responses to trafficking in women, Gender and Development, Volume 10,
Number 1 / March 01, 2002, pp.60-68
violence against women at home and expect women to fit into the accepted “stereotype” model of an obedient housewife. There is little sympathy for the trafficked victims. Usually the government and law enforcement officials (mostly male) state that these women knew what they were doing and have got what they deserved.

**NGOs Counter-Trafficking Activities in Armenia**

There are many NGOs in Armenia working on problem of trafficking. Since 2002, IOM's Yerevan branch has been implementing counter-trafficking programs in several areas. These include training consulate and embassy workers, training and technical support for law enforcement anti-trafficking departments, increasing awareness of the issue amongst the populace, and helping victims of trafficking. The IOM has also assisted the local NGO “Hope and Help”, which works both with women involved in prostitution and identified victims of trafficking.

“Hope and Help” is an NGO that assists women in prostitution who encounter problems with local police. It also plans to provide shelter, medical services, psychological counseling, and job training for repatriated victims of trafficking. According to Mr. Yenok Shatvoryan, the director of “Hope and Help”, their NGO has worked with 32 people, providing them with legal assistance to obtain necessary documents, placing them in a temporary shelter, and helping “them understand that they are victims of trafficking”. Ms. Nora Mnatsakanyan, the program coordinator of “Hope and Help” asserts the readiness of the NGO to provide temporary shelter to those women who had been trafficked abroad for prostitution and returned, as well as medical and

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163 Available online at [http://www.hetq.am/eng/society/0512-mard.html](http://www.hetq.am/eng/society/0512-mard.html)
psychological assistance. Also, they implement re-integration projects by conducting professional training and try to find jobs for the victims of trafficking.164

“Hope and Help” recently instituted a 24-hour hotline for trafficking victims and their families throughout Armenia.165 The “Hope and Help” Hot-Line service has received 1,358 calls since January 2004.166 Through this service the NGO has contacted 11 trafficked victims and has provided information to hundreds on labor recruitment.

Within a UN anti-trafficking project, the South Caucasus NGO Network was established. In July – August, 2004 a group of representatives from IOM and UNDP missions in Armenia and Georgia, “Hope and Help” NGO representatives from Armenia and “People Harmonious Development Society” NGO and police representatives from Georgia made a trip to Turkey to meet with Turkish officials and NGOs dealing with trafficking issues. The purpose of this joint project was to identify and if possible interview victims of trafficking, and to discuss the possibilities of organizing medical, legal and repatriation assistance for identified victims of trafficking in Turkey, especially for the citizens of Armenia. It was an important initiative with positive results.167

On the basis of Women’s Club, which has been operating since 1987, “Hayouhi” Women’s Association was founded in November 1990 and registered in the Ministry of Justice in January 1991. This was the first registered non-governmental organization in Armenia. In 1997 “Hayouhi” Women’s Association reconsidered its mission and goals. Renamed the “Women’s Rights Center” (WRC) was registered with the Ministry of

165 Available at http://www.iom.int/armenia/news_release/press_release.htm
Justice in November 1997. The “Women’s Rights Center” has been involved in the problem of violence against women carrying out activities in three areas: *domestic violence, trafficking in women, reproductive and sexual health and rights*. The goals of WRC are as follows:

- to prevent violence against women and their children;
- to protect women’s reproductive and sexual health and rights;
- to support women’s participation in decision-making processes and to promote women’s leadership.

WRC was one of the six Armenian NGOs awarded a direct grant by USAID to provide safe and adequate shelters, support, counseling and other services to victims of domestic violence throughout Armenia. The grant allowed the NGO to expand their goals and implement the current projects.

The United Methodist Committee on Relief (UMCOR) has developed an antitrafficking program in Armenia in partnership with the United Nations Development Programme (UNDP) and IOM and coordinated by the Armenian government. UMCOR works in several areas, raising awareness of the issue amongst the populace, providing support to victims, and training social workers and employment agency and hospital personnel. In 2004, it opened a support hotline to provide assistance to the victims. The hotline has received 887 calls. Of them, 56%

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169 Available online at: http://www.usaid.gov/am/pr10_02_DV.html

were women and 44% were men. The “Hot Line” provides psychological, medical and legal consultations and general information about trafficking and about UNCOR activities in particular.\textsuperscript{171}

\textsuperscript{171} See at http://www.umcor.am/traffick.htm
PART V. RECOMMENDATIONS

Based on the analysis of the situation in Armenia related to trafficking in human beings and the current efforts made by the government, international community and non-government sector the following recommendations could be suggested for further improvement of Three “P’s” counter-trafficking policies in Armenia in close cooperation of all the parties of concern.

Prevention

Lack of political will is an important problem largely ignored by anti-trafficking projects. Government officials may demonstrate little or no interest in addressing trafficking issues within their authority. This can hinder effective implementation of anti-trafficking programs reducing it to mere window dressing to avoid domestic criticism and foreign pressures. Effective anti-trafficking strategies, therefore, need to take this factor into account. Thus, it is very important to recognize and acknowledge trafficking in human beings and place problem of trafficking on different levels of agenda: national, regional and international.

The most important tool in the prevention phase is organizing the awareness raising campaign. The campaign should be focused both on vulnerable groups and society in general as well. The effectiveness of this campaign is mostly characterized by the working collaboration among the main concerned actors in the country including government, NGOs and the international community. It is important as well to establish co-operation with the same actors in the countries of destination and transit. An awareness raising campaign should address the following issues:
• Provide potential migrants with reliable information about the labor market, legal and social systems, kinds of jobs available and the level of demand, and the possible difficulties one could face in the country of destination;

• Create employment especially for women and the young generation is the most effective measure to reduce and prevent trafficking in women from Armenia. Special programs should be developed on vocational training and education for women empowerment to improve their ability to enter into the local labor market.

• Present the information about the trafficking in human beings, its cruel nature, risk of being abused and humiliated in the country of destination, risk of HIV/AIDS and STD associated with the work in sex industry, as well as the information about where to apply for assistance in the countries of destination and, if possible, the contacts of Armenian Embassies and Consulates;

• Provide training workshops for government officials working with documents and passenger flows (border guards, passport departments, embassies and consulates abroad), the media and NGOs on defining the trafficking phenomenon, its nature and anticipated consequences for victims of trafficking.

• Special training should be organized for embassies abroad, NGOs both local and the countries of destination and transit in identification of victims of trafficking, and also in providing the victims appropriate and timely assistance by Consular personnel in respective destination countries where Armenian Diplomatic Missions are represented.
Special training should be organized for law enforcement and government officials on various international instruments on human rights that implicitly bind Armenia to course of action.

**Prosecution**

Efforts made by the Government of Armenia have been concentrated on criminalizing the behavior and complying with the U.S. “minimum standards”\(^{172}\) in order to avoid sanctions and a cut-off of foreign aid. Little attention has been given to the protection of victims and prevention of their double victimization.

In 2004 TIP report Armenia was shifted from Tier 3 to Tier 2,\(^{173}\) as it had adopted new anti-trafficking law and established the Interagency Commission on Human Trafficking by a Prime Minister's decree on 14 October 2002. The commission is chaired by the Foreign Ministry and coordinates the efforts of relevant organizations and agencies in researching the situation of trafficking in Armenia, implemented public awareness campaigns, conducted programs aimed at sensitization and capacity building of the law enforcement agencies, and in developing a National Plan of Action\(^{174}\) for 2004 - 2006 on counte-trafficking activities. The implementation of the National Plan focuses on cooperation between government entities, local NGOs and international mission in providing protection and assistance to victims of trafficking.

Although the Government has made significant progress in criminalizing trafficking, prosecution efforts are not fully adequate either. The new penal law fails to define the elements of the crime of trafficking in persons thus making prosecution impossible.

\(^{172}\) See TVPA, *supra* note 28.

\(^{173}\) [http://www.state.gov/g/tip/rls/tiprpt/2004/33192.htm](http://www.state.gov/g/tip/rls/tiprpt/2004/33192.htm)

difficult. Moreover, it does not recognize trafficking in human beings as a serious crime as evidenced by inadequate sanctions: the maximum punishment is eight years, even when committed under aggravated circumstances such as the death of the victim. Nor does it provide for confiscation of assets, which could be used to compensate the victims and fund prevention and awareness raising programs. Finally, it provides no workable mechanisms for protection of victims who testify against traffickers.

The Government of Armenia should consider enacting a separate law on trafficking that would be broad enough to fill the gaps identified in the trafficking legislation in this paper. Specifically the anti-trafficking legislation should be amended as follows:

- Define the elements of trafficking to make prosecution easier;
- Recognize trafficking as a serious crime and enhance sanctions to be commensurate with punishment for other relevant crimes, e.g. rape.
- Consider adding confiscation of proceeds of trafficking as a supplementing sanction: use these assets to compensate victims and fund prevention and assistance programs.
- Exempt victims of trafficking from liability for offences committed in the process of trafficking.
- Provide for workable mechanisms of witness protection, including non-disclosure of identity and whereabouts of such persons; and witness testimony through the use of communication technologies.
- Reinforce irrelevance of consent in case of minors;
• Provide that a case involving minors amounts to trafficking even if the coercive means that constitute an element of the crime have not been used, as provided for by UN Trafficking Protocol.
• Add a provision to the Administrative Code on liability of legal persons involved in trafficking of persons.
• Reform NGO legislation, bringing it in conformity with international standards and thus allowing for more freedom and flexibility for NGO activity.

Another key component of successful prosecution of trafficking is through cooperation with destination countries. As mentioned in Part one, the UAE and Turkey are the two main destination countries for trafficking in persons from Armenia. Armenia has an extradition treaty and a mutual legal assistance treaty in civil matters with the UAE. Armenia should consider renegotiating these treaties and concluding new treaties to include cooperation in trafficking-related matters. Taking into account that Armenia currently does not have diplomatic relationship with Turkey and cases of trafficking can be legally processed only with the assistance of Russian diplomatic missions in the country. Armenia could try to use the Council of Europe and OSCE fora to find ways of cooperation with the Turkish Government.

Protection

The most significant shortcoming of the current anti-trafficking policy in Armenia is the tendency to view trafficking as a matter of crime control, failing to recognize it as a

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175 See IOM Armenia Report on a Fact Finding Trip to Turkey, supra note 167
176 Since both Armenia and Turkey are party to OSCE and the Council Europe, these organizations could be helpful in cooperation efforts of both governments.
serious human rights issue. Another serious problem is the still prevailing attitude, both among the public and government officials, towards trafficked persons as prostitutes rather than victims of trafficking. A high-ranking government official, actively involved in anti-trafficking projects in partnership with international organizations, suggested in a radio interview that one should not be so naïve as to believe that “victims of trafficking” do not know in advance where they are going and what they will be doing. Unfortunately, this is a broadly shared view. Anti-trafficking projects are implemented for the mere image of the Government and for reporting to donors. The interests of the victims are placed the last, reinforced by the belief that they are not such innocent victims as they might seem.

NGOs should play important role in developing and implementing these programs and should be supported both by the government and international organizations.

The Government in close cooperation with NGOs and international organizations should undertake steps for effective protection and assistance of victims of trafficking.

- Victims of trafficking should not be criminalized, they should be recognized first as victims and should not be prosecuted for possessing fraudulent documents, working illegally, and even for being involved in prostitution.
- Develop the guidelines and clear procedures for identification, referral and treatment of victims of trafficking based on human rights standards;
- Provide Armenian law enforcement agencies and Border Guard troops with increased knowledge, advanced skills and appropriate tools required to detect, investigate and prosecute traffickers as well as to adequately protect the
victims through seminars and training workshops with the assistance of international expertise;

- In cooperation with NGOs ensure effective medical, psychological and legal assistance to victims of trafficking;
- Support victims of trafficking in reintegration procedures with the assistance of NGOs and projects funded both by international organizations and the government;
- With the help of the international community organize training workshops for NGO associates and service providers for victims of trafficking to improve the quality of service and privacy.

A human rights approach ensures recognition of trafficking as a serious human rights issue, and emphasizes the state’s obligation to comply with its international human rights commitments under relevant UN conventions and the European Convention. Treating trafficking as an international human rights violation would offer the advantage of looking at the problem not in the narrow context of the new, still deficient, domestic law on trafficking, but in the broader framework of international human rights law, which is binding on the Government of Armenia.
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