

Women and Transnational Organized Crime

Elements for a Discussion Paper on Women in the Criminal Justice System

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Prepared by:
Yvon Dandurand and Vivienne Chin
*International Centre for Criminal Law Reform
and Criminal Justice Policy.*

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*International Centre for Criminal Law Reform
and Criminal Justice Policy*
1822 East Mall, Vancouver, B.C. - V6T 1Z1

Introduction

Crime prevention and criminal justice institutions must offer women real and effective protection against violence, exploitation and discrimination. Whether such crimes are committed across borders or not is relevant only to the extent that the transnational nature of the offences may call for different prevention or control strategies.

While it will obviously continue to be important to examine how the criminal justice system can help prevent exploitative behaviour and various traditional forms of violence against women, the growing threat posed by transnational organized crime makes it necessary to specifically consider the issue of women's access to protection against organized crime. Women certainly do not currently receive the level of protection they are entitled to expect from the criminal justice system against the many forms of exploitation and violence they suffer at the hands of transnational criminal organizations. Furthermore, the impact that criminal law, the criminal justice process and crime prevention strategies generally have on women's lives continue to deserve urgent and careful scrutiny.

One can argue that only a few among contemporary forms of transnational crime actually involve gender-based violence and exploitation, but some of them definitely do. This is clearly the case of various organized criminal activities relating to trafficking in women and children for the purpose of various forms of exploitation. There is clear evidence of women's and children's particular vulnerability to certain forms of transnational organized crime. There are also reports of increasing recruitment of women into criminal organizations.

Under the United Nations current definition, 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life¹. The primary focus of that definition is on traditional forms of violence at the domestic level. However, it also includes other forms violence related to exploitation, forced prostitution and trafficking, all of them crimes which are often committed across borders and are likely to involve criminal organizations.

From the point of view of international law doctrine of state responsibility, the principle of 'due diligence' is gaining international recognition.² In accordance with article 4 of the

¹ See: *Declaration on the Elimination of Violence Against Women*, United Nations, A/Res. 48/104., article 2.

² Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission of Human Rights resolution 1995/85, 10 March 1999. E/CN.4/1999/68.

Declaration on the Elimination of Violence Against Women, States must exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons..

Global media coverage and increased travel have resulted in a greater awareness of opportunities elsewhere and an increased movement of both legal and illegal migrants. Over the last decades it is claimed that in Europe, for example, smuggling and trafficking of humans has become a determining factor in migration trends³. An unabated demand for migration, in the face of stricter entry controls and requirements, has provided criminal entrepreneurs with new opportunities for profits. There are high profits to be made. Today, organized criminality in migrants trafficking is reaching every region of the world and it is now recognized internationally as major enforcement, human security, and human rights issues. Traffickers exploit the phenomenon of illegal migration and supply a variety of services to illegal migrants, such as smuggling, the provision of fraudulent travel documents, transportation, accommodation, job brokering, and even training in how to claim asylum or deceive border officials. The same criminal organizations are also quick to use deception and coercion to exploit illegal migrants themselves.⁴ Current international discussion speaks openly of slavery-like conditions of which the indentured status of trafficked persons is a prime example.⁵

According to the Special Rapporteur on violence against women, its causes and consequences, Ms Rhadika Coomarasamy:

Each year, thousands of women throughout the world are trafficked; they are tricked, coerced, abducted, sold and, in many cases, forced to live and work under slavery-like conditions as prostitutes, domestic workers, sweatshops labourers or wives. The exploitation of female labour and of the female body has led to an

³ See: UNICRI. 1999. *Global Programme Against Trafficking in Human Beings: An Outline for Action*, Centre for International Crime Prevention, UN Interregional Crime and Justice Research Institute.

⁴ See: Paiva, Robert G. 1998. *Multilateral Efforts to Combat Trafficking in Migrants: an International Agency Perspective*, in Schmidt and ,A.P. and I. Melup. 1998. *Migration and Crime*. Milan: ISPAC; IOM. 1997. *Trafficking in Migrants: IOM Policy and Activities*. Geneva, May 1997; Chin, Co-Lin. 1998. *Smuggling of Chinese Aliens and Organized Crime*, in Schmidt and ,A.P. and I. Melup. 1998. *Migration and Crime*. Milan: ISPAC.

⁵ See: Beare. M.E.1999. *Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats*, *Transnational Organized Crime*, Special Issue titled *Illegal Immigration and Commercial Sex: The new Slave Trade*. Published by Frank Cass. Article published simultaneously in *Transnational Organized Crime* and R.T. Naylor. 1999 *Major Issues Relating to Organized Crime: Within the Context of economic Relationships*. Prepared for the Law Commission of Canada. Also: Skinnider, E.1997. *Illegal Labour Movements and the Trafficking of Women: International Dimensions in the Era of Globalisation*. Presented at the International Conference of Illegal Labour Movements and the Trafficking in Women, Bangkok, Thailand. Vancouver: ICCLR.

international industry of trafficking in women. Such trafficking occurs for diverse purposes but the movement of women within countries and across frontiers is usually a result of their unequal bargaining power and vulnerability to exploitation.

Today, women are primarily trafficked from the South to the North and increasingly from South to South: from countries in which structural adjustment has bankrupted the State economy, deforestation has destroyed villages and forced families into urban areas and the feminization of poverty is most apparent, to countries where the gross national product and the standard of living for the average citizen are higher. Consequently, trafficking in women is fuelled by poverty, racism and sexism.

Although trafficking has been of international concern since the beginning of this century, little has been accomplished to effectively combat the flourishing trade in women. Admittedly trafficking in women presents complex enforcement issues due to its international character and the numerous actors involved. With few exceptions, countries of origin, transit countries and countries of destination, refuse to accept responsibility to protecting trafficked women. The primary concern of most States is the illegal status of the victim who, if discovered, is quickly targeted for deportation.⁶

Of particular note is what has been termed the feminization of migration. Historically labour migration was predominately male and the typical migrant was male. This is changing. For example, Soviet women are everywhere. Beirut bars, hotels in Hammamet, cabarets in Cairo and escort services across the globe⁷. It is estimated that eighty percent of those people who lost their jobs in the former Soviet Union were women. Likewise it has been acknowledged that the Asian financial crisis had, and continues to have, a disproportionate impact on women. Women were the first to be let go when companies were forced to cut down their staff, and in general terms more women live in poverty than men. Poverty, desperation and displacement are having a direct impact on the movement of these women. However, while financial situations may be exacerbating the position of women, their marginalized status and powerlessness in some of the societies remain a critical issue.

These factors - the increasing amounts of migration, the gender element, the involvement of organized crime, the brutality inherent in some of the indentured arrangements -all speak of the need for a global response to human trafficking. Combating trafficking in human beings

⁶ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Rhadika Coomaraswamy, 12 February 1997. E/CN.4/1997/47 p. 15. See also Addendum on the Report on the mission of the Special Rapporteur to Poland on the issue of trafficking and forced prostitution of women (24 May to 1 June 1996). E/CN.4/1997/47/Add.1 10 December 1996

⁷ See: McMurray David. 1999. Recent Trends in Middle Eastern Migration., in *Middle East Report: Trafficking and Transiting: New Perspectives on Labour Migration*, Summer, Number 211, pp. 16-19.

requires a two-fold approach: a criminal justice response (to prevent the crime and deter the offenders) and a human rights response to protect the trafficked persons and their rights. However, even if law enforcement was considered to be the answer, experience indicates that law enforcement alone will not seal the borders or restrict the trafficking. Moving beyond the war on illegal migrants rhetoric, the international community is emphasizing the need to understand the context: political, economic and social environments; the motivations of the illegal migrating populations and other non-illegal migrant groups; the identity of those who exploit and/or are serviced by the migrants⁸.

Punishment, prevention and protection (including human right protection) must all be remain the main pillars of an effective strategy to combat trafficking in human beings⁹. In their zeal to punish traffickers and protect the integrity of their borders, states must take care not to inadvertently violate the principle of doing no harm to trafficked persons, for example, by increasing the risk of exposure to abuse by third parties¹⁰. There is a clear need to ensure that the individuals falling victim to such criminal practices are protected¹¹.

The 1999 *Trafficking in Persons* report by the Office of the High Commissioner for Human Rights states that the two fundamental principles in the area of trafficking are that: (1) human rights must be at the core of any credible anti-trafficking strategy; and, (2) such strategies must be developed and implemented from the perspective of those who most need their human rights protected and promoted.

The *FWCW Platform for Action* (The Beijing Platform for Action)¹² formulated a strategic objective (D.3) aimed at eliminating trafficking in women and assisting victims of violence due to prostitution and trafficking. Governments of countries of origin, transit and destination, regional and international organizations, it was recognized, had to take appropriate measures to address the root factors, including external factors, that encourage

⁸ See: Graycar, Adam. 1999. Trafficking in Human Beings. Australian Institute of Criminology. Paper presented at the International Conference on Migration, Culture and Crime, Israel, July 1999.

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See: *Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons*. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27)

¹⁰ See: Human Rights Caucus. 1999. *Human Rights Standards for the Treatment of Trafficked Persons*. (www.wagner.inet.co.th/org/gaatw/smr99.htm)

¹¹ *Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons*. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27)

¹² *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No, E.96.IV.13), chap 1, resolution 1, annex II.

trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through both criminal and civil measures. {Actions to be taken no. 130(b)}.

Recently a number of specific recommendations were also put forward as a result of the NGO Consultation with the United Nations and Intergovernmental Organizations on Trafficking in Persons, Prostitution and the Global Sex Industry¹³.

Member States have repeatedly been called upon to review their criminal law and the criminal justice system in order to make them as effective as possible in preventing crime against women. They are also asked to consider how criminal justice systems can become more relevant to women's experience and aspirations and more effective in protecting their rights. However, the required legal and systemic reforms are both delicate and complex. The question of how these changes can be effected raises a number of issues concerning the relative effectiveness of various strategies to address systemic biases, cultural and sub-cultural opposition to change, the system's own inertia, or the lack of necessary human and financial resources.

In December 1997, the United Nations General Assembly adopted a resolution¹⁴ which urged Member States to develop and promote crime prevention strategies that reflect the realities of women's lives and address their distinct needs. The resolution also included a document entitled *Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice*. These *Model Strategies* provided a new impetus for concrete reform and international cooperation in the area of elimination of violence against women. The strategies are relevant to all aspects of the criminal justice system, from community based crime prevention to law enforcement, to courts, sentencing, and corrections. They also address several issues concerning research, the media, education and public awareness¹⁵.

The main focus of the *Model Strategies* are to ensure that criminal justice systems around the world provide a fair treatment. response to all incidents of violence against women.

¹³ *Contemporary Forms of Slavery*. Report of the Working Group on Contemporary Forms of Slavery on its twenty-fourth session, Part II. Traffic in Persons and Exploitation of the Prostitution of Others, pp. 13-34. E/CN.4/Sub.2/1999/17, Annex II.

¹⁴ General Assembly Resolution 52/86 of 12 December 1997.

¹⁵ A *Resource Manual* and a *Compendium of Promising Practices* were recently developed to assist in the implementation of the *Model Strategies*. The two instruments were prepared by the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), the European Institute for Crime Prevention and Control affiliated with the United Nations (HEUNI), the Latin American Institute for the Crime Prevention and the Treatment of Offenders (ILANUD), and the United Nations Centre for International Crime Prevention, Office for Drug Control and Crime Prevention (CICO/ODCCP). Vancouver, April 1999.

They aim to provide *de jure* as well as *de facto* equality between women and men. The *Strategies* do not give preferential treatment to women but aim to ensure that any inequalities or forms of discrimination that women face in achieving access to justice, particularly in respects of acts of violence, are redressed. It is fair to say, therefore, that the *Model Strategies* do not emphasize the need to ensure that criminal justice institutions adopt strong measures to effectively protect women against gender-based exploitation and violence resulting from organized transnational criminal activities.

Transnational organized crime, by nature, calls for distinct and somewhat different responses from criminal justice systems. Among other things, it calls for a level of international cooperation that is not usually necessary in the control and prevention of other forms of crime. The same is true, needless to say, of certain forms of transnational crime which specifically targets women. As a result, the control and prevention of these crimes may require specific strategies which have not been sufficiently articulated in the *Model Strategies* adopted by the General Assembly.

Reviewing Legislation

The *Beijing Platform for Action* urged governments to consider enacting legislation aimed at preventing sex tourism and trafficking, giving special emphasis to the protection of young women and children. {action no. 130 (e)}.¹⁶ Since then, a number of countries have enacted such legislation, each reflecting a different way of dealing with the problem of extra-territorial criminalization raised by this type of offense. The impact of these new law has not yet been evaluated systematically.

The *Model Strategies* also urge Member States to periodically review, evaluate and revise their laws, to ensure their values and effectiveness in eliminating violence against women and remove provisions that allow for or condone violence against women. {article 6 (a)}, and to review, evaluate and revise their criminal and civil laws, within the framework of their national legal systems, in order to ensure that all acts of violence against women are prohibited and, if not, to adopt measures to do so. {article 6(b)}.

A recent resolution by the Commission on Human Rights (1999/40)¹⁷ urges Governments to take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour, so as to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both

¹⁶ See also: the recommendations of the World Congress against Commercial Sexual Exploitation of Children.

¹⁷ *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40.

criminal and civil measures.¹⁸ The resolution also urges Governments to criminalize trafficking in women and girls in all its forms, to condemn and penalize all the offenders involved, including intermediaries, whether their offence was committed in their own country or in a foreign country, while ensuring that the victims of those practices are not penalized.¹⁹

In line with the *Model Strategies*, according to the 1999 Report of the Secretary General on the Elimination of Violence Against Women, some countries have recently reformed their laws and regulations or have adopted strategic plans, programmes and plans of action to reflect the issues addressed by that instrument. Major developments were prompted by it and new initiatives taken by States have related to review and reform of legislation (including criminal law and criminal procedure) by which acts of violence against women were criminalized; empowerment of the police and judiciary with authority to intervene in certain cases of domestic violence; and introduction of victim reconciliation and compensation, either by the offender or by the State.²⁰

According to the same report, a number of countries had undertaken special initiatives to address the problem of trafficking in women and children. In Austria, for example, a new law was introduced concerning sex offences, trafficking in human beings and pornographic presentations involving minors in electronic media. A new aliens law, which entered into force in 1998, offers protection to victims and witnesses of trafficking in human beings. In Germany, a working group on trafficking in women was established in 1998. An Inter-ministerial Committee for Action to Combat Trafficking in Women and Children was established in Colombia. In Ukraine, 1997 amendments to the Criminal Code and the Code of Criminal Procedure established trafficking in persons as a criminal offence.²¹ In the United States, an Interagency Working Group on Worker Exploitation has recently proposed new legislation and sentencing guidelines relating to situations not yet adequately covered by existing federal laws. Legislation is proposed that would make it a crime to recruit or transport any person, knowing or having reason to know that the person will be subjected to unlawfully exploitative labor conditions. It would punish those who directly or indirectly profit from the fruits of involuntary servitude or debt bondage.²²

According to a recent review of current efforts to combat trafficking among participating States of the Organization for Security and Cooperation in Europe (OSCE) concluded that there is currently no unified approach to combating trafficking among OSCE destination countries. Most participating OSCE States lack an adequate legal framework to combat

¹⁸ *Ibidem*.

¹⁹ *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40

²⁰ A/54/69 .E/1999/8. Report of the Secretary General . Violence Against Women, 26 March 1999.

²¹ *Idem*, pp. 5-7.

²² *Trafficking in Human Beings: Implications for the OSCE*, 1999, pp. 38-39.

trafficking in human beings. Most of them rely on existing criminal law statutes usually dealing with prostitution. Few States have specific anti-trafficking laws. The few laws that exist tend to define the offence in terms of trafficking for prostitution or sexual exploitation, and may, therefore, be inadequate to address trafficking for other forms of forced labour or contemporary forms of slavery.²³

The same review of current efforts in OSCE countries notes that while opinions differ as to whether it is necessary (or even beneficial to have a specific anti-trafficking provision in the criminal code, few States have taken adequate steps to address the limitations or gaps in existing laws.²⁴ A persistent problem, according to the same report, is that the narrow reach and low penalties usually associated with prostitution crimes. A typical indictment to prostitute, or procuring, statute, for example, will not reach many of the actors involved in trafficking and does not carry penalties reflecting the serious and often brutal nature of trafficking crimes.²⁵

The laws and policies (as well as the level of co-ordination and implementation) vary considerably between major destination countries, even within the EU. In some participating States, such as Germany, laws and policies are further decentralized, and vary even within the country itself.²⁶ According to the same review, coordination is also lacking at the national level. Very few OSCE destination countries have established a national point person, agency, or task force to coordinate anti-trafficking strategies nationally and internationally.²⁷

Many slavery, or servitude, or forced prostitution statutes tend to be defined or interpreted too narrowly to cover all frequent trafficking situations. Existing criminal code provisions concerning rape, assault, extortion, deceit, and unlawful confinement, as well as laws prohibiting labour exploitation and servitude are apparently rarely used in trafficking cases.

In some of the existing legislation, the crime of trafficking must involve an element of coercion, and that element is often too narrowly defined to include several trafficking situations where the threats are directed against the victim's family (in another country). The crime is also often defined in a way which takes into account the transnational nature of that form of exploitation and does not cover the behaviour of certain members of the

²³ *Trafficking in Human Beings: Implications for the OSCE*, 1999. See also: Carin Benninger-Budel and Anne-Laurence Lacroix (1999). *Violence Against Women - A Report*. Geneva: World Organization Against Torture (OMCT), pp. 184-198.

²⁴ *Trafficking in Human Beings: Implications for the OSCE*, 1999, p. 37.

²⁵ *Ibidem*.

²⁶ *Idem*, p. 36.

²⁷ *Ibidem*.

transnational criminal network who aided, abetted or conspired to commit the crime of trafficking.

Criminal Procedure

The *Model Strategies* urge Member States to review, evaluate and revise their criminal procedure and to adopt a number of specific measures to ensure that women are effectively protected against all forms of gendered violence and receive fair treatment. response from prosecuting and judicial authorities (see: article 7). Among the specific measures advocated are those aimed at ensuring the safety of victims and their families and to protect them from intimidation and retaliation. {article 6(h)}.

In practice, it would seem from currently available information that trafficking offences are rarely effectively prosecuted due to the total lack of protection offered to victims and potential witnesses; they are often left to fend for themselves against organized criminal elements in either or both the country of origin or of destination. According to the recent review of the situation in participating OSCE States, in most destination countries, trafficked persons caught residing or working in the country illegally are immediately deported pursuant to the State's alien or immigration law. In most cases, the police or immigration authorities do not make any attempt to determine whether the persons are victims of trafficking or other slavery-like abuses, and therefore fail to alert interested parties (even in their own government), provide assistance or protection to the victims, or conduct any further investigation.²⁸

The vulnerability of illegal migrants often leads to the violation of their most basic human rights. Migrants who are or have been the victims of criminal exploitation in the source, transit or destination countries are even more vulnerable to further exploitation, victimization and violation of their rights. All States are under an obligation to ensure respect for and protection of the rights of illegal migrants, including victims of trafficking, which are owed to them under applicable international law.²⁹

The High Commissioner for Human Rights has noted that the fact that national anti-trafficking measures have been used in some situations to discriminate against women and other groups in a manner that amounts to a denial of their basic right to leave a country and to migrate legally.³⁰

²⁸ *Idem*, p. 41.

²⁹ See: *Informal note by the United Nations High Commissioner for Human Rights*, A/AC.254/16, p. 2.

³⁰ Informal Note by the United Nations High Commissioner for Human Rights, *Ad Hoc* Committee on the Elaboration of a Convention against Transnational Organized Crime, Fourth Session, Vienna, 28 June - 9 July 1999. (A/AC.254/16). See also Commission on Human Rights resolution 1999/40 which invites Governments to take steps to ensure for victims of trafficking the respect of all their human rights..

Immigration Policies and Procedures.

Immigration laws, policies and procedures clearly require urgent attention to ensure that the victimization of trafficked persons is not compounded by the intervention of the destination, transit or source state. The vulnerability of migrants, in particular irregular migrants, as a result of their precarious situation in society often leads to violations of their most basic human rights³¹. In many cases, it is clear that strict immigration laws and procedures relating to the deportation of illegal migrants or workers work at cross-purposes with efforts to prosecute trafficking crimes and to protect the human rights of victims. For instance,

- .. the threat of immediate deportation prevents victims from seeking help from police or other authorities;
- . victims who are arrested or otherwise escape their traffickers do not receive the assistance or protection they need and entitled to under international human rights norms. In fact, most cases are further victimized by the State.s criminal and immigration policies;
- . NGOs attempting to assist victims of trafficking are reluctant to co-operate with law enforcement; and,
- . effective law enforcement is severely undermined because victims are unwilling or unable to testify against traffickers.³².

In the case of the country of origin to which the victim is often returned, there usually is no ability to provide the victim with the necessary medical and psychological help, legal assistance or effective protection against reprisals or intimidation. For instance, it does not appear that any OSCE participating States have programs to protect trafficked persons from retribution by traffickers upon return to the country of origin. There are frequent cases of re-trafficking. of the same victim upon her return to the country of origin and not infrequent reports of the presence of collusion between immigration officials and organized criminal elements to take advantage of returning victims. There are also many situations where the deportation of the trafficked person as illegal immigrants has serious and long-lasting implications for the trafficked persons (e.g., victims may be prosecuted for leaving the country illegally, using false documents or engaging in prostitution, and they may be fined, jailed or charged for the costs of her repatriation, etc.).

³¹

Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children . s Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27), p. 5.

³² *Trafficking in Human Beings: Implications for the OSCE*, 1999, p. 42.

Law enforcement agencies have often argued that it is very difficult for them to prosecute trafficking offences under the current system in their countries. It is very difficult to convict a trafficker if the key witness has already been deported.

Law Enforcement

The *Model Strategies* urge Member States to ensure that the applicable provisions of the laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts of violence against women are recognized and responded to accordingly by the criminal justice system. {article 8(a)}, to develop investigative techniques that do not degrade women subjected to violence and minimize intrusion. {article 8(b)}, to ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim and others related through family, socially or otherwise and that these procedures also prevent further acts of violence. {article 8(c)}, and to empower the police to respond promptly to incidents of violence against women. (article 8(d)).

According to the recent report on OSCE countries and trafficking in human beings, it would seem that even when reasonably good laws exist, trafficking in human beings remains a relatively low law enforcement priority in most destination countries.³³ Among the main law enforcement problems noted in the report are the following:

- . trafficking in human beings tends to be seen as a far less serious problem than trafficking in drugs or firearms;
- . few law enforcement agencies seem to fully recognize the brutality of the crime or address the involvement of organized criminal groups;
- . unspoken biases, confusion and disbelief over the issue contribute to a lack of determination to combat the phenomenon;
- . trafficking is often characterized as nothing more than foreign prostitution, or black-market labour rather than a form of slavery;
- . the consent of the trafficked person is presumed;
- . the problem is dismissed as an abuse by private individuals for which States have no responsibility;
- . the laws that are enforced are far more likely to be enforced against the trafficked persons than the perpetrator of the trafficking crimes.³⁴

Corruption

³³ *Trafficking in Human Beings: Implications for the OSCE*, 1999, p. 40.

³⁴ *Ibidem*.

It is generally assumed that organized crime in general, and trafficking in women and children in particular, cannot occur on the scale that it currently does without the collusion of corrupt officials. Specific measures to combat corruption are therefore required.

Sentencing and Corrections

The *Model Strategies* include quite a number of measures relating to sentencing and corrections. Among them, Member States are urged: .to review, evaluate and revise sentencing policies and procedures in order to ensure that they meet the goals of: (i) holding the offenders accountable for their acts related to violence against women; (ii) stopping violent behaviour; (iii) taking into account the impact on victims and their family members of sentences imposed on perpetrators who are members of their families; (iv) promoting sanctions that are comparable to those for other violent crimes. {article 9(a)}. Member States are also urged .to ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason. {article 9(e)}; and, .to protect the safety of victims and witnesses before, during and after criminal proceedings. {article 9(h)}.

Many victims of trafficking in human beings are detained by the receiving state, either for violation of immigration laws, for prostitution or even as recalcitrant witnesses. The irregular or illegal migrants who are detained by the receiving State have a recognized right under international law to be treated with humanity and dignity, both before and after the determination of the lawfulness of their detention.³⁵

The recent resolution of the Commission on Human Rights concerning the traffic in Women and Girls calls upon Governments to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody.³⁶

Victim Support and Assistance

The *Model Strategies* contain a number of recommended measures to assist victims, from the provision of information on rights and remedies, to encouragement and assistance in lodging formal complaints, or improving access to prompt and fair redress (e.g. restitution or compensations from the offender or the state). These strategies, as currently formulated, however, do not take into account some of the special difficulties that must be faced by victims of transnational organized crime, and in particular victims of trafficking.

³⁵ Informal Note by the United Nations High Commissioner for Human Rights, *Ad Hoc* Committee on the Elaboration of a Convention against Transnational Organized Crime, Fourth Session, Vienna, 28 June .9 July 1999. (A/AC.254/16).

³⁶ *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40

The Beijing Platform for Action advocated the allocation of resources by Governments of countries of origin, transit and destination, regional and international organizations .to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking, including through job training, legal assistance and confidential health care, and take measures to cooperate with non governmental organizations to provide for the social, medical and psychological care of the victims of trafficking. {action no. 130 (d)}.

Victims of trafficking offences are all too often treated as offenders. The recent report of the Working Group on Contemporary Forms of Slavery on its twenty-fourth session, recommended that States enact or revise national policies, laws and strategies and other administrative measures in order to ensure that victims of sex trafficking and other practices of sexual exploitation are not the subject of criminal proceedings or other legal or administrative sanctions.³⁷

Victims who are arrested do not receive the assistance they need even though they are entitled to be treated in accordance with international human rights norms. Their almost automatic deportation as illegal migrants also compounds the problem. Many victims are deported without having even been identified as such. A few countries have specific legislation permitting a temporary stay for victims of trafficking. These provisions are meant to allow the victim of a trafficking crime to temporary reside and receive assistance while she is cooperating with law enforcement. A few countries (e.g. Belgium, Italy, and the Netherlands) have institutionalized policies for assisting victims of trafficking offences and offer a temporary stay of deportation while the victim decides whether to participate as a witness in criminal proceedings. Not surprisingly, these countries report significant increases in witness testimony and successful prosecution of traffickers. The High Commissioner for Human Rights has expressed the view that, at a very minimum, the identification of an individual as a trafficked person should be sufficient to ensure that immediate expulsion that goes against the will of the victim does not occur and that protection and assistance be offered.³⁸

Whereas the laws of many countries now recognize the rights of crime victims to redress or compensation, it would appear that that right is effectively denied in most cases to victims of trafficking. In the few countries where material assistance is offered to victims, that assistance is terminated as soon as they are returned to their original country.

The current prevailing situation of forced deportation and repatriation of victims of trafficking is intolerable. It represents an unacceptable safety risk for the victims. This is why the High Commissioner for Human Rights has expressed the view that .safe and, as far

³⁷ *Contemporary Forms of Slavery*. Report of the Working Group on Contemporary Forms of Slavery on its twenty-fourth session, Part II. Traffic in Persons and Exploitation of the Prostitution of Others, pp. 13-34. E/CN.4/Sub.2/1999/17.

³⁸ *Idem*.

as possible, voluntary return must be at the core of any credible protection strategy for trafficked persons..³⁹

The recent resolution of the Commission on Human Rights concerning Traffic in Women and Girls calls upon concerned Governments to allocate resources to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking, including through job training, legal assistance and health care and by taking measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care to victims..⁴⁰

Health and Social Services

The *Model Strategies* contain a number of recommended measures to ensure that member states in cooperation with non-governmental organizations, community organizations and others provide and maintain a number of essential services to assist victims and potential victims. The victims of trafficking, however, may be in need of special forms of assistance which may not be readily available and may not even be covered under the services generally offered to victims of crime.

Training

The *Model Strategies* recognize the importance of providing adequate gender-sensitivity, human rights, cross-cultural training to police criminal justice officials, practitioners and professionals involved in the criminal justice system in order to ensure that they understand the unacceptability of violence against women under all of its forms, its impact and consequences. They encourage the development of enforceable standards of practice and behaviour for practitioners involved in criminal justice system, which promote justice and equality under the law and promote an adequate response to the issue of violence against women {article 12}.

The 1999 resolution of the Commission on Human Rights concerning the Traffic in Women and Girls invited Governments, with the support of the United Nations, to formulate manuals for the training of personnel who receive and/or hold in temporary custody victims of gender-based violence, including trafficking, taking into account current research and data on traumatic stress and gender-sensitive counseling techniques, with a view to sensitizing them to the special needs of the victims..⁴¹

³⁹ *Ibidem.*

⁴⁰ *Traffic in Women and Girls.* Commission on Human Rights resolution 1999/40

⁴¹ *Traffic in Women and Girls.* Commission on Human Rights resolution 1999/40

Research and Evaluation

The *Model Strategies* contain a number of measures relating to research and evaluation. Among them, one finds proposed surveys on the nature and extent of violence against women, and the proposed gathering of information on a gender-disaggregated basis for analysis and use, together with existing data, in needs assessment, decision-making and policy making in the field of crime prevention and criminal justice, in particular concerning the different forms of violence against women, its causes and consequences; the extent to which economic deprivation and exploitation are linked to violence against women. {article 13).

There are obviously several other specific areas of research and evaluation not mentioned in the *Model Strategies* which are of particular significance to the process of developing effective policies and measures to combat transnational organized criminal victimization of women. In particular there is a need for a global approach to collecting systematic data collection and comprehensive studies, including on the *modus operandi* of trafficking syndicates.⁴² The Centre for International Crime Prevention and the United Nations Interregional Crime and Justice Research Institute have prepared a Global Programme against Trafficking in Human Beings, in order to enable the international community to better respond to the problem. The Global Programme will involve assessing regional and interregional trends, taking stock of promising practices worldwide, carrying out demonstration projects in selected countries or regions and evaluating the projects based on standardized criteria.⁴³

Crime Prevention Measures

Article 14 of the *Model Strategies* contains a list of general crime prevention measures which should be considered and implemented by Member States and various non-governmental actors. Many of these measure focus on the provision of information to potential victims and measures to promote general awareness of the issue of discrimination and violence against women and their impact on society.

Specific measures are certainly also required to raise public awareness of the seriousness of the impact of certain forms of organized transnational crime, in particular trafficking in women and children, on the lives of women and their families. Specific measures are also required in source countries to inform potential victims of trafficking of the risk they face. In many source countries, young women and children still believe that there is a high demand for local girls to work abroad and are unaware of the suspect nature of advertised

⁴² *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40.

⁴³ See: E/CN.15/1999/CRP.2.

jobs or of other deceitful tactics. The Working Group on Contemporary Forms of Slavery recently urged States to initiate community-based prevention programmes, especially in high-risk areas, to educate people on the tactics of recruiters and traffickers and on the risks of sexual exploitation.⁴⁴

According to the recent review of the situation in OSCE countries, it would appear that state-sponsored programmes are virtually non-existent in most countries of origin, and public awareness about trafficking remains very low. Few states have been able or willing to devote resources for that purpose. Education officials have apparently also been slow to incorporate any trafficking awareness programmes into school curricula. There exist some examples of successful programs, but much greater efforts are needed.⁴⁵ The recent resolution of the Commission on Human Rights concerning the Traffic in Women and Girls specifically encourages Governments, in cooperation with non-governmental organizations, to undertake campaigns aimed at clarifying opportunities, limitations and rights in the event of migration so as to enable women to make informed decisions and to prevent them from becoming victims of trafficking.⁴⁶

Furthermore, it should be noted, as it was by the High Commissioner for Human Rights, that some forms of actions aimed at preventing trafficking may have very detrimental effects on the victims of the crime. Responsible crime prevention strategies must be such that they do not have discriminatory effects or infringe upon the right of an individual to leave her country or legally migrate to another.⁴⁷

Finally, the growing role played by the internet in facilitating the trafficking of human beings cannot be denied. Specific prevention measures are required to encourage service providers to adopt or strengthen self-regulatory measures to promote the responsible use of the internet with a view to assisting in the elimination of trafficking in women and girls.⁴⁸

International Cooperation

The Beijing Platform for Action advocated stepped up cooperation and concerted action by

⁴⁴ *Contemporary Forms of Slavery*. Report of the Working Group on Contemporary Forms of Slavery on its twenty-fourth session, Part II. Traffic in Persons and Exploitation of the Prostitution of Others, pp. 13-34. E/CN.4/Sub.2/1999/17.

⁴⁵ *Trafficking in Human Beings: Implication for the OSCE*. 1999, p. 48.

⁴⁶ *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40

⁴⁷ Informal Note by the United Nations High Commissioner for Human Rights, *Ad Hoc* Committee on the Elaboration of a Convention against Transnational Organized Crime, Fourth Session, Vienna, 28 June - 9 July 1999. (A/AC.254/16).

⁴⁸ *Traffic in Women and Girls*. Commission on Human Rights resolution 1999/40.

all relevant law enforcement authorities and institutions with a view to dismantling national, regional and international networks in trafficking. {action no. 130 (c)}. It also urged countries to ratify and enforce existing international conventions on trafficking in persons and slavery {action no. 130(a)}.

Article 16 of the *Model Strategies* are urging Member States to cooperate and collaborate at the regional and international levels with relevant entities to prevent violence against women and to promote measures to effectively bring perpetrators to justice, through mechanisms of international cooperation and assistance in accordance with national law. The importance of fully implementing and achieving universal ratification of the *Convention on the Elimination of All forms of Discrimination against Women* was also emphasized.

Some relevant regional instruments and initiatives can also play an important role in promoting international cooperation to eliminate violence against women and combating trafficking in particular. This is obviously the case, for instance, of the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (Convention of *Belém do Pará*). However, the latter may also be in need of a careful reexamination to ensure that it addresses the growing amount of violence against women resulting from specific forms of transnational organized crime.

The Council of Europe formulated a *Plan of Action for Combating Violence Against Women*⁴⁹ as well as a *Plan of Action against Traffic in Women and Forced Prostitution*⁵⁰. The Ministerial Conference of the European Union to prepare the European Code to Prevent and Combat Trafficking in Women adopted *The Hague Ministerial Declaration on European Guidelines to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*.

Furthermore, since the adoption of the *Model Strategies*, considerable progress has been achieved in developing a draft protocol to prevent, suppress and punish trafficking in women and children, supplementary to the proposed United Nations Convention Against Transnational Organized Crime⁵¹.

The significance of the proposed new protocol⁵² stems in part from the fact that there does

⁴⁹ Final Report of Activities of the EG-S-VI, including a Plan of Action for Combating Violence Against Women, Group of Specialists for Combating Violence Against Women, Strasbourg, 1997 (EG-S-VI (97) 1).

⁵⁰ See Council of Europe, Plan of Action against Traffic in Women and Forced Prostitution, Michèle Hirsch, Strasbourg, 1996 (EG (96)2).

⁵¹ For details concerning the deliberations and progress made with regard to the elaboration of the convention and a legally binding instrument against trafficking in women and children, see the report of the Secretary-General on the subject (E/CN.15/1999/5).

⁵² *Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Seventh Session, Vienna,

not exist as yet a universal instrument that addresses all aspects of trafficking in persons. In fact, as the High Commissioner for Human Rights observed in an informal note, .trafficking. has never been precisely defined in international law and the most recent international instrument dealing with trafficking and related issues is now more than a half a century old.⁵³ A final definition of trafficking has yet to emerge from the current process. It will be important to arrive at a broad and comprehensive definition of the crime, to include not only trafficking for the purpose of sexual exploitation and forced prostitution, but also all forms of servitude generally included under the concept of .contemporary forms of slavery..⁵⁴

Many countries, particularly source countries, do not currently have a legal framework for cooperation between law enforcement and justice officials in other countries. Many of them without extradition agreements are effectively powerless to prosecute all the perpetrators of trafficking in the criminal network.

17-28 January 2000 (A/AC.254/4/Add.3/Rev.5).

⁵³Informal Note by the United Nations High Commissioner for Human Rights, *Ad Hoc* Committee on the Elaboration of a Convention against Transnational Organized Crime, Fourth Session, Vienna, 28 June -9 July 1999. (A/AC.254/16).

⁵⁴ *Ibidem*.