

refugee women's resource project
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Safe for whom?

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

asylumaid, june 2004





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June 2004

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Section one introduction

1. context: the restrictions on rights to appeal for asylum cases

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

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

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

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

¹ The list was announced on 7 October 2002 and included 10 countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

² Home Office, '*Safe country list expanded to cut asylum abuse*', 17 June 2003 at www.ind.homeoffice.gov.uk/news.asp?NewsId=283.

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

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

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

³ See *'Asylum Aid's response to the Government's extension of the Asylum 'safe list' countries'*, June 2003 available online in section Press Statements and Policy Work at www.asylumaid.org.uk/Press%20statements/white_list_June_03.htm.

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

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

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

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

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

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

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

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

⁷ Joint Committee on Human Rights, *Nationality, Immigration and Asylum Bill*, Seventeenth Report of Session 2001-2002, HL 132 HC 961, par.98.

⁸ House of Commons Constitutional Affairs Committee, *Asylum and Immigration Appeals. Second Report of Session 2003-4*, Volume 1, para 72, p.25. House of Commons, HC 211-11 26, February 2002.

qualify for refugee status could lose their appeal under the new system.⁹

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

As the minister's comments on the use of a '*safe country list*' clearly indicate¹¹ these measures were introduced as part of a continuing drive by the Government to cut what it considered to be abuses of the asylum system (as also suggested by the title of its press release on the extension of the '*safe country list*'¹²) at a time when asylum application had reached a peak.¹³

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

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

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

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

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

¹³ 84,130 asylum applications were made in 2002 excluding dependants, an increase of 18% from the previous year. See Home Office Asylum Statistics, United Kingdom 2002, www.homeoffice.gov.uk/rds/pdfs2/hosb803.pdf.

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

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2. women asylum seekers subject to the NSA procedures

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

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

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

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

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

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

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

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

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

3. report's aim

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

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

4. research objectives

1. To provide detailed information which can be used to assess the quality of information currently relied on by the Home Office in its decision-making on gender-related asylum claims from women from countries included in the '*safe country list*'.
2. To provide a detailed source of reference for practitioners representing female clients from countries included in the '*safe country list*' on the key

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

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

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

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

5. research methodology

1. selection of countries

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

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

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

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

2. sources of information

The report is based on secondary sources and draws on the most up to date sources available on the internet during the research period (December 2003 – April 2004¹⁸). A wide range of authoritative sources was consulted, including research by governmental, non-governmental and international organisations, local NGO web sites and recognised local media. Domestic legislation was directly cited wherever possible.

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

¹⁸ with the exception of a press release from Amnesty International dated 1st June 2004.

6. report's structure

The report is divided in six sections:

Section two includes conclusion and recommendations.

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

Section six includes a list of references and an appendix.

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Section two conclusion and recommendations

1. conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

www.ind.homeoffice.gov.uk/default.asp?pageid=4470.

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

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

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

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

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

'safe list country' unworkable and random

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

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

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

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

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

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

inconsistency in refusal letters re: claimants from 'safe' countries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. recommendations

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

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

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'Gender-specific harm is not different from other forms of ill treatment and violence that are commonly held to amount to persecution. (...) Each case should be considered on its own merits against country information (...).'¹⁴

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

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

'Recommendation 1

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

Recommendation 6

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

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

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

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

¹⁷ For all subsequent recommendations, see Baldaccini, A., op. cit., pp. 6 – 49.

Recommendation 7

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

Recommendation 10

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

Recommendation 12

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

Recommendation 16

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

Recommendation 17

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

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

Recommendation 21

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

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Section three

women's rights abuses and protection in Albania

1. introduction

This report provides information on women's human rights in Albania, focusing in detail on two specific gender-related human rights abuses: domestic violence and trafficking in women for the purposes of sexual exploitation. It extends and updates the 2001 report of the Refugee Women's Resource Project, *Refugee Women and Domestic Violence, Country Studies: Albania*.¹ Current research is quoted wherever possible. On issues where no recent information is available, or where the situation is unchanged, information from the 2001 report may be repeated or summarised.

Some references are made in the report to information provided on domestic violence and trafficking by the Albania *Country Report* produced by the Home Office Asylum and Appeals Policy Directorate's Country Information & Policy Unit (CIPU) in April 2004.²

The Home Office CIPU also produces Operational Guidance Notes (OGN) for use by its caseworkers. The current OGN for Albania is dated May 2003 and draws on the Country Assessment of April 2003.³

The Home Office CIPU *Country Report* includes some information on domestic violence and trafficking in women for the purposes of sexual exploitation. The Albanian OGN also gives specific guidance on whether

¹ Palmer, C. & Smith, H., (2001), *Refugee Women and Domestic Violence: Country Studies*, RWRP, Asylum Aid, available at www.asylumaid.org.uk.

² *Country Reports* on the 35 countries producing the most asylum applicants to the UK are produced by the Home Office CIPU in April and October of each year. Home Office Country Information and Policy Unit (CIPU) (2004), *Albania Country Report: April 2004*, available at www.ind.homeoffice.gov.uk/default.asp?pageid=88.

³ Home Office Asylum and Appeals Policy Directorate, 'Operational Guidance Note: Albania', (May 2003), available at www.ind.homeoffice.gov.uk/default.asp?PageId=3817.

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there can be considered to be sufficiency of protection in Albania for women who have been trafficked into prostitution. The issue of domestic violence is not addressed by the OGN.

2. Political and social background

Albania is a multi-party parliamentary republic. The president is head of state and is elected by a unicameral Parliament, known as the 'People's Assembly'. The prime minister heads the government; the presidency is a largely ceremonial position with limited executive power.⁴ Since its transition to democracy began in the early 1990s, the country has experienced considerable political turbulence. In August 2002, former Communist party leader Fatos Nano became prime minister of the ruling Socialist Party, his fourth premiership since 1991.⁵

A new Constitution was adopted on 22nd November 1998. Although it provides for an independent judiciary, according to the US State Department, political pressure, intimidation, endemic corruption, bribery, and limited resources limit its independence and efficiency.⁶

A significant international presence exists in the country. In 1997, economic crisis, anti-government protests and a general breakdown in law and order prompted the Member States of the Organisation for Security and Cooperation in Europe (OSCE) to establish a permanent '[p]resence' in the country with a [mandate](#) 'to give advice and assistance to the Albanian authorities on democratization issues, development of free media, promotion of respect for human rights and preparation of elections'.⁷ In December 2003, a new mandate was approved, including anti-trafficking and anti-corruption projects and legislative and judicial reform.⁸

According to a 2002 assessment of Albania by the International Crisis Group:

⁴ Legislationline, *Albania*, at www.legislationline.org/index.php?country=1&org=0&eu=0.

⁵ BBC, *Country Profile: Albania* (last updated 30 September 2003), available at http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1004234.stm.

⁶ US Department of State (2004), *Country Report on Human Rights Practices: 2003: Albania* (Bureau of Democracy, Human Rights, and Labor, February 25 2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27820.htm>.

⁷ See www.osce.org/albania/mandate.

⁸ OSCE Online, 'OSCE approves new mandate for Presence in Albania', 18 December 2003, available at www.osce.org/news/show_news.php?id=3791.

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*'The key social issues are the growth of organised crime and corruption and poverty, particularly in rural areas. Organised crime has grown steadily more sophisticated as it consolidates links between closely-knit Albanian diaspora clans and the wider criminal world. The EU has warned that the country must do more to fight organised crime, corruption and trafficking to remain on track for eventual membership. [...] Corruption remains endemic, costing business around 8 per cent of turnover. The anti-corruption initiatives launched since 1999 have proved ineffective; the leading international group campaigning on this issue, Transparency International, has no chapter in Albania because it has been unable to identify a sufficiently broad-based, impartial network.'*⁹

Albania has a population of 3.3 million, 58% of whom live in rural areas and 42% in urban areas. In 1979 these percentages were 66.5% and 38.5% respectively.¹⁰

3. Human rights in Albania: an overview

3.1 Applicable human rights law

3.1.1 International obligations

Albania has ratified six of the UN's core human rights treaties, including, in 1994, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹¹ In 2003, the government also ratified the Convention's Optional Protocol (1999), thereby accepting the

⁹ International Crisis Group (2003), *Albania: State of the Nation (2003)*, Balkan Report No. 140, (11 March 2003), p.7, at www.crisisweb.org/home/index.cfm?id=1472&l=1.

¹⁰ Limanowska, B., (2003) *Trafficking In Human Beings In South-Eastern Europe: 2003 Update on Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Serbia and Montenegro including the UN Administered Province of Kosovo, the former Yugoslav Republic of Macedonia, Moldova and Romania*, p. 33, United Nations Children's Fund (UNICEF), Office of the UN High Commissioner for Human Rights (UNHCHR) & OSCE Office for Democratic Institutions and Human Rights (ODIHR), November 2003). This study updates a June 2002 publication by the same author referred to below. Available at www.osce.org/odihr/documents/trafficking/trafficking-see_2003update.pdf.

¹¹ These are the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Available on UNHCR's website at <http://193.194.138.190/tbs/doc.nsf/Statusfrset?OpenFrameSet>.

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competence of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) to receive complaints on violations of Convention rights.¹²

After many years of delay, Albania submitted its first periodic reports to the CEDAW monitoring Committee and the Committee on the Elimination of Racial Discrimination in 2002. However, at the time of writing all its other periodic reports were outstanding.

In August 2002, the Albanian government ratified the 2000 *UN Convention Against Transnational Organised Crime* as well as the supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol)* and the *Protocol against the Smuggling of Migrants by Land Sea and Air*.¹³

Several key human rights instruments have still not been signed and ratified, including the 2003 *Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families*. The Albanian government is not a signatory to either of the Optional Protocols to the International Covenant on Civil and Political Rights, nor is it a signatory to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

3.1.2 Regional obligations

In addition to its international obligations, Albania is a party to the key regional human rights instruments in Europe. It is a member of the Council of Europe, and has ratified both the [European Convention on the Protection of Human Rights and Fundamental Freedoms](#) and, more recently, the revised *European Social Charter*.¹⁴ Additional human rights commitments are the [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (ratified 2 October

¹² The CEDAW Optional Protocol entered into force on 23 September 2003.

¹³ *UN Convention against Transnational Organised Crime* was adopted on 15 November 2000 and entered into force on 29 September 2003, the *Palermo Trafficking Protocol* was adopted on 15 November 2000 and entered into force on 25 December 2003, and the *Protocol against Smuggling of Migrants* was adopted on 15 November 2000 and entered into force in 28 January 2004. More information available at www.unodc.org/unodc/en/crime_cicp_signatures.html.

¹⁴ The ECHR and [Protocols 1-5, 7, 8 and 11](#) were ratified and entered into force on 2 October 1996. [Protocol 6](#) was ratified on 21 September 2000. (*Revised*) [European Social Charter](#) ratified 14 November 2002.

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1996, entered into force 1 February 1997)¹⁵ and the [European Framework Convention for the Protection of National Minorities](#).¹⁶

In May 2003 Albania signed Protocol No. 13 to the European Convention on Human Rights, committing itself to the complete abolition of the death penalty. In practice however, the death penalty has not been used since 1992.

3.2 Human rights protection in practice

According to leading governmental and non-governmental human rights sources, the Albanian government generally fails to comply with international human rights standards. The 2004 US Department of State *Country Report on Human Rights Practices in Albania* expresses general concern about human rights violations throughout 2003, reporting that:

*'The Government's human rights record remained poor in some areas; although there were some improvements, serious problems remained. Police beat and otherwise abused suspects, detainees, and prisoners. Prison conditions remained poor. The police occasionally arbitrarily arrested and detained persons, and prolonged pretrial detention was a problem. The Government occasionally infringed on citizens' privacy rights. Political interference in the media remained a problem. Police reportedly used excessive force against protestors. Individual vigilante action, mostly related to traditional blood feuds, resulted in some killings and an atmosphere of fear. Societal violence and discrimination against women and children were serious problems. Societal discrimination against religious and ethnic minorities, particularly against Roma and the Egyptian community, persisted. Child labor was a problem. Trafficking in persons remained a problem, which the Government took steps to address.'*¹⁷

Commenting on events during the first half of 2003, the international human rights group Amnesty International drew specific attention to the government's continued failure to hold members of the Albanian police accountable for their human rights abuses:

'In April [2003] the Albanian People's Advocate (Ombudsperson) reported that in 2002 his Office had received more complaints against police officers than in the previous year and that 70 of these

¹⁵ [Protocol No.1](#) and [Protocol No.2](#) both ratified 2 October 1996 and entered into force 1 March 2002.

¹⁶ Ratified 28 September 1999 and entered into force 1 January 2000.

¹⁷ US Department of State (2004), *Country Report*, op. cit.

were complaints about police ill-treatment; following investigation the Office found that 15 of these were justified, 20 remained to be investigated, and the others were either invalid or did not fall within the Office's remit. On the basis of the Ombudsperson's recommendations, disciplinary measures were taken against 12 police officers and prosecutors opened investigations against 24 police officers. The People's Advocate commented, however, that investigations were sometimes delayed or perfunctory, or were terminated for reasons that did not accord with Albanian law. The report concluded: "There is a lack of will and there are delays by the Prosecution in carrying out swift and objective investigations when the accused are police officers".¹⁸

4. Women's human rights in Albania: context

4.1 Customary laws

In the north-eastern region of Albania, respect for customary laws known collectively as the 'Kanun of Lek Dukagjini' leads to widespread discrimination and abuses of women's rights. This traditional code subordinates women to men in all areas of life. The following extract from the Kanun is provided by Minnesota Advocates for Human Rights in their 1996 report on Domestic Violence in Albania:

'The Kanun provides that men have the right to beat and publicly humiliate their wives if their wives disobey them. If the wife does not "conduct herself properly toward her husband," the man may "cut a ribbon from her belt or a lock of her hair" and leave her. The man is directed to cut his wife's hair, strip her nude, expel her from the house in the presence of relatives and then drive her with a whip through the entire village. The Kanun further provides:

If a husband beats his wife, he incurs no guilt . . . and her parents may not make any claims on him because of the beating. If a man beats his wife bloody, and she complains to her parents, the man must give an explanation.

The Kanun also provides that, under certain conditions, a man may kill his wife with impunity:

For two acts, a woman may be shot in the back . . . and she may be left:

a) for adultery; and b) for betrayal of hospitality.

¹⁸ Amnesty International (2003), *Amnesty International Report 2003: Albania* (October 2003). Covering events January-December 2002, available at <http://web.amnesty.org/report2003/Alb-summary-eng>.

For these two acts of infidelity, the husband kills his wife, without requiring protection or a truce and without incurring a blood feud, since the parents of his killed wife received the price of her blood, gave him a cartridge and guaranteed her conduct.

The MAHR report goes on to observe that:

*'Thirty years of communist rule did not completely eradicate the patriarchal attitude attendant to the Kanun. Many women still view the Kanun as a graphic illustration of the underlying social attitudes towards women's rights that influence Albania today.'*¹⁹

Although the Kanun does not have the force of law, the US Agency for International Development reported in 2003, when discussing problems in the judiciary, that:

*'In addition, judges in remote areas do not always apply national law. A judge in northern Albania recently decided a case involving a woman based on the Kanuni in Leke Dukagjinit, a customary legal code that severely limits the rights of women; the decision was reversed on appeal.'*²⁰

The CEDAW Committee in its 2003 *Concluding Observations* on Albania highlights continued respect for the Kanun in the northeast of the country as an area of concern. It urges Albania to *'implement measures to eliminate the practice of customary law and traditional codes of conduct discriminating against women.'*²¹

4.2 Discrimination against women

The principle of non-discrimination is guaranteed under article 18 of Albania's 1998 Constitution, which provides that *'all are equal before the law'* and that *'no one may be unjustly discriminated against for reasons*

¹⁹ Minnesota Advocates for Human Rights (1996), *Domestic Violence in Albania*, p.11, available at www.mnadvocates.org/Eastern_Europe.html.

²⁰ US Agency for International Development (USAID), Office of Women in Development (2003), *Albania Assessment and Analysis Report, June 29-July 11, 2003*, p. 15, at www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/wlr_albania_assessment_analysis.pdf.

²¹ CEDAW, *Concluding Observations: Albania*, paras. 68-69, UN Doc. A/58/38 part I (2003). Available at UN CEDAW website at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/468/20/PDF/N0346820.pdf?OpenElement>.

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such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.²²

By 2000, in accordance with constitutional provisions on gender equality, various legal reforms had been implemented, including changes to the Civil Code and Procedure, the Penal Code and Procedure, the Labour Code and the Family Code.²³ The CEDAW Committee commented in 2003 however that:

*'women have seldom used existing laws to challenge acts of discrimination and ... there is no record of court decisions in which women have obtained redress for such acts.'*²⁴

In general, women continue to exercise little influence in political decision-making. The US Department of State reports that in 2003:

*'There were 9 women in the 140-seat Parliament, including several government Ministers. [...] The major political parties had women's organizations, and women served on their central committees; however, overall women were very poorly represented in the central and local governments, and few were elected to public office at any level. During the year's local elections, less than 3 percent of all candidates were women.'*²⁵

Furthermore, Albania's State Committee on Equal Opportunity (formerly known as the State Committee for Women and Family), the main government body responsible for addressing women's low status, is under-funded and lacks political influence.²⁶

²² *Constitution of Albania*, Article 18(1) & (2), approved by the Albania Parliament on October 21 1998. Available at

www.coe.int/T/F/Affaires_juridiques/Coop%E9ration_juridique/Combattre_la_criminalit%E9_%E9conomique/Projet_LARA/Natleg_Alb.asp#TopOfPage.

²³ International Helsinki Federation for Human Rights (IHF), (2000), *Women 2000 - An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States: Albania*, p. 22, available at www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2050.

²⁴ CEDAW, *Concluding Observations*, op. cit., par. 62.

²⁵ US Department of State (2004), *Country Report, Albania 2004*, op. cit. Section 3

²⁶ *Ibid.* Section 5.

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4.3 Marriage and divorce

Marriage, divorce and related matters are governed by the *Family Code*, a revised version of which came into force on 20 December 2003.²⁷ As yet no reports have been found on its impact on women's rights.

Save the Children highlights the importance of marriage for women and the tradition of early marriages in rural areas:

*'In rural areas, the tradition of very young marriages, often below the legal age of 16, is still widely practised. [...] Furthermore, in the north especially, an unmarried woman in the house is a potential source of shame and embarrassment lest she loses her virginity outside marriage and dishonours the family name. In these communities an unmarried girl over the age of 20 may already be the victim of malicious gossip. [...] The idea that family members under 18-years old are children who have rights does not hold in rural areas; it is normal for children (especially in very poor families) to work from the age of 14.'*²⁸

Divorce rates are relatively low in Albania. A report by the South Eastern Women's Legal Initiative (SEELINE) on family law notes:

*'Divorces in Albania decreased from 9 divorces per 100 marriages in 1991 to 7.8 divorces per 100 marriages in 2000. The relatively low level of divorces is related to the fact that Albanian women, for the sake of their children and because of their low economic status, agree to stay with their husbands although they are victims of physical or psychological violence.'*²⁹

The Centre for Reproductive Rights writes:

*'Because of the patriarchal nature of the society, women who seek divorce are commonly blamed for having ruined family unity. Divorced women often find themselves without family support and, therefore, face poverty. Securing suitable and affordable housing — a problem for everyone in Albania — is exacerbated for women seeking a divorce.'*³⁰

²⁷ CIPU (2004), op. cit. Section 6.62.

²⁸ Save the Children Fund, *Child Trafficking*, op. cit., pp. 15-16. Rural women comprise 58% of Albania's total population.

²⁹ South Eastern European Women's Legal Initiative (SEELINE) (2002, updated 2003), *Family Law Report: Albania*, at www.seeline-project.net/FamilyLaw/AlbaniaFL.htm.

³⁰ Centre for Reproductive Rights (2000), *Women of the World: Laws and Policies Affecting their Reproductive Lives: East Central Europe, Albania*, pp 22-23, available at www.crlp.org/pdf/Albania.pdf.

The US Agency for International Development warned in 2003 of the possible deterioration in married women's property rights under the new code, noting that public awareness-raising and training of officials was essential:

*'The new code contains significant changes regarding the ownership of property. Under the new law, parties must decide at the time of marriage who will hold title of the property. This system could be ripe for manipulation and may result in women's rights being severely diminished. It is imperative that the public be aware of their new rights and obligations under the family code. It is also essential that judges and lawyers be properly trained in order to effectively implement the code and ensure that those rights are protected. Proper utilization of this law can lead to empowerment of women and improve their economic and social status thereby decreasing the likelihood that they might fall prey to traffickers.'*³¹

The following extract from a 2000 report by the International Helsinki Federation for Human Rights describes property rights on divorce under the previous system. As yet no studies are available demonstrating the impact of the new Family Code on these problems.

'In case of divorce, property will be shared equally - including the dwelling if acquired during the marriage. However, there are practical problems concerning real estate. According to Arjana Fullani, lawyer and Director of the Centre of Legal Assistance for Indigent Women, "The kitchen/living room is usually assigned to the wife, the bedroom to the husband and the bathroom to both. Alternatively, the right to occupy the property is given to one of the divorcees together with the obligation to liquidate 50% of the real estate value in favour of the evicted ex-partner. Nonetheless, since the majority of Albanians cannot afford to lose money through liquidation, divorced couples are forced to continue living together. This was also the case in the previous regime. This situation greatly increases the incidence of violence - both psychological and in many cases physical - of which women and children are the victims'.

³¹ US Agency for International Development (USAID), Office of Women in Development (2003), *Albania Assessment and Analysis Report, June 29-July 11, 2003*, p. 19, at www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/wlr_albania_assessment_analysis.pdf.

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*Because the wife traditionally moves to the house of her husband, the house often belongs exclusively to the man. [...] According to the Albanian Women's Bar Association's report, when the house belongs to the husband, the law leaves the judge free to decide whether the wife and children are entitled to occupy the premises, but often property rights prevail and mothers and children are evicted.'*³²

4.4 Social and economic rights

The female literacy rate is lower than the male in Albania, especially in the countryside. In urban areas, 94% of men aged between 15 and 24 years old are literate, compared to 92% of women, whilst in rural areas, 87% of men in the same age bracket are literate and only 76% of women.³³ Save the Children's study on child trafficking reports that prostitution and trafficking in girls and women has meant that in some rural areas as many as 90% of adolescent girls drop out of secondary school due to fears they could be kidnapped.³⁴

Women also experience higher rates of unemployment; well-educated women are often under-employed or do not work in the field of their training. The Human Development Promotion Centre describes women's employment patterns as follows:

*'At the end of 1989, Albanian women's rate of participation in the work force was one of the highest in Europe. During the last decade, however, women were among those first to lose their jobs. It has also been more difficult for women to find new jobs than for men. Occupations traditionally employing women no longer exist or jobs exist in reduced numbers. According to a recent survey 60% of employers prefer to hire men over women. [...] Women seldom occupy leading posts in either the public or private sectors. In 1997, 70% of employed women worked in agriculture on family farms, 20% worked in the public sector, and 10% in the private sector. The average salaries of women in all sectors and at all levels are only about 70% [that of men].'*³⁵

The CEDAW Committee highlights the particular difficulties faced by women living in rural areas:

³² International Helsinki Federation (2000), *Women 2000*, op. cit., p.26.

³³ Ibid. p. 25.

³⁴ Save the Children Fund, *Child Trafficking*, op. cit.

³⁵ Human Development Promotion Centre (2002), *The Albanian Response to the Millennium Development Goals*, (Tirana, May 2002), p. 26, available at www.un.org.al/?en,publications.

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*'The Committee is concerned about the situation of rural women, as the majority of the female population, who are discriminated against in practice with respect to owning and inheriting property, and who are disadvantaged by poverty, poor infrastructures, lack of credit, and limited access to education, health-care services and social insurance. Noting the decrease in the school dropout rate of girls, the Committee remains concerned about this continuing problem.'*³⁶

4.5 Rape and sexual violence

No statistics were available at the time of writing on the number of rapes reported to the police. However, the International Helsinki Federation for Human Rights reports a 1995 survey of gender-based violence carried out by the Albanian Women's NGO 'Refleksione'. This found that 1 in 5 women had experienced some type of coerced sexual relations, and that roughly 28% of women in rural areas said they had experienced sexual violence compared to 16% of women in urban areas.³⁷

Article 102 of the 1995 *Criminal Code of the Republic of Albania* criminalises rape. The law defines rape as '*unconsensual sexual intercourse with mature women*'. Although marital rape is not mentioned specifically, there is no exception in the law for acts committed by a husband against his wife.³⁸

Key provisions include:

Article 100: Intercourse with minor girls. *Intercourse with a minor girl who has not reached the age of thirteen years, or has not reached sexual maturity, is sentenced from five to fifteen years of imprisonment. When sexual intercourse was has without consent, or serious harm to the health of the victim has been caused, it is sentenced from ten to twenty years of imprisonment. When the act has resulted into death or suicide of the girl, it is sentenced to no less than twenty years of imprisonment.'*

Article 101: Intercourse with minor girls between fourteen to eighteen. *Unconsensual sexual intercourse with a minor girl between fourteen to eighteen years and who has reached sexual*

³⁶ CEDAW, *Concluding Observations*, op. cit., par. 76.

³⁷ IHF, *Women of the World*, op. cit., p. 32.

³⁸ South Eastern European Women's Legal Initiative (SEELINE) (2002, updated 2003), *Criminal Code Report: Albania*, Section 7, available at www.seeline-project.net/CCR/AlbaniaCCR.htm.

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maturity is sentenced from five to ten years of imprisonment. When serious consequences result for the minor girl's health, it is sentenced from ten to fifteen years of imprisonment. When the act lead to the death or suicide of the minor girl, it is sentenced no less than fifteen years of imprisonment.

Article 102: Unconsensual intercourse with mature women. *Unconsensual intercourse with mature women is sentenced from three to ten years of imprisonment. When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act lead to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment.*

Article 103: Intercourse with handicapped persons unable to protect themselves. *Sexual intercourse with an either physically or mentally handicapped victim who has reached the age of fourteen and is sexually mature or, when it is had when the victim has lost consciousness, is sentenced from five to ten years of imprisonment. When serious consequences are caused to the health of the victim, it is sentenced from five to fifteen years of imprisonment. When the act has lead to the death or suicide of the victim, it is sentenced from ten to twenty years of imprisonment.*

Article 104: Intercourse under threat of gunpoint. *Sexual intercourse under threat of gunpoint is sentenced from five to fifteen years of imprisonment.*

Article 105: Intercourse through abuse of office. *Sexual intercourse through abuse of office or subordinate relations is sentenced up to three years of imprisonment.*³⁹

The total number of prosecutions for rape is a small fraction of the overall number of criminal prosecutions. According to the statistics published by the UN in their 7th *Survey of Crime Trends and Operations of Criminal Justice Systems*, out of 3,581 convictions registered in 1998, only seven were for the crime of rape. In 1999, out of 3,734 convictions, five were for rape. In 2000, out of 4,090 convictions, nine were said to be for rape.⁴⁰

³⁹ *Criminal Code of the Republic of Albania*, Law No. 7895, 27 January 1995. Code available at pbosnia.kentlaw.edu/resources/legal/albania/crim_code.htm.

⁴⁰ UN Office on Drugs and Crime Centre for International Crime Prevention, *Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 1998 - 2000: Albania*, Table 10.09, available at www.unodc.org/pdf/crime/seventh_survey/7sc.pdf.

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Barriers to protection against domestic violence addressed in section 5 will also be relevant in cases of rape and sexual violence.

5. Domestic violence

5.1. Prevalence

As UNICEF points out in its 2003 survey of domestic violence in Albania, 'minimal' research has so far been carried out on this aspect of gender-based violence.⁴¹

According to UNICEF, 35% of domestic violence victims interviewed during research for its 2003 report had experienced sexual abuse from their partner in addition to other kinds of physical violence. UNICEF notes that:

*'Women's experiences with sexual violence varied along a continuum, from battering, rape and bullying to threats, verbal humiliation and non-physical forms of pressure that compelled them to engage in sex against their will.'*⁴²

UNICEF also describes economic or financial abuse amongst the women interviewed as a serious problem. 16% of women reported that their partners did not allow them to keep the money that they earned at work.⁴³

UNICEF's study also reports that domestic violence is frequently directed towards victims' children. 34% of the victims of domestic violence interviewed for the study reported that their husbands had also physically abused their children on a repeated basis.⁴⁴

The 2004 US Department of State's report on Albania reports:

'[T]he Counseling Center for Women and Girls noted that, in 2002, its Tirana hotline received 80-100 calls per month from women reporting some form of violence. A 1999 poll conducted

⁴¹ UNICEF (2003), *Domestic Violence Against Women in Albania*, p. 14, available at www.unicef.org/albania/publications/domviol-eng.pdf.

UNICEF's research was based on findings from in-depth qualitative interviews with 55 women victims of domestic violence living in Tirana, Shkodra and Berat. The interviews included a series of broad, open-ended questions about women's experiences of abuse.

⁴² UNICEF, *Domestic Violence (2003)*, op. cit., p. 34.

⁴³ Ibid., p. 38.

⁴⁴ Ibid., p. 45.

*by the NGO Advice Center for Women and Girls showed that 64 percent of women surveyed had experienced some form of physical, emotional, or sexual abuse; later statistics were not available.*⁴⁵

Drawing on this report, the Home Office CIPU report on Albania repeats the above statistics and acknowledges that '*Violence against women; specifically spousal abuse, remained a serious problem.*'⁴⁶

5.2 Roots and social characteristics

Interviews conducted in 2003 by UNICEF with Albanian women who have experienced domestic violence give some impression of what women themselves view as the causes of domestic violence. The research finds that:

*'Although informants identify multiple causes of domestic violence, women tend to explain it within a discourse that emphasizes the rapid social changes that have occurred in Albania since 1991. Men's violence towards women is represented as one of many social diseases. In this respect, the gendered nature of violence is not consistently reflected. Other frequently cited causes are alcohol abuse of the perpetrator and his jealousy. Domestic violence is also constructed as the product of the man's dysfunctional emotions, such as depression or low self-esteem. Other women see men as naturally aggressive human beings.'*⁴⁷

However, the organisation also suggests that a key contributing factor is women's subordinate status in society and the continued prevalence of gender stereotypes:⁴⁸

'Albanian society has a long history of male domination in which women are taught to obey their husbands and accept their submissive roles, a reflection of the strong patriarchal traditions of the Balkans (Gjipali & Ruci, 1994). (...) Traditional relationships have persisted in Albanian communities probably to a greater degree than in any other ethnic group in the Balkans (Lawson and Saltmarshe, 2002). The Kanun remains important and contributes significantly to the social exclusion of women. (...) Many women still view their social position under this framework of customary laws. Although their

⁴⁵ US Department of State (2004), *Country Report (2003)*, op. cit.

⁴⁶ CIPU (2004), *Country Report*, op. cit., par. 6.59.

⁴⁷ UNICEF, *Domestic Violence* (2003), op. cit. p. 8.

⁴⁸ *Ibid.*, p. 8.

*position in the family can shift according to class or age, most women expected to serve their families, bear children and preserve Albanian cultural traditions. Cultural attitudes toward male honour also serve to justify violence against women and exacerbate its consequences. A culture that teaches male mastery and domination over women encourages violence.*⁴⁹

Although Albanian women from all socio-economic backgrounds may suffer from domestic violence, UNICEF research has also found that women from certain backgrounds are more vulnerable than others. In their 2000 study of domestic violence in Albania, *Mapping Domestic Violence*, the organisation reports that:

*'Violence occurs notwithstanding religion. Women with high education tend to be better empowered and prepared to encourage communication with their spouse, and therefore are less likely to suffer from domestic violence. Women who are unemployed and living in rural areas are more likely to be physically abused. Young women aged between 20-30 years old are more likely to experience physical and sexual abuse and seek help.'*⁵⁰

Rural women also appear to be more vulnerable to domestic violence. A 1996 study carried out by Kaci showed that 46% of women living in rural areas admitted physical abuse compared to 36% of women living in the cities. 28% of interviewed women living in rural areas admitted having experienced sexual abuse in comparison with 16% women in urban areas.⁵¹

5.3 Attitudes towards domestic violence

The results of UNICEF interviews with domestic violence victims illustrate that cultural tolerance of violence in the home is widespread. The 2003 report makes clear that this type of violence has:

'generally received high levels of acceptance from both family members and non-family members. It is generally regarded as less serious than other forms of violence. [...] Violence is generally accepted and tolerated because of the lack of empathy for victims, the belief that victims can prevent their victimization by not placing themselves in dangerous situations, the belief that women deserve to

⁴⁹ Ibid., p. 13.

⁵⁰ UNICEF, *Mapping Domestic Violence (2000)*, op. cit., p. 2.

⁵¹ Ibid., p. 9. Here citing B., Kaci, *Dhuna kunder grave - Nje problem kombetar*, (Tirane 1996), p. 58.

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*be victimized because of their attitude, the concern for one's own safety if intervention occurs.*⁵²

One female interviewee from Tirana quoted in UNICEF's report recalls that:

*'Many times, I thought of leaving my husband, but the mentality prevented me from doing this. My parents, my brothers, my sisters, all my relatives said: You would publicly dishonor us. You would humiliate your family. You have to stay with him. He is your destiny. Only after a long struggle with myself I understood that I have to take my life into my own hands.'*⁵³

In 2003, the CEDAW Committee recommended that Albania implement *'awareness-raising measures through the media and public education programmes to make such violence socially and morally unacceptable.'*⁵⁴

With respect to sexual violence within marriage, the US Department of State's report observes that:

*'The concept of spousal rape (...) [is] not well established, and, consequently, such acts often were not considered crimes by authorities or the public.'*⁵⁵

Based on its interviews with domestic violence victims, UNICEF comments that women who experience forced sex in a relationship where they also suffer other types of physical abuse do not think of themselves as being raped.

*'Women are not willing to label their experiences as rape, which could be a sign that the concept of marital rape is rather absent in the Albanian culture. For these women, sex is the result of threatening behaviour on the part of the husband. In these cases, unwanted sex occurred due to fear of some negative reactions from the husband. (...) Having sex is perceived by some women as the quickest way to counteract the husband's anger and to avoid further violence. From prior experiences the women learned not to fight it and to do whatever their husbands wanted.'*⁵⁶

The report also adds that:

⁵² UNICEF, *Domestic Violence (2003)*, op. cit., pp. 58-59.

⁵³ Ibid., pp. 58-59.

⁵⁴ CEDAW, *Concluding Observations*, op. cit., par. 73.

⁵⁵ US Department of State (2004), *Country Report 2003*, op. cit., section 5.

⁵⁶ UNICEF, *Domestic Violence (2003)*, op. cit., pp. 34-5.

*'In many of these [violent] relationships, the fact that sex is unwanted is most often not known to anyone, not even to the husband; "He never asks me if I would like to make love to him or not; he just does it. This is one of his traditions: never ask the woman. Also, he never accepts to use contraceptives (...)." says Lira, 28 years old and mother of two.'*⁵⁷

5.4 Legal recourse against domestic violence

5.4.1 *Criminal Code of the Republic of Albania (1995)*

No Albanian legislation specifically addresses violence against women or domestic violence.⁵⁸ Considering Albania's initial report under the Women's Convention in 2003, the CEDAW monitoring body expresses its concern that:

*'the Albanian Penal Code does not distinguish between acts committed by a stranger and acts committed by a family member, and that no specific legislation has been enacted to combat domestic violence.'*⁵⁹

With no domestic violence legislation, cases of domestic violence are currently punished using the provisions of the 1995 *Criminal Code*, including those which criminalise 'assault', 'threat', 'torture' and 'serious intentional injury'.⁶⁰ According to the Centre for Reproductive Rights, the following provisions of the 1995 Code are most relevant:

Article 84 'Threat'

Threats of death or serious injury are deemed criminal behaviour irrespective of whether they are made by one family member to another. Article 84 provides that:

⁵⁷ Ibid.

⁵⁸ US Department of State (2004), *Country Report 2003*, op. cit., Section 5.

⁵⁹ CEDAW, *Concluding Observations*, op. cit., par. 72.

⁶⁰ *Criminal Code of the Republic of Albania*, Law No. 7895, 27 January 1995. Code available at http://pbosnia.kentlaw.edu/resources/legal/albania/crim_code.htm; see also the Centre for Reproductive Rights, *Women of the World: Laws and Policies Affecting their Reproductive Lives: Albania* (2000), p. 25, available at www.crlp.org/pdf/Albania.pdf.

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'Serious threat to cause death or grave personal harm to someone constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.'

Articles 86-90 '*Criminal Acts Intentionally Committed against Health*'

Under article 86, torture or '*any other degrading or inhuman treatment*' will result in a 5 to 10 year prison sentence. If torture seriously injures, mutilates, permanently harms or kills an individual, the sentence can be between 10 to 20 years (article 87).

Under article 88(1), '*serious intentional injury*' causing disability, mutilation or any other permanent detriment to health, or causing a miscarriage or any other harm to foetal life carries a sentence of between three and ten years of imprisonment.

Article 88(2) further provides that if the same act is committed against a group of people, or causes death, it is to be punished by 5 to 15 years of imprisonment.

'Non-serious intentional injury' that causes a temporary work disability (lasting no longer than nine days) is subject to a monetary fine or two-year prison term (article 89).

Article 90 specifically addresses assault. Article 90(1) states that: '*assault as well as any other violent act, constitutes criminal contravention and is sentenced to a fine [sic].*' Under article 90(2), an assault which leaves a victim unable to work for up to nine days will incur a fine or up to six months imprisonment.

Article 130, '*Forcing or impeding to cohabit or divorce [sic]*'

Under Article 130 of the Criminal Code, coercion to cohabit or divorce constitutes a crime and is punishable by a fine or up to three months imprisonment.

Article 106, '*Incest*'

The law provides that:

'Sexual intercourse had between parent and offspring, brother and sister, between other persons in direct gender [sic] with one another, or between persons who have either custodial or adoption

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relationship among themselves, is sentenced up to five years of imprisonment.'

5.4.2. Other government measures

The State Committee on Equal Opportunity has taken over the responsibilities of the former Committee on Women and Family. Its 2000 document, the 'Platform of Action for the Improvement of the Status of Women in Albania 1999-2000', is the only policy document specifically on gender issues that has been approved by the Government.⁶¹ The document states that:

'Government commits itself to elaborate a new modern concept of social protection of women and girls, in particular:

- To safeguard women's rights and freedoms by consistently improving legislation [...];*
- To train police forces, health care providers and the judiciary to effectively curb violence against women;*
- To promote the establishment of public institutions dealing with the rehabilitation of abused persons;*
- To support private institutions operating in this field.'*

The Platform also states that the Government will make every effort and use all possible means (in partnership with NGOs) to promote:

- '• The development (in schools and other institutions) of new relations within the Albanian family, encouraging the protection of the individuality and personality of women and girls;*
- Researches and surveys on the causes and effects of violence against women, the implementation of counselling programmes for abused women and girls (with the assistance of experts) in social, psychological and legal issues.'*⁶²

However, according to the HDPC report, the Platform for Women *'lacks action plans and the financial and human resources necessary to achieve its objectives. As a result, the activities carried out to accomplish such commitments have met with only sporadic results.'*⁶³

No reference to any government policy on domestic violence could be found in later human rights reports.

⁶¹ HDPC, *The Albanian Response*, op. cit., p. 28.

⁶² Excerpts from the Platform of Action, cited in IHF *Women 2000*, op. cit., p. 31.

⁶³ HDPC, *The Albanian Response*, op. cit., p. 28.

The 2004 CIPU report notes:

*The State Committee on Equal Opportunity, who took over the responsibilities of the State Committee on Women and Children, is responsible for children's issues; however, it was under-funded and lacked political influence.*⁶⁴

5.5 Seeking protection in practice

5.5.1 Shortcomings of existing legal protection

The lack of specific legislation to prosecute cases of domestic violence fundamentally undermines Albania's ability to prevent violence against women. As UNICEF observes in its 2000 study on domestic violence in Albania:

'Domestic violence has an institutional background (...). It is true that the individual's characteristics and social norms "fuels" violence, but these are not the only causes. Individuals or groups who exercise violence are favoured by lack of legal framework or law enforcement that will make them responsible for their behaviour.'

Albania's failure to introduce effective legislation on domestic violence amounts to a failure to implement one of its obligations under CEDAW.⁶⁵ In its *Concluding Observations*, the CEDAW treaty monitoring committee writes:

'the Committee urges the State party to place high priority on comprehensive measures to address violence against women in the family and in society, and to recognize that such violence, including domestic violence, constitutes a violation of the human rights of women under the Convention. The Committee calls upon the State party to adopt legislation on domestic violence and to ensure that violence against women is prosecuted and punished with the required seriousness and speed. Women victims of violence should

⁶⁴ CIPU (2004), op. cit., Section 6.70.

⁶⁵ Minnesota Advocates for Human Rights, *Domestic Violence in Albania*, (USA, 1996), Part IV(C) 'Albania's Obligations under International Law', see Part C, 'Albania is not in compliance with the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women', available at www.mnadvocates.org/vertical/Sites/{C83C74A5-9AEB-4448-B059-C7B9B3DFB089}/uploads/albania.PDF.

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*have immediate means of redress and protection, including protection orders and access to legal aid.*⁶⁶

Further obstacles to pursuing prosecutions under the existing criminal law are also created by the *Albanian Code of Criminal Procedure* (please see section 5.5.5 below).

Although it recognises that Albania has no domestic violence legislation and that domestic violence is not defined in Albanian law, the Home Office CIPU report does not address the limitations of using other legislation to provide legal protection to victims. On the contrary, it misleadingly states:

*'Currently, [there is] no specific law against domestic violence. There are, however, laws against violence and violent behaviour that can be used in the context of domestic violence. This means that domestic violence is prosecuted under general assault laws.'*⁶⁷

Provisional restriction orders are available which remove a perpetrator from the home whilst criminal proceedings are heard against him. However, the Home Office CIPU report acknowledges that their effectiveness is limited. This type of order is very limited as it can only be granted if an offender is being prosecuted and only lasts as long as the duration of proceedings.⁶⁸

5.5.2 The fear and stigma of reporting domestic violence

The Centre for Reproductive Rights estimates that as few as 5% of women who experience domestic violence actually decide to report this violence to the police.⁶⁹ One reason that domestic violence goes largely unreported is because it is considered a private matter and something shameful that should not be discussed.⁷⁰ In addition, women are generally encouraged by society to value their role as a wife and mother above all else, and women who do leave abusive partners can be stigmatised for having failed in their family role.⁷¹

⁶⁶ CEDAW, *Concluding Observations*, op. cit., par. 73.

⁶⁷ CIPU (2004), *Country Report*, op. cit., par. 6.63.

⁶⁸ CIPU (2004), *Country Report*, op. cit. para 6.62.

⁶⁹ Centre for Reproductive Rights, *Women of the World*, op. cit., p. 25.

⁷⁰ UNICEF (2000), *Mapping Domestic Violence*, op. cit., pp. 2, 7-9.

⁷¹ UNICEF (2003), *Domestic Violence*, op. cit., pp. 51, 58.

According to UNICEF, the interviews conducted for its 2003 research reveal that:

'Women fear that the family will not be supportive of them if they go public, that they will feel ashamed and guilty because they brought this into the open, that their husbands will retaliate, and that their children will be taken away. A 40-year-old woman worker in Shkodra, comments: "I could not talk to my parents because I was the one who wanted to get married to him. They had no idea about the terrible things I was going through. One day my parents got to know the truth, but they did not support me. They told me to accept the situation because I had three children and our living conditions did not allow any other viable solutions or choices. Fortunately for me and my children, I did not follow their advice."'⁷²

UNICEF also reports how even though women may be aware that the violence they suffer is wrong, this does not mean they are able to break out of these relationships. One interviewee states:

'Many times I did not react to my husband's insults. I tolerated him, maybe because of my son and because I wanted to protect my family from trouble. I cared too much about the impression that my family was making. I'm not saying that women are one hundred percent able to fight against violence, this would be an ideal situation, but most of them are capable of taking a stand against it. I make by myself a very good income for my family; nevertheless I accept the patriarchal mentality of my husband, which makes our relationship impossible. For women of my age, protecting the family from rumors is extremely important. So, I have tolerated my husband, I have been silent, and I have accepted violence. I'm conscious and convinced that if I reacted against it from the beginning, things would be better now.'⁷³

5.5.3 Lack of information

Even though activities by women's rights NGOs have led to a more open discussion about domestic violence, not all sections of Albanian society have been included in such discussion. UNICEF Albania comments that:

'Prevention and awareness raising campaigns have been limited to literate women living in urban areas, with very few attempts to reach out to the rural areas or to the perpetrators of violence. The

⁷² Ibid., p. 57.

⁷³ Ibid., p. 58.

*involvement of elementary and secondary school teachers in changing the mentality of the future generation has also been limited to the initiative of few individuals.'*⁷⁴

Information about domestic violence is still not available for other relevant people such as journalists, police, lawyers and health staff. In response to this, UNICEF currently offers training to these groups.⁷⁵

The US Department of State observes that local women's rights organisations which have promoted public awareness about domestic violence still have '*limited*' influence over government policy in this area.⁷⁶

5.5.4 Police inaction

The Home Office CIPU report acknowledges that a '*lax police response*' contributes to the major under-reporting of domestic violence, and that '*in practice spousal rape was not reported or prosecuted. The concepts of spousal rape and sexual harassment were not well established, and consequently, such acts often were not considered crimes by the authorities or the public.*'⁷⁷

According to UNICEF Albania, the Albanian police are one of several '*key actors*' in the country currently '*either unaware of, or not involved in, the fight against domestic violence.*'⁷⁸

The lack of understanding about appropriate responses to domestic violence amongst police is to be addressed by UNICEF's domestic violence project which in future will include a component on 'Training for Support Professionals'. The organisation states that:

*'The UNICEF domestic violence project aims to assist Albanian service providers and government officials to take the first steps toward internationally accepted policies and actions to address this complex issue.'*⁷⁹

⁷⁴ UNICEF Albania, 'Protection', accessed February 17 2004, available at www.unicef.org/albania/Children_in_albania/protection.htm.

⁷⁵ Ibid.

⁷⁶ US Department of State (2004), *Country Report 2003*, Section 5.

⁷⁷ CIPU (2004), *Country Report*, op. cit., para 6.59.

⁷⁸ UNICEF Albania, 'Children in Albania, Protection: Domestic Violence', accessed 15 March 2004, available at www.unicef.org/albania/Children_in_albania/protection.htm.

⁷⁹ UNICEF Albania, 'Domestic Violence', at www.unicef.org/albania/what_we_do/dom_violence.htm.

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The organisation explains that:

*'The project will focus on training and sensitization activities among three key groups: law enforcement officials, the legal profession, and health workers. Existing law enforcement policies will be reviewed, with particular attention to developing policy guidelines for using police powers of entry, arrest and release. Once correct policies are clearly established, activities will be devised to set up and train special units to respond to cases of domestic violence and to raise awareness of all ranks of police officers to the unique dynamics of domestic violence and to the appropriate response to be made.'*⁸⁰

No information was available at the time of writing about exactly when the UNICEF project would be implemented.

Other information available, such as the *Women 2000* report of the International Helsinki Federation, also makes it clear that Albanian police are poorly informed about how to deal with domestic violence, generally considering it a private matter in which they should not intervene.⁸¹

A UNICEF assessment of domestic violence in Albania published in 2000 concludes that 4 years after the publication of a major study of domestic violence in Albania by Minnesota Advocates which condemned the lack of training given to law enforcement officers on the *'unique and complicated issues involved in domestic assault'*, the situation remained unaltered.⁸²

If a woman does decide to report domestic violence, the police commonly try to reconcile the couple rather than pursue a criminal investigation. Police attitudes will also affect whether a woman will be referred to 'forensic hospital' to have her injuries examined (once a woman's injuries have been documented, she can bring her case to the prosecutor).⁸³ The 1996 Minnesota Advocates report continues:

'If a woman does not want to reconcile with her husband or partner, the police will send her to the forensic hospital to document her injuries. At the forensic hospital, a doctor will examine the woman and issue her a certificate describing her injuries to be used as evidence in court. The certificate also grades the severity of the injuries sustained by the woman. A woman must be referred to the

⁸⁰ UNICEF Albania, 'Domestic Violence: Training for Support Professionals', Ibid.

⁸¹ See for example, the IHF *Women 2000*, op. cit., p. 30.

⁸² UNICEF (2000), *Mapping Domestic Violence*, op. cit. p. 20.

⁸³ CRR, *Women of the World*, op. cit., p. 25.

*forensic hospital by the police. She may not decide on her own to get a certificate documenting her injuries.*⁸⁴

No information was available about the impact of police training on domestic violence provided before 2000 by the Albanian Centre for Human Rights and reported by the IHF in their *Women 2000* report.⁸⁵

At the time of writing, no statistics were available on the number of women reporting domestic violence to the police, or on the number of arrests for domestic violence-related offences.

In the light of the above evidence, the assertion in the Home Office CIPU report that *'If a woman reports the crime and the police do nothing, she can file a criminal lawsuit against the police. Moreover, she can file a request against them via the People's Advocate Office for violation of her rights'* appears overly optimistic.

This is one of many quotes in the Home Office CIPU report from the South Eastern European Women's Legal Initiative (SEELINE) Criminal Code Report, which takes the form of answers to questions on legal mechanisms regarding violence against women. The report notes legal remedies available, but does not give information on how often, if ever, they are taken up by women, stating that statistics are scarce as domestic violence is not specifically mentioned in any legislation. It does however comment that *'The status of law in relation to violence against women and especially in the area of providing financial support and services to the victim has a lot of gaps'*, but this is not quoted in the Home Office CIPU report.

5.5.5 Barriers to prosecution

A UNICEF press release recently summarised the reasons why few cases in fact lead to legal action against the perpetrators:

*'Victims of domestic violence rarely take legal action, due to fear of retribution, lack of knowledge about their rights and legal procedures, and loss of confidence in the judicial system.'*⁸⁶

⁸⁴ Ibid.

⁸⁵ IHF, *Women 2000*, op. cit., p. 26.

⁸⁶ UNICEF, Albania, Media Release, 'Judges, Attorneys To Be Trained In Domestic Violence: Women's Advocacy Centre, Magistrates' School Team Up To Help Legal Professionals Protect Victims, Hold Perpetrators Accountable' (Tirana, 12 December 2003), at www.unicef.org/albania/what_we_do/press-15.htm.

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As a result and as noted above, only an estimated 5% of domestic violence cases are reported in Albania. However, even fewer of these cases will actually come to court because of procedural obstacles created by the 1995 *Code of Criminal Procedure*.⁸⁷

Under article 284(1), prosecutions using many of the provisions that are relevant to a woman who has experienced domestic violence must be initiated by a complaint by the victim:

*'For the criminal offences provided by [inter alia] articles 85, 89 [non-serious intentional injury], 102 first paragraph [rape], 105, 106 [incest], 130 [forcing or impeding cohabitation or divorce], (...) of the Criminal Code, the prosecution may start only by indictment brought by the injured, who may withdraw the same at any stage of the proceedings.'*⁸⁸

If the victim withdraws her complaint, the case is closed.⁸⁹ Once a woman has requested that a criminal case be initiated, prosecutors and judges are still reluctant to prosecute those responsible for domestic violence. The most detailed research available on the subject is the report published by the Minnesota Advocates in 1996 which describes a situation later deemed unaltered by a more recent report by Centre of Reproductive Rights published in 2000:

*'Police, prosecutors and judges treat domestic violence as a situation for which each party bears equal responsibility. They invariably try to persuade women to pardon their abusers at each stage of the legal process. The result of this focus on persuading the victim to do nothing rather than on the aggressive prosecution of the abuser is that the vast majority of women drop charges of assault before a trial is conducted. In the five month time period for which Minnesota Advocates reviewed court records, not a single person was tried for domestic assault in the Tirana District Court. During this same time period, approximately 150 to 300 women reported to the Tirana prosecutor's office that they were assaulted by their spouses or intimate partners.'*⁹⁰

⁸⁷ CCR, *Women of the World*, op. cit., p. 24-5.

⁸⁸ *Criminal Procedural Code of the Republic of Albania*, (5 April 1995), Chapter II, 'Becoming Aware of the Criminal Offence', Article 284 'The Action', see also article 280-87, available at http://pbosnia.kentlaw.edu/resources/legal/albania/crim_pro.htm

⁸⁹ CCR, *Women of the World*, op. cit., p. 24-5.

⁹⁰ Minnesota Advocates for Human Rights, *Domestic Violence*, op. cit., 'Preface' A. 'Summary of Findings'.

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Clearer definitions and punishment for rape following the introduction of a new Penal Code in 1995 have led to an increase in prosecutions for rape. However, whilst marital rape is punishable by law, the 2004 US Department of State report notes that *'in practice, spousal rape is not reported or prosecuted'*.⁹¹

The CRR's 2000 report on Albania explains:

*'Prosecutors often attempt to reconcile the woman with her abusive husband or partner. If she still wishes to proceed with the prosecution, the prosecutor opens the court case.'*⁹²

According to the South Eastern European Women's Rights Legal Initiative (SEELINE), statistics from the Tirana District Court show that 80% of cases that come to court fail to proceed because of women withdrawing their claims.⁹³ Information on the reoccurrence of domestic violence after attempted reconciliations by police and prosecutors was unavailable at the time of writing.

Furthermore, according to the Minnesota Advocates:

*'The state generally does not assist in prosecuting crimes of domestic assault unless the woman has been killed or permanently injured.'*⁹⁴

The CRR reports the same problem, stating that:

*'[The Prosecutor's opening of the case] is the extent of the state involvement in the process. The prosecutor does not assist the woman with the preparation of her case or with the actual trial. The woman must gather all the evidence and the witnesses and present her own case in court. Only in cases involving very serious injury amounting to repeated torture or death, does domestic violence become a public matter leading to a state prosecution. Because the burden of carrying forth the legal process falls on survivors of domestic violence, virtually all cases of domestic assault are dropped before a trial on the merits can be conducted.'*⁹⁵

No statistics were available at the time of writing about the number of domestic violence cases successfully prosecuted under laws on assault,

⁹¹ US Department of State (2004), *Country Report 2003*, op. cit.

⁹² CRR, *Women of the World*, op. cit., p. 25.

⁹³ SEELINE, *Criminal Code Report*, op. cit., section E.

⁹⁴ Minnesota Advocates, *Domestic Violence*, op. cit., 'Preface' A. 'Summary of Findings'.

⁹⁵ CRR, *Women of the World*, op. cit., p. 25.

rape, torture or other relevant provisions of the Criminal Code.⁹⁶ However, SEELINE reports that in 2002, 21 cases of assault were brought to the Tirana District Court under Article 90 (assault) of the Criminal Code and that all the victims involved in these cases were women.⁹⁷

The 2000 CRR report notes that, even where successful prosecutions for domestic violence do take place, punishments remain light, stating:

*'In the rare case where there is a conviction, the courts do not fulfil their obligation to punish perpetrators of violence against women in the home. Abusers rarely serve time in prison, although imprisonment is a potential punishment under the assault statute.'*⁹⁸

Whilst a range of evidence suggests that very few domestic violence cases are reported and prosecuted the Home Office asserts, as previously noted, that *'[There are] laws against violence and violent behaviour that can be used in the context of domestic violence. This means that domestic violence is prosecuted under general assault laws.'*⁹⁹

The Home Office CIPU assessment of prosecutions for domestic violence fails to take into account the difficulties created for women under article 284(1) of the Criminal Procedural Code. The Home Office selectively refers to provisions of the Criminal Procedural Code relating to the prosecution of criminal offences which only require the victim to initiate a complaint (for example, the article 90 provision on assault). Furthermore, attempts by police and prosecutors to reconcile women with abusive partners, recorded widely in other human rights literature, are not mentioned. Thus, according to the Home Office CIPU assessment of the situation, again a quote from the SEELINE report mentioned earlier:

*'A victim, e.g. a woman victim of a crime committed by her husband, can report the commission of the crime to the prosecutor or the officer of judicial police. If a simple citizen is aware of the commission of a crime, he must report it.'*¹⁰⁰

⁹⁶ UN Office on Drugs and Crime Centre, *Seventh UN Crime Survey*, Table 10.07. According to the statistics published by the UN's in their 7th Survey of Crime Trends and Operations of Criminal Justice Systems, out of a total of 3,581 persons convicted in 1998, 193 were convicted for assault. Later figures, and figures disaggregated by gender, were not available.

⁹⁷ SEELINE, *Criminal Code Report*, op. cit., section E.

⁹⁸ CRR, *Women of the World*, op. cit., p. 25.

⁹⁹ CIPU (2004), *Country Report*, op. cit., par. 6.63.

¹⁰⁰ CIPU (2004), *Country Report*, op. cit., para 6.62.

The Home Office CIPU assessment is also silent on the number of women who drop domestic violence charges, and on the fact that various reports indicate that prosecutors only assist women with prosecutions in the most serious cases of domestic violence.

5.5.6 Other obstacles in the courts

Other general difficulties with the Albanian legal system may also affect victims of domestic violence once their cases go to court. The Home Office CIPU report acknowledges:

'According to the European Commission, the Albanian Judicial System remains weak. The infrastructure is generally poor; rulings are not always executed; magistrates, prosecutors, lawyers and administrative staff are not yet sufficiently trained. As a consequence, there is a fundamental lack of trust by the Albanian population in the delivery of justice and in the judicial institutions. Furthermore, Albania has made limited progress with regard to the judicial system. Infrastructure remains poor. Magistrates, prosecutors, lawyers and administrative staff are not yet sufficiently trained. Corruption remains widespread and affects both judges and prosecutors.'

On 12 December 2003, a UNICEF press release reported a new training initiative for 320 judges, prosecutors and attorneys across Albania. The training aims to *'enhance their skills in family and domestic violence cases, thanks to collaboration between UNICEF, the Magistrates School and the Women's Advocacy Centre'*. Arta Mandro, training director at the Magistrates School is reported as saying: *'The programme will help the participants learn from their peers how to handle domestic violence cases in a manner that promotes victim and child safety -- while holding the perpetrator accountable.'*¹⁰¹ No reports are available as to the progress of this scheme.

5.5.7 Lack of women's support networks

There is one shelter for victims of domestic violence in Albania: the agency also operates an advice hotline and provides counselling to

¹⁰¹ UNICEF Albania, 'Judges to be Trained', op. cit.

women and girls.¹⁰² As the 2003 study on domestic violence in Albania by UNICEF reports:

*'Aside from the services provided by dedicated but under-funded women's NGOs, domestic violence victims have to rely largely on their own resources. The country's only domestic abuse shelter, located in Tirana, has space for just eight women and their children.'*¹⁰³

UNICEF also makes clear that the NGO, 'Refleksione', which provides this service *'cannot meet the demand for shelter'*.¹⁰⁴ The inadequate provision of shelters for victims of domestic violence is further criticised in the CEDAW Committee's 2003 Concluding Observations on Albania's periodic report submitted under article 18 of the Convention.¹⁰⁵

Increasingly other support services, such as counselling and legal advice, are provided by a small number of non-governmental Albanian women's organisations, with the majority situated in the biggest Albanian cities.¹⁰⁶

The 'Network against Gender Violence and Trafficking' offers direct services to abused women and girls. UNICEF describes this network as being comprised of 4 NGOs offering counselling, a shelter (referred to above), legal advice, and employment advice and referrals.¹⁰⁷

However, interviews carried out with other professionals working in the area make clear that these NGOs' actions remain insufficient and that a co-ordinated response from government and NGOs is required. According to Valli Corbanese, Co-ordinator of the Project for the Advancement of the Albanian Women:

'The actual NGO network active in this field is overwhelmed with demands and lacks funds. [...] Domestic violence is presently losing ground due to the acuity of problem of trafficking of human beings. The government does not have a programme in this field that ensure

¹⁰² US Department of State (2004), *Country Report 2003*, op. cit., Section 5.

¹⁰³ Cited in UNICEF Albania, 'Domestic Violence Devastates Lives of Women and Children, Hinders Albania's Development', (UNICEF, Wednesday 17 September, 2003), available at www.unicef.org/albania/what_we_do/press-12.htm.

¹⁰⁴ UNICEF, *Domestic Violence (2003)*, op. cit., p. 15.

¹⁰⁵ CEDAW, *Concluding Observations*, op. cit., par. 73.

¹⁰⁶ UNICEF Albania, op. cit., 'Protection'.

¹⁰⁷ For more details, see UNICEF 2000, *Mapping Domestic Violence*, op. cit., pp. 2, 20-25.

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*the co-operation of different actors in the field such as the Police force, health workers, the social workers.*¹⁰⁸

Describing the situation that doctors face when dealing with women who have experienced domestic violence, a Professor at Albania's University Medical Centres is quoted as saying:

*'Doctors at the University Medical Centre are in daily contact with abused women. They come for medical reasons, which are often direct consequence of the violence they have experienced. (...) Many doctors, including myself, feel of being helpless to abused women. We cannot offer them proper psychological support, as we are not trained for this. Referral to the Counselling Centre for Women and Girls depends on personal knowledge. There is a social worker in our hospital, but she mainly deals with abandoned babies.'*¹⁰⁹

At the time of writing, detailed information about the number of women assisted through this network was not available. However, UNICEF reports that since it started work in 1996, the Counselling Centre for Women and Girls had received more than 5,000 calls to its counselling hotline and assisted more than 400 women in the Centre itself.¹¹⁰

The Home Office CIPU report notes in detail the activities of these different NGOs, again quoting from the SEELINE report:

*'In Albania there is an entire NGO network called 'Network against Gender Violence and Trafficking', which provides a lot of direct and indirect services to abused women.'*¹¹¹

However, it does not refer to any of the evidence noted above on lack of resources and government support.

¹⁰⁸ Ibid., p. 19, Part II D 'International Organisations'. This project is funded by the Italian Government, UNDP and UNOPS.

¹⁰⁹ Ibid., p.18, Part II C 'Members of the Academic Community', quoting interview with Rubena Moisiu, Professor at the Faculty of Medicine at the University Medical Centre and Obstetrician at Maternity Hospital.

¹¹⁰ UNICEF (2003), *Domestic Violence*, op. cit., p. 15.

¹¹¹ CIPU (2004), *Country Report*, op. cit., para 6.66.

6. Trafficking in women for the purposes of sexual exploitation

6.1 Prevalence of trafficking for the purposes of sexual exploitation

Over the past ten years, Albania has become one of the major countries of origin and transit for women and girls trafficked for the purposes of sexual exploitation.¹¹²

In its 2000 assessment of trafficking in women and girls for sexual exploitation, 'The Hearth', a leading Albanian NGO working in the field of trafficking of human beings and offering services to trafficking victims states that:

*'Without having accurate evidence of the victims' number, different state, international and Albanian organisations often misreport the real number of Albanian girls involved.'*¹¹³

This report suggests that, based on research it has carried out in the key transit port of Vlora, between 1998 and 2000 approximately 6,000 Albanian girls were trafficked for prostitution to EU states.¹¹⁴

Nonetheless, a lack of comprehensive research means the total number of victims of trafficking from Albania, including those being trafficked for the purposes of sexual exploitation, can only be estimated and such estimates vary widely. The 2003 UN/OSCE study *Trafficking in Human Beings in South Eastern Europe* cites figures quoted in November 2001 by the Council of Ministers in the 'National Strategy to Combat Trafficking in Human Beings'. These indicate that 100,000 Albanian of all sexes and ages were trafficked to Western European and other Balkan countries from 1991-2001.¹¹⁵

¹¹² Apap, J., & Medved, F. (2003) *Protection schemes for victims of Trafficking in Selected EU Member countries and Third countries: Albania* (International Organisation for Migration), pp. 21-32, p. 21, available at www.iom.int//DOCUMENTS/PUBLICATION/EN/Protection_Schemes.pdf.

¹¹³ Psycho-Social Centre 'The Hearth', *The Girls and the Trafficking: Review of Trafficking in Human Beings for the year 2002*, compiled by Vera Lesko and Entela Avdulaj (Vlora, February 2003), pp. 7-8. Report on file with the author.

¹¹⁴ Ibid.

¹¹⁵ This official document is cited by the UN/OSCE report, which wrongly quotes '100,000 women and girls'. See Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 34, footnote 72; and 'National plan of Action', *As approved by the Council of Ministers of Republic of Albania on December 7, 2001*, p. 9 at

Without doubt though, since 2002, successful police action against illegal speedboat traffic crossing the Adriatic has contributed to a significant decrease in the number of Albanian women trafficked to other countries.¹¹⁶ According the UN/OSCE report on trafficking published in 2003:

*'The number of women trafficked out of Albania in the year 2002 is estimated to be very low, with the result that the number of victims who returned to Albania in the year 2002 dropped by 40 percent. According to the police the number is "zero", as they claim to have shut down completely all the main trafficking routes.'*¹¹⁷

Albanian NGOs report that trafficking and transit through and from Albania is still taking place, even if on a smaller scale. Nonetheless, the UN/OSCE report states:

*'While NGOs are right when stating that trafficking has not stopped completely, it has to be acknowledged that when judging by the rapid decrease in the number of registered cases of foreign trafficked women, the recent actions of the Albanian government has had a huge impact on the numbers of trafficking victims transited through Albania in the last year.'*¹¹⁸

The Home Office CIPU report comments that *'Although the number of Albanians subjected to trafficking to other countries has decreased significantly, the country continued to remain a point of origin.'*¹¹⁹

6.2 Profile of trafficking victims

The International Organisation for Migration (IOM) reports that three main categories of trafficking victim can be found in Albania:

'Albanian women and girls for the purpose of sexual exploitation, foreign women and girls for sexual exploitation and Albanian children

www.osce.org/attf/pdf/nap_al.pdf. (Many thanks for Natasha Carver, IAS for pointing this out to RWRP).

¹¹⁶ US Department of State (2004), Country Report 2003, op. cit. Section 'f', 'Trafficking in Persons'.

¹¹⁷ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 35.

¹¹⁸ Ibid., p. 34.

¹¹⁹ CIPU (2004), *Country Report*, op. cit., par. 6.109.

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*for forced labour, including begging, drug dealing and other street activities, such as washing car windows.*¹²⁰

Some background information on those women and girls trafficked for the purpose of sexual exploitation is given by the first report of the Counter-Trafficking Regional Clearing Point (RCP) published in September 2003. The RCP reports that over 65% are minors at the time they are trafficked and 40% are minors at the time of identification and assistance. The majority have an extremely low level of education; over 50% are lured by the false promise of marriage or engagement.¹²¹

Whilst in the past roughly 70% of victims assisted by the NGO The Hearth reported that they came from rural areas, in 2002 the number of girls who claimed to be from rural areas fell to 37%. However, the NGO makes clear that majority of these women still originate from rural areas, and explains that:

*'The free and uncontrolled movement of population in Albania during the past 10 years has led many people to move from the city and settle in the suburbs. Thus, during the interviews with the accommodated girls [on which its statistics are based], most of them claim to come from the cities, while in fact they are born and raised in the rural areas.'*¹²²

Although the number of female victims who are under 18 years of age appears to have declined since 2002, local NGOs question the accuracy of statistics that suggest this. One detailed study of Albania's responses to trafficking jointly published by the UN/OSCE in 2003 concludes:

'From 1999 until the second half of 2002, an estimated 70 percent of the Albanian victims of trafficking for sexual exploitation were adolescent girls under the age of 18, although currently this figure has dropped to around 30 percent [...] According to NGO Vatra [The Hearth], this apparent drop in the numbers of underage girls being trafficked for sexual exploitation does not reflect any real change in trafficking patterns but rather reflects the fact that girls under 18 are

¹²⁰ Apap & Medved, *Protection Schemes*, op. cit., p. 21.

¹²¹ Hunzinger., L. & Sumner Coffey, P., *Counter-Trafficking Regional Clearing Point, First Annual Report on Victims of Trafficking in South Eastern Europe*, (IOM, Stability Pact for South Eastern Europe, ICMC, September 2003), The RCP was established in June 2002 within the framework of the Stability Pact Task Force on Trafficking in Human Beings to collect and analyse verified data on those victims of trafficking identified and assisted in South Eastern Europe. Analysis was based on data collected from June 2002 to June 2003, hereafter RCP, p. 31, available at www.icmc.net/docs/en/publications/rcp00.

¹²² The Hearth, *The Girls and the Trafficking*, op. cit., p. 37.

*not being released by traffickers and [not being] deported [back to Albania] from Italy. NGOs also suggest that some Albanian policemen sell girls under 18 who return to Albania back to the traffickers and, as a result, these girls simply do not reach the shelters.'*¹²³

Between 70% and 80% of children at risk of trafficking in Albania are members of ethnic minority groups, particularly Roma.¹²⁴

6.3 Context of trafficking in Albania

A number of international studies have described the social and economic context in which trafficking of human beings has been able to flourish, the most important ones being poverty and lack of economic opportunities in general and in particular for women. With regards to the situation in Albania, Save the Children comments:

*'Because of the high rate of male migration from villages (in some areas it is as high as 90%), girls may have problems finding husbands. This makes it easy for traffickers to propose false marriage to girls who have few opportunities. Rural families, who often have many children, face a severe economic hardship. An offer of marriage and a better life abroad is potentially an opportunity for the family to improve its financial position.'*¹²⁵

Mass migration to urban areas has also created vulnerable 'heterogonous communities [...] facing a lack of infrastructure, information, employment, access to education etc.' Desire to escape domestic violence is also noted as a factor that increases women's vulnerability.¹²⁶

A report by the US Agency for International Development makes the link between domestic violence and trafficking:

'Domestic violence is often the impetus for women to become involved in trafficking. Abused women often try to escape their abuser only to become a victim of trafficking in the process.'

¹²³ Limanowska (2003), *Trafficking in Human Beings*, op. cit., pp. 33, 50-51.

¹²⁴ UNICEF Albania, 'Protection', at www.unicef.org/albania/Children_in_albania/protection.htm.

¹²⁵ Renton, D., (2001) *Child Trafficking in Albania*, (Save the Children, March, 2001), pp.15-16 available at www.globalmarch.org/child-trafficking/virtual-library/child-trafficking-in-albania.pdf.

¹²⁶ The Hearth, *The Girls*, op. cit., pp.9-11.

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*Unfortunately, the violence continues as traffickers use violence and threats of violence against family members to retain control over trafficked women.*¹²⁷

6.4 Methods of recruitment and control

Information provided by Albanian NGO The Hearth indicates that traffickers recruit women in a range of different ways:

*'More than one third of the women staying in the shelter in 2002 were recruited willingly into prostitution abroad (102 out of 276). They knew the purpose of their trip abroad and were prepared to work for their pimps. Eighty-four women were lured through false marriages, 72 through job deceptions, 18 by false engagement and 10 were sold by their families.'*¹²⁸

Although women who have worked in the sex industry may be aware of the type of work they are promised, they may not be aware of the abusive terms and conditions. The Hearth also points out that many returning women are still too afraid of their traffickers to talk about how they were actually recruited.¹²⁹

Different means of coercion are used to control women and girls. The US Department of State reports in 2004 that:

*'Traffickers typically confiscated victims' documents, physically and sexually abused them, and sometimes forced them to work as prostitutes before they left the country. Both Albanian and foreign women trafficked by Albanian organized crime networks were abused, tortured, and raped. Traffickers also threatened many of the victims' family members.'*¹³⁰

Anecdotal evidence also suggest that some women are instructed by their traffickers to lie about their identity if they are caught by the immigration

¹²⁷ US Agency for International Development (USAID), Office of Women in Development (2003), *Albania Assessment and Analysis Report*, op. cit. p 13.

¹²⁸ Ibid., p. 33. "False marriage" is the term used in Albania for the situation in which the marriage was seen as authentic by the woman and her family, but not by the man who saw the contract only as the opportunity to exploit his wife. Usually traffickers who exploit women control larger numbers of women and are part of organised crime groups. "Husbands" usually live off the earnings of their wives only (they can have more than one "wife" or girlfriend in some cases, but it still remains a "family run business"

¹²⁹ Ibid., p. 34

¹³⁰ US Department of State (2004), *Country Report 2003*, op. cit.

services, thereby undermining the credibility of any asylum claim women may later make and allowing traffickers to keep control of them.

6.5 Trafficking routes

According to the US Department of State's *Trafficking in Persons* report for 2003 (TIP report), female victims from Albania are usually trafficked to Italy and Greece and then to other EU countries, such as Belgium, France, the UK and The Netherlands.¹³¹

The first annual report of the Counter-Trafficking Regional Clearing Point observes that Albanian trafficking routes have changed significantly since 2002. Before improvements were made to law enforcement marine control in summer 2002, most victims crossed the Adriatic Sea to Italy. Victims are now more likely to be re-routed through Greece and transferred by ferry or plane to Italy using false documents.¹³²

Despite increased surveillance of the Adriatic route, an article published by the Institute of War and Peace Reporting (IWPR) indicates that traffickers continue to use the dangerous sea-route across the Adriatic from the port of Vlora. The IWPR states that in one incident in January 2004, 20 Albanians from the region of Shkodra drowned whilst being transported by speedboat to Italy. According to the article, heightened anti-trafficking activities by the government in the Vlora area mean that traffickers now try to conceal the boats they use. However, traffickers are still using the Adriatic route to transport people and other illegal cargoes.¹³³

¹³¹ US Department of State, *Trafficking in Persons Report* (2003), (Released by the Office to Monitor and Combat Trafficking in Persons, June 11, 2003). The TIP Report covers the period April 2002 - March 2003. Available at www.state.gov/g/tip/rls/tiprpt/2003/21262.htm.

¹³² RCP, *First Annual Report*, op. cit., p. 30.

¹³³ Barnett, N., Institute of War and Peace Reporting, 'Traffickers risk death on Albania's High Seas', 4th February 2004, available at www.iwpr.net/index.pl?archive/bcr3/bcr3_200402_479_2_eng.txt.

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6.6 Trafficking and the law

6.6.1 Legislation to combat trafficking

Since 2001, there has been a clear trend towards domestic law reform in order to deter all kinds of human trafficking, including the trafficking of women and girls for the purpose of sexual exploitation. These changes to domestic law have been mirrored at the international level, and in August 2002 the Albanian government ratified the *UN Convention against Transnational Organised Crime* as well as the supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol)* and the *Protocol against the Smuggling of Migrants by Land Sea and Air* (2000).¹³⁴

Under current Albanian law, trafficking in persons is a criminal offence. Law No. 8733, adopted by the Albanian Parliament on 24th January 2001, amends the 1995 Criminal Code and imposes specific penalties for trafficking in persons.¹³⁵

The amended Criminal Code complies with the *Palermo Trafficking Protocol* and clearly states that trafficking victims must not be prosecuted for any crimes committed when they are being trafficked (e.g. prostitution or use of false documentation).¹³⁶

The key articles of the Criminal Code relating to trafficking in women and girls for sexual exploitation are:

Article 110(a). This addresses trafficking in human beings. The provisions states that:

'Trafficking of human beings with the purpose of material profit or any other profit shall be punished by imprisonment from 5-15 years.

When this offence is committed in complicity with others, repetitively or associated with maltreatment and physical or psychological threat toward the injured person to commit different actions or causing serious health impairment is punished with imprisonment not less

¹³⁴ Minnesota Advocates for Human Rights, *Stop Violence Against Women: Albania 'Legislative Trends and New Developments'* (updated 16 December 2003), available at http://www.stopvaw.org/index.asp?Type=B_BASIC&SEC={35E57F81-0A06-48D9-B737-A54C1A6C923C}.

¹³⁵ Ibid.

¹³⁶ Limanowska (2003), *Trafficking in Human Beings*, op. cit., p. 39.

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than 15 years, and when these actions cause the death (of the person) shall be punished with life imprisonment.

Kidnapping or keeping hostage of a person, or of a child under the age of 14, [preceded] by or associated [with] physical or psychological torture, if it is committed against several persons or repetitively shall be punished with not less than 20 years imprisonment, [and] when death is caused, then shall be punished with life imprisonment.¹³⁷

Article 114(b) specifically refers to trafficking in women for sexual exploitation and provides that:

'Trafficking of women for prostitution with the purpose of material profit or any other profit is punished from 7-15 years imprisonment.

When committed in complicity with others or repetitively or associated with maltreatment and physical or psychological threat to the injured woman to commit different actions or causing serious harm to her health, shall be punished not less than 15 years imprisonment and when death is caused, shall be punished with life imprisonment.¹³⁸

Article 128(b) criminalises trafficking in children. It provides that:

'Trafficking of children with the purpose of material profit or any other profit shall be punished from 10-20 years imprisonment.

When committed in complicity with others, or repetitively or associated with maltreatment and physical or psychological threat of the (victim) injured to commit different actions or causing serious harm to the health of the injured (trafficked victim), shall be punished [with] not less than 15 years imprisonment, and when death is caused then it shall be punished with life imprisonment.¹³⁹

¹³⁷ *Criminal Code of the Republic of Albania* (January 1995, as amended by Law No. 8733 of 24 January 2001), Article 110(a). Relevant excerpts available at www.legislationline.org/view.php?document=56694&ref=true.

¹³⁸ *Ibid.*, Article 114(b).

¹³⁹ *Ibid.*, Article 128(b).

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6.6.2 Further government measures

Since 2002, Albania's government has taken significant steps to address the issue of human trafficking.¹⁴⁰ Human Rights Watch summarises some of the key actions taken:

*'In December 2001, Parliament adopted an anti-trafficking strategy and set up a special anti-trafficking police unit. The government also agreed to refer all illegal migrants to the Office of the United Nations High Commissioner for Refugees, which did a first screening for trafficking victims. The prosecutor general also issued instructions that trafficking victims should no longer be charged with the crimes of prostitution and illegal border crossing.'*¹⁴¹

These changes led the US State Department to 'upgrade' Albania from a 'Tier 3' to a 'Tier 2' country in its 2000 *Trafficking in Persons Report*. It retains this ranking in the most recent 2003 TIP Report, indicating that whilst it is not in full compliance with international standards the country continues to make significant efforts to meet minimum standards for combating trafficking.¹⁴²

The 2001 'National Strategy against Trafficking in Human Beings' incorporates a *National Plan of Action* (NPA) on trafficking to be implemented in three stages between 2001 and 2004. It is co-ordinated by the 'National Co-ordinator for Trafficking', who reports to the State Committee and to the Prime Minister and has a total budget of US\$15 million, US\$9 million of which is contributed by foreign donors. 43% of this total budget is designated to the creation of a special police 'Anti-Trafficking Task Force' revealing the priority accorded to law enforcement.¹⁴³ According to the UN/OSCE:

'The NPA established clear, short and long-term goals and priorities for different areas of concern and different institutions. In the first phase, the plan focussed on activities that would have a direct impact on suppressing trafficking from and through Albania, whereas the long term plans are much more focused on prevention and addressing the root causes of trafficking. There is also a clear link made between the economic and social position of women in society and in the family, and trafficking.'

¹⁴⁰ RCP, *First Annual Report*, op. cit.

¹⁴¹ HRW, *Annual Report 2003*, (covering the period from November 2001-November 2002), available at www.hrw.org/wr2k3/europe1.html.

¹⁴² US Department of State, *TIP Report 2003*, op. cit.

¹⁴³ Limanowska (2003), *Trafficking in Human Beings*, op. cit., pp. 35-37.

*(...) While the initiatives in the area of law enforcement are being implemented in a concrete fashion, the long-term initiatives to prevent trafficking and to protect the victims are described only in very general terms.*¹⁴⁴

Since the end of 2001, Anti-Trafficking Units have been established in all of the 12 police Directorates. Every Anti-Trafficking Unit has five subdivisions: trafficking in human beings for forced labour; trafficking in women for sexual exploitation; trafficking in children; trafficking in arms; and, trafficking in stolen cars. Each unit employs between eight and 12 police officers.¹⁴⁵

The US State Department's 2003 *Trafficking in Persons* Report also praises Albania's increasing cooperation with regional partners, commenting that in 2002-3:

*'The government showed increased effectiveness in coordinated law enforcement efforts with the government of Italy and with the SECI Center [Southeast European Cooperative Initiative] in Bucharest. Its new Three Port Strategy increased its ability to monitor its porous borders and its overall interdiction capabilities.'*¹⁴⁶

6.7 Seeking protection in practice

Assessing whether there is sufficiency of protection for women trafficked for prostitution in Albania, the Home Office Operational Guidance Note concludes that:

*'In general, the Albanian government is not unwilling to prosecute individuals found to have facilitated trafficking for the purposes of sexual exploitation (...). However, victims may in practice receive inadequate protection and each case should be considered on its individual merits.'*¹⁴⁷

The Home Office's assertion that victims 'may' not receive sufficient protection in practice is not supported by the comments of human rights groups reporting on this area. These sources, which the Home Office does

¹⁴⁴ Ibid., 'National Plan of Action', p. 36.

¹⁴⁵ Ibid., p. 37.

¹⁴⁶ US Department of State, *TIP Report 2003*, op. cit.

¹⁴⁷ Home Office Asylum and Appeals Policy Directorate, *OGN*, op. cit., par. 3.12.4

not draw on, analyse current available protection in a far more critical manner.

6.7.1 Number of arrests

The introduction of anti-trafficking laws and closer police collaboration within the region is generally recognised as having led to increased numbers of arrests of traffickers by police. As the US State Department's 2003 *Trafficking In Persons Report* states, in 2002-3:

*'Albanian police [...] improved their investigative and operational capabilities. In April 2003, the National Police conducted a three-day, cross-country sweep targeting traffickers, and the Organized Crime Unit, working with Italian police, disabled a sophisticated child-trafficking network, arresting high-ranking local customs and law enforcement officials.'*¹⁴⁸

In 2002, police uncovered 80 criminal groups, made 700 arrests and brought 465 cases against traffickers. During the same year, 36 people were sentenced for trafficking related crimes. The number of cases opened has increased since 2001 when 238 cases were opened. Further prosecutions were also reported as being undertaken, although details of these were not available at the time of writing.¹⁴⁹

Arrests resulting from regional anti-trafficking initiatives, such as 'Operation Mirage' coordinated by the Southeast European Cooperative Initiative Centre (SECI Centre) a regional initiative combating transborder crime, have also increased.¹⁵⁰ In September 2003 'Operation Mirage 2003' led to the arrests of 125 people after raids on 800 establishments in Albania. Only 12 arrests had been made during 'Mirage 2002' raids.¹⁵¹

The SECI Centre reports that this ten-day regional initiative led to the identification of 463 victims of trafficking and 595 traffickers. 207 traffickers were charged under the specific provisions of the respective national legislation during or after the operational period. Of these, 31

¹⁴⁸ US Department of State, *TIP Report 2003*, op. cit.

¹⁴⁹ Limanowska (2003), *Trafficking in Human Beings*, op. cit., p. 47

¹⁵⁰ For further information please see the SECI Centre web-site, available at www.secicenter.org/html/index.htm.

¹⁵¹ Ambassador Osmo Lipponen, Head of Presence, OSCE Albania, *Report to the Permanent Council: Second Semi-annual OSCE report on activities in Albania*, 20 November 2003, p.7, available at www.osce.org/documents/pia/2003/11/1366_en.pdf.

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have already been convicted in Albanian courts and more prosecutions are underway.¹⁵²

6.7.2 Low levels of convictions

Despite the number of arrests, Human Rights Watch states that prosecutions continue to be the '*weakest link in the system*'.¹⁵³

Amnesty International also observes that the number of successful trafficking convictions remains very low and represents a fraction of those traffickers arrested.¹⁵⁴ The 2003 UN/OSCE study reports that while 700 people were arrested during 2002, only 36 people were sentenced for trafficking-related crimes.¹⁵⁵

The US Department of State's 2003 human rights assessment of Albania further explains that:

'Traffickers who were arrested often were released because of insufficient evidence, and, if prosecuted, they often were charged for lesser crimes or were given less than the minimum [7 year] sentence for trafficking.'

Lack of cooperation between police and state prosecutors also prevents successful law enforcement, although an 'Organized Crime Task Force' was established in 2003 to improve cooperation in the most sensitive organised crime and trafficking cases.¹⁵⁶

Rather than address the low level of prosecutions, the Home Office OGN emphasises the introduction of the new Criminal Code and focuses on the number of arrests, stating that '*Despite a lack of resources, the Government arrested 96 people for trafficking crimes from December 2000 to October 2001, and the frequency of arrests continues to rise. Of*

¹⁵² SECI Centre, Press Release, '31 traffickers in human beings convicted as a result of the continuation of Operation Mirage', 10 February 2004, available at www.secicenter.org/html/index.htm.

¹⁵³ HRW, *Annual Report*, op. cit.

¹⁵⁴ Amnesty International, *Concern in Eastern and Central Europe*, op. cit.

¹⁵⁵ Limanowska (2003), *Trafficking in Human Beings (2003)*, op. cit., p. 47, citing statistics provided in an interview with Colonel Avni Jashellari, Head of the Anti-trafficking Department at the Ministry of the Interior, Tirana, 04 February 2003.

¹⁵⁶ US Department of State, *Country Report (2004)*, op. cit., Section E.

*these, there were at least 12 convictions, with 9 receiving prison sentences.*¹⁵⁷

6.7.3 Corruption in government, police and judiciary

Corruption of law enforcement officers and other government officials exists at all levels and is a major reason for the government's failure to systematically enforce anti-trafficking laws. In its 2003 *State of the Nation Report*, the International Crisis Group writes:

*'While the authorities accept the existence of organised crime in Albania, they appear not to acknowledge the full extent of its links with individuals in top state offices, the police and politics. The real challenge for Nano's [the Albanian prime minister's] administration is to deprive organised crime of its powerful political backers in Tirana. In many areas the traffickers work with the complicity of police and customs officials and enjoy the protection of high-ranking politicians.'*¹⁵⁸

The US Department of State's 2003 *Trafficking In Persons* and country report on human rights practices in Albania both make clear that police corruption, including direct police involvement in trafficking activities, hinders the successful investigation and prosecutions of traffickers in Albania.¹⁵⁹ In their survey of different EU protection schemes for trafficking victims the International Organisation for Migration (IOM) also comments that there is:

*'a deficit of successful prosecutions compared to the number of arrests, as well as great variations in the rate of arrests in different areas in the country. Those areas with the strongest links to trafficking are those with the lowest rates of arrest and prosecution.'*¹⁶⁰

Recent steps have been taken to address the issue of police corruption. According to the 2003 US Country Report:

'During the year [2003], the Ministry of Public Order's Anti-Trafficking Unit within the Organized Crime Sub-Directorate and the Office of Internal Control paid particular attention to police

¹⁵⁷ Home Office Asylum and Appeals Policy Directorate, *OGN*, op. cit., par. 3.12.2.

¹⁵⁸ ICG, *State of the Nation*, op. cit., p.7.

¹⁵⁹ US Department of State (2004), *Country Report 2003*, op cit., Section F; US Department of State *TIP Report*, op. cit.

¹⁶⁰ Apap & Medved, *Protection Schemes*, op. cit., p. 24.

*involvement in human trafficking; the Office of Internal Control investigated 266 cases of police involvement in all forms of trafficking. Many of these cases resulted in suspensions or dismissals, and a growing number of police officials implicated in trafficking cases faced arrest and prosecution.*¹⁶¹

Nonetheless, the impact of government action against corrupt police appears to be limited since the 2003 report also states that few police officers are actually prosecuted. In February 2004, the Institute for War and Peace Reporting (IWPR) also reported:

'On January 20 [2004], Ilir Rrokaj, head of traffic police in Vlora, was arrested on suspicion of organising the smuggling ring. Artur Rrokaj, one of the surviving smugglers from the January 9 [2004] tragedy, turned out to be the son of a police chief – from the lawless Shkoder region, where many of the victims came from.

Erion Veliaj, of "Mjaft" ("Enough"), a civic action group, says the immigrants' tragedy is directly linked to corruption. "Low-ranking police officers are paid on average euro 100 a month, and as such the probability of one being bribed is very high," he said.

*But in this case, he adds, senior officers were involved in organising the smuggling ring; the rank and file merely obeyed orders.*¹⁶²

Corruption amongst other government officials, particularly customs officers, is also highlighted by the IWPR and US Department of State.¹⁶³

Corruption within the Albanian judiciary is another factor widely cited as contributing to the low level of trafficking prosecutions. The bi-annual OSCE report on activities in Albania published in November 2003 also highlights what it describes as an:

*'Across-the-board need for greater transparency to reduce the inequities and arbitrariness of the judicial system resulting from the corruptive effects of influence peddling and conflicts of interest. Areas requiring further attention include greater public participation in legislative drafting, publication of court decisions and codification of a more transparent means of assigning cases in the prosecutor's offices and courts.*¹⁶⁴

¹⁶¹ US Department of State (2004), *Country Report*, op. cit., Section F.

¹⁶² Barnett, 'Traffickers risk death', op. cit.

¹⁶³ US Department of State (2004), *Country Report 2003*, op cit.; Barnett, Ibid.

¹⁶⁴ Lipponen, *Report to the Permanent Council*, op. cit., pp. 6-7.

Similarly, the International Crisis Group 2003 country assessment on Albania observes that:

*'Serious problems remain within a judiciary plagued by political interference and widespread corruption. There is a pressing need to increase its independence from politics and organised crime.'*¹⁶⁵

State prosecution lawyers are also reported to be linked to traffickers. Albanian NGO, The Hearth, explains that:

*'The victim, who is the witness in the case of denunciations, is defended by the prosecutors, who often sell cases in cooperation with the judges in exchange for the money they get from traffickers.'*¹⁶⁶

In early 2004 steps were taken by the government to strengthen judicial action in the area of organised crime, including the creation of specialised 'Serious Crime Courts'. The OSCE explains that:

*'The newly created Serious Crime Court has been established as existing courts lacked the resources and expertise to handle such cases. (...) The newly created system technically began to operate as of 1 January [2004] and it will hear any case in which defendants face 15 years in prison or more. To address widespread intimidation, Albania will give judges bodyguards and provide other security measures. They will also get better pay: about US\$1,000-1,700 per month, compared to US\$800 for average judges.'*¹⁶⁷

At time of writing, no information was available on whether these courts were functioning effectively.

Although the Home Office OGN asserts that Albania's government is '*not unwilling to prosecute*' those who carry out trafficking, the Home Office CIPU report recognises the serious problem of corruption in all areas of law enforcement. The Home Office CIPU assessment comments:

'The police often were involved directly or indirectly in trafficking. (...) Few police officers, and no other government officials, were prosecuted during the year. Lawyers and judges were also

¹⁶⁵ ICG, *State of the Nation*, op. cit., p. 7.

¹⁶⁶ The Hearth, *The Trafficking*, op. cit., p. 51.

¹⁶⁷ Associated Press, 'Reform of the Justice System Unfolds in Albania', 5 January 2004, and available at *OSCE online*, www.legislationline.org/index.php?country=1&org=0&eu=0.

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*manipulated and bribed, permitting traffickers to buy their way out of punishment if arrested.*¹⁶⁸

6.7.4 Shortcomings of existing legislation

Gaps remain in Albania's anti-trafficking legislation.¹⁶⁹ The 2003 UN/OSCE study states that:

*'Legislation does not include provision for confiscating assets derived from trafficking. NGOs have pointed out the effectiveness of the Italian legislation against organised crime, which allows the assets and property of traffickers to be confiscated.'*¹⁷⁰

NGOs also report that there is no law governing victim/witness protection¹⁷¹ (see section 6.7.7). According to the International Crisis Group:

*'The lack of protection for witnesses is a major obstacle in the fight against organised crime. A law for the protection of witnesses and repentant criminals and funding to provide them and their families with personal security are urgently required.'*¹⁷²

A witness protection Bill has been pending in the Albanian Assembly since 2003. As of February 2004, the Bill was still to be approved and a proper legislative and functional system of protection still had to be put into place.¹⁷³

The latest Home Office OGN acknowledges the lack of a state witness protection programme.¹⁷⁴

6.7.5 Lack of awareness and understanding of legislation

Whilst the IOM reports that in 2001-2 trafficking training was organised by them for the judiciary throughout most regions of the country, Albania's failure to enforce its existing anti-trafficking laws is, amongst

¹⁶⁸ CIPU (2004), *Country Report*, op. cit., par. 6.115.

¹⁶⁹ Apap & Medved, *Protection Schemes*, op. cit., p. 24.

¹⁷⁰ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 38.

¹⁷¹ The Hearth, *The Trafficking*, op. cit., p. 51.

¹⁷² ICG, *State of the Nation 2003*, p. 7.

¹⁷³ Lipponen, *Report to the Permanent Council*, op. cit., p.9.

¹⁷⁴ Home Office Asylum and Appeals Policy Directorate, *OGN*, op. cit., par. 3.12.3.

other things, attributed to the judiciary's lack of knowledge of new legislation.¹⁷⁵ The joint 2003 UN/OSCE report comments that:

*'[J]udges and prosecutors do not understand the new articles in the Criminal Code and do not know how to use them. The law contains no definition of trafficking, so it is often confused with smuggling or illegal border crossing.'*¹⁷⁶

Human Rights Watch supports this, commenting that:

*'Progress notwithstanding, there remained many obstacles to the implementation of the government's anti-trafficking strategy. Particularly problematic was the government's reluctance to recognize that Albania continued to be a major country of origin. This attitude was mirrored by the police and courts, which often viewed trafficking as an issue of illegal migration rather than a serious human rights violation.'*¹⁷⁷

6.7.6 Lack of legal advice and representation for victims

Victims of trafficking are also uninformed about new anti-trafficking laws, and their rights to take civil action against traffickers and claim compensation and damages.¹⁷⁸

Legal services for trafficking victims returning to Albania are provided by local non-governmental organisations or international organisations operating in the country. Providing legal advice for returned victims is important, not only so that they are informed about their rights as victims of crime, including the right to compensation, but also to increase the number of women testifying against their trafficker.

Until November 2002, women in the early stages of return were unable to obtain professional legal advice unless they agreed to testify against their traffickers. The 2003 Regional Clearing Point (RPC) country report on Albania explains that:

'[M]ost national victims of trafficking did not receive access to legal representation or advice at early stages of their identification and assistance, and they were only offered individualised counselling by a

¹⁷⁵ Apap & Medved, *Protection Schemes*, op. cit., p. 30.

¹⁷⁶ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 38.

¹⁷⁷ HRW, *Annual Report 2003*, op. cit.

¹⁷⁸ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 38.

*legal professional if they made a preliminary decision to denounce their traffickers and testify in a court case.*¹⁷⁹

However, the introduction of an OSCE 'Victims Assistance Team programme' in November 2002 has increased the availability of professional legal advice at an early stage and according to the RCP study:

*'Since October 2002, OSCE focal points have provided legal information to 68 women expelled from other countries. Trafficked victims who request further assistance are referred to one of three legal assistance NGOs providing free of charge, direct, individualised representation to victims. This service is very similar to the legal services proposed to beneficiaries at the [IOM] Reintegration Centre (the same three legal assistance NGOs), but the added advantage of the OSCE programme is that all women receive legal information at the earliest possible moment.'*¹⁸⁰

The IOM Reintegration Centre also provides legal assistance to women who are willing to testify against their traffickers at its shelter.

*'In 2002, IOM signed co-operation agreements for the provision of legal assistance to the victims of trafficking participating in the IOM programme with the Legal Clinic for Minors and the Citizen Advocacy Office. A Woman's Advocacy Centre criminal law specialist was also hired by IOM on a case-by-case basis, to offer legal advice to victims of trafficking, while the Legal Clinic for Minors assisted the girls under 18 who were testifying.'*¹⁸¹

No information was available on how many returned victims of trafficking currently access legal assistance from the OSCE or IOM but witnesses/victims rarely benefit from representation in court. The RCP report states:

*'It is important to note that victims of crime are not legally entitled to bring their legal representative to court with them; this is a matter of judicial discretion and most Albanian judges do not allow the presence of a victim's legal representative in court.'*¹⁸²

The leading anti-trafficking NGO The Hearth also states that:

¹⁷⁹ RCP, *First Annual Report*, op. cit., p. 31.

¹⁸⁰ Ibid. p. 43.

¹⁸¹ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 43.

¹⁸² RCP, *First Annual Report*, op. cit., p.44.

*'The absence of a victim defence counsel or even a female prosecutor to attend the case has caused many cases to fail. We think that the assignment of a female prosecutor would develop more trust in the victims and would avoid the corruption existing in some prosecutors and judges.'*¹⁸³

6.7.7 Lack of an effective witness protection system

A major reason for the low number of trafficking convictions in Albania is that victims are often unwilling to testify against their traffickers.¹⁸⁴ The UN/OSCE report makes clear that a mixture of bribery and threats of violence against witnesses can prevent successful prosecutions:

*'Women and girls are afraid to testify because of the possible repercussions. Some women and girls or their families are paid off by the traffickers in exchange for changing their testimonies and in 11 cases [in 2002] testimonies were changed during the court proceedings.'*¹⁸⁵

As no witness protection legislation exists, the government currently provides a series of *ad hoc* and temporary witness protection measures. The November 2003 UN/OSCE study explains:

'Up until the trial, [witnesses] can be accommodated either in a selected police station or in the shelters for victims of trafficking run by IOM or the NGO Vatra.'

Further details about these provisional measures are given by the IOM which reports that:

*'The first option consists in the setting up of premises for the temporary protection of the witnesses in the regional police departments since the moment of their denunciation of the perpetrators up to the time when the court either ensures evidence or the charge is made public in the court. (...) The second option consists in the provision of temporary protection to the witnesses in shelters set up by international organizations or NGOs in Albania.'*¹⁸⁶

¹⁸³ The Hearth, *The Trafficking* op. cit., p. 51.

¹⁸⁴ Amnesty International, *CONCERNS IN EUROPE AND CENTRAL ASIA: January - June 2003 Albania 3* (October 2003) AI Index: EUR 01/013/2003, available at <http://groups.yahoo.com/group/balkanhr/message/6109>.

¹⁸⁵ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 48.

¹⁸⁶ Apap & Medved, *Protection Schemes*, op. cit., p. 25.

In 2003, six police commissariats ran this type of temporary witness protection shelter.¹⁸⁷

The Hearth reports that 36 of the 289 girls and women who had stayed at its shelter in Vlora in 2002 had agreed to testify against traffickers.¹⁸⁸

In June 2003, national and international agencies led by the OSCE Presence established a 'Witness Protection Task Force' which would *'facilitate the international community's interim temporary assistance to the Albanian Government in the protection of witnesses who have provided evidence against traffickers in human beings.'*¹⁸⁹ However, at the time of writing it was unclear whether the creation of the Task Force has led to an increase in the number of trafficking victims offered protection before testifying.

International cooperation led to the relocation and protection of five witnesses outside of the country during 2003.¹⁹⁰

Albania's slow judicial process aggravates the shortage of witness protection. The Hearth reports:

*'The time prolongation of juridical proceedings for proving the testimony given by the victims by the Public Prosecutor's offices, up to three months, has caused some girls to drop charges. As a rule of the prosecutor's office, these proceedings must be accomplished within 10 days. This deadline is not respected in any of the cases (...). This delay causes the victims to feel insecure about the charges (...). This situation is more dangerous because it gives to the trafficker the possibility to be free, to threaten the victim's life and recycle her into trafficking in the future.'*¹⁹¹

¹⁸⁷ US Department of State, *TIP Report*, op. cit.

¹⁸⁸ The Hearth, *The Trafficking* op. cit., p. 29, p. 51.

¹⁸⁹ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 38. The Witness Protection Task Force comprises the Minister of State to the Prime Minister, the Minister of Public Order, the Minister of Justice and the General Prosecutor, and the following international organisations: OSCE, CoE, ICITAP, IOM, the Office following for Overseas Prosecutorial Development Assistance and Training (OPDAT), the Police Assistance Mission for the European Commission in Albania (PAMECA) and Save the Children.

¹⁹⁰ US Department of State (2004), *Country Report 2003*, op. cit., Section f.

¹⁹¹ The Hearth, *The Trafficking* op. cit., p. 51.

6.8 Difficulties reintegrating after return

6.8.1 Number of victims identified and assisted on return

According to research published by the Counter-Trafficking Regional Clearing Point (RCP) in September 2003, between January 2000 and April 2003 1,041 Albanian women and girls who had been trafficked for the purposes of sexual exploitation were identified and given assistance by organisations in Albania.¹⁹²

It is important to recognise that these figures do not represent the total number of victims trafficked from Albania, which is likely to be much higher. The report observes:

*'Considering the high estimates of trafficked victims for South East Europe in recent years, these figures appear quite low. This report contains only verified figures regarding victims actually identified and assisted within the region. Undoubtedly, many more victims are never identified or assisted.'*¹⁹³

6.8.2 Stigma associated with return to families

Due to the stigma attached to prostitution in Albania, women and girls who have been trafficked abroad for sexual exploitation face particular problems when trying to integrate back into their families and villages where they live.¹⁹⁴

Although attitudes in the south of the country may be slightly more tolerant than in the north, Save the Children concludes in relation to trafficking of minors:

*'[T]he overriding impression remains that it is still very difficult for trafficked Albanian girls to be reintegrated into communities because of negative social stigma.'*¹⁹⁵

¹⁹² Ibid., p. 10. According to the RCP, this total 'excludes trafficked Albanian victims identified and assisted by organisations or government assisted programmes in transit and destination countries who have not subsequently been returned to Albania.'

¹⁹³ Ibid., p. 10.

¹⁹⁴ Anti-Slavery International, 'Trafficking Worldwide and in Albania' (November 2003), available at

www.antislavery.org/homepage/antislavery/award/albaniabackground2003.htm

¹⁹⁵ Save the Children, *Child Trafficking* op. cit., p. 38.

The Home Office also describes the '*significant stigmatisation*' trafficking victims experience from their families and broader society.¹⁹⁶

6.8.3 Police treatment of returned victims

Several sources acknowledge a positive shift in the attitude of police to trafficked women returning to Albania since 2002.¹⁹⁷ The 2003 UN/OSCE report on responses to trafficking across southeastern Europe describes one key change to have taken place in the country:

*'Over the last few years, the Albanian government has signed agreements with IOM, OSCE and UNHCR to inform them about all cases of potential trafficking registered with the police. Similar agreements were also signed in 2001 between some local NGOs and the Police Directorates in different Albanian towns. These agreements oblige the police to inform NGOs about all cases of suspected trafficking. The agreements are supposed to give NGOs access to all women deported from Italy and other countries back to Albania and to all women who were trying to leave Albania.'*¹⁹⁸

The report also observes that such agreements are '*the first example in the region of police co-operating with NGOs to allow them to proceed with the identification of victims.*'¹⁹⁹

However, police treatment of returned women is still mixed. The UN/OSCE report continues:

*'The NGOs and IOM agree that there are inconsistencies in the numbers of women referred to them from the different Police Directorates, which reflects more the willingness of the police to co-operate with NGOs and use the referral system than the actual numbers of women involved. The Vatra Shelter [run by local NGO the Hearth] identified the police directorates in Berat, Durrës and Gjirokaster as refusing to co-operate. The police in those towns claim that women do not want to go to the shelter, but prefer to stay at the police station while their identity is verified, after which they are sent directly back home.'*²⁰⁰

¹⁹⁶ CIPU (2004), *Country Report*, op. cit, par. 6.119.

¹⁹⁷ See for example, US Department of State 2003, *Country Report (2003)*, op. cit. Section F.

¹⁹⁸ Limanoswka, *Trafficking in Human Beings (2003)*, op. cit., pp. 40-41.

¹⁹⁹ *Ibid.*, p. 41.

²⁰⁰ *Ibid.*, p. 41.

The report also cites IOM figures that state in 2002 roughly 500 trafficked women and girls were returned to Albania, of whom between 200 and 300 were referred for assistance by the police to NGOs and other agencies, whilst the rest:

*'were released by the police and went straight home. According to local NGOs, those women and girls who are sent directly home are often later re-trafficked.'*²⁰¹

The Home Office CIPU Country Report does not incorporate any material which reflects such concerns about the police response to victims, stating only that *'police treatment of trafficked women improved dramatically [in 2002]. Most police stopped treating trafficked women as criminals rather than victims and routinely referred them to local and foreign NGOs for assistance.'*²⁰²

6.8.4 Low capacity for support and assistance by women's networks

Despite publication of the government's 'National Plan of Action', government services for trafficking victims are still extremely limited. As the RCP's research concludes:

*'Albanian governmental services do not have the capacity to provide services needed for the case of trafficked victims. Accordingly, private practitioners provide almost all medical, psychological and other services to trafficked victims.'*²⁰³

It goes on to report that 95% of the trafficking victims who do receive assistance on return are helped by local NGOs and the remaining 5% by international organisations in conjunction with local NGOs.²⁰⁴ The only reported improvement is the opening in July 2003 of one shelter outside Tirana which offers psychological counselling and medical treatment.²⁰⁵

Including this government-run shelter, there are three temporary shelters offering support and protection to women immediately after they return. The other two are run by local NGOs. Only one of the shelters solely

²⁰¹ Ibid., p. 39.

²⁰² CIPU (2004), *Country Report*, op. cit, par. 6.117.

²⁰³ RCP, *First Annual Report*, op. cit., pp. 30-31.

²⁰⁴ Ibid., p. 33.

²⁰⁵ US Department of State (2004), *Country Report 2003*, op. cit.

assists trafficking victims, and all three are based in either Tirana or Vlora. The RCP writes:

*'All combined, these shelters have a maximum capacity of 45 places for national victims. Two of the shelters (with a total of around 15 spaces for trafficking victims) provides short-term lodging and other assistance, and one of the shelters (with a maximum of 30 spaces) provides longer term lodging and rehabilitation assistance.'*²⁰⁶

More detailed information could not be found on these shelters at the time of writing, although the RCP reports that they are sufficient in number given the currently low level of identification and referral. According to the organisation:

*'[C]onsideration should be given to the establishment of smaller reintegration centres providing long-term lodging and assistance to victims in other areas of origin such as Elbasan and Korçe.'*²⁰⁷

Trafficking victims housed at the Vatra shelter in Vlora (run by The Hearth) have access to counselling, medical and social assistance. Women and girls are generally returned to their families after a couple of days, although in certain circumstances they may stay longer. According to the UN/OSCE:

*'Those women and girls who cannot go back home or are testifying in cases against traffickers may stay at the [Vatra] shelter longer. 36 women stayed in the shelter for up to three months. 18 women from the shelter were sent to the IOM shelter in Tirana for further assistance.'*²⁰⁸

In 2002, the Vatra shelter assisted 371 women, including 13 women not from Albania.²⁰⁹

The IOM 'Reintegration Centre' in Tirana opened in February 2002. It has capacity for 28 trafficking victims. According the UN/OSCE:

'In 2002, the shelter assisted 85 victims of trafficking, including 30 girls under 18. IOM does not insist that women go back to their homes. 30 women went back to their families, while others decided to stay longer in the shelter or look for other alternatives. 10 women started to rent apartments in Tirana, with IOM's support, and 5 girls

²⁰⁶ RCP, *First Annual Report*, op. cit., p. 40.

²⁰⁷ Ibid., p.40.

²⁰⁸ Limanowaka, *Trafficking in Human Beings (2003)*, p. 42.

²⁰⁹ Ibid., p. 42.

*under 18 are in foster care. The shelter operates on a voluntary basis - women are free to go when they choose. Services provided by the shelter include medical, psychological and social services, vocational training and job placement.'*²¹⁰

Girls under 18 who have been trafficked for sexual exploitation are placed in shelters for trafficked women and then sent back to their families. The Vatra shelter assisted 78 adolescent girls under 18 in 2002, although neither the Vatra shelter nor the IOM Reintegration Centre offers any special programme or special assistance for children.²¹¹ The UN/OSCE assessment states:

*'The NPA provides for the creation of the specialised structures for reintegrating children but, currently, assistance and reintegration is offered only by NGOs. NGOs working with children are advocating an alternative system of protection and reintegration with open services, adoptive/foster families and specialised programmes.'*²¹²

Although these shelters provide some support and assistance, there is little longer-term support available to women and girls after they leave. The report details how victims receive inadequate assistance in a range of important areas, including mental health care, education, housing and employment. For example, with respect to psychological care, the report notes that:

*'The scope of psychological care provided to trafficking victims at shelters varies, mostly according to the length of time they spend in shelter. Most victims require longer-term approaches. Service providers should review possibilities for follow-up counselling that could be provided by specialist NGOs or trained health-care workers in communities throughout Albania. A significant percentage of victims require psychiatric care and some need specialist services for the mentally disabled, yet these services are scarce within Albania. It is highly unlikely at present that victims can access these kinds of services once they depart the shelters.'*²¹³

²¹⁰ Ibid., p. 43.

²¹¹ Ibid., p. 45.

²¹² Ibid., p. 45.

²¹³ RCP, *First Annual Report*, op. cit., p. 31.

6.8.5 Lack of socio-economic prospects

In the context of poor economic opportunities, one important obstacle to improving the economic situation of many trafficked women is their lack of education. As the RCP explains:

*'The Albanian government, the National Action Plan and service providers place insufficient emphasis upon educational assistance. Only a handful of victims trafficked for sexual exploitation have been reinserted into mainstream schools, and comprehensive reinsertion agreements and alternative education programmes must be developed.'*²¹⁴

With respect to finding employment, some assistance is provided by international organisations and local NGOs. For example, the IOM Reintegration Centre in Tirana helps trafficked women to access vocational training and job placements. The UN/OSCE 2003 report states that:

*'Women can choose any training that is available in Tirana. (...) For the period May 2002 – May 2003, of the 62 women who were offered training and/or jobs, 42 received training and 51 were given one or more job opportunities. Thirty-one of those 62 were given both at least one training session and one job opportunity. Some of the women could not be offered training or employment until certain concerns such as security, had been fully addressed. After a long period of assistance, some women reach the point where they are capable of finding employment themselves.'*²¹⁵

However, the report also makes clear that, even when training does lead to a job, low wages and the lack of subsidised housing and foster care possibilities ensure that women who do not live with their families still face severe economic difficulties. The UN/OSCE study explains that:

'While many [trafficked women] follow some kind of training, including making clothes or shoes, cooking, baby sitting, computer and languages training, hairdressing, dairy processing, office assistance, job interview skills training, not many are able to support themselves afterwards. [...] Finding a job is not difficult as there are enough jobs available for low skilled people, but usually the salaries

²¹⁴ RCP, *First Annual Report*, op. cit., p. 31.

²¹⁵ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 43.

*are not high enough for the women to survive on their own. Only 4 or 5 women from the whole group found and kept a job.*²¹⁶

Assessing the overall situation, the RCP study reports that only 20% of women who benefit from job placements obtained through shelters and other NGOs working in the area of employment manage to remain in their jobs. The report makes it clear that:

*'Social structures (governmental and NGO) within Albania must be built up in order to sufficiently address the socio-economic needs of at-risk and trafficked women and children.*²¹⁷

6.8.6 Risk of re-trafficking

Although existing shelters offer immediate protection against re-trafficking, the UN/OSCE study suggests that there remains a substantial risk of re-trafficking in the longer term. In relation to the Vatra shelter, the reports comments:

*'One to two months after the women have left a shelter, the shelter staff conduct a follow-up visit to each family to assess the current situation of the women. In 2002 150 family visits were conducted. In 90 cases the women were still at home. In 60 cases, however, the women were not at home and, according to Vatra staff, these women had been re-trafficked.'*²¹⁸

No information was available about how many women and girls initially accommodated in the shelter remain with their families after these initial visits. Similarly, according to the UN/OSCE:

*'There have been no evaluations or assessments of the results of IOM's reintegration programmes and it is unclear how many women who participated in the programmes were subsequently able to support themselves and start a new life. It is also not clear how many women were re-trafficked after having taken part in a reintegration programme.'*²¹⁹

The Home Office also quotes a report noting that *'In some cases, women are simply being returned to family members who trafficked them in the*

²¹⁶ Ibid., p. 43.

²¹⁷ RCP, *First Annual Report*, op. cit., pp. 30-31.

²¹⁸ Limanowska, *Trafficking in Human Beings (2003)*, op. cit., p. 42.

²¹⁹ Ibid., p. 50.

first place, or to the very same situation from which they were trafficked. This often simply leads to the re-trafficking of these women.²²⁰

²²⁰ CIPU (2004), *Country Report*, op. cit, par. 6.119.

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Section four

women's rights abuses and protection in Jamaica

1. Introduction

This report provides country background information on women's human rights in Jamaica, focusing in detail on information relating to two specific gender-related human rights abuses faced by Jamaican women: domestic violence and discrimination against lesbians.

Some references are made in the report to the information provided in the Home Office's Country Information & Policy Unit (CIPU) '*Jamaica Country Report*' published in 2004.¹ The Home Office CIPU Country Report provides some information on domestic violence and the treatment of homosexuals as discrete areas, although minimal detail is given in comparison to available information from other reliable human rights sources. The Jamaica Operational Guidance Note (OGN) also gives specific guidance on whether there can be considered to be sufficiency of protection in Jamaica for those women who have experienced domestic violence.² OGN guidance regarding claims based on sexual orientation does not specifically address human rights abuses experienced by lesbians; it addresses the treatment of homosexuals in general.

¹ *Country Reports* on 35 countries producing the most asylum applicants in the UK are produced by the CIPU in April and October of each year. According to the Home Office, these reports cover the 35 countries producing the largest number of asylum applications in the UK. The Home Office CIPU '*Jamaica Country Report*', 20 April 2004 can be found at www.ind.homeoffice.gov.uk/filestore/Jamaica%20April%202004.pdf.

² The current Operational Guidance Note (OGN) used by the Home Office in decision-making on Jamaica is largely sourced to the Country Report of April 2003. Home Office Asylum and Appeals Policy Directorate, 'Operational Guidance Note: Jamaica, effective from 1st April 2003, accessed 7 June 2004, available at www.ind.homeoffice.gov.uk/default.asp?PageId=3968 (part I) and www.ind.homeoffice.gov.uk/default.asp?PageId=3968 (part II); and Home Office CIPU, '*Jamaica Country Report*', October 2003, at www.ind.homeoffice.gov.uk/default.asp?PageId=3454.

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2. Jamaica's system of government and court structure

After achieving independence from Britain in 1962, Jamaica adopted a democratic parliamentary system of government based largely on the British model.³ The Executive is headed by a Prime Minister, and Jamaica's legislature consists of a House of Representatives and a Senate. According to the US Library of Congress, the Senate (Upper House) reviews legislation submitted by the House of Representatives. It also submits bills. Senate concurrence is essential for a constitutional amendment to pass Parliament.⁴

Jamaica is a member of the British Commonwealth and a constitutional monarchy, although a Governor-General represents the Queen and performs ceremonial duties.⁵

Two political parties, the People's National Party (PNP) and the Jamaican Labour Party (JLP), have dominated politics in Jamaica since the first elections were held in the 1940s.⁶ However, despite the presence of a traditionally stable political system, since the mid-1970s politically motivated violence has become a serious concern and encouraged gang warfare, outbreaks of street violence and even assassinations. In the run up to the last general election in 2003, Amnesty International reported an increase in such political violence and at least 60 deaths in the period immediately prior to voting.⁷

Jamaica has an independent judiciary which can rule on civil and criminal matters, including the constitutionality of Government legislation.

³ US Department of State, *Background Note: Jamaica* (Bureau of Western Hemisphere Affairs, January 2004), available at www.state.gov/r/pa/ei/bgn/2032.htm.

⁴ US Federal Research Division, Library of Congress, *Country Study: Commonwealth of Caribbean Islands*, 'Chapter 2: Jamaica – Government and Politics' (*information as of 1987*), at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+cx0021\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+cx0021)).

⁴ Ibid.

⁵ Government of Jamaica, *Core document forming part of the reports of States Parties: Jamaica*. Chapter III, 'General Political Structure', par. 31, (23/06/97), UN Doc. HRI/CORE/1/Add.82, at www.bayefsky.com/core/jamaica_hri_core_1_add.82_1997.php.

⁶ US Department of State, *2002 Country Reports on Human Rights Practices: Jamaica* (Bureau of Democracy, Human Rights and Labour, Washington, March 2003), available at www.state.gov/q/drl/rls/hrrpt/2002/18337.htm.

⁷ Amnesty International, *Amnesty International Report 2003: Jamaica*, covering events from January to December 2003, available at <http://web.amnesty.org/report2003/Jam-summary-eng>.

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Jamaica's courts operate on three levels.⁸ The Court of Appeal is the highest appellate court in Jamaica.⁹

The Supreme Court has:

*'unlimited jurisdiction in civil and criminal cases and can dispense summary justice without jury in certain criminal cases. It sits in Kingston for the trial of civil cases; for criminal cases, it serves as a circuit court in the capital town of each parish.'*¹⁰

Below the level of the Supreme Court are the Resident Magistrates Courts, which have jurisdiction over the Family Courts. Within their jurisdiction, which derives entirely from statute, not from constitutional authority, are the Traffic and Family Courts.¹¹ The latter have concurrent jurisdiction with the Supreme Court in relation to paternity, maintenance, and custody of children whilst also presiding over cases involving the adoption of children.

Jamaica is divided into 14 administrative districts, known as parishes. The district of Kingston has four Resident Magistrate courts; St. Andrew has three while the other 12 parishes have one each. Circuit court judges exercise broad discretion in imposing sentences for serious violations of law.¹²

The Judicature (Family Court) Act of 1975 establishes a system of Family courts. There are four Family Courts in Jamaica with jurisdiction only in the parishes where they are established. They deal with all family matters except divorce. They also:

'provide or recommend social services to assist clients to sort out their problems before legal action becomes necessary. These services include family counselling, probation, child care and police adoption and other services as necessary. Probation and Children's

⁸ US Department of State, *Country Report (2003)*, op. cit.

⁹ However, as the Library of Congress observes: '*Section 110 of the Constitution provides that decisions of the Court of Appeal can be taken on appeal to the Judicial Committee of the Privy Council in London in grave civil or criminal cases, for matters deemed of great public importance, or as decided by Parliament or the Court of Appeal itself. The Privy Council is given final jurisdiction on interpretation of the Constitution.*' See US Federal Research Division, *Country Study*, op. cit.

¹⁰ Ibid.

¹¹ Centre for Reproductive Rights, *Women of the World: Law and Practice affecting their Reproductive Lives: Latin America and the Caribbean - Jamaica* (1997), p.136, available at www.reproductiverights.org/pdf/wowlac_jamaica.pdf.

¹² US Federal Research Division, *Country Study*, op. cit.

*Officers also prepare reports for the courts to assist with decision making.*¹³

3. Human rights in Jamaica: an overview

3.1 Applicable human rights law

3.1.1 International obligations

Jamaica has signed and ratified all the core UN human rights treaties, with the important exceptions of the UN *Convention against Torture* (1984) and the UN *Migrant Workers Convention* (2003). In addition, it is not bound by the 2nd *Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) Aiming at the Abolition of the Death Penalty* (1990), or the 1999 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, which creates a complaints mechanism for individuals or groups who suffer violations of the rights guaranteed in CEDAW.

Individual petitions concerning the use of the death penalty led to Jamaica's denunciation and withdrawal from the ICCPR 1st Optional Protocol on 23 January 1998. As a signatory to this Protocol, Jamaica had previously accepted the jurisdiction of the Human Rights Committee to receive complaints about its violation of ICCPR rights.

Several of Jamaica's periodic reports to the UN Treaty monitoring mechanisms remain outstanding, including its 5th periodic report to the Committee on the Elimination of Discrimination against Women CEDAW, due in November 2001.¹⁴

3.1.2 Regional obligations

Although Jamaica is a member of the *Organisation of American States (OAS)* and has signed and ratified the *American Convention on Human Rights* (1969), it does not accept the jurisdiction of the Inter-American

¹³ Jamaican Ministry of Justice, 'Family Courts', accessed 14/02/04, available at www.jjs.gov.jm/justice/index.asp.

¹⁴ For further information on Jamaica's reporting history, see www.bayefsky.com/bycategory.php/state/86.

Court of Human Rights.¹⁵ The Inter-American Commission on Human Rights is therefore the only regional mechanism which Jamaican citizens may petition in the absence of a domestic remedy following violations of rights guaranteed by the region's human rights instruments.¹⁶

Jamaica is not a party to the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, or 'Convention of Belém Do Pará'.¹⁷ Its failure to sign and ratify the Convention is unusual amongst OAS member states. In its *Report on Human Rights on the Status of Women in the Americas*, the Inter-American Commission notes that:

*'The Inter-American Convention on Violence against Women, known as the "Convention of Belém do Pará," is unique. Within the regional system, the development and entry into force of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women represents the re-envisioning of inter-American human rights law to apply in a gender-specific way. The adoption of the Convention reflected a powerful consensus among both state and non-state actors that the struggle to eradicate gender violence requires concrete action and effective guarantees. This initiative both influenced and drew from the recognition of violence against women as a human rights violation at the 1993 World Conference on Human Rights, the adoption of the UN Declaration on the Elimination of Violence against Women later that year, and the further developments of the Fourth World Conference on Women in 1995. Notwithstanding that the Convention of Belém do Pará is the newest of the inter-American human rights instruments; it is the most widely ratified, with 27 States Parties.'*¹⁸

Any person or group from a signatory state may petition the Inter-American Commission alleging a violation of the Convention.¹⁹

¹⁵ *The American Convention on Human Rights* (Protocol of San Jose) signed on 16 September 1977, and ratified 7 August 1978, available at www.cidh.oas.org/annualrep/2002eng/ratifications.htm#i.

¹⁶ Article 44 ACHR states that the recommendations made by the IACHR are not legally binding.

¹⁷ Adopted by the OAS General Assembly in Belém do Pará, Brazil, June 9, 1994, entered in force March 1995, available at www.cidh.oas.org/countryrep/Mujeres98-en/Annex%202.htm.

¹⁸ Inter-American Commission on Human Rights, *Report on Human Rights on the Status of Women in the Americas*, (13 October 1998), OAE/Ser.L/VII.100, Doc.17, available at www.cidh.oas.org/countryrep/Mujeres98en/Chapter%201.htm#2.%20The%20Conventio%20of%20Belém%20do%20Pará.

¹⁹ *Ibid.*, 'Chapter 1, The Inter-American human rights system'.

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In 2002, the Jamaican government explained its failure to ratify the *Convention of Belém do Pará* as follows:

'Jamaica has not yet ratified this Convention due to certain reservations. The Convention has been critiqued by the Attorney General's Department. After careful consideration of the articles of the Convention together with the legislation concerning women, the view is that there are no legal impediments preventing Jamaica's accession to the Convention. Chapter III of the Constitution together with the Offences Against the Person Act, the Married Women's Property Act, the Matrimonial Causes Act, the Employment (Equal Pay for Men and Women) Act and the common law adequately cover the legal obligations contained in the Convention.

The issue that is of concern however relates to the death penalty and the Convention. There is currently a legal debate on whether the Convention prohibits State Parties from imposing a death penalty on a woman'.²⁰

3.1.3 The 1962 Jamaican Constitution

Chapter III of the 1962 Jamaican Constitution entrenches certain fundamental rights of the individual, irrespective of race, place of origin, political opinions, colour, creed or sex. These rights include the right to life, liberty, property and security of the person, protection from arbitrary arrest and from restriction of movement. As entrenched rights, these provisions may only be amended with a two-thirds majority from both the House and Senate.²¹

3.2 Human rights protection in practice

Despite its formal commitment to a range of international and regional human rights standards, in practice, Jamaica's government has often fails to ensure effective domestic implementation of these rights. In its 2004 report on human rights practices in Jamaica, the US Department of State summarises the human rights situation during 2003 in the following terms:

²⁰ Inter-American Commission On Women (CIM) 2002 Report, Prepared by the Bureau of Women's Affairs, (August 30, 2002), p.9, available at www.oas.org/CIM/XXXI%20Asamblea%20de%20Delegadas/Informe%20Nacional%20Jamaica.ing.doc.

²¹ Government of Jamaica, *UN Core Document*, op. cit., paras. 34-35.

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'The Government generally respected the human rights of its citizens; however, there were serious problems in some areas. Members of the security forces committed unlawful killings. Mob violence against and vigilante killings of those suspected of breaking the law remained a problem. Police and prison guards abused detainees and prisoners. Although the Government moved to investigate incidents of police abuses and punish some of those police involved, continued impunity for police who commit abuses remained a problem. Prison and jail conditions remained poor; overcrowding, brutality against detainees, and poor sanitary conditions were problems. There were reports of arbitrary arrest and detention. The judicial system was overburdened, and lengthy delays in trials were common. Violence and discrimination against women remained problems. There were cases of societal discrimination against persons with disabilities, while treatment of members of the Rastafarian religion improved. Violence against individuals suspected or known to be homosexuals occurred, as did violence and discrimination against persons living with HIV/AIDS. Child labor was a problem, as was trafficking in persons.'

While no executions have been carried out in Jamaica since 1988, Jamaica retains the death penalty. Prior to their re-election in October 2002, the PNP pledged to amend the Jamaican Constitution to render ineffective previous court rulings preventing executions. In 2002, at least five people were sentenced to death, leaving at least 50 people on death row. No executions took place.²²

3.2.1 Violent crime and gang-related violence

Violent crime in Jamaica is a major human rights concern. According to Amnesty International, between January and October 2003 a total of 739 murders were reported in Jamaica. The organisation comments:

*'A large proportion of these constituted reprisal killings, gang-related and domestic incidents. Jamaican media estimate that firearms were used in around 75% of the murders committed in the first three months of this year.'*²³

²² Amnesty International, *2003 Report*, op. cit.

²³ Amnesty International, *Jamaica/UK: Communities in the Crossfire – debate on gun violence and arms control*, AI Index: AMR 38/019/2003 (Public), News Service No: 236,16 October 2003, available at <http://web.amnesty.org/library/Index/ENGAMR380192003?open&of=ENG-JAM>.

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*An explosion in violent crime since the 1960s has made Jamaica one of the most violent societies in the Latin American and Caribbean region. It has a homicide rate of 37 per 100,000 people; within the region, only Guatemala, El Salvador and Colombia have higher homicide rates.*²⁴

According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions:

*'In recent years the crime rate has increased considerably in Jamaica. Situated at the centre of the Caribbean, Jamaica has been exposed to both the drug and the arms trade and often serves as a transit point for illegal shipment of these items. Violence has marked life in the so-called "inner cities", mainly in Kingston. In recent years the murder rate has been more or less constant at around 1,000 persons per year.'*²⁵

Gang-related violence is widespread. The World Bank writes that:

*'According to a World Bank study on youth in Jamaica, four out of the five communities studied perceived gang conflict as the most serious type of violence. Gang violence dates back to the late 1960s when individual politicians within Jamaica's political parties created unofficial armed militias to control poor neighborhoods. These groups eventually became economically independent through drug smuggling and today form a loose mafia that operates within Jamaica and internationally.'*²⁶

The 2004 report of the US Department of State on human rights practices in Jamaica also states that in 2003:

'The country faced a critical crime situation with a homicide rate exceeding 37 per 100,000 persons. Well-armed gangs that trafficked

²⁴ The World Bank, Caribbean Country Management Unit, Gender Group, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, *A Review of Gender Issues in Haiti the Dominican Republic and Jamaica*, Report No. 21866-LAC, (December 11, 2002) par.187, available at www.wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/03/22/000094946_03030704005682/Rendered/PDF/multi0page.pdf.

²⁵ Jahangir. A., *Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2003/53, 26th September 2003, UN Doc. E/CN.4/2004/7/Add.2, par. 19, p. 10, available at www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a7af3c2c5ba84be7c1256ddb0039c2_02?OpenDocument.

²⁶ World Bank, *Gender Issues*, op. cit., par. 188.

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in narcotics and guns controlled many inner-city communities. The gangs often were equipped better than the police force and conducted coordinated ambushes of joint security patrols.'

3.2.2. State violence

State violence is also a major concern. In 2002, Jamaica's population suffered from an 'alarming rate of lethal police shootings' and police brutality, whilst unlawful arrests and detention and ill-treatment of Jamaican detainees, possibly amounting to torture, were also common. At least 133 people were killed by the police during the year.²⁷

The impunity of the security forces in relation to these illegal killings remains a significant obstacle to the effective protection of human rights. Again, Amnesty International reports that during 2002,

*'There was a continuing failure to hold perpetrators of human rights violations to account and to offer redress to victims. Investigations into alleged extrajudicial executions and other human rights violations were inadequate. In numerous instances, police allegedly failed to protect the scenes of such killings and those investigating failed to arrive promptly, thereby allowing important evidence to be tampered with or destroyed. Although police officers were occasionally charged with offences related to human rights violations, no police or army officer was known to have been convicted of such charges.'*²⁸

Following her visit to Jamaica in 2003, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions concluded that Jamaica 'showed an alarming number of killings by the police and security forces of civilians'. The Bureau of Special Investigations, established in 1999 for the purpose of investigating all police shootings, reported that in 2002 there were 152 killings by the police. In 2001 there were 156 and in 2000 149 killings were reported.²⁹ Her final report on Jamaica provides the following statistics:

'According to information provided by the Government, from 1 July 1999 to 31 January 2003 a total of 23 police officers were charged with either murder or manslaughter in a total of 17 cases. As of February 2003, of these 23 police officers 7 had been acquitted and

²⁷ Amnesty International, *2003 Report*, op. cit.

²⁸ Amnesty International, *2003 Report*, op. cit.

²⁹ Jahangir, *UN Special Rapporteur*, op. cit, par. 22.

*6 had deserted. The cases of the remaining 10 had, at the time of writing, not been concluded.*³⁰

Although no up to date information was available on the topic, a 1999 UNDP study on gender violence also notes that incidents of policemen being violent to women in custody has been recorded.³¹

3.3 Economic and social rights

According to the Jamaican government, its implementation of economic and social rights has been limited due to economic restructuring and external debt. The Jamaican government explains that:

*'Jamaica's social indicators have tended to be quite good [...]. However, the stabilization and structural adjustment processes produced tremendous social costs. Government's expenditure on social welfare and services has been constrained under structural adjustment by the large debt burden, the downsizing of the public service and the privatization of certain services. As a consequence, services such as health and education have received insufficient funding, resulting in a critical shortage of manpower and equipment which has had an adverse impact on the quality of these services. For example, functional illiteracy among school leavers is relatively high even with the high level of school enrolment.'*³²

The unequal distribution of wealth and rural poverty in Jamaica also prevents the universal realisation of social and economic rights. According to UNICEF:

'Jamaica is a country of 2.6 million people. The wealthiest 10% of its citizens consume ten times as much as its poorest 10% (UNICEF, 2000). In 1999, the poorest 10% lived on the equivalent of less than US\$1.10 daily and in the same year, families existing below the poverty line have been estimated at 16.9% of households across the

³⁰ Ibid., par. 24.

³¹ United Nations Development Programme, *National Reports on the Situation of Gender Violence against Women NATIONAL REPORT: JAMAICA*, (UNIFEM, UNPD, UNICEF, UNFPA, ECLAC, UNHCR, UNAIDS, UNHCHR, March 1999) Regional Project RLA/97/014, no page numbers provided, see figure 1.1 'Gender Violence: An overview'. The study was published as part of an inter-agency UN campaign on Women's Human Rights. In UNDP's report "domestic violence" is defined as '*Any act committed within the family by one of its members which seriously impairs the life, body, psychological well-being or liberty of another family member*'. Available at: www.undp.org/rblac/gender/jamaicabigfile.pdf.

³² Government of Jamaica, *Core document*, op. cit.

country. Urbanisation and emigration have had profound effects on families. Over half of the country's population lives in urban areas, with 43% of the population living within the Kingston metropolitan area itself. However, poverty rates in KMA are the lowest (10.6%); rural poverty rates are 22% and in some remote areas, as much as double that again (UNICEF, 2000).³³

4. Women's human rights in Jamaica: context

4.1 Women's status in society

Whilst female figures play central roles within the family, Jamaica also retains a patriarchal or 'traditional (biblical) view of man as head of household.³⁴

Considering Jamaica's implementation of the rights guaranteed under the ICESCR, the Committee on Economic, Social and Cultural rights (CESCR) comments on the damaging effect of traditional gender roles, noting that:

*'the persistence of certain traditions and cultural attitudes in Jamaica are serious impediments to the full enjoyment by women, girls and boys of their rights under the Covenant.'*³⁵

In October 2003, the Jamaican daily newspaper the *Jamaica Observer* reported on research from the University of the West Indies which found that 80% percent of men and 28% of women believed the natural role of a woman to be a support to the man. 34% of men believed that when a woman married she became her husband's possession, while only 1% of females believed this. The study concluded that men see themselves as more powerful and often better than women, and believe that their position of authority is inherent and God-given. The *Jamaica Observer* reported Dr. Salter, author of the research, as commenting that:

³³ L., Williams, "Anywhere yuh be, yu not safe": *Adolescence and Violence in Jamaica*, Figure c (i) 'Poverty and Insecurity' JAM 2001/803, (UNICEF 2001). The paper provides a review of the relevant literature and the analysis of the views of a sample of 170 adolescents. The adolescents' views were collected from eighteen focus group discussions, held in three distinct geographical sites across Jamaica, available at www.unicef.org/evaldatabase/JAM_2001_803.pdf.

³⁴ UNDP, *National Reports*, op. cit.

³⁵ CESCR, *Concluding Observations: Jamaica*, UN Doc. E/2002/22 (28th and 29th November, 2001), par. 929, available at www.bayefsky.com/./pdf/jamaica_t4_cescr.pdf.

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*(...) with such a mindset, implications for hopes of achieving gender equality [sic] are dubious, but the possibilities of violence against women being enacted are enormous.*³⁶

Although improved economic status of some women has enhanced women's authority in the household, for many, economic dependence on a partner discourages them from reporting domestic abuse. UNDP notes in its 1999 report that:

*'Girls that were interviewed from the inner city stated that the one disadvantage of a boyfriend is that "they beat you". (...) research showed that men were seen as gatekeepers to the resources that women need, therefore they had to take orders, give respect and hear what men say.'*³⁷

Sources suggest that this reluctance is especially marked if a woman has children. Research carried out by UNICEF points out that whilst men are less permanent figures within the family home, this does not necessarily diminish their important financial role within the family. The organisation observes how:

*'It is notable that although 40% of children do not have their father's name on their birth certificate, 80% of fathers do contribute to the financial support of their children.'*³⁸

Women hold roughly 8% of all political offices and 30% of senior civil service positions. Three out of 17 cabinet members are women.³⁹

³⁶ *Jamaica Observer: All Women*, 'Mistrust between the sexes pushing domestic violence up: Sixty per cent of males mistrust their women' by Indi McLymont, (October 20, 2003). According to the article, the study on male attitudes to domestic violence and men and women's attitudes towards themselves was 'a preliminary one and not representational of the population The respondents were mainly male and female police officers and social workers, male students from the University of the West Indies and Jamaica College of Agriculture before their training in domestic violence workshops.' Available at http://jamaicaobserver.com/magazines/AllWoman/html/20031019T220000-0500_50471_OBS_MISTRUST_BETWEEN_THE_SEXES_PUSHING_DOMESTIC_VIOLENCE.asp.

³⁷ UNDP, *National Reports*, op. cit., fig 1.3 'Gender violence through life cycle'.

³⁸ UNICEF, *Anywhere Yuh Be*, op. cit., part c(ii) 'Family and Community Stress'.

³⁹ US Department of State, *Country Report* (2004), op. cit.

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4.2 Marital status and property rights

Household structures vary considerably. Whilst couples do enter into legal marriage, multiple, common-law relationships are also a particular feature of Jamaican society. As much as 47% of the population is also in 'visiting unions'.⁴⁰ The Centre for Reproductive Rights explains the nature of these relationships, reporting that:

*'In addition to legally recognized marriages, many couples form "visiting unions," in which the man visits the woman, often at the parental home, or common-law marriages, many of which develop out of visiting unions. Couples often live together for many years and raise several children together before entering a legal union. However, a recent study of the Kingston Family Court found that most Jamaican women are at the core of the family unit, while men tend to be more transitory, although they still play an important financial role.'*⁴¹

UNICEF explains the effect of this on children stating that:

*'Family structure in Jamaica is distinguished by the fact that procreation tends to occur outside conjugal unions, so children are born into a variety of family types and domestic situations. The child may move through several living arrangements, including resident-mother and visiting father, common law union or a legal marriage, or find his or her situation "redefined to that of step-child in a household where the mother or father has a new resident partner. In other cases, the children of earlier unions may be shifted to live with grandmothers or other relatives" (Government of Jamaica/UNICEF, 1995b). Half of the unions between biological parents have ended by the time a child is 11 years old.'*⁴²

Until February 2004, when the *Family Property (Rights of Spouses) Act* was passed by Parliament, legally married women and women in other types of union did not benefit from property rights equal to those of their partners after the breakdown of their relationship. In particular, under the *Married Women's Property Act* of 1887, women in common-law relations were not deemed 'spouses' and therefore forced to go through lengthy

⁴⁰ UNICEF, *Anywhere Yuh Be*, op. cit., part c(ii) 'Family and Community Stress'.

⁴¹ Centre for Reproductive Rights, *Women of the World: Law and Practice affecting their Reproductive Lives: Latin America and the Caribbean - Jamaica* (1997), p.136, available at www.reproductiverights.org/pdf/wowlac_jamaica.pdf.

⁴² UNICEF, *Anywhere Yuh Be*, op. cit., part c(ii) 'Family and Community Stress'.

court proceedings to negotiate the division of property upon the dissolution of a relationship.⁴³

The 2004 Act requires fair division of properties between both spouses after the breakdown of legal marriages and also after the breakdown of common-law unions where couples had been cohabiting for five years or more. It recognises the non-financial contribution of spouses/common-law partners during the division of property, and makes no presumption that a monetary contribution during the relationship was of greater value than a non-monetary one.

According to one government Minister, the legislation will mean that women and their children are no longer “disenfranchised” if their partners start a new common-law relationship or re-marry. However, in spite of this important development for women in common-law unions, those in ‘visiting unions’ will not benefit from equal property rights under the Act. The financial situation of women in these types of union therefore remains uncertain should their relationship break down.⁴⁴

In addition, the 1989 Matrimonial Causes Act continues to cover only the legally married, leaving women in non-marital relationships (co-habiting or otherwise) with no legal right to obtain support or maintenance from their partner under the Act. Women in common-law unions may however claim maintenance for their children.⁴⁵

4.3 Discrimination against women

4.3.1 Anti-discrimination legislation

Subject to respect for the rights and freedoms of others and to the public interest, article 13 of the Jamaican Constitution protects certain fundamental freedoms irrespective of race, place of origin, political opinions, colour, creed or sex.⁴⁶ These provisions relating to fundamental

⁴³ Ministry of Development, ‘House Passes Family Property’ (Rights Of Spouses) Act, KINGSTON, (JIS), February 18, 2004, available at www.jis.gov.jm/development/html/20040218t170000-0500_1762_jis_house_passes_family_property_rights_of_spouses_act_.asp.

⁴⁴ Ibid.

⁴⁵ Centre for Reproductive Rights, *Women of the World (1997)*, op. cit., p.137.

⁴⁶ *Constitution of Jamaica of 1962*, updated through Amendment Act 18/1999, Chapter III, paragraph 13, available at http://axes.com/encyc/caricom/nt/frameit.cfm?frame_url=http://www.georgetown.edu/pdba/english.html.

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rights underlie all legal proceedings, although relief on constitutional grounds is only granted when every other domestic remedy has been exhausted, or no other form of relief exists in law.⁴⁷

In addition, according to article 24(1) of the Constitution:

'[N]o law shall make any provision which is discriminatory either of itself or in its effect.'

Chapter 3, article 24(3) of the Constitution provides that the term 'discriminatory' should be interpreted to mean:

*'(...) affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.'*⁴⁸

4.3.2 Shortcomings in anti-discrimination provisions

Article 24(3) of the Constitution has been widely criticised for failing to prohibit discrimination on the basis of sex.⁴⁹ In addition, the non-discrimination provision specifically states that its terms shall not apply to any law which relates to 'adoption, marriage, divorce, burial, devolution of property on death, or other matters of personal law'.⁵⁰

Economic discrimination against women in the workplace is prohibited by the 1975 *Employment (Equal Pay for Men and Women) Act*, under which women and men must receive equal pay for equal work. However, the absence of a prohibition on sex discrimination in the Jamaican Constitution discourages the reform of other discriminatory employment legislation. The Centre for Reproductive Rights gives one example:

'(...) the Women (Employment of) Act of 1942 (the "Women's Employment Act") provides, with certain exceptions, that "no woman shall be employed in night work" and that the total permitted

⁴⁷ Centre for Reproductive Law and Policy, *Women of the World (1997)*, op. cit., p.130

⁴⁸ *Jamaican Constitution*, Article 24(3), available at http://axes.com/encyc/caricom/nt/frameit.cfm?frame_url=http://www.georgetown.edu/pdba/english.html.

⁴⁹ See for example the *Concluding Observations* of the CESCR on Jamaica, op. cit.

⁵⁰ *Jamaican Constitution*, Article 24(4), op. cit.

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hours of employment per twenty-four hours is ten hours. The statute provides no exception to the stated maximum hours of employment. Certain occupations are exempt from the prohibition on night time employment: nurses or healthcare workers; management; theater or cinema workers; workers in hotels, bars, restaurants, and clubs; pharmacists; workers in fresh fruit preparation, packing, and shipment; and workers in certain specified unavoidable situations. The Women's Employment Act further gives the Minister of Labor the power to restrict or prohibit the employment of women in industrial undertakings and to restrict, prohibit or regulate the employment of women before or after childbirth'.⁵¹

Following Jamaica's latest periodic report to the CESCR on its implementation of the *International Covenant on Economic, Social and Cultural rights*, the CESCR expressed concern about:

'the existence of laws which are discriminatory on the basis of sex (mostly against women but at times against men), such as article 6, paragraph 1, of the 1947 Pensions Act providing for payments to married males, the 1942 Women (Employment of) Act prohibiting night work by women except in specified circumstance.'⁵²

CEDAW's monitoring committee takes a similar view in its most recent review of Jamaica's implementation of its obligations under the Convention, stating:

'The Committee urges the Government to make the necessary legislative reforms to the Constitution in order to create an appropriate legal framework to ensure that the law is consistent with the provisions of the Convention. The Committee urges the Government to reform existing legislation and to create new legislation to protect the equal rights of women and men in regard to labour, social, family and property.'⁵³

Even where anti-discrimination legislation has been introduced, *de facto* discrimination continues to prevent the implementation of women's legal rights. The US Department of State's country report on human rights practices in Jamaica draws attention to such discrimination throughout 2002 in relation to employment, stating that:

⁵¹ Centre for Reproductive Rights, *Women of the World (1997)*, op. cit., p.138.

⁵² CESCR, *Concluding Observations*, op. cit, par. 931.

⁵³ CEDAW, *Jamaica: Concluding Observations to 2nd, 3rd & 4th state periodic reports*, UN Doc. A/56/38 (Part I) (2001), paras 211 & 212, available at www.bayefsky.com/./pdf/jamaica_t4_cedaw.pdf.

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*'The Constitution and the Employment Act accord women full legal equality; however, in practice women suffered from discrimination in the workplace and often earned less than their male counterparts. The Bureau of Women's Affairs, reporting to the Minister of Development, oversaw programs to protect the legal rights of women. These programs had limited effect but raised the awareness of problems affecting women.'*⁵⁴

4.4 Women's rights and legislative reform

Following Jamaica's ratification of CEDAW in 1981, a National Policy Statement on Women was developed by the Jamaican Bureau of Women's Affairs, the government agency charged with overseeing initiatives to assist women.⁵⁵ The Statement was adopted by the Jamaican Cabinet in July 1987 which clearly acknowledged the need for legislative reform in order to ensure adequate protection and redress for women and girls subject to domestic violence, incest, rape and sexual harassment.⁵⁶

Although the government has acknowledged the need for new legislation, the pace of reform has been extremely slow, sparking international criticism. The Human Rights Committee, CEDAW Committee and CESCR have consistently drawn attention to the government's failure to amend the Constitution, or to introduce or revise current legislation to ensure that Jamaican laws are consistent with their human rights obligations under international law. For example, the Human Rights Committee 1998 *Concluding Observations* on Jamaica recommend that:

*'increased efforts be made to sensitize the population to the need to respect women's dignity and that legislation should ensure ready access to remedies for violations of women's human rights.'*⁵⁷

NGOs have lobbied politicians to introduce a range of measures to fight gender violence and discrimination against women, including the adoption of legislation such as an amended *Offences against the Person Bill*, an

⁵⁴ US Department of State, *Country Report (2003)*, op. cit.

⁵⁵ According to the government, 'The Women's Bureau is the state agency charged with overseeing initiatives aimed at assisting women in the society. The agency acts as not only an advocate for women but as a facilitator of projects aimed at empowering women including accessing funding for micro-enterprise activities designed to provide women with economic self-sufficiency.' For further information see www.npep.org.jm/Projects_Programmes/Ministry_of_Tourism/Bureau_of_Women_s_Affairs/bureau_of_women_s_affairs.html.

⁵⁶ UNDP, *National Reports*, op. cit., figure 2.9.

⁵⁷ ICCPR, *Concluding Observations*, 1998 UN Doc. CCPR A/53/40 (1998), par. 80.

*Incest (Punishment) Bill, Sexual Harassment Bill and a Charter of Rights and Freedoms.*⁵⁸

However, as the US State Department reports, the launch of the calls for new legislation in the run up to the last general election gained *'moderate media support and coverage but little impact on election debates.'*⁵⁹

4.5 Economic & social rights (including health and fertility)

Despite a traditional perception of men as main providers for the family, Jamaica is noted for a particularly high, and growing, incidence of households headed by females. According to UNICEF research published in 2001, 44% of Jamaican households are headed by women, one of the highest proportions anywhere in the world outside West Africa.⁶⁰ The World Bank explains that:

*'Ten years ago women's household responsibilities were primarily centred around ensuring the welfare of their children, carrying out domestic chores and providing a comfortable environment for their male partners. However, with significant increases in their independent earning ability, coinciding with a decrease in the number of men working, women are often now the chief breadwinners for the family.'*⁶¹

However, the World Bank also reports that not all women have benefited from improved economic status, noting:

*'[I]n rural areas women's economic status has not increased to the same extent as their urban counterparts, as men still generally are perceived as the main providers for the family, and opportunities for economic advancement for women are fewer.'*⁶²

In addition, of the *single* women who head 47% of Jamaica's urban households, 30% live in poverty.⁶³

⁵⁸ *Women's Manifesto Committee, Women's Manifesto, op. cit., Article 13.*

⁵⁹ US State Department, *Country Report (2003)*, op. cit.

⁶⁰ UNICEF, *Anywhere Yuh be*, op. cit., figure c (ii) 'Family and community stress'

⁶¹ World Bank, *World Development Report 2000/1: Jamaica*, p. 58 available at www.worldbank.org/poverty/voices/reports/national/jamaica.pdf.

⁶² Ibid.

⁶³ Centre for Reproductive Rights, *Women of the World: Laws and Policies Affecting Their Reproductive Lives: Latin America and the Caribbean, Jamaica*, Progress Report, (2000), p. 58, available at www.crlp.org/pdf/wowlac_pr00_jamaica.pdf.

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Indeed, according to the Jamaican government, Jamaica's structural adjustment programme and the country's growing debt burden have impacted disproportionately on women, by undermining measures to address poverty, violence against women, prostitution and the spread of HIV/AIDS. The government writes:

'The status of women in Jamaica over the last decade has been affected by a number of external as well as internal factors which are inter-related. Amongst these are the impact of the Global Debt Crisis and the impact of structural adjustment policies which have had the following effects:

- a) reduction of the standard of living of the majority of Jamaica's population*
- b) reduced government spending on social services*
- c) change in the structure of the labour market such that there has been a growth in the informal economy*

*These factors have effectively placed the burden of adjustment on low income earners, amongst which women are over represented.'*⁶⁴

In spite of higher levels of education and training amongst women, higher unemployment rates still persist amongst the female population. The Inter-American Commission on Women gives the following analysis:

*'A breakdown of the unemployment statistics [for the year 2000] by sex reveals that male unemployment rose marginally from 10.0 percent to 10.2 percent while conversely female unemployment fell slightly to 22.3 percent from 22.5 percent in 1999. Nevertheless the gap between male and female unemployment remains significant and is therefore a matter of concern (...). Among the unemployed, women (109,200) outnumbered men (62,500) by nearly 47, 000 or a ratio of 1.7 to 1.'*⁶⁵

Levels of female unemployment are partly explained by the gender stereotypes and sex discrimination prevalent in Jamaica. The Canadian government's Industrial Cooperation Programme reports that:

⁶⁴ CEDAW, *Concluding Observations*, op. cit., par. 8.

⁶⁵ Inter-American Commission On Women (CIM) 2002 Report, Prepared by the Bureau of Women's Affairs, August 30, 2002, available at www.oas.org/CIM/XXXI%20Asamblea%20de%20Delegadas/Informe%20Nacional%20Jamaica.ing.doc pp.1-2; According to the Human Development Report 2000, 81 percent of Jamaican women were literate compared to 69 percent of men.

'the educational standard needed for males to succeed in the Jamaican society is lower than that required by females due to the social norms established for males. Women need to have four more years of schooling in order to compete for salaries similar to those of men. Even with their higher levels of education and qualification, the majority of women are concentrated in the lowest paying sectors'.⁶⁶

In terms of health and fertility, a range of sources expresses concern about high levels of teenage pregnancy amongst young unmarried girls. In a review of gender issues in the Latin American and Caribbean (LAC) region, the World Bank describes the situation as follows:

'Jamaica's total birth rate has declined over the last two decades, falling from 3.7 births per woman in 1980 to 2.8 births per woman in 1997.[...] At approximately 100 births per 1,000 women age 15-19 years the adolescent fertility rate is high compared to the LAC average of 74 births. An estimated 85 percent of Jamaican babies are reportedly born to unmarried mothers and over 50 percent do not have a registered father.'⁶⁷

The 1864 *Offences against the Person Act* prohibits abortion, although common-law principles permitting specific exceptions to this have been developed. During the mid-1970s, the Jamaican Ministry of Health itself called for an amendment to the 1864 Act in order to clarify the circumstances in which abortion would be lawful, and make rape, 'carnal abuse' and incest lawful grounds for abortion. However, according to the most recent information available (published by the Centre for Reproductive Right in 2000), legislation to amend the law in this area has still has still not been enacted.⁶⁸

Adolescent girls are increasingly vulnerable to HIV/AIDS. The World Bank reports that:

'Nearly 70 percent of the HIV-positive population is male, although the incidence of HIV has been growing at a faster rate among women than men. Adolescents between the ages of 10 and 19 have the highest incidence of STI [Sexually Transmitted Infections], which is a known risk factor for HIV/AIDS.'⁶⁹

⁶⁶ Canadian Industrial Cooperation Programme, *Gender Profile: Jamaica* (April, 2003) citing the Planning Institute of Jamaica., available at www.acdi-cida.gc.ca/cida_ind.nsf/0/6718d10a2e97648085256bf90047ee94?OpenDocument.

⁶⁷ World Bank, *World Development Report*, op. cit., par. 167.

⁶⁸ CCR, *Women of the World (2000)*, op. cit., p. 59.

⁶⁹ World Bank, *World Development Report*, op. cit., par. 186.

UNICEF observes that the high rate of HIV/AIDS in Jamaica is above the LAC regional average, commenting that:

*'Jamaica has high HIV/AIDS prevalence (1.6 per 1,000 persons) vis-à-vis the region. Nearly eight per cent of those infected are children under 10 years of age, with mother-to-child-transmission a major contributing factor. Almost eight per cent of the total reported number of cases (4,443) is among children under the age of 10. Four fifths of infected children live in poor households, and one out of four will be abandoned. Among adolescents, infection rates have doubled every year since 1995, and adolescent girls are three times as likely as adolescent boys to become infected. [...] Sexual initiation occurs as early as 10 years of age. Knowledge of contraception among adolescents is high, but it is estimated that only 50 per cent regularly use condoms.'*⁷⁰

4.6 Sex tourism

In 2001, the CESCR expresses deep concern about:

*'the lack of laws, policies or programmes to address explicitly the proliferation of sex tourism and its consequences, which include the sexual exploitation and prostitution of women and children and the spread of sexually transmitted diseases. In particular, the Committee is alarmed that school dropout rates have increased as young girls are induced to leave school to enter the sex trade, sometimes even with the consent and encouragement of parents who benefit from their earnings.'*⁷¹

According to an ILO [International Labour Organisation] study on child prostitution carried out in 2000, girls as young as 10 years old are involved in prostitution in all parts of the country.⁷² The use of young girls in the sex tourism trade is cited by the CESCR as one factor contributing to the growing incidence of HIV amongst female adolescents.⁷³

⁷⁰ UNICEF, 'At a glance: poverty rates in Jamaica', available at www.unicef.org/infobycountry/jamaica.html.

⁷¹ CESCR, *Concluding Observations*, op. cit., par. 936.

⁷² Cited by the US Department of State, *Country Report (2003)*, op cit.

⁷³ CESCR, *Concluding Observations*, op. cit., par. 939.

4.7 Aspects of gender-based violence

4.7.1 Murder

According to UNDP's 1999 research, female murders accounted for roughly 10% of all murders in Jamaica in 1996 and 1997. In general, female murder victims have tended to come from the country's main urban areas. The organisation reports that:

*'[In 1996] 55 of the 99 murders of females, or 55.6 percent, occurred in the parishes of Kingston and St. Andrew which is the main urban area of Jamaica. In 1997, female murders accounted for a similar percentage of all murders, and the percentage in Kingston and St. Andrew was even higher with 71, or 64.5 percent of the 110 female murders taking place in these parishes. The overall number of female murders reported for 1997 increased by approximately 11.1 percent over those for 1996 from 99 to 110 cases, indicating an increase in this extreme type of physical violence against women.'*⁷⁴

4.7.2 Rape

In relation to sexual offences, the Inter-American Commission on Women states that the number of cases reported in the year 2000 increased by 859 to a total of 2,121. Rape, 'carnal abuse' and indecent assault accounted for most sexual offences.⁷⁵ According to later reports by the US Department of State, during 2003 the number of rapes reported increased by 2%, although the vast majority of rapes remained unreported.⁷⁶

Sexual violence towards girls is particularly prevalent, with 26% of adolescent females age 15 to 19 reporting they have experienced forced sexual intercourse.⁷⁷ The 2004 US Department of State country report on Jamaica notes that by 21 September 2003, there had been 274 reported cases of sex with girls under 16, a 23% increase since the same period in

⁷⁴ UNDP, *National Reports*, op. cit., figure 2.1 'Incidence and Prevalence of violence against women in the country over the last 5 years'.

⁷⁵ CIM, *Report 2002*, op. cit., citing statistics provided by the Centre for Investigation of Sexual Offences and Child Abuse (CISO).

⁷⁶ US Department of State, *Country Report (2004)*, op. cit.; the same information is mentioned by the Home Office CIPU report on Jamaica (April 2004), op. cit.

⁷⁷ Centre for Reproductive Rights, *Women of the Word (2000)*, op. cit., p.60.

2002. Victims of child abuse are also predominantly female. Over 70% of perpetrators are male, and aged between 20 and 49.⁷⁸

In relation to the number of sexual offenders arrested and prosecuted, Inter-American Commission on Women cites figures from the Centre for Investigation of Sexual Offences and Child Abuse (CISOCA), according to which of 2,121 cases of sexual offences in 2000, 801 are described as 'cleared up', although no details were given on whether this referred to successful convictions. The CISOCA also states that 895 rapes were reported, with 299 of these being 'cleared up', 761 carnal abuses cases were reported of which 313 were 'cleared up' and 260 cases indecent assault with 90 being 'cleared up'.⁷⁹

4.7.3 Sexual Harassment

Sexual harassment is not currently prohibited under Jamaican law. In its 1999 report, UNDP explains the legal position:

*'If there is a physical assault or a threat of an assault, the victim of such assault can bring an action in tort and get an injunction to restrain further such behaviour. Of course, the heart of sexual harassment is that tolerance of it is a prerequisite for the maintenance of the employment relationship. As such, access to the routine civil remedies would not protect a woman from the consequences of her termination from employment. In Jamaica, there is no legislation against Sexual Harassment although AWOJA [Association of Women's Organisation in Jamaica] and other Women's Organisations have been advocating for such a law. Because there is no legal recourse for victims there is unlikely to be much that the individual can do in cases of sexual harassment though it is prevalent in the workplace. There is in the Jamaican society, a tolerance of levels of sexual hassling on the street which would not be condoned in some other societies, and this can be carried into the workplace. There is also lack of knowledge about what actually constitutes sexual harassment.'*⁸⁰

In 2003, the Jamaican Bureau of Women's Affairs admitted that:

'Sexual harassment in the workplace, educational institutions, health institutions, prisons and nursing homes frequently occurs in Jamaica

⁷⁸ UNICEF, *Anywhere Yuh Be*, op. cit., citing research carried out by Milbourne (1994).

⁷⁹ CIM, *supra.*, n. 19, p. 3.

⁸⁰ UNDP, *National Reports*, op. cit.

*and has to be legally addressed for protection of women who are largely the victims of acts of harassment.*⁸¹

Plans for sexual harassment legislation were announced in July 2003. According to Sharon Millwood, a minister at the Legal Reform Department in the Ministry of Justice:

*'legislation would be aimed at redressing the level of tolerance in Jamaican society for inappropriate behaviour. The proposed legislation (...) would place an onus on the employer to take immediate and appropriate steps to address the situation.'*⁸²

However, at the time of writing no Bill had been tabled.⁸³

4.8 Women as victims of gang-violence

According to Amnesty International, rising reports of violence against women, including sexual violence, may be related to the growing violence in Jamaica's inner-city garrison communities. The human rights organisation explains that:

*'Reports indicate that women in marginalised garrison communities are being singled out for abuse or other form of physical or psychological violence by local gang members in the garrison communities [inner city areas]. These reports suggest that the forms of exploitation and violence that garrison communities are subject to are gender-specific. Local communities allegedly resort to violent means to control women's sexuality and bodily and mental integrity as part of the larger garrison system.'*⁸⁴

The gender element of gang violence is also highlighted by the 2004 US Department of State report on Jamaica which states that *'inner city*

⁸¹ BWA, cited in research compiled by the Research Directorate, Canadian Immigration and Refugee Board, Ottawa, relating to 2001-April 2003, reference number JAM41517.E, (April 2003), available at www.cisr.gc.ca/cgibin/fofiocgi.exe/refinfo_e/query=domestic+violence+jamaica/doc/{@1}/hit_headings/words=4/hits_only.

⁸² *Black Britain*, 'Sex Discrimination Debate in Jamaica', 08/07/2003, available at www.blackbritain.co.uk/News/News.asp?i=317&c=caribbean.

⁸³ Cabinet Office of the Government of Jamaica, Legislation Programme 2003/4, as at January 2004, at www.cabinet.gov.jm/docs/pdf/legprog2003-2004@January15_2004categories.pdf.

⁸⁴ Amnesty International, 'Reports of violence against women in inner-city garrison communities'. (March 30 2004). On file with author.

*"dons" or gang leaders [...] initiated sex with young girls as a "right."*⁸⁵
Commenting on the shooting of three women in the Red-Hills road areas, in 2002 the Jamaica Gleaner reports:

'Women in the ghettos of Jamaica remain some of the most oppressed and persecuted women on the planet. Once, women only had to worry about domestic abuse, jealous ex-lovers, stray shots or just being in the wrong place at the wrong time. Now they are being deliberately targeted along with their children. (...) Last year four pregnant women were killed by gunmen, and we have started 2002 with the deaths of at least eight women and three children in the first few weeks.

*Gunmen from one area have no qualms about killing a woman or a child who comes from 'ova de soh' [another community]. Once, when two communities were at war, women from both communities used to think they were safe, now they are just easy targets for armed cowards who want to get their stripes or want people to dub them as being 'dog-hearted shottas' [heartless gunmen] and wicked.*⁸⁶

According to Jamaican NGO's Women's Media Watch poor, single women are particularly vulnerable to gang-related rape and to being targeted for use as 'mules' (women who deliver and transport drugs). Women suspected to be police informers are also specifically targeted by gangs.⁸⁷ UNDP notes that:

*'In Jamaica, one of the difficulties faced by some victims is that in some areas to be seen at a police station automatically casts suspicion on the person as an informer.'*⁸⁸

Neither in its Country Report, nor in the OGN, does the Home Office address the particular vulnerability of women to gang-based violence.

⁸⁵ US Department of State, *2003 Country Reports on Human Rights Practices: Jamaica* (Bureau of Democracy, Human Rights and Labour, Washington, February 25 2004), available at www.state.gov/g/drl/rls/hrrpt/2003/27904.htm.

⁸⁶ Jamaica Observer, January 21 2002, cited by Women's Media Watch 'Women subject to gang violence – excerpts from documents', (30 March 2003). On file with author.

⁸⁷ Ibid.

⁸⁸ UNDP, *National Report*, op. cit., fig. 1.1 'Gender Violence: an overview'.

5. Domestic Violence

5.1 Prevalence of domestic violence

At the time of writing, no statistics were publicly available on the number of cases of domestic violence reported to police by Jamaican women and girls.

Nonetheless, as the Home Office CIPU country report on Jamaica recognises,⁸⁹ widespread violence against women and girls of all ages is an important aspect of the general violence experienced throughout Jamaican society. This issue has been highlighted as a serious human rights concern by several international human rights monitoring bodies, including the Inter-American Commission on Women and the Committee on Economic, Social and Cultural rights.⁹⁰ According to a World Bank review of gender issues in Jamaica:

*'One out of five Jamaican women between the ages of 25 and 60 has suffered some sort of physical abuse (Brown 1999). Haniff (cited in Centre for Gender and Development Studies "National Report on the Situation of Violence Against Women and Girls in Jamaica 1999") found in her research that one in 11 women between the ages of 5 and 60 would experience an act of violence in one year in Jamaica based on reported cases. However she contends that this is conservative and that the real estimate is probably closer to one in five.'*⁹¹

With respect to all types of gender-based violence, under-reporting is a major problem. As UNDP makes clear:

*'The statistics are merely "the tip of the iceberg". Estimates of the number of reports filed range between one half and one tenth. It is suggested that one in ten battered women reports, and the rates of report for incest are even lower.'*⁹²

According to the latest research available on levels of domestic violence published by UNDP in March 1999, during 1998 the Emergency Unit of

⁸⁹ Both the October 2003 and the April 2004 editions. See Home Office CIPU *Jamaica Country Report*, op. cit.

⁹⁰ CESCR, *Concluding Observations*, par. 937, see also Inter American Commission on Women, *Report 2002*, op. cit., p.3.

⁹¹ World Bank, *World Development Report*, op. cit., par. 191.

⁹² UNDP, *National Reports*, op. cit., fig 1.1.

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the Kingston Public Hospital treated approximately 20 women each day for wounds requiring stitches. 90% of these outpatient cases are reported to have been caused by domestic violence. UNDP also reports that during 1998, 3,844 victims were assisted at the Kingston Crisis Centre, 1,037 of whom received help for domestic violence, 1,510 help for 'domestic crisis', and 48 requesting shelter.⁹³

More recently, Jamaica's Prime Minister has described continuing high levels of domestic violence. Speaking publicly in December 2003, he drew attention to '*the very worrying level of domestic violence*' in Jamaica, which:

*'[a]ccounts for four out of ten crimes committed in Jamaica - crimes committed in the home by men and women against partners, parents against children, brothers, sisters, aunts, uncles, cousins - all resorting to violence to settle family problems.'*⁹⁴

5.1.1 Domestic murder

No up to date information about the number of domestic murders in Jamaica was available at the time of writing and no police figures on this type of murder were publicly available at the time of writing.⁹⁵ However according to UNDP, 21% of all murders committed in Jamaica in 1997 were 'domestic-related'.

With respect to female murders that occurred in Jamaica in 1996 and 1997, UNDP writes:

*'Data [sic] suggests that it is females who are in the peak of their child-bearing years who are most vulnerable to this form of gender violence, possibly implying that these murders result from domestic disturbances. Further research would be required to verify this assumption.'*⁹⁶

⁹³ Ibid.

⁹⁴ Jamaica Information Service, 'PM speech on the state of our families and of our children', Wednesday, December 03, 2003, available at http://jis.gov.jm/pmspeeches/html/20031130t170000-0500_1174_jis_pm_speech_on_the_state_of_our_families_and_of_our_children.asp.

⁹⁵ *Jamaica Observer*, 'Your love relationships and the law', Margarett Macaulay, February 17 2004, at www.jamaicaobserver.com/magazines/allwoman/html/20040216t1900000500_55846_obs_your_love_relationships_and_the_law.asp.

⁹⁶ UNDP *National Reports*, op. cit, figure 2.1 'Incidence and Prevalence of violence against women in the country over the last 5 years'.

The Canadian Immigration and Refugee Board reports an article from Jamaican daily newspaper *The Gleaner* released in March 2001, commenting that an average of 93 women had been killed per year over five years, mostly through domestic violence.⁹⁷

5.1.2 Child abuse & incest

Violence against children is common throughout Jamaica. As the US Department of States comments:

'[Although] there was no societal pattern of abuse of children (...) there were numerous reports of rape and incest, especially in inner cities. NGOs reported (...) even fathers initiated sex with young girls as a "right".'

The incidence of child abuse in Jamaica has also been linked to the large proportion of children brought up by men who are not their biological father. As UNICEF explains, half of Jamaican children do not live with both biological parents after the age of 11. However, although a child can benefit from close association with a wider kinship network:

*' [this association] can also open the door to exploitative relationships through the exposure to potential abuse from non-family and family members.'*⁹⁸

According to information released by the Child Development Agency (CDA), in 2002 there were 2,183 violence-related injuries involving children in nine accident and emergency units across Jamaica, 70% of them involving the use of a sharp or blunt instrument and 18% involving the use of bodily force and guns.⁹⁹

Children are frequently flogged and threatened with weapons and the Committee on Economic, Social and Cultural Rights has stated that the government's failure to punish those who carry out these acts of violence constitutes a serious violation by Jamaica of its obligations under the Covenant on Economic, Social and Cultural Rights.¹⁰⁰

⁹⁷ BWA cited in IRB, April 2003, op. cit.

⁹⁸ UNICEF, *Anywhere Yuh Be*, op. cit., part c(ii) 'Family and Community Stress'

⁹⁹ *Black Britain*, 'Harsh punishment linked to crime', 12/01/04, available at www.blackbritain.co.uk/News/News.asp?i=582&c=caribbean.

¹⁰⁰ CESCR, *Concluding Observations*, op. cit., par. 937.

World Bank research also suggests that the high level of sexual abuse amongst young girls (as well as girls' sexual relationships with older men) may be one factor responsible for elevated HIV rates amongst this section of society.¹⁰¹

5.2 Roots & social characteristics of domestic violence

A UNICEF study of violence amongst Jamaican adolescents describes the general historical context within which all of Jamaican violence takes place:

*'Individual and societal violence is not new to Jamaica. Indeed it could be argued that violence has been an integral part of Jamaican society from its very inception; violence has been stitched into its very fabric. Violence has been institutionalised in all major aspects of the society; it has regulated the relations between the races and classes, and has permeated all of its major institutions (of particular interest in this context schools, the family, the political system, the judicial system and other state institutions); but most importantly of all it has affected the psyche of the people and is buried deep within our collective memory. It is only with the emergence of Jamaican and Caribbean historians that the roots of violence in the society are being investigated and analysed in ways that produce useful understanding.'*¹⁰²

With respect to the high levels of domestic violence experienced in Jamaica, a range of other explanations have also been offered, including the persistence of traditional gender stereotypes according to which men are viewed as household heads and expected to defend family and community.¹⁰³ UNDP writes that such stereotypes are considered by men to *'[...] sanction their use of violence they deem necessary to put women in their place.'*¹⁰⁴

Given traditional expectations about gender roles, the growing economic status of Jamaican women may also contribute to domestic violence. As a World Bank report observes:

'Gender is linked to many of the socioeconomic issues that most Caribbean countries confront today, including crime and

¹⁰¹ World Bank, *World Development Report*, op. cit., par. 186.

¹⁰² UNICEF, *Anywhere Yuh Be*, op. cit., see 'Historical context/background'.

¹⁰³ *Black Britain, 'Harsh Punishment'*, op. cit.

¹⁰⁴ UNDP, *National Reports*, op. cit.

violence, reproductive and sexual health issues such as teenage pregnancy and the spread of HIV/AIDS, attainment of quality education, unstable family structures, poverty and inequality. Gender roles - socially ascribed roles and expectations imposed on men and women simply because of their sex - and gender relations - power relations between men and women - affect socioeconomic outcomes. For example:

(...)Violent crime is concentrated among young males, who are both victims and perpetrators. Less reported but extensive domestic violence in the subregion involves men as the aggressors and women as the victims for the most part. Aggressive male behavior has been linked to the inability of men (in particular low income men) to meet societal and family expectations of being an achiever and provider and to socialization patterns that teach boys to be tough and girls to be submissive.¹⁰⁵

However, whilst domestic violence may be more conspicuous amongst lower income families, the World Bank points out that it can occur amongst families from all socio-economic groups.¹⁰⁶ The violent treatment of young boys in the home has also been linked to rising levels of crime and violence.¹⁰⁷

5.3 Attitudes towards domestic violence

Despite the public education and awareness-raising work conducted by both Jamaican NGOs and the government's 'Bureau of Women's Affairs', traditional gender stereotypes continue to encourage widespread social acceptance of domestic and other types of gender-based violence.¹⁰⁸

According to the UNDP study, some of the most commonly held attitudes about the victims of gender violence in Jamaica are that:

'[1] Females provoke this violence by their clothing, by their seductiveness, or by their friendly behaviour. (...) [2] Females are masochistic. This myth is perpetuated and played out in the male imagination by pornographic images and messages from the media that portray the woman as enjoying pain, and the linking of pain and sexuality. Lyrics of Jamaican dance hall songs echo this

¹⁰⁵ World Bank, *World Development Report*, op. cit, p.1.

¹⁰⁶ World Bank, *World Development Report*, op. cit, par. 141.

¹⁰⁷ *Black Britain*, 'Harsh Punishment', op. cit.

¹⁰⁸ BWA cited in IRB, April 2003, op. cit.

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*misconception. Even the name of the popular condom to promote safe sex amongst youngsters has an aggressive label – Slam [3] **Perpetrators are not normal.** This myth allows men to be assured that the perpetrator is not similar to them - he is not a nice respectable banker, streetcleaner, farmer, etc. (...) [4] **Abusers belong to a certain socio-economic class or race.** It is believed that only persons from the lower socio-economic classes and persons who are non-Caucasian are exploited and that the exploiters belong to these same groupings. [5] **Women are insatiable in their demands.** There is a view that women wear men out but cannot be worn out themselves by the sexual act. This leads to the non-recognition of the fact that women can be raped in marriage, and that women are not always receptive to sexual overtures, nor do they always have a quid pro quo attitude of sex in return for financial support. [6] **Men have higher sex /aggressive drives and cannot control themselves.** It is also posited that males react aggressively/sexually to stress.’¹⁰⁹*

In 2002, a coalition of women’s NGOs lobbying for action against domestic violence in the run up to the general election published a ‘Women’s Manifesto’ in which they strongly criticised the ‘underlying social acceptance in the wider society that female sexuality is a commodity to be traded, and that men have a right to women’s bodies’ and noted that this ‘*meant coerced sexual activity, including rape, was not viewed as a serious criminal offence.*’¹¹⁰

Violence against women within the family usually tends to be viewed by society as a private issue for the man and woman concerned. As UNDP comments:

‘Domestic violence is not a mandatory-reporting act; it is seen as a private matter.’¹¹¹

Similar social and cultural attitudes prevail with regard to violence against children. UNDP also observes that:

‘Not only is the man deemed to have ownership of his spouse but also of his children.’¹¹²

¹⁰⁹ UNDP, *supra.*, n. 30, figure 1.2, ‘Common Myths about Acts of Violence against Women’.

¹¹⁰ Women’s Manifesto Committee 2002, ‘*Healing the Nation: Women’s Manifesto for the prevention of sexual injustice*’, (2002), p.1, available at http://axeses.com/encyc/caricom/nt/frameit.cfm?frame_url=http://www.georgetown.edu/pdba/english.html.

¹¹¹ UNDP, *National Reports*, op. cit., citing N. Haniff, *Violence against Women: The Case of Jamaica* (Mimeo, Kingston, Jamaica: Centre for Research, 1994); see also the World Bank, *World Development*, op. cit., par. 141.

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Indeed, the use of violence against children is perceived as commonplace and part of everyday life. A UNICEF literature review completed in 2001 concludes:

*'Violence is found to be very much a part of the parent-child relationship, and is accepted as natural and normal. [...] 30% of adolescents have expressed worry about the fighting and violence seen in the home, fearing that one or other of their parents will leave them.'*¹¹³

6. Domestic Violence and the law

6.1 Legal recourse against domestic violence

The 1995 *Domestic Violence Act* and the *Matrimonial Causes Act* of 1989 provide protection against domestic violence. Under these statutes, abused spouses may apply to for a court order to exclude an abuser from the home in which both parties have been living, and from going to, or near to, the workplace, school or any other specified location where the abused spouse may be found.¹¹⁴

6.1.1 *Domestic Violence Act (1995)*

The Domestic Violence Act came into effect on 29 May 1995. Applications under the Act can be made either to the Resident Magistrates Courts or to the Family Courts. These courts have sole jurisdiction to deal with applications for the protection, occupation and ancillary orders which can be obtained under the Act.¹¹⁵ The Act was devised to address the increase of violence within the home and to provide redress for victims of domestic violence in addition to those remedies traditionally available under criminal law.¹¹⁶

¹¹² Ibid.

¹¹³ UNICEF, *Anywhere Yuh Be*, op. cit., citing a study by Moser and Holland (1995).

¹¹⁴ Article 10(1)(b)(c) Matrimonial Causes Act (1989); article 4(1) Domestic Violence Act (1995).

¹¹⁵ Centre for Reproductive Rights, *Women of the World* (1997), op. cit, pp. 128-9.

¹¹⁶ Immigration and Refugee Board of Canada, Research Directorate, 'Jamaica: Domestic Violence, including responses to complaints (2001-April 2003)', May 2003, citing the correspondence sent to the Research Directorate from a BWA policy analyst, full text cited by UNHCR on the following link: www.unhcr.ch/cgi-bin/taxis/vtx/rsd/+4wwBmeWW1-

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The 1995 Act provides remedies for the victims of domestic violence, such as restraining orders and non-custodial sentences. Breaching a restraining order is punished with a fine of up to US\$200 (J\$10,000) or a six-month prison sentence.¹¹⁷ It protects persons living together in a household unit from violence or abuse by other members of their household. Most importantly given the structure of many Jamaican families, article 2 of the Act defines 'spouse' to include a woman who has cohabited with a man as if they are in law husband and wife. Protection is therefore provided for both legally married women and common-law spouses. Victims of domestic violence who are separated or divorced are also protected, as are their children and dependants.¹¹⁸

According to the Association of Women's Organisations in Jamaica (AWOJA):

'A person may seek the protection of the Court against violent acts which cause personal, physical or mental injury. In addition, however, a person may seek protection where he or she is being molested, even if no actual violence has been used.'

Under the Act, molestation is defined as including:

*'Watching or besetting a person's home, school or workplace, following or waylaying a person, making persistent calls to a person, using abusive language to or ill-treating a person.'*¹¹⁹

The courts may make occupation, protection or ancillary orders to protect the victim of the violence or threatened violence. Protection orders may be made to prevent the abuser from:

'Entering or remaining in the home, or the area where the home is located. Entering or remaining in the school or workplace of the abused person, or in any other place. Molesting a person in any of the ways outlined above.'

CwwwwwwwwwwwwmFqSzwMwoqwamdMn5BoqaVodcnDqnAFqgejhrmFmmDFqwdFqt2Iy gZf3zmxwwwwww/rsddocview.html.

¹¹⁷ US Department of State, *Country Report (2003)*, op. cit.

¹¹⁸ *Jamaica Observer*, 'Your love relationships and the law', Margarett Macaulay, February 17 2004, available at www.jamaicaobserver.com/magazines/allwoman/html/20040216t1900000500_55846_obs_your_love_relationships_and_the_law_.asp.

¹¹⁹ Cited in UNDP, *National Report*, op. cit.

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An occupation order gives the victim the right to live in the home, whilst an ancillary order allows the abused person to use the furniture, appliances and household effects. According to AWOJA:

*'Before an order is made, the Court must be satisfied that the abuser has used violence, or has threatened mental or physical injury to the person and is likely to do it again. An abused person may apply at the office of the Resident Magistrate's Court or Family Court for the parish in which he or she lives. Usually, the person against whom an order is sought will have to be served and given an opportunity to appear in Court. However, where the Court is satisfied that a delay in hearing the matter would cause risk to personal safety or serious or undue hardship to the abused person, it may make orders ex parte, i.e., without serving the other person the application.'*¹²⁰

Proceedings are intended to be speedy and require minimal legal assistance, making them inexpensive in order to ensure access to the protection of the courts for poorer women. The proceedings are conducted in camera, and publication of the court's decision is prohibited.¹²¹

6.1.2 Matrimonial Causes Act (1989)

Only legally married persons, not those in common-law relationships, may bring applications under the *Matrimonial Causes Act*, which are brought in the Supreme Court.¹²²

Under this Act, the Court may make an order for the protection of spouse or child. The orders are similar to those which may be made under the *Domestic Violence Act* and any person who commits acts prohibited under the statute can be fined or imprisoned or both.¹²³

6.1.3 Offences against the Person Act (1864)

Another central piece of legislation protecting women and girls against gender-based violence is the *Offences against the Person Act* (1864).

¹²⁰ UNDP, *National Report*, op. cit., citing AWOJA, see section 'domestic violence'.

¹²¹ Centre for Reproductive Rights, *Women of the World (1997)*, op. cit., p.139.

¹²² Article 10 Matrimonial Causes Act (1989).

¹²³ UNDP, *National Report*, op. cit.

Article 44 of the Act governs the law relating to rape and establishes that rape is punishable by life imprisonment. Attempted rape carries a seven-year sentence. Rape is not defined by the Act, although common law requires that vaginal penetration has taken place.¹²⁴

The Act also establishes sentences for other sexual offences such as indecent assault and offences against minors, such as or sexual intercourse with a girl under 16 years of age, known as 'carnal abuse'.¹²⁵

Jamaican common law recognises marital rape as a criminal act under certain circumstances. The Centre for Reproductive Rights reports:

*'The common law (...) recognizes that a wife is not deemed to have consented to have sexual intercourse with her husband in the following circumstances: during a separation, or when divorce proceedings are underway or there is a separation agreement or restraining order in place; when sex is accompanied by threat of, or actual, physical attack or injury; and when the husband has a sexually transmitted disease (R v. R, 4 All England Reports 481 (House of Lords, 1991))'*¹²⁶

6.2 Further government measures against domestic violence

The national police force, known as the Jamaica Constabulary Force (JCF), has attempted to take direct action to deal with the problem of violence against women. Its most significant step has been the creation of 'Centres for the Investigation of Sexual Offences and Child Abuse' (CISOCA) and the establishment of a 'Mediation Unit'.¹²⁷

Sexual offences and child abuse are dealt with by the CISOCAs, the first of which was set up in 1989. Six other CISOCAs were opened between 1990 and 1998, and Centres are now located at Spanish Town Police Station, Main St., St. Catherine; Portmore Police Station, Greater Portmore, St. Catherine; Morant Bay Police Station, St. Thomas; St. James Divisional Headquarters, St. James; May Pen Police Station, Clarendon; St. Ann's Bay Police Station, St. Ann. As of 2001, the JCF had

¹²⁴ Article 44, *Offences against the Person Act*, (1864) available at www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaJamaica.asp.

¹²⁵ *Ibid.*, Articles 53, 48, 50.

¹²⁶ Centre for Reproductive Rights, *Women of the World (1997)*, op. cit., p.139.

¹²⁷ UNDP, *National Report*, op. cit., fig. 4(f) 'The Jamaica Constabulary Force'.

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7,614 members, roughly 18% of whom were women.¹²⁸ Female officers trained to deal with child abuse and sexual offences are also attached to every police division.¹²⁹

According to Jamaican Bureau for Women's Affairs (BWA), the creation of JCF Sexual Offences Units has led to an increase in reporting of sex crimes, as victims have a place to seek redress.¹³⁰ Women attending the Units are encouraged to proceed with court hearings and legal aid is available. They also receive counselling and are given medical attention.¹³¹

Since 1998, the Ministry of National Security and Justice has also established Victim Support Units in all 14 parishes.¹³² These have helped to foster a more sensitive approach to the handling of sexual and other violent offences committed against women and children, although they are not specifically focused on dealing with domestic violence.¹³³

Despite this action, the Jamaican government has failed to introduce a National Action Plan to eliminate violence against women and girls. According to information supplied to the Canadian Immigration and Refugee Board by the BWA in 2003:

*'The closest attempt towards a national effort can be evidenced through an Inter-Agency Campaign on Violence Against Women and Girls involving a collaborative approach with a number of agencies which included government, women's NGO's and international funders. The objective of the campaign was to raise awareness and increase sensitivity in relation to violence against women and girls in Jamaica and its deleterious effect on society with regard to social as well as economic costs in order to promote an environment where women and girls have alternatives - to live a life free of violence.'*¹³⁴

¹²⁸ JCF, *History of the Jamaica Constabulary Force*, 'Establishment of the Jamaican Constabulary Force', available at www.jamaicapolice.org.jm/.

¹²⁹ For more information on see the JCF site, available at www.jamaicapolice.org.jm/.

¹³⁰ BWA, cited in IRB (April 2003), op. cit.

¹³¹ UNDP, *National Report*, op. cit., fig. 3.7.

¹³² See the Independent Jamaica Council (1998) for Human Rights, 'Victims', available at www.ijchr.com/victims.htm.

¹³³ World Bank, *World Development Report*, op. cit., par. 192.

¹³⁴ BWA, cited in IRB (April 2003), op. cit.

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7. Seeking protection in practice

7.1 Shortcomings of existing legislation

With respect to the legal protection available to victims of domestic violence in Jamaica, the Home Office's October 2003 CIPU report notes:

*'Judicial instruments for protection of persons affected by gender-based violence include Matrimonial Causes Act, Act 2 of 1989; the Domestic Violence Act of 1995, and the Offences against the Person Act. The Domestic Violence Act of 1995 provides remedies including restraining orders and other non-custodial sentencing. Breaching a restraining order is punishable by a fine of up to \$200 (J\$10, 000) and/or 6 months imprisonment.'*¹³⁵

In its 2004 version, the Home Office country report on Jamaica adds:

*'The USSD Report 2003 states that the Act only covers relationships maintained in the same household. Couples who reside in separate domiciles are not covered under this act.'*¹³⁶

Whilst this information is consistent with the legal provisions outlined in the previous section of this report, crucial details of the various shortcomings of this legislation are omitted, despite being explicitly addressed in other human rights material. The following criticisms can be made of Jamaican legislation on domestic violence:

7.1.1 Domestic Violence Act

Although an improvement on previous criminal legislation, the 1995 *Domestic Violence Act* remains unsatisfactory in several respects, failing to cover violence by siblings, visiting relatives and those sharing homes for economic reasons. Nor does it make provision for the training of court officers in how to deal with victims who testify; nor does it create a legal obligation for medical practitioners, nurses and other health personnel to report cases of abuse to the police or the court.¹³⁷

However, the Act's most significant omission is its failure to address violence against women in so-called 'visiting unions', i.e. an estimated 47% of the female population.¹³⁸

¹³⁵ Ibid., par. 6.62.

¹³⁶ Home Office CIPU '*Jamaica Country Report*', 20 April 2004, op. cit., par. 6.71.

¹³⁷ Centre for Reproductive Rights, *Women of the World (2000)*, op. cit, p. 60.

¹³⁸ McCauley in the *Jamaica Observer*, 'Your Love Relationships', op. cit.

Whilst these women may find protection under the *Offences against the Person Act*, that Act does not distinguish between domestic violence and cases of common assault. Furthermore, victims of domestic violence are unable to apply for the kind of protective orders available under the 1995 Act. Amendments to the *Domestic Violence Act* to rectify these problems were first promised by the government in 1996; however, at the time of writing the law had still not been changed.¹³⁹

Furthermore, the Offensive Weapons Bill, aimed at banning the possession of offensive weapons, such as knives, in public places was withdrawn due to lack of Parliamentary support. According to Jamaican Information Minister, Senator Maxine Henry Wilson:

*'During the course of this year, the knife has become the weapon of choice in terms of murdering and especially in cases of domestic violence. [...] Perhaps we (the Government) did not sufficiently explain what it was about. What we got was that the knife was a defensive and not an offensive weapon, and that it was the poor man's gun.'*¹⁴⁰

7.1.2 *Offences against the Person Act*

As noted above, Jamaican common law views marital rape as a criminal act only under certain circumstances.

A Bill to amend the Offences against the Person Act, introduced in 1996, is still under consideration by Parliament. An amended Act would provide a definition of rape and incorporate the common-law rules relating to the conditions under which a spouse may bring charges or marital rape. In addition, it would make the offence gender-neutral, prohibit the publication of a rape complainant's identity and abolish common law presumption that a 14-year-old boy or younger is incapable of rape.¹⁴¹

A specific Sexual Offences Act to provide protection for victims of incest and rape has been under consideration by Parliament for over ten years, although at the time of writing no legislation had been adopted by

¹³⁹ Ibid.

¹⁴⁰ M., Henry-Wilson, 'Domestic Violence on the Increase', (Women Inc., 2000), available at

http://axeses.com/encyc/caricom/nt/frameit.cfm?frame_url=http://www.georgetown.edu/pdba/english.html, accessed 18/12/03.

¹⁴¹ Centre for Reproductive Rights, *Women of the World (2000)*, op. cit., p. 59.

Parliament. In 2003, campaigners also called for the creation of a sexual offences registry.¹⁴²

7.1.3. *Incest (Punishment) Act*

Current legislation governing the punishment of those found guilty of incest is also the subject of criticism. The Centre for Reproductive Law explains:

*'The Incest (Punishment) Act of 1948 (the "Incest Act") prohibits sexual intercourse between a man and his granddaughter, daughter, sister, or mother. A man who commits incest with a female under 12 years of age is liable to ten years' imprisonment with hard labor. Where the woman is over 12 years of age the maximum sentence is five years. A female aged 16 years or over is guilty of incest if she "with consent permits" her grandfather, brother, father, or son to have sexual intercourse with her.'*¹⁴³

When compared with the life sentence imposed for the crime of 'carnal abuse' under the *Offences Against the Person Act*, the *Incest Act* has been criticised by UNDP for encouraging the view that this sort of sexual behaviour is a male entitlement arising from financial support provided to the family.¹⁴⁴

Additionally, while the frequency of 'visiting unions' in Jamaica means children are often not raised by their biological father, the current law does not address sexual abuse carried out by those who are not blood relatives.¹⁴⁵

A proposed amendment to the Incest Act would create an incest offence applicable to persons age 16 or older and include step-parents and both male and female children stepchildren, guardians and wards. *The Incest (Punishment) (Amendment) Bill* also carries a maximum sentence of life imprisonment, and would grant the court authority to withdraw

¹⁴² Ministry of Health, 'Hay-Webster Appeals for Passage of Sexual Offences Act', KINGSTON (JIS), (Friday, December 12, 2003), available at www.jis.gov.jm/health/html/20031211T120000-0500_1244_JIS_HAY_WEBSTER_APPEALS_FOR_PASSAGE_OF_SEXUAL_OFFENCES_ACT.asp.

¹⁴³ Centre for Reproductive Rights, *Women of the World (2000)*, op. cit., p.140.

¹⁴⁴ UNDP, *National Report*, op. cit., par. 48. 'Carnal abuse' is defined as sexual intercourse with a girl of less than 16 years old.

¹⁴⁵ World Bank, *World Development Report*, par. 193.

guardianship rights from a person convicted of incest or attempted incest if applicable.¹⁴⁶

Despite being put before a Parliamentary Joint Select Committee in 2000, as of January 2004 the Bill has still not been enacted.¹⁴⁷

Where adequate legislation exists, the following issues also hinder effective access to legal protection.

7.2 Fear and stigma of reporting domestic violence

The guilt, shame and stigma attached to domestic and other forms of gender violence such as rape means women are reluctant to openly admit and report abuse and do not receive help from friends and relatives to do so. Research carried out by the University of the West Indies in 1997 reveals that:

*'(...) women, due to socialisation, do not challenge their partners but rely on alternate ways to cope with forms of abuse. [It] found that in violent behaviour there is more tolerance for verbal abuse, which is the most common form of abuse. When physical abuse is present, the relationship ends when the well being of the children is threatened rather than the personal safety of the woman. Women tolerated violence because of low levels of self-esteem and because of the perceived economic benefits derived from men. The researcher concluded that the observed behaviour and the attitudes within the family of origin established what was normative and operated to influence the women's decision-making about their situation.'*¹⁴⁸

Noting that all acts of violence directed at women and girls are under-reported, UNDP's 1999 report observes that:

*'Women do not have the sympathy of police, or relatives or friends in reporting incidents of domestic violence. In Jamaica, middle and upper class women do not report incidents of violence against themselves because they have to save their own face as well as that of the man.'*¹⁴⁹

¹⁴⁶ Centre for Reproductive Rights, *Women of the World (1997)*, op. cit, p. 140.

¹⁴⁷ Centre for Reproductive Rights, *Women of the World (2000)*, op. cit, p. 60; and see Legislative Programme 2003/4, op. cit.

¹⁴⁸ UNDP, *National Report*, op. cit., citing research by J. Stevens, Domestic Violence in Jamaica, (MSc. Thesis, CGSSS, Univ. West Indies, 1997); see also World Bank, *World Development Report*, op. cit., p. 61.

¹⁴⁹ Ibid.

More recently in 2003, the Jamaican government agency responsible for implementing women's rights, the BWA, also acknowledged that the majority of women and girls experiencing sexual assault, domestic violence and incest still choose not to report these incidents to the police. In addition:

*'Special problems associated with cases of violence against women and children arise in cases where the accuser and accused know each other. The accuser may be unprepared to go ahead with the trial. In cases of domestic violence, the parties involved often withdraw charges, the accuser claiming that they have made up their differences.'*¹⁵⁰

Fear amongst the wider community can prevent others from intervening to report abuse. The 2004 US Department of State report on Jamaica reports how

*'In March [2003], a woman in Kingston freed herself from a room where her partner had held her captive for many years. She showed scars and signs of years of physical abuse and starvation. Police investigators questioned the community about the situation. Neighbours admitted that they knew about the abuse, but they were afraid to report it to the police for fear of retribution by her partner. The man accused of the abuse was still at large at year's end.'*¹⁵¹

7.3 Barriers to accessing the justice system

In its 2004 report on human rights in Jamaica, the US Department of State draws attention to the lack of staff and resources hindering the effective functioning of the courts and delaying many trials for years.¹⁵² In general, long delays following the arrest of suspects are acknowledged as particularly problematic with respect to domestic violence cases, encouraging some women to drop charges or not to bring formal charges at all.¹⁵³

Legal aid is available for victims of domestic violence. Two legal aid clinics operate in the parishes of Kingston and Montego Bay. In the fiscal year 2001/2 1,300 people were reported to have used the Kingston Legal Aid clinic, established under the Legal Aid Act. This was an increase of 10%

¹⁵⁰ IRB citing BWA (April 2003), op. cit.

¹⁵¹ US Department of State, *Country Report (2004)*, op. cit.

¹⁵² Ibid.

¹⁵³ UNDP, *National Report*, op. cit.

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on the previous year, although information was not available on the kind of assistance provided or how many women had benefited. Under the Act, any person who has reasonable grounds for taking or defending a legal action should not be prevented from doing so due to lack of means.¹⁵⁴

At the time of writing, no information could be found on the level of awareness of domestic violence legislation. However, in 1999, the Canadian Immigration and Refugee Board (IRB) reported comments in a Jamaican newspaper article that questioned the level of public awareness about the 1995 Act.¹⁵⁵

7.4 Police inaction

At the time of writing, no statistics were available relating either to the number of domestic violence incidents reported to police or on arrests and successful convictions under the 1995 Act.¹⁵⁶

Despite more police resources being available to counter gender-related violence, the World Bank is critical of the Jamaica Constabulary Force's handling of domestic violence, claiming that women are unlikely to report offenders to police as they do not believe the police will act.¹⁵⁷

Indeed, a variety of sources report that that, whilst there has been an improvement in police attitudes to domestic violence, laws protecting women are still not effectively enforced with women's reports of violence failing to lead to a criminal investigation or to the perpetrator being arrested. UNDP's 1999 study highlights the use of 'alternative dispute resolution' by the police, reporting that:

'The [JCF] Mediation Unit provides counselling in alternative dispute resolution methods. (...) The unit plays a vital role in reducing incidents arising from domestic disputes. One hundred and ninety-eight such disputes were referred to the Unit in 1997. One hundred

¹⁵⁴ Ministry of Justice, 'More Persons Accessing Legal Aid', KINGSTON (JIS), April 24, 2003,

www.jis.gov.jm/justice/html/20030423t150000-0500_370_jis_more_persons_accessing_legal_aid.asp

¹⁵⁵ Immigration and Refugee Board of Canada in 'Jamaica: Effectiveness of the Domestic Violence Act, 1999-2000 (update to JAM30492.E of 17 Nov. 1998)', October 2000 citing the Inter Press Service (IPS). 16 March 1999. Ingrid Brown, 'Population - Jamaica: Domestic Violence, the Silent Epidemic'.

¹⁵⁶ IRB citing BWA (April 2003), op cit.

¹⁵⁷ World Bank, *World Development Report*, op. cit., par. 191.

*and twelve (56.6 percent) were successfully mediated and 13 were referred to the Courts.*¹⁵⁸

The IRB also draws attention to the low level of cases brought to trial. An IRB interview conducted in August 2001 with a counsellor from the *Women Inc. Crisis Centre for Women* (WICCW) reports that police often choose not to open investigations into cases of domestic violence. The IRB observes:

*'The counsellor at the WICCW in Kingston explained that the manner in which the police handle a case of domestic violence depends on its gravity: in cases of severe bodily harm, the police will encourage the woman to seek medical help and will also carry out an investigation. In most cases, however, the tendency is to send women to the Women Inc Crisis Centre for Women for counselling.'*¹⁵⁹

The IRB also reports a further interview it conducted in 2001 with another leading Jamaican NGO, Women's Media Watch, based in Kingston. According to one programme officer at the non-governmental organisation, the police are *'ineffective'* at enforcing laws that protect women against violence because of the *'traditional attitudes'* towards women which permeate the police and the judiciary.¹⁶⁰ In February 2002 the IRB *Jamaica Observer* also reported that police still did not *'attach much significance to domestic violence'*, although it did not give any further information about this point.¹⁶¹

Acknowledging this problem, in April 2003 the BWA reports that attempts have been made to address the lack of awareness and insensitivity to domestic violence in the police force. According to its correspondence with the Canadian IRB, as part of the *'Inter-agency Campaign on Violence against Women and Girls'*, the BWA has conducted *'Police Awareness Workshops'* which involve training police and of police trainers and that focused on:

'a) assisting the police to recognize their role in protecting victims of domestic violence, rape, incest and sexual harassment; b) assisting

¹⁵⁸ UNDP, *National Report*, op. cit., fig. 4f.

¹⁵⁹ IRB, Number JAM37624.E (21 August 2001), available at <http://www.unhcr.ch/cgi-bin/teaxis/vtx/rsd/+pwwBme36c88wwwwwwwwwwwwwwwmFgSzwMwoqwamdMn5BoqaVodcnDqnAFqqejhrmFmmDFqwdFqt2IygZf3zmmwwwwww/rsddocview.html>.

¹⁶⁰ Ibid.

¹⁶¹ *Jamaica Observer*, *'Women and Our Economy'*, H. Boyd, 20 February 2002, reported through Canadian IRB, available at www.unhcr.ch/cgi-bin/teaxis/vtx/rsd/+4wwBmeWW1-CwwwwwwwwwwwwwwwmFgSzwMwoqwamdMn5BoqaVodcnDqnAFqqejhrmFmmDFqwdFqt2IygZf3zmxwwwwww/rsddocview.html.

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*them to enforce the laws and bring to justice the perpetrators of violence against women and c) helping them to recognize their responsibilities under the Domestic Violence Act.*¹⁶²

The government agency also claims that:

'For police personnel who have received training in domestic violence, there has been increased awareness of the impact of domestic violence on families and heightened response from police. (...)

Separate from the police training workshops that were part of the Inter-Agency Campaign on Violence Against Women, the JCF has a programme on training police on domestic violence. The programme is expected to last for three years with 5,000 front-line members of the JCF and its Auxiliaries trained.

*In addition, "Domestic Violence Intervention" as a topic was added to the Training Syllabus of the Jamaican Police Academy Basic Training and Probationer Training.*¹⁶³

However, the BWA also concedes, *'[Police] training has been lagging because of the need to fall within the police work schedule and there are limited financial resources for continuous training.*¹⁶⁴ Furthermore, in the same correspondence the government department admits that:

*'The police often do not wish to be involved in issues of domestic dispute because they know only too well that if they arrest the accused, the woman is likely to drop the charges before the trial. The same obtains in cases of rape where the victim is known to the accused.*¹⁶⁵

The Home Office Country Assessment fails to take this 2003 IRB assessment of police attitudes into account at all. Instead, it makes reference to the Canadian IRB's report of April 2001 and suggests that, while the attitudes of police may affect the enforcement of laws to protect women, *'change in police attitude towards domestic violence is detected as there are increasing efforts to train the police and the judiciary.*¹⁶⁶

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ IRB citing BWA (April 2003), op. cit.

¹⁶⁶ Home Office Home Office CIPU, *'Jamaica Country Report'*, op. cit, par. 6.66.

Indeed, on this crucial point, the current Operational Guidance Note (OGN) on Jamaica advises that:

*'Laws to protect women who are the victims of domestic violence do exist and police and crisis centres are able to offer protection to women suffering domestic violence. The level of protection varies however with the severity of the harm and in less severe cases assistance may be limited to referral for counselling. In general there is a sufficiency of protection.'*¹⁶⁷

7.5 Obstacles in the courts

There are four Family Courts where cases of domestic violence can be heard. These are located in the parishes of Kingston and St. Andrew (the main urban area of Jamaica) Montego Bay, St. James and Westmoreland. There is also one sub-court in Lucea, Hanover.¹⁶⁸ Since Family Courts have jurisdiction only in the parish where they are established, domestic violence cases in a parish without a Family Court must be heard in the parish's Resident Magistrate Court. Unlike those in the Family Court, cases in the Resident Magistrates Court are not held in camera, leading to a lack of privacy and confidentiality.¹⁶⁹

Although a separate Family Court system to deal with cases of domestic violence exists, according to a 2001 report by the IRB, in practice, these courts will try to reconcile women with their spouses, thereby effectively limiting the number of convictions which might otherwise be obtained under domestic violence legislation.¹⁷⁰ As the Ministry of Justice explains:

*'In addition to its adjudicative responsibility, the Family Courts provide or recommend social services to assist clients to sort out their problems before legal action becomes necessary. These services include family counselling, probation, child care and police adoption and other services as necessary.'*¹⁷¹

¹⁶⁷ Home Office Asylum and Appeals Policy Directorate, *'Operational Guidance Note: Jamaica*, op. cit., 'Sufficiency of protection', paras. 3.11.3, 3.11.4.

¹⁶⁸ Ministry of Justice, 'Family Courts', at www.jis.gov.jm/justice/index.asp.

¹⁶⁹ UNDP, *National Report*, op. cit., figure 3(a) 'The Court system in Jamaica'.

¹⁷⁰ IRB, 'Jamaica: Protection and/or redress available to victims of domestic violence and attitudes of the police and the judiciary towards women who report such cases (1995-present) 21 August 2001.

¹⁷¹ See the official site of the Ministry of Justice, available at www.jis.gov.jm/justice/index.asp.

Since violence frequently reoccurs, these measures by the Family Courts often provide only temporary respite.¹⁷²

Where the court does decide to prosecute, attitudes amongst the judiciary are also noted as obstacles to prosecutions. UNDP's 1999 report comments that:

*'according to several lawyers [working on domestic violence cases], the Family Court trivialises cases concerning domestic violence. One lawyer stated that, "The court needs to look legal, imposing and threatening."*¹⁷³

The organisation concludes that in spite of Bureau of Women's Affairs training for the judiciary in relation to the issue of domestic violence, many lawyers still believed that:

*'Such programmes do not have much credence, or weight amongst many in the legal fraternity. They tend as a body not to respond to measures taken to sensitise them, and are often autocratic, patriarchal and sexist. It was generally recognised that many would not respond favourably to programmes offered by women. The suggestion made is to encourage a leading legal luminary to take up the cause as this would yield better results.'*¹⁷⁴

This opinion is borne out in the more recent 2004 US Department of State country report on human rights practices in Jamaica, which gives the following details about cases of domestic violence:

*'In January [2003], a court gave a suspended sentence to a man in Montego Bay charged with beating his girlfriend so severely that she was blinded in one eye, and it ordered him to pay the woman's medical bills as compensation. The judge found that the man was "obviously a good and just man" because he was married with three children. The girlfriend's reputation was a mitigating circumstance in the judge's decision.'*¹⁷⁵

Attitudes amongst the judiciary are not addressed in the Home Office CIPU October 2003 country report assessment, which misleadingly observes with reference to the Family Courts that although there is an *'emphasis on counselling and reconciliation'* there are also *'increasing*

¹⁷² IRB (21 August 2001).

¹⁷³ UNDP, *National Report*, op. cit., figure 3.7.

¹⁷⁴ UNDP, *National Report*, op. cit., figure 3.9.

¹⁷⁵ US Department of State, *Country Report (2004)*, op. cit.

efforts to train the (...) judiciary.¹⁷⁶ Nor is this issue addressed in its April 2004 version.

7.6 Lack of women's support networks

Another reason why women are deterred from reporting domestic violence is the limited social support network and the lack of shelters and counselling facilities.¹⁷⁷

Two Crisis Centres in Kingston and Montego Bay provide assistance to victims of rape, incest and domestic violence and are run by a private non-profit organisation, Woman Incorporated. The NGO describes the work it carries out:

'The [Kingston] Crisis Centre has been in existence since February 1985. It provides professional and specialised advice and outreach support to women, (and men), that have, or are experiencing matters concerning rape, incest, domestic violence and domestic crisis.

The Centre seeks to assist women in working toward self-empowerment and to gain the necessary insights to handle their particular crisis. As women are empowered, they become more self-assured and this contributes to positive self-esteem and independence'.

*The Crisis Centre in Kingston offers walk-in counselling services from 8:00 a.m. - 4:00 p.m. and telephone counselling 24 hours per day every day of the year.'*¹⁷⁸

The Montego Bay Crisis Centre, at the western end of the island, opened in 1991. It opens from Monday to Friday between 9a.m and 5p.m. and does not have a 24-hour hotline.

There is only one shelter available on the island for domestic violence victims, known as the 'Crisis Shelter'. It is attached to the Kingston Crisis Centre and is run by the NGO, Women's Inc. Located in Kingston, the

¹⁷⁶ Home Office CIPU, 'Jamaica Country Report', October 2003, op. cit., par. 6.66.

¹⁷⁷ IRB citing BWA (April 2003), op. cit.

¹⁷⁸ IRB, citing BWA (April 2003), op. cit., information provided by a Women's Inc. counsellor.

shelter is not easily accessible for rural women.¹⁷⁹ According to Women's Inc.:

*'The Crisis Shelter functions as a temporary residence for women in crisis. The location is kept confidential to protect the safety of the women. The cases are usually abused women, incest, rape, or temporary homelessness due to domestic violence. The maximum stay is two weeks. In many cases small children and babies are involved. The victims are generally seen at the Crisis Centre, the cases assessed and then sent to the Shelter. When the incident occurs during the night, the Volunteer on the Hotline, with the agreement of the 'Back-up' counsellor, may refer the victims to the Police who will escort the person to the Shelter, providing there is space. A housemother attends to the smooth running and supervision of the Shelter that was opened in 1988 and continues to be the only one of its kind in Jamaica.'*¹⁸⁰

Describing the work of the Montego Bay Crisis Centre, UNDP observes:

*'The Chief counsellor's main regret is that they cannot provide a shelter [in the Montego Bay area]. Despite all the counselling the women often have to go back to the men that abused them because at the end of the day there is no alternative in the majority of cases.'*¹⁸¹

Both Women Inc. Crisis Centres are mainly funded through an annual Trade Fair.¹⁸² Since the Crisis Centres and Shelter are limited by cash constraints, they are largely staffed by volunteers.¹⁸³ In 1998, the Shelter closed temporarily because of funding problems.¹⁸⁴

By law, the Crisis Centres are not allowed to treat or counsel minors. If minors are brought to the Crisis Centre, or if they call they are referred to

¹⁷⁹ Centre for Reproductive Rights, *Women of the World (2000)*, op. cit., p. 60.

¹⁸⁰ IRB, citing BWA (April 2003), op. cit.

¹⁸¹ UNDP, *National Report*, op. cit., fig. 4(e).

¹⁸² Jamaica Observer, *All Women*, 'Women Inc. Trade Fair Next Week', Monday October 20, 2003, available at

www.jamaicaobserver.com/magazines/allwoman/html/20031019t220000-0500_50468_obs_woman_inc_trade_fair_next_week.asp.

¹⁸³ UNDP, *National Report*, op. cit., Section 4(I), 'Service De-Centralisation and Participation of Other Social Actors Such As Local Governments, Universities, Civil Society, and Churches, etc.'

¹⁸⁴ C. Taylor, 'Women's Inc struggles to re-open shelter', (Women's Inc., undated), available at

http://axes.com/encyc/caricom/nt/frameit.cfm?frame_url=http://www.georgetown.edu/pdba/english.html.

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the Juvenile courts, the Family Court or the Children's Services Division.¹⁸⁵

Inadequate provision of women's shelters and the general absence of social support for victims of gender-based violence was a focus of the 2002 'Women's Manifesto', produced by a coalition of leading Jamaica women's NGOs to lobby politicians before the last election. Amongst other things, the Manifesto urged that the government should:

- '1. Immediately establish an emergency phone line direct to the police, similar to Crime Stop, where persons confidentially report threats and crimes of sexual violence against themselves and others.*
- 2. Within two years, establish a network of 16 shelters (one in each parish and two in KMA [Kingston Metropolitan Area]) to provide for victims and persons threatened with crimes of sexual violence. (...)*
- 6. As of the next financial year, establish clear budgetary allocations for programmes geared to end gender-based violence, implemented by the state and civil society.'*¹⁸⁶

8. Treatment of lesbians

8.1 Prevalence of violence and discrimination against lesbians

It is widely accepted that Jamaica is a homophobic society, and serious State and non-state violence against homosexuals in Jamaica has been documented by different human rights organisations.¹⁸⁷ The Jamaican Forum for Lesbians And Gays (JFLAG) regularly publishes reports of violence and discrimination directed against the homosexual community by both law enforcement agents and the wider community. The vast majority of literature in this area pertains to homosexual men and information on the treatment of lesbians is not readily available although there is mounting anecdotal evidence.¹⁸⁸

¹⁸⁵ UNDP, *National Report*, op. cit.

¹⁸⁶ *Women's Manifesto Committee, Women's Manifesto*, op. cit.

¹⁸⁷ UNDP, *National Report*, op. cit.

¹⁸⁸ Research Directorate, Immigration and Refugee Board of Canada, 'Jamaica: Treatment of lesbians and whether there is any lesbian organization in Jamaica (1998) - June 1998' at www.unhcr.ch/cgi-bin/texis/vtx/rsd/+QwwBm-e2EudwwwgwwwwwwwwwFqwqFqwmFq3zwMwoqwacn5xowD5nFqwhFqwtFqwrFqwoFqwzFqwaFqqejhrmFmmDFme26btqt2IygZf3zmxwwwwww/rsddocview.html.

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In their 2003 annual report, Amnesty International makes reference to the '*continued reports of attacks on homosexuals by both the public and the police*', whilst the US State Department states that the leading gay rights group JFLAG had:

*'continued to report allegations of human rights abuses, including police harassment, arbitrary detention, mob attacks, stabbings, harassment of gay patients by hospital and prison staff, and targeted shootings of homosexuals. (...) Human rights NGOs and government entities agreed that brutality against homosexuals, both by police and private citizens, was widespread in the community.'*¹⁸⁹

In a press release dated 1 June 2004, Amnesty International reports:

*'Amnesty International has received many reports of vigilante action against gay people by members of the community, and of ill-treatment or torture by the police. Gay men and women have been beaten, cut, burned, raped and shot on account of their sexuality. Once a person's homosexuality becomes known to family or community, they are frequently at risk. (...) [Amnesty] has talked to people who have been forced to leave their communities after being publicly vilified, threatened or attacked on suspicion of being gay. They face homelessness, isolation or worse. We are concerned that these reports are just the tip of the iceberg. Many gay men and women in Jamaica are too afraid to go to the authorities and seek help.'*¹⁹⁰

A variety of sources document discrimination against gay women. The International Lesbian and Gay Association reports that:

*'homosexual females are affected by the same taint as male homosexuals. Ironically, the best evidence of this is the fact that the Jamaican word for lesbian (i.e., sodomite) is actually derived from sodomy, the other word for buggery. And in socio-cultural terms - jobs, housing, general treatment - the Jamaican lesbian is just as discriminated against as her male counterpart.'*¹⁹¹

¹⁸⁹ US Department of State, '*Country Reports on Human Rights Practices - 2003. Bureau of Democracy, Human Rights, and Labor*', February 25, 2004, par. 69 and 71.

¹⁹⁰ Amnesty International, Press Release, '*Jamaica: Amnesty says urgent government action needed to protect gay people from homophobic violence*' at www.amnesty.org.uk/deliver/document/15392.html.

¹⁹¹ International Lesbian and Gay Association, *Action Alert*, '*Support The Inclusion Of Sexual Orientation As A Protected Category Against Discrimination In The Jamaican Constitution*', undated, at www.ilga.org/Current%20activities/Urgent%20actions/iglhrc/support_the_inclusion_of_sexual_.htm.

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One member of the JFLAG women's group steering committee, Women for Women, describes the verbal abuse lesbians experienced from men:

*'[I] have been harassed by men who had some suspicion about my sexuality....they would hurl slangs at me such as "girl drinking juice with out straw".... "sodomite"...."gunshot for a suck p***y gal".'*

Although lesbians are verbally harassed and discriminated against, reported cases of physical violence are not common.¹⁹² However, it is clear that lesbians can be subject to homophobic violence by the public, as testified by JFLAG:

*'I know of women who have been beaten/raped. One in particular had appeared on a local TV talk show behind a screen of course, and when she went to work the following day a co-worker who had recognized her voice went on to abuse her and went as far as beating her up. Other women here who have been suspected of be a lesbian have been raped or chased out of their homes/communities. Many of us are also forced to deny our sexuality while there are those of us who still brave it and just live our lives no matter what.'*¹⁹³

Amnesty International's recent press release confirms this:

*'Lesbians are also targets of homophobic violence in Jamaica. Amnesty International has assisted in several cases of lesbian women from Jamaica who have sought asylum abroad following persecution at home. Amnesty International has received reports of acts of violence against lesbians, including rape and other forms of violence. There are reports of lesbians being singled out for attack on the grounds of "mannish" physical appearance or other visible manifestations of sexuality.'*¹⁹⁴

Writing in Jamaican newspaper *The Gully*, Kelly Gogswell suggests that as domestic violence is often used to ensure that traditional gender roles are enforced, gay women challenging those roles may be more at risk of family violence. She argues that:

¹⁹² Inter-Press Service, *World News*, 'Jamaica: Facing violent homophobia, gay men seek asylum overseas', 2 Dec 2002, available at www.unhcr.ch/cgi-bin/texis/vtx/home/+vwwBmqeqj0pwwww1wwwwwwwhFqnN0bItFqnDni5AFqnN0bIcFq3zwMwoqwacn5xowD5Dzmxwwwwww/.opendoc.htm.

¹⁹³ JFLAG, 5 February 2004, correspondence with a member of steering committee JFLAG women's group, Women for Women. On file with author.

¹⁹⁴ Amnesty International, Press Release (June 2004), op. cit.

*'In this context [of widespread domestic violence], any woman refusing the advances of a man may be punished with violence and rape regardless of her sexual identity. It's worse when they actually are lesbians. Families use violence on their sisters and daughters to enforce traditional female behavior, including marrying and producing children. Ditto for gender variant people.'*¹⁹⁵

However, no further research could be found the time of writing which would clarify this point.

8.2 Attitudes towards lesbians

According to the JFLAG women's group steering committee:

*'Gay women are treated and viewed in the society at large just as gay men are although society treats gay women a little more leniently [sic]. Not to say that we haven't had our fair share of bashing and ridicule. Some gay women are forced to be so closeted that they don't even want to be seen with another woman who is known to be gay. We are viewed as strange or women who have been hurt so bad by men that we have turned to other women, while even straight women would say that all we want is a man to give us a good "f**k". I would say to some degree we are considered to be lesser than the average human beings... like we are some "sick puppies".'*¹⁹⁶

Many lesbians choose not to openly reveal their sexuality.¹⁹⁷

8.3 Legislation concerning the treatment of lesbians

Although being homosexual is not illegal under Jamaican law, article 76 of the *Offences against the Person Act* does criminalise particular 'homosexual acts' between men.

'The Offences Against the Person Act prohibits "acts of gross indecency" (generally interpreted as referring to any kind of physical intimacy) between men, in public or in private. The offence of buggery is created by section 76, and is defined as anal intercourse between a man and a woman, or between two men. No force is required for the commission of the offence of buggery. Most of the

¹⁹⁵ K., Gogswell, 'Jamaica: Queer in a Culture of Violence', *The Gully*, November 7, 2003, at www.thegully.com/essays/gaymundo/031103_lesbian_gay_jamaica.html (or www.sodomylaws.org/world/jamaica/janews11.htm).

¹⁹⁶ JFLAG, Correspondence, February 5 2004, op. cit.

¹⁹⁷ Ibid.

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*prosecutions in fact, involve consenting adult men suspected of indulging in anal sex. To the best of our knowledge, a man and a woman engaging in consensual anal sex is [sic] seldom, if ever, prosecuted for buggery.*¹⁹⁸

According to Article 76 of the Act, the '*abominable crime of buggery*' is punished by up to ten years' imprisonment with hard labour whilst Article 79 of the same Act punishes any act of physical intimacy between men in public or private by up to two years' imprisonment and the possibility of hard labour.¹⁹⁹

Unlike its approach to male homosexual relationships, Jamaican law does not criminalise lesbian behaviour and there is no legislation governing the treatment of lesbians or lesbian relationships.

However, the Jamaican Constitution does not prohibit discrimination for reasons of sexual orientation. In December 2001, the Joint Select Committee on the Charter Bill of Rights failed to give their backing to JFLAG proposals to amend the Constitution's non-discrimination clause in order to incorporate this ground.²⁰⁰ Nonetheless, although the Committee did not support the amendment, they did recommend that Parliament repeal article 76 of the Act. In January 2002, the government refused to repeal this legislation.²⁰¹ The current situation and high levels of violence against gay and lesbian Jamaicans (as described above) has led Amnesty International to issue a press release urging the government to take action to protect gay people from homophobic violence.

8.4 Seeking protection in practice

Local media and gay rights organisations were unable to provide information on police harassment or abuse of lesbians. However, in relation to gay men, Jamaica's police have been criticised for regularly failing to investigate or prevent acts of violence against suspected homosexuals. In fact, discriminatory and homophobic behaviour by police

¹⁹⁸ JFLAG 'Parliamentary Submission: THE JAMAICA FORUM FOR LESBIANS ALL-SEXUALS AND GAYS (J-FLAG) WITH REGARD TO "AN ACT TO AMEND THE CONSTITUTION OF JAMAICA TO PROVIDE FOR A CHARTER OF RIGHTS AND FOR CONNECTED MATTERS"', (2001), available at www.jflag.org/programmes/parliamentary_sub.htm.

¹⁹⁹ Amnesty International, Press Release (June 2004), op. cit.

²⁰⁰ JFLAG, 'Legal Reform and Advocacy', available at www.jflag.org/programmes/constitutional.htm.

²⁰¹ Amnesty International, *2003 Report*, op. cit.

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is itself a serious problem. In November 2003, the Jamaican newspaper, *The Gully*, reported that:

*'The police also instigate problems, using sodomy laws as justification to harass, and beat up perceived sexual minorities. One group of AIDS activists trying to hand out condoms and promote safe sex reported that after being accused of promoting homosexuality and taken to the police station: "The other police officers told us we should be dead and that the policemen should have killed us instead of bringing us into the police station."*²⁰²

Although JFLAG does run a telephone hotline and provides support services to both gay men and lesbians, the NGO cannot offer protection to those individuals who are subject to homophobic violence.²⁰³ Furthermore, according to JFLAG, women's NGOs dealing generally with gender-based violence are not able to offer support and protection to lesbians who are the victims of homophobic violence.²⁰⁴

JFLAG also reports that the majority of lesbians who are harassed or abused by the public prefer not to come forward and report the matter to police, fearing that to do so could lead to further humiliation. Where women are reluctant openly to admit their sexuality, the organisation also reports a tendency to 'prefer to just try and forget.'²⁰⁵

Human rights groups clearly report that incidents of violence, harassment and discrimination against lesbians are a problem. However, since the law does not explicitly criminalise lesbian relationships, the Home Office CIPU Country Report focuses its attention on the treatment of homosexual men, and only comments in its October 2003 report that:

*'According to J-Flag, "The law is mute on sex between women, but it remains a crucial element of the homophobic social atmosphere (compounded by militant traditional Christian beliefs) which harms lesbians as well."*²⁰⁶

On lesbians specifically, the April 2004 report states only that:

²⁰² Kogswell, 'Queer', op. cit.

²⁰³ JFLAG, see description of NGOs activities at 'About Us', available at www.jflag.org/about/index.htm.

²⁰⁴ JFLAG, Correspondence, 5 February 2004, op. cit.

²⁰⁵ Ibid.

²⁰⁶ Home Office CIPU, 'Jamaica Country Report', October 2003, op. cit., par. 6.84.

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*'Lesbians are also discriminated against in the wider society, however no laws target lesbians or lesbian conduct.'*²⁰⁷

²⁰⁷ Home Office CIPU, *'Jamaica Country Report'*, October 2003, op. cit., par. 6.84.

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Section five

women's rights abuses and protection in Ukraine

1. Introduction

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

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

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

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

² Home Office Asylum and Appeals Policy Directorate, 'Operational Guidance Note: Ukraine', effective from July 24 2003, accessed 28 March 2004, available at www.ind.homeoffice.gov.uk/default.asp?PageId=4046.

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2. Ukraine's system of government & court structure

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

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

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

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

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

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

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

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

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

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

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

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

The report also concludes that:

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

⁶ US Department of State, *Country Reports on Human Rights Practices: Ukraine* (2003) (Released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004), available at www.state.gov/g/drl/rls/hrrpt/2003/27871.htm.

⁷ Ibid.

⁸ Ibid.

3. Human rights in Ukraine: an overview

3.1 International and regional obligations

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

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

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

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

⁹ 1966 International Covenant on Civil and Political Rights (entry into force March 3 1976), 1966 Convention on the Elimination of Racial Discrimination (entry into force April 6 1969), 1966 International Covenant of Economic, Social and Cultural Rights (entry into force January 3 1976), 1979 Convention on the Elimination of All Forms of Discrimination Against Women (entry into force September 1981), 1984 Convention against Torture (entry into force June 29 1987), 1989 Convention on the Rights of the Child (entry into force 27 September 1991), further information on ratification history at www.bayefsky.com/.html/ukraine_t1_ratifications.php.

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

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

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

3.2 Human rights protection in practice

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

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

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

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

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

¹² Ibid.

¹³ Human Rights Watch, *World Report 2003: Ukraine, Human Rights Developments* (HRW, 2003), covering events between November 2001 and November 2002, available at www.hrw.org/wr2k3/europe15.html.

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

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

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

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

4. Women's human rights in Ukraine: context

4.1 Women's status in society

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

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

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

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

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

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

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

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

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

Furthermore:

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

¹⁸ Minnesota Advocates for Human Rights, *Trafficking in Women: Moldova and Ukraine* (December, 2000), p. 7, at www.mnadvocates.org/vertical/Sites/%7BC83C74A5-9AEB-4448-B059-C7B9B3DFB089%7D/uploads/TraffickingReport.pdf.

¹⁹ *Ibid.*, p. 10.

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

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

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

4.2 Family and property rights

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

4.3 Discrimination against women

4.3.1 Anti-discrimination legislation

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

*'There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.'*²⁴

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

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

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

²³ UNDP, *Gender Issues in Ukraine: Challenges and Opportunities*, (UNDP, Kyiv 2003), p. 18, available at <http://www.un.kiev.ua/en/docs/?mdg=3>.

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

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

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

4.3.2 Shortcomings of anti-discrimination provisions

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

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

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

²⁵ Ibid.

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

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

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

²⁹ Government of Ukraine, 'Law on State Guarantees Of Equal Rights And Opportunities For Men And Women', available at <http://gender.undp.sk/indexAction.cfm?module=database&action=getFileAction&documentID=3505>.

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

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

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

Human Rights Watch concludes that:

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

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

4.4 Economic & social rights (including health and fertility)

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

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

³¹ Human Rights Watch (HRW), *Women's Work: Discrimination Against Women in the Ukraine Labour Force*, 'Summary', (August 2003, HRW, New York), available at www.hrw.org/reports/2003/ukraine0803/.

³² Ibid.

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

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

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

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

4.5 Aspects of violence against women and girls

4.5.1 Rape

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

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

³³ HRW, *Women's Work*, op. cit.

³⁴ US Department of State (2004), *Country Report*, op. cit.

³⁵ HRW, *Women's Work*, op. cit.

³⁶ US Department of State (2004), *Country Report*, op. cit.

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

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

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

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

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

4.5.2 Child abuse

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

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

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

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

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

³⁹ Ibid.

⁴⁰ SVAW, 'Ukraine', op. cit.

⁴¹ Chapter IV, *Criminal Code*, op.cit.

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

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

4.5.3 Sexual harassment

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

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

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

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

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

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

⁴² Ibid.

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

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

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

⁴⁶ See Chapter V of the Draft law, available at

<http://gender.undp.sk/indexAction.cfm?module=database&action=getFileAction&documentID=3505>.

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

5. Trafficking in women for the purposes of sexual exploitation

5.1 Profile of trafficking victims

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

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

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

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

⁴⁷ SVAW, 'Ukraine', op. cit.

⁴⁸ US Department of State, *Trafficking in Persons Report 2003*, (Released by the Office to Monitor and Combat Trafficking in Persons, June 11, 2003). The TIP Report covers the period Apr 2002 - Mar 2003. At www.state.gov/g/tip/rls/tiprpt/2003/21277.htm.

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

⁵⁰ Ibid. p. 54

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

5.2 Methods of recruitment and control

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

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

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

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

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

⁵³ Ibid. p. 43.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 Trafficking routes

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

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

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

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

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

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

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

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

5.4 Prevalence of trafficking for sexual exploitation

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

IOM research on victim protection in the Ukraine reports that:

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

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

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

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

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

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

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

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

5.5 Trafficking and the law

5.5.1 Legislation to combat trafficking

Article 149, Ukrainian Criminal Code (2001)

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

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

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

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

⁶⁵ Ibid., pp.82-86.

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

⁶⁷ IOM, *Press Briefing Notes, 'Ukraine – Victims of Trafficking as Witnesses: Interview Best Practices'*, 6 February 2004, Christopher Lom, at www.iom.int/en/news/pbn060204.shtml#item4.

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

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

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

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

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

Other laws used to punish trafficking

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

⁶⁹ Ibid., Article 149(2).

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

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

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

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

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

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

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

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

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

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

5.5.2 Further government measures to combat trafficking

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

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

⁷² Ibid.

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

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

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

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

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

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

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

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

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

⁷⁵ CABINET OF MINISTERS OF UKRAINE, *Resolution of June 5, 2002, No. 766, Kyiv*, available at www.lastrada.kiev.ua/content/doc/program2005en.rtf.

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

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

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

*'The OSCE Project Coordinator in Ukraine and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) serve as focal points both for a national strategy and for international cooperation, jointly with IOM and the European Commission. It is aimed at giving technical assistance to support the National Coordination Council against Trafficking. Special emphasis is placed on anti-trafficking legislation and enforcement. Another task is to support counselling hotlines, established in five major cities in Ukraine.'*⁷⁸

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

In 2003, UNDP reports that there were 170 counter-trafficking police officers working throughout Ukraine. Anti-trafficking units are found in each of the 27 administrative regions (*oblasts*) and consist of between three and thirty 'operational officers', depending on local crime rates. Their work is overseen by a Ministry of Interior 'investigator', a lawyer with responsibility for reviewing evidence and preparing the criminal case for the prosecutor. Investigators responsible for trafficking cases have reportedly been assigned to each *oblast* since November 2001.⁷⁹

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

5.6. Seeking protection in practice

5.6.1 Failure effectively to enforce anti-trafficking legislation

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

⁷⁸ Ibid., p. 86.

⁷⁹ UNDP (2003), *Gender Issues*, op. cit. p. 61.

⁸⁰ Minnesota Advocates, op. cit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6.1.1 Lack of resources for police and judiciary

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

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

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

5.6.1.2 Corruption in the police and judiciary

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

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

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

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

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

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

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

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

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

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

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

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

5.6.2 Shortcomings of existing anti-trafficking legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁷ Ibid.

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

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

5.6.3 Lack of awareness and understanding of legislation

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

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

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

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

¹⁰⁹ IHF (2002), *Annual Report*, op. cit.

¹¹⁰ UNDP (2003), *Gender Issues*, op. cit., pp. 59-60.

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

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

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

5.6.4 Lack of legal representation and advice for victims

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

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

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

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

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

¹¹⁴ Anti-Slavery, *Human Traffic*, op. cit., p. 208.

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

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

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

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

5.6.5 Absence of effective witness protection system

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

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

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

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

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

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

¹¹⁸ La Strada, 'Other kinds of assistance', at www.lastrada.kiev.ua/tp.cgi?lng=en&Id=195.

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

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

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

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

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

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

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

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

In addition, La Strada reports that:

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

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

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

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

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

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

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

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

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

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

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

5.7 Problems of reintegration on return

5.7.1 Stigma associated with return to families

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

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

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

¹²⁸ Ibid., p. 209.

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

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

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

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

5.7.2. Government failure to identify & assist returned victims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7.4 Lack of socio-economic prospects

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

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

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

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

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

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

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

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

6. Domestic Violence

6.1 Prevalence of domestic violence

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

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

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

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

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

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

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

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

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

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

safe for whom?

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

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

6.2 Social characteristics of domestic violence

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

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

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

6.3 Attitudes towards domestic violence

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

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

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

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

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

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

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

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

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

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

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

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

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

Co-operation in December 2000 and taken from "Gender Analysis of Ukrainian Society" presented by the Ukraine Gender in Development Programme. Available at [www.coe.int/T/E/Human_Rights/Equality/04_Violence_against_women/096_EG\(2001\)03rev.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/Equality/04_Violence_against_women/096_EG(2001)03rev.asp#TopOfPage).

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

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

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

6.4 Domestic Violence and the law

6.4.1. *Prevention of Domestic Violence Act (2001)*

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

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

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

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

¹⁶⁶ SVAW, 'Ukraine', op. cit.

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

¹⁶⁸ Ibid., p. 332.

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

6.4.2 *Criminal Code of Ukraine (2001)*

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

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

This crime:

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

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

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

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

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

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

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

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

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

6.5 Seeking protection in practice

6.5.1 Shortcomings of *Prevention of Domestic Violence Act (2001)*

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

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

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

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

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

¹⁷³ SVAW, 'Ukraine', op. cit.

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

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

6.5.2 The stigma of reporting domestic violence

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

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

6.5.3 Police inaction

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

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

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

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

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

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

The research also concludes that:

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

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

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

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

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

¹⁷⁸ Ibid.

¹⁷⁹ IHF, *Human Rights* (2002), op. cit. p. 332; CIPU, *Country Assessment*, op. cit., par. . 6.64.

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

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

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

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

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

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

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

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

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

¹⁸³ Ibid.

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

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

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

6.5.4 Obstacles in the courts

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

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

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

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

¹⁸⁵ Ibid.

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

6.5.5 Financial dependency

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

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

6.5.6 Shortage of women's support networks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹² Winrock International, information available at

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

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

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

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

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

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women's human rights abuses and protection in Ukraine

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

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

1st Quarter 2003

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

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

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

2nd Quarter 2003

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

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

3rd Quarter 2003

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

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Brazil	*	*
Poland	0	5

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

4th Quarter 2003

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

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