



Prevention of trafficking in persons in Central and Eastern Europe
Prewencja handlu ludzmi w Europie Srodkowej i Wschodniej
Предотвращение торговли людьми в Центральной и Восточной Европе
Prevenca obchodu s lidmi ve Stredni a Vychodni Evropě
Prevenција trgovine ljudima u Centralnoj i Istočnoj Evropi
Забобігання торгівлі людьми в країнах Центральної та Східної Європи
Prevenirea traficului de fiinte umane in Europa Centrala si de Vest
Превенција на трафика на хора в Централна и Източна Европа
Превенција од трговија со луѓе во Централна и Източна Европа
Preventie van mensenhandel in Centraal en Oost Europa

De Wittenstraat 25 • 1052 AK Amsterdam • The Netherlands • T: 00 31 (0)20 6881414 • F: 00 31 (0)20 6881013
www.lastradainternational.org • info@lastradainternational.org • giro: 2304026 • kvk 34215238

Response of La Strada International to the Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda

“Integration of the Human Rights of Women and the Gender Perspective”

E/CN.4/2006/62, 20 February 2006

62nd Session of the Commission on Human Rights

La Strada International (LSI), a European Network against Trafficking in Human Beings, consists of nine independent human rights NGOs in Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Macedonia, Moldova, the Netherlands, Poland and Ukraine. It aims to prevent trafficking in human beings, with a focus on women in Central and Eastern Europe. The primary goal of LSI is to improve the position of women and to promote their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.

LSI welcomes the UN Special Rapporteur’s initiative for a report on the demand side of trafficking, which has become an important theme in the international trafficking discussion and therefore an issue for international research and debate.

LSI also fully supports the statement of the Special Rapporteur that “the human rights of victims of trafficking should be at the centre of all efforts to combat trafficking and protect, assist and provide redress to victims of trafficking.”(4)

However, LSI would like to share a number of concerns about the Report which we believe undermines the validity of the conclusions and recommendations.

These concerns can be categorised in the following themes:

1. Methodology
2. Human Rights Framework
3. Excluding other sectors into which people are trafficked
4. Relationship between 'demand', trafficking and criminalisation of the purchase of sexual services
5. Conflation of prostitution with trafficking and the Palermo Protocol

1. METHODOLOGY

The Special Rapporteur relies upon a number of sources for her Report, including a Questionnaire that was sent to UN member States, IOM and UNICEF, NGOs and individuals. She also attended a number of meetings and conferences. Unfortunately, the Report does not include a summary of the responses to the Questionnaire, a literature review on the issue of 'demand' and trafficking, or official reports from the meetings and conferences she attended. As a result, it is impossible for any reader to check most of the facts or any of the sources (except for published reports) contained in the Report.

The Special Rapporteur on trafficking in persons worked with the Special Rapporteur on the sale of children, child prostitution, and child pornography to develop a Questionnaire. We have several concerns in relation to this Questionnaire which bring into question the conclusions and recommendations contained in the Report.

First, the Questionnaire does not disaggregate responses regarding children from those dealing with adults, which means that it treats adults (i.e., women) as having no more self determination or status under law than children.

Second, it includes the term 'sexual exploitation' without any definition. While there may be some common understanding about the meaning of 'sexual exploitation' with reference to minors, there is no consensus or international definition with respect to adults.

Third, the Questionnaire contains questions about 'sexual exploitation' that are not clearly linked to trafficking and 'sexual exploitation' is undefined (e.g., "2. Please provide available estimates on how many people in your country solicit services that derive from *sexual exploitation*"). It contains similar questions about demand without any definition or context for understanding 'demand' (e.g., "3. Please provide available information on which factors, attitudes or policies create or increase *demand* for services that derive from *sexual exploitation*.").

LSI regrets that the flawed nature of the Questionnaire means that the conclusions drawn from it are unreliable. Furthermore, in many cases the Special Rapporteur substitutes her opinions for evidence. She repeatedly uses terms such as 'believe', 'little reason to believe', 'good reason

to believe' and 'extremely unlikely', all of which are opinions and not facts upon which conclusions may be drawn or sound policy developed. Nonetheless, the conclusions following her statements of opinion adopt the position that her opinions are based on facts and so give the impression that her conclusions and recommendations are sound and supported by research.

2. HUMAN RIGHTS FRAMEWORK

LSI is surprised and worried about the fact that the Special Rapporteur fails to place the Report within the human rights framework. Especially as the Special Rapporteurship for trafficking in persons was created by the Commission on Human Rights in 2004 "to focus on the human rights aspects of the victims of trafficking in persons."

Although the term 'Human Rights' is often mentioned in the report, none of the human rights principles are integrated in the Report of the Special Rapporteur, there is no mention or reference made to any specific human rights instrument (the UN Trafficking Protocol only touches upon human rights) and the described arguments and discussions about demand, prostitution, clients and trafficking are not grounded within a human rights framework. The report further does not provide any evidence based analyses why 'the criminalisation of clients' (the main recommendation of the report to end the human rights violations of trafficking) will be an effective measure to protect the rights of trafficked persons. On the contrary, the Special Rapporteur acknowledges in her report, that criminalisation can push "prostitution out of sight, thus making trafficking victims more vulnerable to human rights abuses." (92) Unfortunately, this potential risk of human rights abuses is not further explored, neither are any recommendations made on how to reduce this risk. Instead this potential for harm is dismissed by comparing criminalisation with the risk that legalised prostitution can make human rights abuses "appear in plain view" (92). The existence of flaws in one system does not justify the acceptance of flaws in another system.

When the Report does mention human rights, it is confusing. It states, for example, that "[m]en do not have a human right to engage in the use of prostituted persons." (81) Unfortunately, this statement reflects a complete misunderstanding of the core human rights instruments. Also, to our knowledge, no one has ever claimed such a 'right' so the statement is unhelpful in analysing the relationship between clients, prostitution and trafficking.

3. EXCLUDING OTHER SECTORS INTO WHICH PEOPLE ARE TRAFFICKED

LSI regrets very much that the Special Rapporteur limited the scope of the Report to trafficking into the sex industry only. (27) Given the Palermo Protocol's broad definition of trafficking, it would have been logical and productive to research "the demand that fosters *all* forms of exploitation of persons that leads to trafficking." (50) The research by Anderson and O'Connell Davidson in *Is Trafficking in Human Beings Demand Driven?* (cited in the Report) shows that many similarities can be found between trafficking for the sex industry and trafficking for other forms of (informal) labour. The Report would have been more valuable and relevant had a comparison been made, between demand in different sectors, and the different ways in which governments address the demand of consumers of all forms of trafficked labour was further explored.

The Special Rapporteur states in her report that "often governments do not engage in the type of investigative or educational activities that would discourage demand in many consumers

markets. Instead, states are often wilfully blind to the use of trafficked labour in the production of many consumers good sold in their domestic markets.” (footnote 12) Therefore, research on the demand for all forms of trafficked labour, including the role of states, is indeed needed in order to fully understand the scope of the problem across all sectors and to be able to explore a variety of responses and solutions to the many forms of trafficking that flourish around the world.

Our present understanding about trafficking within and out of countries in Africa, Asia and Latin America indicates that trafficking takes place for agriculture work, domestic work and in a variety of other industries as well as into prostitution. By not addressing these forms of trafficking, the human rights violations that occur to thousands of people in these continents have been ignored, while a variety and a diversity of responses and solutions to the demand for trafficked labour other than criminalisation have been excluded.

4. RELATIONSHIP BETWEEN ‘DEMAND’, TRAFFICKING AND THE CRIMINALISATION OF THE PURCHASE OF SEXUAL SERVICES

LSI shares the Special Rapporteur’s understanding of the meaning of demand in the Palermo Protocol: “demand must be understood expansively, as any act that fosters any form of exploitation that, in turn, leads to trafficking.” (52) For example, LSI views the existence of barriers to legal migration for jobs that citizens of those countries are unwilling to take as an “act that fosters” the exploitation of undocumented workers “that, in turn, leads to trafficking.” Unfortunately, this is not one of the ‘acts’ covered in the Report.

We also share the Special Rapporteur’s view that “States parties need not to eradicate demand simply because that demand is occasionally met by goods produced by trafficked labour.” (59) We too hope that the demand side of the trafficking of goods produced by trafficked labour can be reduced by informing costumers and encouraging them to avoid the purchase of those products/services. (59) Similarly, we hope that the demand for trafficking of sexual services involving trafficked persons can also “be reduced by informing customers and encouraging them to avoid the purchase of those services.” (59)

By analogy, states need not eradicate demand for sexual services simply because some of those services could be produced by trafficked labour.

However, the Special Rapporteur rejects the analogy between trafficked labour for goods and trafficked labour for sex claiming that “there is little reason to *believe* that the same holds true in the sex-trafficking market, and thus States parties have an obligation...to discourage the use of prostituted persons generally.”(60) In other words, without any data or evidence, the Special Rapporteur does not believe that persons who purchase sex can be educated and discouraged from purchasing sex from trafficked persons. She simply concludes that “[p]rostitute-users are typically incapable of distinguishing and/or unmotivated to differentiate between prostituted persons who have been subjected to the illicit means delineated in article 3(a) of the Protocol and those who have not.” (60) She cites a study in which clients who are aware of the existence of trafficking continue nonetheless to buy sex (just as people who know that food and goods are produced with trafficked labour continue nonetheless to purchase them),

She then acknowledges that “there is good reason to *believe*” that many - but not all - clients “are aware that the women and children they use in prostitution are subjected to the illicit means...in the Protocol.” (63) However, she continues “it is *extremely unlikely* that any substantial number of prostitute-users would be deterred from using prostituted persons on the grounds that the prostituted person has been subjected to” force, threats, coercion, fraud, deception, abuse of power, and/or abuse of a position of vulnerability. (63)

Based on these assumptions the Special Rapporteur “*believes* that [the state obligation to discourage the demand side of trafficking] can be effectively met through criminalization of the use of prostituted persons and good faith enforcement of these provisions.” (88). Unfortunately, it is not further explained how this would work in reality.

The Special Rapporteur recognises that “criminalization does not guarantee” that people will stop purchasing sex but claims that “expressive condemnation of harmful conduct is one of the central functions of the legal system” and so “it *stands to reason*” that criminalizing clients is a “way of fulfilling [state] obligations” to reduce demand.(89) Although some governments believe in the symbolic strength of criminal laws, most governments regard the criminal justice system as the ultimate remedy that should only be used when it is proven to be effective in practise.

5. CONFLATION OF PROSTITUTION WITH TRAFFICKING AND THE PALERMO PROTOCOL

The Special Rapporteur states that the Palermo Protocol definition of trafficking “reflects an important resolution between deeply divided views regarding the acceptability of the commercial sex industry, establishes clear criteria for understanding what counts as trafficking, and makes it possible to frame anti-trafficking initiatives with consistency and clarity.” (33). Actually, in respect to trafficking into the sex sector the delegates to the Trafficking Protocol negotiations were unable to develop a consensus view on the question of whether or not trafficking of adults includes all sex work (whether legal or illegal) or only unfree sex work. The *travaux préparatoires* to the Protocol reflects this outcome, which the delegates included to allow all states parties to make this determination in their national implementing legislation:

While the Protocol recognises the possibility of domestic trafficking laws adopting different positions with regard to prostitution and trafficking, the Special Rapporteur asserts that this is wrong because it is “*evident* that most prostitution is accomplished by one or more of the illicit means outlined in subparagraph (a) of the Protocol and therefore constitutes trafficking.” (48) She also *believes*, without any evidence, that “[i]t is rare to that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability.” (42) Contrary to the *belief* of the Special Rapporteur, it is a fact that the Protocol does not state that all prostitution involves trafficking.

Thus, the Special Rapporteur’s analysis and conclusions conflating prostitution and trafficking are not based on any proof or analyses and in fact nothing more than an expression of her personal *beliefs*. Unfortunately, the Special Rapporteur has chosen to adopt the abolitionist view that all prostitution involves trafficking and to reject, without evidence, the other view that prostitution can and does exist without trafficking.

LSI deeply regrets the conflation of prostitution and trafficking in the Special Rapporteur's Report because it results in a focus on the discussion about policy options towards prostitution (legalisation of the sex industry contrary to the criminalisation of clients) instead of analysing how to address the demand for services or products that are the result of trafficked labour within a human rights framework.

The statement that "State parties with legalized prostitution industries have a heavy responsibility to ensure that the conditions [...] are free from the illicit means delineated in subparagraph (a) of the Protocol definition", but that "current conditions throughout the world attest, States parties that maintain legalized prostitution are far from satisfying this obligation" is remarkable (43).

LSI is of the opinion that all state parties are obliged to ensure that the conditions in which prostitution takes place are free from illicit means, regardless of their prostitution policies. Countries in which prostitution is legalised, such as Germany and the Netherlands, have always be categorised in Tier 1 in the annual TIP reports.

The experience of over 10 years working in the anti trafficking field and with trafficked persons has taught that trafficking occurs in countries where sex work is legal and in countries where (aspects) of commercial sex is criminalised. It is also important to note that trafficking in persons around the world into industries that are legal (agriculture, domestic work and factories) continues unabated as well as into industries that are mostly illegal (prostitution). As trafficking can occur in large numbers in legal and illegal industries, LSI believes that legalisation or criminalisation of the site of trafficking is not the key factor and the focus of the international debate on trafficking should instead be put on the real root causes of trafficking - the reasons why people migrate and are trafficked and the reasons why other people are able to traffic them - and less on the sites of trafficking.

LSI regrets that the Report of the Special Rapporteur does not make a contribution to this important discussion.

6. CONCLUSION

La Strada International hopes that the comments, observations and concerns expressed in this document are seriously considered by the Special Rapporteur for her upcoming projects and possibly for an updated or amended Report. It is extremely important that official UN reports are soundly grounded in evidence and objectivity. Biased methodology and assumptions are not a sound basis for making UN policy recommendations. At the same time, we recognise that, on a subject as politically-charged and sensitive as prostitution, it is inevitable that personal opinions will exist, but they should be recognised as such and not be presented in official UN reports as facts.

La Strada International, August 2006