



**Contribution to the Draft Report of the European Expert Group on
Trafficking in Human Beings**

25/10//04

EWL has taken note of the Report of the Expert Group on Trafficking and supports most of the recommendations of the report, namely those that call:

- To place Human rights at the centre of further developments and measures against trafficking in human beings
- The need for a holistic and integrated approach
- The provision of assistance and protection for all victims of trafficking
- The refusal to consider victims as illegal immigrants and the need to promote a gender sensitive immigration policy at the EU level.

However, the EWL has serious concerns about some aspects of the report. The main critics concern 1) the partial use/misuse of the UN Protocol definition of trafficking, which, as the report states, "contains a worldwide recognised definition"; 2) the lack of prevention analysis and recommendations.

1) The partial use/misuse of the UN Protocol definition on trafficking

The Expert Group is based on the Brussels Declaration, which relies on the UN Protocol to prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the UN Protocol), adopted in 2002. The UN Protocol is also the major reference for any further binding texts at international and national level. All EU legislation on trafficking (the EU Framework Decision, the EU Directive on short-term permit) as well as the Draft Council of Europe Convention for action against trafficking in human beings, include at minimum this definition.

The report, while pretending to work on these bases, fails to consider all the elements of this guiding text. In other words:

The Protocol gives a comprehensive definition of trafficking :

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Each word of the definition has its own value. The Expert Group however, treat them in a deceiving way.

1.1 Exploitation

Exploitation is at the core of the trafficking definition, and, as the report recognises, “the aim of the trafficking is the exploitation of the trafficked person”. But the forms of exploitation are also listed, and this is important.

Whereas trafficking is not the same as prostitution, the Protocol makes a link between trafficking and “**the exploitation of prostitution of others or other forms of sexual abuses**”. It DOES specify that the exploitation is not only forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Trafficking and sexual exploitation are intrinsically connected and should not be separated merely because there are other forms of trafficking or because some countries have legalized/regulated prostitution and thereby want to censor any discussion of prostitution from regional and international policy agendas.

The UN Protocol makes trafficking for **the exploitation of prostitution of others or other forms of sexual abuses** a primary form of exploitation. By pretending to adopt a “neutral stance” on this subject (see note 21 and 18), and by refusing to use some of the terms of the UN Protocol, the Expert Group diminishes the Protocol scope, reducing sexual abuses and exploitation of the prostitution of others to forced labour and services in the sexual industry. Trying to separate prostitution and sexual abuses from trafficking is not a new process; during all the negotiations for the UN Protocol, some countries (destination countries) and some NGOs, including some INGOs as ILO, tried to deny the link between sexual exploitation and to the sex industry.

Diluting exploitation of prostitution of others and sexual abuses in forced labour or services is not neutral. It introduces a **selective interpretation** of the text of the UN Protocol, and therefore to the Brussels Declaration and to the Council Framework Decision on combating trafficking in human beings (2002). The Brussels Declaration calls for “*a global approach to trafficking (which) must address all forms of exploitation, including sexual exploitation, labour exploitation, in particular child labour and begging*”.

This is also stipulated in the CEDAW Protocol (art 6): “*States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*”.

Therefore, the EWL calls for the report to include, whenever it mentions the exploitation or the purpose of trafficking, **the complete list of forms of exploitation** as adopted in the Protocol and in the other international and EU legislative documents.

1.2. Coercion/consent

All commentators agree that there are fewer victims of trafficking who “are being kidnapped or abducted...an overwhelming majority are being trafficked through deception and false promises ...”. The definition of trafficking in the UN Protocol provides a comprehensive listing of criminal means by which trafficking takes place, including not only force, coercion, abduction, deception or abuse of power but also *abuse of a victim’s vulnerability* (Art 3a). The definition of trafficking in the new UN Protocol explicitly states that **the consent of a victim of trafficking is irrelevant**.

The Expert Group however introduces confusion with a discussion about “innocent/guilty victims”, “coercion/consent element”. This message is in direct contradiction to the definition of the UN Protocol. During the negotiations of this Protocol, the EWL, together with the International Human Rights Network of NGOs, worked to ensure the protection of all victims of trafficking, not just those who could prove that they have been forced. Additionally, we wanted no definitional loopholes for the traffickers whereby they could claim in their defence that women had consented in their exploitation. *The definition of trafficking in the Protocol and in the EU legislation helps insure that victims of trafficking will not bear the burden of proof.*¹ This has to be clearly reaffirmed.

Some governments and NGOs want only to emphasize the provisions of the Protocol that suit them and who still focus only on forced trafficking, ignoring the fact that trafficking can occur with or without the consent of the victim and that this is now a point of international policy and legislation on trafficking².

1.3. Victims/trafficked persons

The UN Protocol, as the Brussels Declaration, uses the word “victims of trafficking” rather than “trafficked persons”. This is not diminishing the empowerment of the person but clearly indicating the status of a person subjected to this criminal offence. It is important to recall that the Draft Council of Europe Convention on actions against trafficking in human beings, which aims to go further in the protection of human rights of the victims, defines “victim of trafficking”,

The EWL calls for a recognition, in the report, of all of the elements of trafficking as defined in the UN Protocol definition, including the use of agreed terms.

2. Prevention measures and recommendations

2.1. Addressing the root causes

The Brussels Declaration has an important chapter on Prevention of trafficking, addressing the root causes, calling for research, training, awareness raising, etc.

¹ Guide to the New UN Trafficking Protocol, 2001, CATW, published by, AFEM, Article Premier, CATW, European Women’s Lobby, MAPP.

² “For example, the Global Alliance Against Trafficking in Women (GAATW) in conjunction with the International Human Rights Law Group states on its webpage that “If a government insists on using language such as ‘sexual exploitation,’ we should encourage them to use the following definition [suggested by the NGO] so that sexual exploitation, like any other form of labour exploitation, requires the use of force or coercion...”.

Among the root causes, the Experts Group refers to gender discrimination and lack of opportunities in the countries of origin but not to gender inequality in receiving countries. The demand for women and children for sexual exploitation is not therefore properly addressed. The report concentrates on the areas of social and labour law and the application of labour standards in order to reduce the demand for victims of trafficking.

It is stated that increasing demand for cheap, unskilled labour in construction and manufacturing jobs, as well as for domestic and sexual services create strong pull factors for legal or illegal migrants. This demand should be clearly stated as one of the root causes of trafficking, as mentioned in the Brussels Declaration.

2.2. A contested solution: Regulating the sex industry

The report of the Expert Group gives a positive picture of regulation of prostitution or legitimising of sex sector in other ways. This seems to be the favoured strategy for the Expert Group to combat trafficking and it is a constant theme in the report. By including exploitation of prostitution of others and sexual abuses in the forced labour or in cheap, un-skilled work, the experts discuss and argue for better regulations of these sectors.

The content of the Brussels Declaration has been changed to serve the purpose of promoting legalisation of the sex industry. The Brussels declaration proposes the implementation of regimes and practises to regulate and monitor agencies that frequently appear in the area of the trafficking crime such as bridal, employment, tourist, escort, au-pair or adoption. They should be monitored by State authorities so illegal acts can be identified. Another proposal of the Brussels declaration is to take measures in countries of destination to reduce the 'invisibility of exploitation' in the sex and labour markets, by a multi agency programme. In the Experts Group report there has been a merging of these statements so that the sex industry appears as a sector that should be monitored *and regulated* by the member states.

The EWL strongly opposes this distortion

In the Expert Group report, the sex industry is mentioned along with sectors such as domestic work, au-pair work, agriculture and construction. It states that women are more vulnerable to trafficking as many of the sectors in "which they traditionally are engaged" such as the sex industry are less likely to be regulated. The unregulated nature of what is called the sex sector is stated as a key factor. The Expert Group names some research supporting the need for regulation.

However there are also pieces of research that firmly argues against the claim that legalisation of prostitution will reduce trafficking and suggests that legalisation is a 'pull factor' for traffickers. Legalisation means an expansion of the sex - industry, both the legal and illegal sectors.³ Legalisation gives the signal that buying women's bodies is acceptable. *With legalisation in countries that have decriminalized the sex industry, many men see prostitution as acceptable. When the legal barriers disappear, so too do the social and ethical barriers to treating women as sexual*

³ One argument for legalizing prostitution in the *Netherlands* was that legalization would help end the exploitation of desperate immigrant women trafficked for prostitution. A report done for the governmental Budapest Group* stated that 80% of women in the brothels in the Netherlands are trafficked from other countries (Budapest Group, 1999, cited in "10 Reasons for not legalising prostitution, J.Raymond, CATW, 2003)

*commodities. Legalization of prostitution sends the message to new generations of men and boys that women are sexual commodities and that prostitution is harmless fun.*⁴

“Legalisation was intended to eliminate organised crime from the sex industry. In fact, the reverse has happened. Legalisation has brought with it an explosion in the trafficking of women into prostitution by organised crime. Convicted criminals, fronted by supposedly more reputable people, remain in the business.”⁵ The Expert Group never mentions the abuses and violence attached to the sexual abuses on women victims of trafficking.

On the other hand there are signs that trafficking to Sweden has decreased and is considered by the traffickers as “unfriendly countries” to operate since buying sex was criminalized. (Interestingly, no woman, man or child selling sex in Sweden is subject to criminal law.)

2.3. Feminisation of migration does not mean expanding the sex industry

In regard to the discussion of prostitution as a form of work and the possibility of labour migration into this sector, the Expert Group forgets its “neutral stance”: “we need to consider the extent to which States see the acceptance of informal sectors such as sex work and services, or domestic work, as part of the market economy that requires regulations, and protection.” (p. 136)

The EWL recognises the need to integrate a gender perspective into the EU immigration policies⁶ but strongly refuses the acknowledgement of the sex-industry, which allows for a separate class of females, especially women and girls from poorer countries, are economically and racially marginalized.

EWL supports the Council of Europe recommendation 1610/2003⁷ which acknowledges the need for states to act together to combat the problems arising from the growth in trafficking of women and prostitution. In particular, it says that it is “a matter of urgency to elaborate an effective common EU strategy which facilitates economic recovery policies, increases socio-economic and political stability in the countries of origin, decreases migration because of poverty and reduces supply factors of trafficking and demand of prostitution”⁸. This would include doing research to profile clients of trafficking in women. This is a demand of the Brussels Declaration. It should be reiterated.

The EWL is the largest coalition of women’s NGOs in the European Union, representing over 3000 national and European non-governmental women’s organisations working together to achieve equality of women and men and respect for women’s human rights in EU policy making

For more information, please contact Colette De Troy, EWL Policy Action Centre on Violence Against Women: tel.: (32.2) 217.90.20- email: centre-violence@womenlobby.org

⁴ “10 Reasons for not legalising prostitution, J.Raymond, CATW, 2003)

⁵ A critical examination of Responses to Prostitution in four countries : Victoria – Australia, Ireland, The Netherlands, Sweden. By Julie Bindel and Liz Kelly, 2004, p.14

⁶ See EWL’s position paper “Integrating a gender perspective into the eu immigration policy framework”, 2004

⁷ Recommendation 1610 (2003) Migration connected with trafficking in women and prostitution

⁸ Ibid. 12, sub para 6

