A. Introduction – Changing Forms of Trafficking for Prostitution in Israel:

From the 1990s to approximately 2005, the Israeli government faced a severe problem of trafficking of women from the former Soviet Union for the purpose of prostitution. The women were held under abusive conditions, which often included, subjection to violence, imprisonment or supervision of movement, debt bondage, detention of passports, and systematic rape. The women were often forced to service many clients a day. However, in light of a concerted effort by government agencies, non-governmental organizations (NGOs), and the Parliament, there has been a radical decrease in this form of prostitution. At the height of the phenomenon, in 2003, the police estimated that 3,000 women were trafficked into Israel each year; during 2009 and 2010, no new victims were identified entering Israel.

However, a new pattern of prostitution has emerged involving less abusive conditions, at least in part. Since September of 2011, women from the former Soviet Union and South America have been brought to Israel on 3-month tourist visas to engage in prostitution. They are believed to receive adequate remuneration (typically 50 percent of the “fee”). As opposed to the earlier form of trafficking for prostitution, the current instances appear to be largely free of violence, and other forms of coercion. Also, as a rule (with one known exception to date), women retain their passports. From September
2011 until May 2012, the police reported six such cases. There have been indictments in three cases (one of which is more severe and will be dealt with in the next paragraph of this memorandum) and the other four are still under investigation.\(^1\) It should be noted, however, that, as a rule thus far, the defendants were apprehended at the start of the women's work as prostitutes and thus, the police do not believe they have obtained all possible evidence regarding these cases.

A possible exception to this emerging pattern is a new indictment submitted in April 2012 in a case involving a mixture of old and new practices. On the one hand, the passports of the women were not detained, they received 50% of the "fee" as a rule, and the women were apprised of the conditions before embarking upon the journey to Israel. On the other hand, threats and humiliating treatment were used, there was some supervision of movements and control over the schedule of the women, language denoting objectification was used (such as "goods"), sexual harassment and assault ensued in one case, and one woman's wages were detained by fraudulent means.

The Israeli Police has filed charges in these cases alleging both trafficking and prostitution offences.

This memorandum will analyze whether this new form of prostitution occurs worldwide and whether other prosecutorial bodies submit indictments on the grounds of trafficking for prostitution or prostitution offences. I will rely upon articles, reports and

\(^1\) Graph provided by the Israeli Police; Interview with Superintendent Rubi Kayam, the police representative in charge of trafficking in persons.
emails sent by experts in reply to queries of the Office of the National Anti-Trafficking Coordinator. While emails are not always reliable sources, they are cited here because the subject is on the cutting edge of trafficking law and not yet dealt with adequately by other sources.

B. Comparative Analysis - Evidence of More Humane Conditions

It appears that these new cases in Israel may reflect a global problem. The European Police Office (Europol) reports from 2009 and 2011 and the International Centre for Migration Policy Development report from 2009 provide evidence for this claim; they explain that procurers of prostitution in and around European Union countries have substantially reduced their use of violence.²

Europol’s June 2009 report states, “there is an increasing trend in using less coercive measures, such as forcing the victim into drug or alcohol dependency or using bogus contracts of work.”³

---


Europol’s April 2011 report explains, many procurers “have sought to adapt their image to that of helpful service providers and indispensable intermediaries between clients and victims.”

The existence of less abusive patterns of prostitution is also substantiated by other sources. European legal experts on trafficking in persons sought out by the International Centre for Migration Policy Development, also report that the use of more subtle forms of coercion of victims, including “manipulated debts, threatening denunciation to the migration authorities in cases where a person had an irregular migration status, and various threats against family members in the countries of origin rather than physical violence.” Furthermore, the International Centre for Migration Policy Development states that “traffickers are more likely to share a small part of the proceeds from prostitution” with the victims “in order to discourage them from complaining to the police.”

According to academics, advocates, and policymakers, since 2005, traffickers in Europe have “become less violent.” International legal policy researchers Martti Lehti and Kauoko Aromaa explain, “Traffickers [in Europe] have become aware that the business can be organized and run more effectively and profitably when the victims

---


5 Ibid.

are engaged on a relatively voluntary basis.” They state, “Eastern European women, in principle, have the least restricted working conditions and usually arrive with the intention of prostituting themselves only for a couple of months . . . Their prostitution is to a large extent based on contracts for a fixed period.”

A similar pattern appears to exist outside Europe as well. According to academic Louise I. Shelley, the prostitution industry in China treats the victims “as valuable commodities to be taken care of” and “aggravated cases of abuse are few, agreements are kept, and victims are free after they have paid their debts.” She further states that the business of prostitution in China is “fairly humane . . . although violence and abuse are not unknown.”

In Nigeria, procurers of prostitution “make use of cultural factors to control the women,” such as Juju or voodoo rituals.”

________________________________________

7 Ibid.
A Thai sex worker organization, "Empower," states that conditions in the prostitution industry in Thailand have improved significantly since the 1990s: “As for the present, in 2011, we are delighted to report that although we still have a way to go, the working conditions in our industry have improved manifestly. We have reached a stage where severe exploitation such as we experienced in the 1990’s is now the rare exception rather than the rule.”

C. Comparative Analysis: Combination of More and Less Abusive Conditions:

NGO La Strada Bulgaria’s National Coordinator, Nadia Kozhouharova, explained that recently the majority of the nation’s cases of prostitution combined more and less abusive conditions. Kozhouharova explained, “most of our cases were a combination between ‘normal’ treating and abuse or exploitation. For example, the woman receives 50% of the money, but is forced to work 12 hours a day. Or she is not supervised closely, but her passport is taken.” Kozhouharova said the mixture of degrees of brutality is “one of the oldest ways to manipulate the trafficked person.”


12 It is unclear from the sources whether the victims of prostitution in the specific regions described are trafficked or are residents of these regions.

13 E-mail to Rahel Gershuni, National Anti-Trafficking Coordinator, Israel from Nadia Kozhouharova of NGO La Strada Bulgaria, July 4, 2012.
This information seems to accord with the facts detailed in the latest Israeli indictment submitted in April 2012 (see above).

D. Legal Analysis: When Can Less Abusive Cases Be Considered Trafficking?

D. 1. Most Jurisdictions: Prostitution Offences Rather than Trafficking:

The majority of jurisdictions categorize the less harsh cases as prostitution, as opposed to trafficking offences. Heike Rabe of the German Institute for Human Rights Policies provides an example of this categorization. According to Rabe, such cases fall under Section 181a (German Controlling Prostitution Penal Code). According to Rabe, the section reads, “Whosoever . . . for his own material benefit supervises another person's engagement in prostitution, determines the place, time, extent or other circumstances of the engagement in prostitution, or takes measures to prevent the person from giving up prostitution, and for that purpose maintains a general relationship with the person beyond a particular occasion shall be liable to imprisonment from six months to five years.”

According to Mr. Mike Dottridge of End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes International, in general, European Union member states, with the exception of France, do not prosecute cases displaying the

---

14 E-mail to Rahel Gershuni from Heike Rabe of the German Institute for Human Rights Policies, June 28, 2012.

15 Section 181a, *German Penal Code*. 
less abusive pattern as trafficking offences. European legal experts on trafficking in persons report that authorities in their nations tend to handle the cases under “offences such as pimping and forced prostitution.”

D. 2. **France: Trafficking Offences Rather than Prostitution Offences:**

On the other hand, French authorities categorize the less harsh cases of prostitution as trafficking offences. Apparently, this is due to the fact that the French trafficking offence is broad, encompassing even pimping. In addition, while article 4(a) of the Council of Europe Convention requires that cases of recruitment for prostitution must involve “abusive means” in order to constitute trafficking, article 225-4-1 on trafficking in France’s penal code has no such restriction. The article reads,

> Human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put that person at the disposal of the trafficker or of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring [for the purpose of taking part or being exploited in prostitution], sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour.

---

16 E-mail to Rahel Gershuni from Mike Dotridge of End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes International, July 3, 2012. ECPAT International is a network of organizations and individuals fighting to end child prostitution and pornography and trafficking of children for sexual purposes.

17 International Centre for Migration Policy Development, 10, 29, 32.


19 195.83.177.9/code/liste.phtml?lang=uk&c=33&r=3717.
Mr. Dottrige states that the article has “the effect of designating all cases in which someone is recruited into prostitution to be cases of human trafficking.” He argues that the French article creates “confusion between less serious offences, such as pimping and procuring, and acts of trafficking as defined by the 2002 Framework Decision and the Council of Europe Convention.”

E. Summary:

Since late 2011, a new pattern of prostitution in which better conditions exist, at least in part, has emerged in Israel. The new pattern seems to be a global development. Reports from the European Police Office and the International Centre for Migration Policy Development and comments from academics, legal policy researchers, and advocates reveal that less abusive forms of prostitution are evident in Europe, China, Thailand, and other countries.

This new pattern presents problems to police and prosecutors, as often, women engaged under better conditions, refuse to complain. In addition, the question arises if these cases can be categorized as trafficking for prostitution.

At least in Bulgaria, it is reported that the most common pattern to date is that of combined harsh and less harsh conditions. This seems similar to the facts in a recent Israeli indictment.

---

20 Dottridge, 28, 70-71.
Most jurisdictions, with the notable exception of France, categorize the less abusive form of prostitution simply as prostitution and do not classify it as trafficking.

Tom Stanley-Becker
Intern
Office of the National Anti-Trafficking Coordinator