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# State Responsibilities in Combating Trafficking in Persons in Central Asia

MOHAMED Y. MATTAR\*

## I. INTRODUCTION

Since the early 1990s, trafficking in persons has been among the major human rights problems in the transition countries of Central and Eastern Europe. In more recent years, however, “the focus of human traffickers ha[s] shifted to . . . Central Asia, a region fraught with social, political, and economic tension.”<sup>1</sup> Existing research on the issue suggests that the fastest growth rates of trafficking are currently observed in the former Soviet Union, including Central Asia,<sup>2</sup> and estimates that the region “is becoming the most important geographical source of trafficking in women in Asia.”<sup>3</sup>

Further, trafficking in persons is a significant problem in the Central Asian countries of Kazakhstan, the Kyrgyz Republic,

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1. Islamabad News Website, *Pakistani Paper Justifies Law on Human Trafficking*, BBC WORLDWIDE MONITORING, Aug. 31, 2002, LEXIS, News Library, ALLNWS File.

2. See, e.g., U. N., OFFICE ON DRUGS AND CRIME, FACT SHEET ON HUMAN TRAFFICKING, at [http://www.unodc.org/unodc/en/trafficking\\_victim\\_consent.html#facts](http://www.unodc.org/unodc/en/trafficking_victim_consent.html#facts) (last visited Jul. 25, 2005).

3. INT'L ORG. FOR MIGRATION (IOM), DECEIVED MIGRANTS FROM TAJIKISTAN: A STUDY OF TRAFFICKING IN WOMEN AND CHILDREN (2001), available at [http://www.iom.int/documents/publication/en/tajikistan\\_study\\_august2001.pdf](http://www.iom.int/documents/publication/en/tajikistan_study_august2001.pdf) [hereinafter DECEIVED MIGRANTS FROM TAJIKISTAN].

Tajikistan, Turkmenistan, and Uzbekistan. Kazakhstan and Uzbekistan were on Tier 3 of the 2003 Trafficking in Persons Report ("2003 TIP Report"),<sup>4</sup> which was released by the U.S. Department of State Office to Monitor and Combat Trafficking in Persons. Their Tier 3 status meant that they did not fully comply with the minimum standards for the elimination of trafficking as stipulated in section 108 of the Trafficking Victims Protection Act<sup>5</sup> (TVPA) and were not making significant efforts to combat the problem. These Central Asian countries, along with the Kyrgyz Republic and Tajikistan, were later moved to Tier 2 of the 2003 TIP Report.<sup>6</sup> Tier 2 status meant that they did not fully comply with minimum standards but were making significant efforts to do so. The 2004 TIP Report<sup>7</sup> kept the Kyrgyz Republic on Tier 2, but shifted Tajikistan to the Tier 2 Watch List, a new country-status category created pursuant to section 6(e)(3) of the Trafficking Victims Protection Reauthorization Act of 2003.<sup>8</sup> Tier 2 Watch List status means that the country did not fully comply with minimum standards but are making significant efforts to do so. In addition, Tier 2 Watch List status may mean a) that the absolute number of victims of severe forms of trafficking in a particular country is very significant or significantly increasing; b) that a country has failed to provide evidence of increasing efforts to combat severe forms of trafficking; or c) that the determination of

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4. See U.S. DEP'T OF STATE, TRAFFICKING VICTIMS PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT (2003), available at <http://state.gov/g/tip/rls/tiprpt/2003> [hereinafter TIP REPORT 2003]. There were fifteen countries listed on Tier 3 in the annual 2003 TIP Report: Belize, Bosnia and Herzegovina, Burma, Cuba, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Liberia, North Korea, Sudan, Suriname, Turkey, and Uzbekistan. *Id.* at 21. On September 10, 2003, the U.S. Department of State released an interim report, which shifted ten of these countries to Tier 2, and presently, only Burma, Cuba, Liberia, North Korea, and Sudan are on Tier 3. See discussion *infra* Section VI. For a discussion on the TIP Report, see Mohamed Mattar, *Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated Under the U.S. Trafficking Victims Protection Act*, 10 BROWN J. WORLD AFFS. 159 (2003).

5. See Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. § 7101-7110 (2000).

6. There were seventy countries on Tier 2 in the 2003 TIP Report. TIP REPORT 2003, *supra* note 4, at 21.

7. See U.S. DEP'T OF STATE, TRAFFICKING VICTIMS PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT (2004), available at <http://www.state.gov/g/tip/rls/tiprpt/2004> [hereinafter TIP REPORT 2004].

8. See Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, Pub. L. No. 108-93, 117 Stat. 2875 (2003).

making significant efforts to bring a country in compliance with minimum standards was based on commitments by the country to take additional future steps.<sup>9</sup> There is not enough information on “a significant number of victims of severe forms of trafficking” in Turkmenistan for it to be placed on any of the three Tiers.<sup>10</sup> Regardless, none of the aforementioned five countries are on Tier 1 of the 2004 TIP Report,<sup>11</sup> suggesting that trafficking in persons is a very significant problem in the region.

Until very recently, both governments and societies in Central Asia were “reluctant to discuss the problem of trafficking in humans, pretending the issue does not exist in their countries.”<sup>12</sup> In this predominantly Muslim region of the world, trafficking and prostitution are “almost taboo,”<sup>13</sup> and victims prefer not to report their experiences to authorities “for fear that the conservative societies . . . will reject them.”<sup>14</sup> As of 2000, no international organizations or non-governmental organizations (NGOs) have conducted research examining the reasons, nature, or consequences of trafficking in persons in Central Asia.<sup>15</sup> The author’s online search for trafficking-related news reported by a number of major news agencies has revealed similar results: until the beginning of 2003, the news articles that contained the word “trafficking” in the context of Central Asia dealt primarily with

9. There were forty-two countries listed on the Tier 2 Watch List in the 2004 TIP Report. TIP REPORT 2004, *supra* note 7, at 39.

10. *Id.* at 30.

11. Twenty-six countries were listed on Tier 1 in the 2003 TIP Report. TIP REPORT 2003, *supra* note 4, at 21. The 2004 TIP Report shifted the United Arab Emirates to Tier 2 status, and consequently, there are now twenty-five countries listed on Tier 1. TIP REPORT 2004, *supra* note 7, at 39.

12. Farangis Najibullah, *Central Asia: Governments Slowly Changing Approach to Human Trafficking*, RADIO FREE EUROPE/RADIO LIBERTY (RFE/RL) NEWSLINE, July 2, 2003, at <http://www.rferl.org/nca/features/2003/07/02072003161302.asp>.

13. *Id.*

14. *Id.*

15. Responses by leaders of the Uzbek women’s NGOs are perhaps the most illustrative of the overall attitude towards the problem that is only now starting to change. According to these responses, NGOs cannot deal directly with the issues of trafficking, “since they cannot deal with ‘what does not exist, or which theoretically does not exist, although they are aware of the actual existence of these problems.’” INT’L HELSINKI FED’N FOR HUMAN RIGHTS, *A FORM OF SLAVERY: TRAFFICKING IN WOMEN IN OSCE MEMBER STATES* (2000), available at [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=1921](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=1921) [hereinafter *A FORM OF SLAVERY*].

drugs and arms trafficking and seemed to completely disregard the existence of trafficking in persons.

The governments in all of these countries, thus far, have also failed to either recognize trafficking in persons as a significant problem or to adopt comprehensive legislation to combat trafficking; however, recent amendments to the Criminal Codes of Kazakhstan and Tajikistan merit attention.<sup>16</sup>

This article is organized as follows: Section II briefly examines (A) the scope of the problem of trafficking in persons in Central Asian countries, including the main routes of trafficking; and (B) the different forms of trafficking, such as trafficking for forced labor, trafficking for prostitution and other forms of sexual exploitation, trafficking for illicit inter-country adoption, trafficking for child-bearing, and trafficking for marriage. Section II (C) analyzes the contributing factors to the trafficking infrastructure in the countries of Central Asia, with particular focus on the problems posed by the transition period in these newly independent states, such as the economic vulnerability of women and children, the political vulnerability caused by civil unrest, and cultural practices which may add to the rising problem.

Section III analyzes the nature of the crime of trafficking in persons under international law and argues that the special nature of this crime warrants a swift and decisive governmental response. Section IV discusses (A) reorganizing trafficking as a specific and serious crime; (B) the prevention of trafficking of persons; (C) the protection of trafficking victims and non-criminalization; (D) the repatriation of victims of trafficking of persons; and (E) the prosecution of traffickers. Section V details the responsibilities of the international community in combating trafficking in persons due to the transnational nature of this crime.

Section VI discusses practical issues related to the states' international obligations to combat trafficking. Section VII addresses sanctions for failing to fulfill international obligations. Section VIII concludes by calling upon the countries of Central Asia to meet these international obligations.

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16. See discussion *infra* Section IV.A.

## II. THE TRAFFICKING PROBLEM IN CENTRAL ASIA: AN OVERVIEW

### A. Scope of the Problem

While no official statistics on trafficking in persons in Central Asia are available,<sup>17</sup> some sources shed light on the gravity of the problem throughout the region. Local offices of the International Organization on Migration (IOM) have estimated that several thousand young women, some as young as sixteen years old, fall victim to trafficking every year.<sup>18</sup> Certainly, more research is needed to assess the scope of the problem in Central Asia, but some statistics are telling: about 5,000 victims are trafficked annually from Kazakhstan,<sup>19</sup> between 3,000 and 4,000 victims are

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17. While some official data on the number of prosecutions and victims of trafficking can be obtained from the governments, those figures tend to be much lower than the estimates of independent sources. The Ministry of Interior of Kazakhstan reported that "45 women were kidnapped and recruited for the purpose of sexual and other exploitation" during January-June 1999. A FORM OF SLAVERY, *supra* note 15. In the Kyrgyz Republic, the official information gathered by the Foreign Ministry and the Customs Inspectorate indicates that only 200 women became victims of trafficking in 1999. See INT'L ORG. FOR MIGRATION & ORG. FOR SEC. & COOP. IN EUROPE, TRAFFICKING IN WOMEN AND CHILDREN FROM THE KYRGYZ REPUBLIC (2001), available at [http://www.iom.elcat.kg/TextUpLoad/TIWReport\\_eng.pdf](http://www.iom.elcat.kg/TextUpLoad/TIWReport_eng.pdf) [hereinafter TRAFFICKING IN KYRGYZ REPUBLIC]. Moreover, in Tajikistan, a representative from the Prosecutor-General's office recently reported that "no cases of trafficking in Tajik nationals had been reported over the past three years with the exception of a single case when the sale of two children was revealed two years ago. . .". Varorud, *Tajik Paper Raps Official for "One-Sided" Information on Human Trafficking*, BBC WORLDWIDE MONITORING, Dec. 25, 2003, LEXIS, News Library, ALLNWS File.

18. See Najibullah, *supra* note 12, at <http://www.rferl.org/nca/features/2003/07/02072003161302.asp>.

19. BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Kazakhstan, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2002*, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18373.htm> [hereinafter *Kazakhstan 2002*]; see also *Kazakhstan Today, About 5,000 Cases of Human Trafficking from Kazakhstan Registered Annually*, BBC WORLDWIDE MONITORING, Jan. 29, 2003, LEXIS, News Library, ALLNWS File. Estimates by local NGOs at Kazakhstan are even more striking. One NGO estimated that a total of 70,000 women have been trafficked out of the country in the ten years since its independence; this number reportedly includes only those women who managed to return home, while the number of those who are still enslaved or those who died in the hands of traffickers is unknown. This estimate amounts to roughly one percent of the total female population in Kazakhstan. See Posting of Justin Burke, JBurke@sorosny.org, to EurasiaNet Kazakhstan Daily Digest (Aug. 15, 2001), at <http://www.eurasianet.org/resource/kazakhstan/hypermail/200108/0031.html>; see also Int'l Org. for Migration, *Prevention of Trafficking in Women and Children: National Information Campaign in Kazakhstan*, in INT'L ORG. FOR MIGRATION, WOMEN, LAW AND MIGRATION app. 5 (2001), available at [http://www.iom.kz/eng/docs/cont2\\_e.php](http://www.iom.kz/eng/docs/cont2_e.php).

trafficked from the Kyrgyz Republic,<sup>20</sup> and between 1,000 and 2,000 women are trafficked annually from Tajikistan to foreign countries.<sup>21</sup> In Uzbekistan, no information on the extent of trafficking in persons has been confirmed until recently, and the problem may well be growing given the recent worsening of the economic situation.<sup>22</sup> For example, there were reports that a number of young girls aged thirteen to fourteen years old were provided with false passports and sent to various countries for prostitution.<sup>23</sup> In Turkmenistan, there are no official or confirmed cases of trafficking; however, there are anecdotal reports of women traveling to Turkey and the United Arab Emirates to work as prostitutes, some of whom may have been trafficked.<sup>24</sup>

The Central Asian countries are mainly origin and transit points for trafficking in persons. The main destination country for women and children trafficked from Central Asia is the United Arab Emirates, although many victims are also sent to Albania, Cyprus, Greece, Germany, Iran, Israel, Italy, Kosovo, Malaysia,

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20. Interfax News Agency, *Human Trafficking Threatens the Kyrgyz Republic's Gene Pool*, Government Spokeswoman, BBC WORLDWIDE MONITORING, May 21, 2003, LEXIS, News Library, ALLNWS File; see also A FORM OF SLAVERY, *supra* note 15 (referring to unofficial sources, according to which over 1,000 girls between the ages of sixteen and thirty-five years, from the Kyrgyz Republic alone, "work" in Dubai, United Arab Emirates).

21. BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Tajikistan*, in COUNTRY REPORTS ON HUMAN RIGHTS 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18373.htm> [hereinafter *Tajikistan* 2002]; Global News Wire - Asia Africa Intelligence Wire, *International Organization Hails Tajikistan for Combating People Trafficking*, BBC MONITORING INT'L REPS., June 28, 2003, LEXIS, News Library, WMBS File; see also Tahmina Khakimova, *White Slavery*, VARORUD, Aug. 20, 2003, at <http://www.varorud.org/english/analitics/law/law200803.html> (citing an official statement by Igor Bosc, head of the IOM office in Tajikistan). It should also be noted that the number of trafficking victims fell dramatically between 2000 and 2002, supposedly due to the increased counter-efforts on the part of the Tajik government, IOM, and various anti-trafficking NGOs. Thus, according to the IOM data, about 2,000 women have been trafficked out of Tajikistan in 2000, while the figure declined to 646 trafficking victims in 2002. See DECEIVED MIGRANTS FROM TAJIKISTAN *supra* note 3, at 13.

22. TIP REPORT 2003, *supra* note 4, at 159; see also BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Uzbekistan*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/18373.htm> [hereinafter *Uzbekistan* 2003].

23. See Int'l Women's Rights Action Watch, IWRAP Country Reports, *Uzbekistan*, at <http://iwwrap.igc.org/publications/countryreports.htm> (last updated July 1, 1993).

24. See *Kazakhstan* 2002, *supra* note 19, at § 6(f).

Pakistan, Russia, South Korea, Syria, Thailand and Turkey.<sup>25</sup> A recent survey suggests that traffickers favor certain towns in these countries as major transit points. For example, the town of Osh in the southern Kyrgyz Republic “has become the trans-shipment point for trafficking women from Tajikistan, Kazakhstan and the Kyrgyz Republic, from where they are further transported to far abroad.”<sup>26</sup> The Kyrgyz Republic has also recently become a transit country for persons trafficked from South Asia, China, and Afghanistan, to Western Europe and the United States.<sup>27</sup> Kazakhstan, the largest country in the region, has also been a popular transit point, especially given the large number of flight connections from Almaty to destinations worldwide.<sup>28</sup>

In addition, while no official court cases have been reported on trafficking into Central Asian countries, at least some sources suggest that Tajikistan can be considered a destination country for trafficked women from Afghanistan.<sup>29</sup> Kazakhstan, reportedly, has also become a destination country for women refugees from North Korea, who “are exploited by their brokers, enslaved, and

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25. TIP REPORT 2003, *supra* note 4, at 88, 93, 147, 159; *see also* Najibullah, *supra* note 12, at <http://www.rferl.org/nca/features/2003/07/02072003161302.asp>; William J. Kole & Aida Cerkez Robinson, *UN Explores Officers' Role in Bosnian Prostitution; Eight Americans Fired for Alleged Misconduct*, COMMERCIAL APPEAL, June 14, 2001, at A7, LEXIS, News Library, ALLNWS File; COUNTRY REPORTS ON HUMAN RIGHTS 2003, *supra* note 22, *passim*, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/18373.htm>.

26. *See* Tatyana Yakovleva, *Combating International Trafficking in Central Asia: First Steps*, CENTRAL ASIA NGO (CANGO) NETWORK NEWSLETTER (Winter 2003), available at <http://www.cango.net.kg/news/archive/winter-2003/a0004.asp>.

27. *See* BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Kyrgyz Republic*, in COUNTRY REPORTS ON HUMAN RIGHTS 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18374.htm> [hereinafter *Kyrgyz Republic* 2002].

28. According to the IOM statistics, about half of all registered cases of trafficking in Kazakhstan involved the transit of people from other Central Asian countries through Kazakhstan for labor and sexual exploitation in the former Soviet countries and beyond. *See* Interfax News Agency, *World Migration Body Logs 170 Human Trafficking Cases in Kazakhstan Since 2001*, BBC WORLDWIDE MONITORING, Feb. 27, 2004, LEXIS, News Library, ALLNWS File.

29. Such possibility can be inferred from the official statistics reported by the government of Tajikistan, which places the estimate for the number of Afghan women-refugees in the country at around 2,000; certainly, some of them might fall victim to trafficking. *See* A FORM OF SLAVERY, *supra* note 15 (citing the State Migration Service of Tajikistan).



experience extreme violence.”<sup>30</sup> There is also some evidence of trafficking between the five Central Asian countries, as Tajik women are known to be trafficked into the more stable Uzbekistan, while Uzbek women, in turn, are brought into the Kyrgyz Republic. Kazakhstan is also a destination country for trafficked laborers from the Kyrgyz Republic, Tajikistan, and Uzbekistan. Trafficking also occurs internally within the Central Asian countries, primarily from rural to urban areas in Kazakhstan and the Kyrgyz Republic.

### *B. Forms of Trafficking*

Trafficking in persons from Central Asia takes many forms. Sex trafficking, or trafficking for commercial sexual exploitation, is the most common. This form of trafficking targets primarily young women and girls. In the Kyrgyz Republic, for example, there have been reports of “girls as young as age 10 from destitute mountain villages” being trafficked for commercial sexual exploitation.<sup>31</sup> Further, there is evidence that when the trafficked women are no longer useful as prostitutes, they are forced to serve as drug couriers or organ donors.<sup>32</sup> Children are also increasingly becoming the victims of trafficking and are engaged in prostitution in Central Asia. In Tajikistan, for instance, the average age of a prostitute has reportedly fallen to eleven or twelve years, and many of these child prostitutes are sold to pimps by their parents, often for only a sack of flour.<sup>33</sup> Similar reports have come from Uzbekistan, where “many rural mothers are [said to be] so desperate that they are willing to consign their children to

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30. See ILYOSISA News Network, *North Korean Women “Chosun Pigs”*, available at the Polaris Project, <http://www.humantrafficking.com> (Database>> Search Database by Country>>Kazakhstan>>Korean language article).

31. See *Kyrgyz Republic* 2002, *supra* note 27. The exact scope of this problem is unknown, however. See *supra* note 30.

32. See *IOM Assesses Human Trafficking in the Kyrgyz Republic*, RFE/RL NEWSLINE, July 1, 2003, at <http://www.rferl.org/newsline/2003/07/010703.asp> (citing Damira Smanalieva of the IOM office in the Kyrgyz Republic).

33. See ASIA-Plus, *British NGO Holds Conference on Child Prostitution in Tajikistan*, BBC WORLDWIDE MONITORING, Jan. 31, 2004, LEXIS, News Library, ALLNWS File.

traffickers without understanding the consequences of their actions.”<sup>34</sup>

There is also trafficking for forced labor in Central Asia. A distinct feature of this form of trafficking in the Central Asian context is that its victims come mainly from rural areas, while the trafficking itself “tends to happen in groups whereby rural solidarity networks transpose themselves in destination countries specializing themselves in irregular employment in sectors of high risk and labor exploitation. . . .”<sup>35</sup> For instance, there are cases of laborers from Tajikistan traveling to Russia “in groups to live and work in private construction sites where they are exploited by unregistered employers.”<sup>36</sup> Also, men from Uzbekistan are reportedly trafficked to illegal labor markets in Russia.<sup>37</sup>

According to various reports, Kazakhstan appears to be the major destination country for trafficked laborers from other Central Asian republics. Thus, laborers from the Kyrgyz Republic and Uzbekistan are often trafficked for seasonal labor to the southern regions of Kazakhstan, where they are forced to work at melon plantations during the summer. According to some reports, the cost of one such summer laborer is equivalent to about 32 USD.<sup>38</sup> There are also reports of a large number of Kyrgyz forced laborers working on tobacco plantations in Kazakhstan,<sup>39</sup> while

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34. Centrasia, *Uzbek Woman Recalls Her Days as Sex Slave*, BBC WORLDWIDE MONITORING, Aug. 22, 2003, LEXIS, News Library, ALLNWS File (citing a report of Victoriya Ashirova of Ayol Woman Resource Centre for Women and Family that rural girls are often sold for 100 USD by their mothers who see this “as a way to make ends meet until a daughter marries or finds work abroad”).

35. Igor Bosc, *Trafficking in Persons: A Form of Social Exclusion*, Presentation at the Poverty Forum of the World Bank Institute’s Attacking Poverty Program (Dec. 11, 2002), available at [http://www.worldbank.org/wbi/attackingpoverty/events/Kazakhstan\\_1202/1d\\_bosc.pdf](http://www.worldbank.org/wbi/attackingpoverty/events/Kazakhstan_1202/1d_bosc.pdf) (last visited Jul. 25, 2005).

36. *Id.*

37. *Uzbekistan* 2003, *supra* note 22. The total number of registered Uzbek migrants in Russia in 2003 was 384,000, according to Russia’s Ministry of Interior Migration Service; however, according to Uzbekistan’s Ministry for Macroeconomics and Statistics, only 88,000 Uzbeks left the country in 2003. See Novosti Uzbekistana, *Uzbek Paper Says Increase in Labor Migration Due to Economic Hardship*, BBC WORLDWIDE MONITORING, Oct. 13, 2003, LEXIS, News Library, ALLNWS File.

38. See Kazakh Commercial Television, *Kazakh TV Raises Alarm over People Trafficking in Country*, BBC WORLDWIDE MONITORING, June 8, 2002, LEXIS, News Library, ALLNWS File.

39. See *Kyrgyz Republic* 2002, *supra* note 27 (citing an estimate by the State Agency for Migration of the Kyrgyz Republic, according to which there are between 500 and 5,000

many Uzbek women are reported trafficked to Kazakhstan for cotton harvesting.<sup>40</sup> Tajikistan, on the other hand, is considered to be "the most important sending country of labour migrants in the CIS[.]"<sup>41</sup> For example, there were reports of Tajik doctors (both male and female) being trafficked to Yemen for forced labor at clinics for substandard wages; in addition, female doctors were forced to engage in prostitution.<sup>42</sup>

The problem of child labor is prevalent in most countries of Central Asia, with the exception of Kazakhstan. In the Kyrgyz Republic, child labor is widespread in the following industries: "[c]onstruction, prostitution, narcotics, tobacco, cotton, rice, cattle breeding, heavy industry, gasoline sales, car washing, shoe cleaning, retail sales of tobacco and alcohol, and work involving pesticides and chemicals."<sup>43</sup> Child labor is particularly extensive in the southern regions of the Kyrgyz Republic, where numerous cotton and tobacco fields are located. Reportedly, school classes are often cancelled and children are sent to the fields to harvest cotton and tobacco.<sup>44</sup> Similarly, in Tajikistan,<sup>45</sup> Turkmenistan,<sup>46</sup> and Uzbekistan,<sup>47</sup> secondary schools commonly shut down during the cotton harvest season to mobilize students for work in the fields.

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such laborers, most of whom are poor farmers from southern regions of the Kyrgyz Republic).

40. See Uzbek Radio Second Programme, *Uzbek NGO Saves "Dozens" of Trafficking Victims*, BBC WORLDWIDE MONITORING, Aug. 17, 2003, LEXIS, News Library, ALLNWS File.

41. DECEIVED MIGRANTS FROM TAJIKISTAN, *supra* note 3, at 12. According to different estimates, the total number of Tajik labor migrants in other countries is between 350,000 and 650,000 persons. See ITAR-TASS, *International Migration Body Says Tajik Labour Migrants Vulnerable*, BBC WORLDWIDE MONITORING, Feb. 12, 2004, LEXIS, News Library, ALLNWS File.

42. See *Tajikistan 2002*, *supra* note 21.

43. See *Kyrgyz Republic 2002*, *supra* note 27 (citing information obtained during a 2002 conference on trafficking in the Kyrgyz Republic).

44. See *id.*

45. See *Tajikistan 2002*, *supra* note 21.

46. In Turkmenistan, parents of students who refuse to "help" with cotton harvesting are reportedly harassed by the government. See BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEPT OF STATE, *Turkmenistan*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18373.htm> [hereinafter *Turkmenistan 2002*].

47. In Uzbekistan, this practice is combined with forcing students to pay for their own food and with local officials beating teachers who object to removing their students from class to participate in the harvest. See *Uzbekistan 2003*, *supra* note 22.

Illicit intercountry adoption is another major form of trafficking.<sup>48</sup> Illegal international adoptions appear to be most severe in Kazakhstan, which has been ranked eighth in the world in the number of children sold abroad.<sup>49</sup> No government agency in Kazakhstan, however, keeps official data on the extent of the problem or the fate of Kazakh national children after they are taken out of the country.<sup>50</sup> Some of the reported cases of child trafficking for illegal adoption from other Central Asian republics include a case involving Uzbek and Kyrgyz citizens who exported newborn babies to Israel.<sup>51</sup> Another case involved two Tajik doctors and a nurse who were convicted for selling a newborn boy for 500 USD and a newborn girl for 300 USD,<sup>52</sup> although the purpose of the sale is unclear.

The sale of children abroad for adoption is prevalent in Central Asia for several reasons. With deterioration of access to medical care that followed the breakdown of the Soviet Union, home deliveries became more common in the region, and children born outside of hospitals are often not officially registered with the

48. For a discussion of illicit intercountry adoptions, see, e.g., Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come to an End?*, 18 HASTINGS INT'L & COMP. L. REV. 121 (1994); Kimberly A. Chadwick, *The Politics and Economics of Intercountry Adoption in Eastern Europe*, 5 J. INT'L LEGAL STUD. 113, 124 (1999); Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT'L L.J. 179 (2003); Nicole Bartner Graff, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children Be Controlled?*, 27 SYRACUSE J. INT'L L. & COMM. 27 (2000); Holly C. Kennard, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions*, 14 U. PENN. J. INT'L ECON. L. 623 (1994); Sara R. Wallace, *International Adoption: The Most Logical Solution to the Disparity Between the Numbers of Orphaned and Abandoned Children in Some Countries and Families and Individuals Wishing to Adopt in Others?*, 20 ARIZ. J. INT'L & COMP. L. 689, 691 (2003).

49. See *Kazakh TV Raises Alarm over People Trafficking in Country*, BBC MONITORING CENT. ASIA UNIT, June 8, 2002, LEXIS, News Library, WBMS File.

50. *Id.*

51. See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17, at 20 (citing a case of an Uzbek woman arrested at the Tel Aviv airport carrying a one-month-old baby girl; the woman later testified that she was asked for "[a] healthy child of either sex, from European parents").

52. See *DECEIVED MIGRANTS FROM TAJIKISTAN*, *supra* note 3, at 16. There is a possibility that the babies were sold for organ donation, as such cases have been reported in Tajikistan previously. See *id.* (citing a 1998 case of two Tajik refugee children whose bodies, with several organs removed, were found in western Ukraine). See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17.

Central Asian governments. These unregistered children become more vulnerable to exploitation. This vulnerability must be addressed in accordance with article 7 of the United Nations Convention on the Rights of the Child, which provides that every child has the right to be registered.<sup>53</sup>

Trafficking for childbearing and marriage is also prevalent in Central Asia.<sup>54</sup> Women from Tajikistan are trafficked to Austria for the sole purpose of giving birth to a child, who is then taken away from the mother.<sup>55</sup> "Marriage agencies" in many Central Asian countries arrange for women to be trafficked elsewhere for forced marriage. A recent study by the Council of Europe suggests that marriage agencies are particularly active in the Kyrgyz Republic, Kazakhstan, and Uzbekistan. The study calculated the number of women recruited by marriage agencies from the former Soviet Union since the early 1990s and found that 4,109 women were recruited from the Kyrgyz Republic, 3,037 from Kazakhstan, and 1,139 from Uzbekistan. In contrast, the problem of trafficking through marriage agencies has not been as pervasive in Turkmenistan and Tajikistan, where only twenty-five and eight women, respectively, were recruited.<sup>56</sup>

53. This Convention states:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

United Nations Convention on the Rights of the Child, Nov. 20, 1989, art. 7, 993 U.N.T.S. 3, 28 I.L.M. 1456, 1460.

54. See generally Christine Chun, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PENN. J. INT'L ECON. L. 1155 (1996); Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139 (1998); Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides"*, 70 GEO. WASH. L. REV. 475 (2002) (detailing mail-order bride marriages).

55. See DECEIVED MIGRANTS FROM TAJIKISTAN, *supra* note 3, at 45-46.

56. See GROUP OF SPECIALISTS ON THE IMPACT OF THE USE OF NEW INFORMATION TECHNOLOGIES ON TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION, FINAL REPORT 44 tbl. 1 (Strasbourg 2003), available at [http://www.coe.int/T/E/Human\\_Rights/Equality/06\\_Trafficking\\_in\\_human\\_beings/096\\_E-G-S-NT\(2002\)09revE.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/Equality/06_Trafficking_in_human_beings/096_E-G-S-NT(2002)09revE.asp#TopOfPage).

Finally, there have been reports of trafficking for organ donation. While this form of trafficking appears to be rare in Central Asian countries, it nevertheless exists. For example, two such cases have been reported in Uzbekistan: one involves a woman who “sold her daughter to unknown people who killed her to take her organs,”<sup>57</sup> the other deals with an organized criminal group who promised six people, including three children, assistance with immigrating to Canada, only to kill them and remove their organs.<sup>58</sup>

While traffickers in Central Asia primarily target women and girls, there is also some evidence that boys and young men occasionally become victims. In the Kyrgyz Republic, seven cases of male trafficking have been discovered as of 2001. The information obtained from some of these cases indicate involvement of at least one organized criminal group in male trafficking.<sup>59</sup> More recent reports from Kazakhstan and Uzbekistan suggest that men from these countries are being increasingly trafficked for purposes of forced labor in Russia.<sup>60</sup>

It should be noted that the 2003 TIP Report does not address all of these forms of trafficking in a comprehensive way. Its determinations are confined to sex trafficking and labor trafficking, as mandated by section 103(8) of the Trafficking Victims Protection Act (TVPA).<sup>61</sup> Further, section 103(9) of the TVPA limits the definition of sex trafficking to “commercial sex act[s].”<sup>62</sup> This limited definition has two implications. First, other

57. Alisher Taksanov, *Modern Slavery Hits Uzbekistan*, TIMES CENTRAL ASIA, June 25, 2003, at <http://www.times.kg/news/1084110.html>.

58. *Id.*

59. See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17.

60. See *Kazakhstan 2002*, *supra* note 19, at 29 (stating that young and middle-aged Kazakh men are becoming victims of trafficking); *Uzbekistan 2003*, *supra* note 22 (stating that trafficked Uzbek men are exploited chiefly in construction and service sectors in Russia).

61. The TVPA provides:

[F]orms of trafficking [include] . . . (A) sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or . . . (B) recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

TVPA § 103(8), 22 U.S.C. § 7102(8) (2000).

62. 22 U.S.C. § 7102(9) (2000).

forms of trafficking fall outside the scope of the TVPA and the 2003 TIP Report, including trafficking for the purpose of illicit adoptions. Second, non-commercial sex is also outside the scope of the TVPA and the 2003 TIP Report; including forced marriages, arranged marriages, early marriages, temporary marriages, marriages for child bearing, and mail-order brides.<sup>63</sup>

### C. Causes of Trafficking

Any analysis of trafficking in persons in the context of Central Asia should consider the underlying causes of the trafficking infrastructure in the region. Among the key factors that make women and children in Central Asia particularly vulnerable to trafficking are low incomes, gender, age, ethnic factors, labor market information, access to markets, and "employable skill learning."<sup>64</sup> These factors fall into economic vulnerability, political vulnerability, and cultural vulnerability.<sup>65</sup>

Economic vulnerability is one of the most obvious contributing factors. The transition to democracy in the Central Asian states has had negative ramifications for their economies. Over the preceding seventy years of their history, these nations

63. See TIP REPORT 2003, *supra* note 4, *passim*. Nevertheless, the 2003 TIP Report did make a few references to the issue of trafficking for marriage in the context of Armenia, Belarus, Finland, Ghana, Niger, Taiwan, Uzbekistan, and Vietnam. *Id.* Also, the 2004 TIP Report mentions the issues of trafficking for marriage in the context of Cameroon, South Africa, Uganda, Zambia, People's Republic of China, Taiwan, Vietnam, Kyrgyz Republic, Russia, Iran, Morocco, Afghanistan, Nepal, and Liberia. See TIP REPORT 2004, *supra* note 7, *passim*. For a discussion of distinctions between commercial and non-commercial sexual exploitation, see *A Comparative Analysis of the Anti-Trafficking Legislation in Foreign Countries: Towards a Comprehensive and Effective Legal Response to Combating Trafficking in Persons: Hearing Before the House Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights*, 108th Cong. 5-6 (2003) [hereinafter *Anti-Trafficking Legislation Hearings*] (prepared statement of Mohamed Y. Mattar, Co-Director, The Protection Project at John Hopkins University School of Advanced International Studies).

64. Bosc, *supra* note 35, at 1 (identifying a list of "vulnerabilities" in the CIS countries of origin that lead to societal exclusion and result in trafficking in persons for the purposes of sexual and labor exploitation).

65. See Kathleen Collins, *Human Security in Central Asia: Challenges Posed by a Decade of Transition (1991-2002)*, Report for the Commission on Human Security (March 2002), available at Meeting on the Transition in Central Asia and Human Security (Apr. 22-24, 2002), [http://www.humansecurity-chs.org/activities/outreach/ashgabad\\_bgpaper.pdf](http://www.humansecurity-chs.org/activities/outreach/ashgabad_bgpaper.pdf). (discussing the status of human security in Central Asia). All of these factors may be characterized as threats to human security, or human insecurities. *Id.*

grew dependent on a centralized Soviet economy. The collapse of the Soviet system and its economic structure, coupled with civil unrest in some of the Central Asian countries, have created a situation where citizens have only limited opportunities to earn income at home.<sup>66</sup> Extreme poverty, high unemployment rates, and the elimination of social protection services previously provided by the communist governments became widespread.<sup>67</sup> All of the aforementioned contributed to women's increased susceptibility to trafficking.<sup>68</sup> For instance, many Central Asian women, abandoned by their husbands, abandon and sell their babies because they are

66. See Jill E. Hickson, *Using Law to Create National Identity: The Course to Democracy in Tajikistan*, 38 TEX. INT'L L.J. 347, 356-57 (2003).

67. The following statistics, obtained from both official government sources and unofficial estimates, are indicative of the overall economic situation in Central Asian countries. In Kazakhstan, over sixty percent of the population had income under 40 USD in 1998, while the real cost of living was estimated at 80 USD per capita. In 140 out of 198 provinces of the country, the salary levels decreased to less than 15 USD per month, or thirty percent of the official cost of living. See A FORM OF SLAVERY, *supra* note 15. In 2003, "women's salaries were, on average, 62 percent that of men's." See *Kazakhstan 2002*, *supra* note 19 (citing the head of Kazakhstan's National Commission on Women and Family). In the Kyrgyz Republic, there were 179,000 unemployed individuals in 2000, and only a third of them received the unemployment benefits at a meager rate of 3 USD per month. See A FORM OF SLAVERY, *supra* note 15. In 1999, sixty-eight percent of Kyrgyz population earned less than 7 USD per month, while seventy-five percent of women experienced financial difficulties earning, on average, 5 USD per month. See TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17. Unemployment has been particularly high among women, with an estimated female unemployment of up to eighty percent. See INT'L WOMEN'S RIGHTS ACTION WATCH, THE KYRGYZ REPUBLIC COUNTRY REPORT, (1998), at <http://iwwraw.igc.org/publications/countries/kyrgyzstan.htm> (citing to an estimate by the OSCE). In 2003, the official unemployment rate among women was 3.6%, compared with 2.6% among men, with mothers with children under sixteen years old comprising approximately two thirds of all unemployed women. See *Kyrgyz Republic 2002*, *supra* note 27. In Uzbekistan, an estimated sixty percent of the population has fallen into extreme poverty, earning less than one dollar a day: while the average salary in the country has been about 50 USD per month in 2003, people in rural areas have significantly lower earnings, about 10-15 USD per month. See Novosti Uzbekistana, *Uzbek Paper Says Increase in Labor Migration Due to Economic Hardship*, BBC WORLDWIDE MONITORING, Oct. 13, 2003, LEXIS, News Library, ALLNWS File. The salaries of doctors and teachers in Uzbekistan are similarly paltry—about 10 USD per month. See *Uzbekistan President's Daughter: Gulf Pimp or Shrewd Business Woman?*, AL-BAWABA, Nov. 11, 2003, LEXIS, News Library, WBMS File.

68. See TRAFFICKING IN THE KYRGYZ REPUBLIC, *supra* note 15, at 4. The "connection between trafficking and [social] dislocations associated with economic transition, especially increases in female poverty and unemployment" has been established as early as 1999. *Id.* (quoting ORG. FOR SEC. & COOPERATION IN EUR., TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE (1999)).



unable to support the children on their own.<sup>69</sup> In addition, most trafficking victims are young women, usually with no higher education and no job prospects,<sup>70</sup> making it easier for traffickers to attract them with false promises of legitimate and well-paying jobs abroad, and then sell the women to brothels.<sup>71</sup>

Political vulnerability is another factor present in the majority of post-communist transition states. The transition in each state from communism to a quasi-democratic form of government and the accompanying weakness of the new political institutions have created a favorable environment for organized crime and corruption to thrive. Out of the five Central Asian countries, Tajikistan is perceived to be the most corrupt, according to the latest Corruption Perceptions Index (CPI) calculated by Transparency International.<sup>72</sup> Tajikistan has been ranked 124th out of 133 countries surveyed, and the corruption there is perceived to be pervasive.<sup>73</sup> Corruption in Kazakhstan has also been growing, supposedly due to the rapid increase in oil revenues. Kazakhstan's standing has deteriorated from 88th to 100th in the overall

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69. BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Kyrgyz Republic*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/18373.htm> [hereinafter *Kyrgyz Republic* 2003]. This has resulted in alarming increases in the numbers of street children in Central Asian countries, thus creating yet another group with increased vulnerability to trafficking. According to official reports by the Kyrgyz government, "the number of street children nationwide varied between 2,000 and 15,000 depending on the season of the year. UNICEF estimated there were 2,000 street children in Bishkek . . . . Approximately 80 percent of street children were internal migrants." *Id.*

70. See Bosc, *supra* note 35, at 3. Even the women with some professional training suffer from the Soviet legacy that disqualifies them for the majority of modern jobs, since "professional skill development in [Central Asian] countries is based on practices developed in Soviet times that are no longer compatible with modern labor and market demands." *Id.*

71. Najibullah, *supra* note 12 (citing Gulchera Mirzoeva, head of the Tajik NGO *Modar* [Mother]).

72. See Press Release, Transparency Int'l, Transparency International Corruption Perceptions Index 2003 (Oct. 7, 2003), available at [http://www.transparency.org/pressreleases\\_archive/2003/dnld/cpi2003.pressrelease.en.pdf](http://www.transparency.org/pressreleases_archive/2003/dnld/cpi2003.pressrelease.en.pdf). The CPI addresses countries' performance in eradicating corruption of politicians and public officials and the abuse of public office for private gain. The information is gathered from surveys conducted by independent institutions, focusing on issues such as bribery and the state's capacity to deal with corruption. In order for a country to be ranked in the CPI, there must be at least three sets of data available for that country, in order to allow for a sufficiently robust database. *Id.*

73. *Id.* at 5 (ranking the country); *id.* at 1 (listing the countries with perceived pervasive corruption, which scored less than two out of ten points in CPI).

ranking.<sup>74</sup> The situation is also troubling in Uzbekistan and the Kyrgyz Republic, which are ranked 100th and 118th, respectively.<sup>75</sup> Such extreme levels of corruption are certainly instrumental in helping the traffickers with their illegal activities, especially given the fact that trafficking in Central Asia commonly “involves highly organized and well-connected criminal syndicates.”<sup>76</sup> As a result, corrupt law enforcement officials in Central Asian nations “have become an integral link in the trafficking chain.”<sup>77</sup> In the Kyrgyz Republic, a case has been reported in which the local police forced a woman into prostitution abroad.<sup>78</sup> But perhaps the most startling recent development involved reports alleging the involvement of Gulnara Karimova, the eldest daughter of Uzbekistan’s president, in sophisticated trafficking schemes between Uzbekistan and the United Arab Emirates. According to information revealed by Ms. Karimova’s former top aide, after gaining control over her country’s tourism industry, she established a number of travel agencies in the United Arab Emirates, including Unitrend Tourism. Unitrend Tourism has essentially monopolized all travel between Uzbekistan and the United Arab Emirates by signing an exclusivity agreement with Uzbekistan’s National Tourism Board.

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74. *Id.*

75. *Id.*

76. See Najibullah, *supra* note 12 (citing Katerina Badikova, an IOM officer in Kazakhstan). According to Ms. Badikova, trafficking organizations usually achieve their goals through “bribing border police and other officials” and “[o]btain[ing] visas on business grounds under the guise of shopping trips.” *Id.* The depth of the corruption appears particularly disturbing when looking at the method used by traffickers to disguise the age of young girls, often under sixteen years old, who are being trafficked: “[T]heir traffickers bought girls new documents and according to their new passports, the girls were 25-30 years old. Some [border officials] who are supposed to stop them at the border are corrupt, and the girls pass borders without problems.” *Id.* See also A FORM OF SLAVERY, *supra* note 15, at 36 (citing Kyrgyz media publication that appears to suggest the involvement of criminal money in bribes for arranging exit visas and passports, as well as coordination of such “processes” by “cool guys with contacts in all the state bodies”); INT’L WOMEN’S RIGHTS ACTION WATCH, *supra* note 65 (implying collaboration between the government officials from the visa and registration department in the Kyrgyz Republic and the traffickers, by provision of forged documents in exchange for bribes); *Uzbekistan* 2003, *supra* note 22 (citing an NGO report that “some local officials . . . were helping women to obtain false passports to travel to Dubai to work as prostitutes”).

77. TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 15, at 5; see also *id.* at 27 (suggesting active involvement of Kyrgyz border guards in the trafficking of women as early as 1998).

78. A FORM OF SLAVERY, *supra* note 15 (mentioning such a case but failing to give a specific reference as to where and when it occurred).

Thus, any Uzbek citizen wishing to travel to the United Arab Emirates must either obtain a visa through Unitrend Tourism or have his/her visa endorsed by the National Tourism Board.<sup>79</sup> The President of Uzbekistan is reportedly aware of this "business."<sup>80</sup>

Civil unrest adds to political instability. For instance, following Tajikistan's Declaration of Independence from the Soviet Union in 1991, violent civil war erupted between the government and opposing parties over the preservation of the old communist regime. This war ushered in a period of uncertainty and hesitation following the fall of that regime.<sup>81</sup> The war also left many Tajik women without means of support. The war took away their fathers, husbands, or sons who, in the conservative and traditional Tajik society, had to provide for the women. Thus, women were forced to look for ways to earn their own living outside of the home; consequently, many of them turned to prostitution and became engaged in various criminal activities.<sup>82</sup>

Another noteworthy contributor to the trafficking problem in Central Asia is cultural vulnerability.<sup>83</sup> The Central Asian states are Islamic countries, or more accurately, Moslem countries, since the majority religion in these nations is Islam.<sup>84</sup> The Central Asian regimes avoid Islamic fundamentalism in government and promote a secular Turkish style of Islam.<sup>85</sup> The region shares borders with

79. "[T]ens of thousands" of Uzbek women have obtained visas and taken to the United Arab Emirates under false pretenses, only to discover that they would be forced into prostitution in various recreational establishments. *See generally Uzbekistan President's Daughter: Gulf Pimp or Shrewd Business Woman?*, *supra* note 67.

80. *See id.*

81. *See generally* Jill E. Hickson, *Using Law to Create National Identity: The Course to Democracy in Tajikistan*, 38 TEX. INT'L L.J. 347 (2003).

82. *See id.*

83. This cultural factor plays a particularly influential role in Tajikistan, Turkmenistan, and Uzbekistan, as well as in the southern, predominantly ethnic-Uzbek areas of the Kyrgyz Republic, where the authoritarian nature of female upbringing is strong. At the same time, the respect for traditional cultural values is weaker in the northern regions of the Kyrgyz Republic and in Kazakhstan, where women are reported to have greater freedom of choice in education, career, and personal relationships. *See id.*

84. *See generally* Mohamed Y. Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 FORDHAM INT'L L.J. 721 (2003) (providing a detailed analysis of anti-trafficking legislation in Islamic Law countries).

85. *See* Hickson, *supra* note 66, 369-70; *see also* KONSTITUTSIJA RESPUBLIKI TADZHIKISTAN [Constitution] art. 1 (Taj.); KONSTITUTSIJA RESPUBLIKI UZBEKISTAN [Constitution] art. 12 (Uzb.).

Iran and Afghanistan, yet the Central Asian states do not condone an Iranian-type religious government or a wahabist Saudi-Afghani style of government.

It has been argued that, contrary to the common view that trafficking in women “would be less likely in traditional social environments, the traditionally strong patriarchal nature of [Central Asian] society renders women even more vulnerable to trafficking than in less conservative settings.”<sup>86</sup> Interpretation of Islam heavily influences numerous social practices in Central Asia, especially those related to traditional family values, the practice of arranged or forced marriages, and the legal status of women. It appears that these traditional social practices, combined with decades of conservative communist rule and economic chaos since 1990, have brought about the perplexing result of female “cultural isolation from the outside world, and their perceived role in society tending to restrict them to being housewives and child bearers.”<sup>87</sup> Young girls are taught since early childhood to be good housewives, often at the expense of their regular education, while boys receive more autonomy and educational opportunities.<sup>88</sup> As adults, women are expected to rely on their husbands for economic support. Subsequently, women have limited understanding of their abilities outside of the family and become “particularly vulnerable when the traditional social and economic support of men fails.”<sup>89</sup> Thus, “[t]he most apparent solution for [them] to maintain their living is . . . to transpose their domestic experience in the outside labor market.”<sup>90</sup>

An especially important social institution in Central Asian societies, which seems to have particular bearing on the problem of trafficking, is the practice of arranged and forced marriages. Unlike many other traditional practices that were eradicated from customary usage during the Soviet era, arranged marriages has

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86. Bosc, *supra* note 35 at 2-3. The remainder of the discussion on cultural factors that contribute to trafficking in persons in Central Asia is based on Bosc's overview of the traditional role of women in a Central Asian society and its relation to trafficking. *Id.*

87. *Id.* at 2.

88. In addition, a girl's parents often do not consider educational investments worthwhile since, according to a traditional saying, “a woman is considered a stranger for her parents” after marriage. *Id.*

89. *Id.*

90. *Id.*

flourished and become "an important leverage for social promotion."<sup>91</sup> The bride's consent for an arranged marriage has rarely been an issue, although such consent is required under Islamic law. Young girls were "literally sold to the groom's famil[ies]."<sup>92</sup> Additionally, according to popular beliefs, "if a young girl [was] not married at an early age, the chances that she [would] find a husband diminish as she gets older."<sup>93</sup> Following the breakdown of the Soviet Union, forced arranged marriages have become more common in many of these countries,<sup>94</sup> while cultural traditions discourage women from reporting such situations to the authorities.<sup>95</sup> This perhaps explains why it has been relatively easy for traffickers to cheat young Central Asian women by promising them the possibility of marrying rich foreigners.<sup>96</sup>

Finally, it has been suggested that the geographical location of the Central Asian states can be viewed as yet another factor contributing to the increasing levels of trafficking in persons. In particular, the location of these countries "between the main destination countries in East Asia and the Middle East make[s] them an ideal recruitment area for traffickers."<sup>97</sup> In addition, some of these countries have already been explored and established by organized criminal groups as popular routes for drug trafficking from South Asia and China onward to the West, implying that the same networks and routes "could easily be exploited to traffic people."<sup>98</sup>

### III. THE NATURE OF THE CRIME OF TRAFFICKING IN PERSONS UNDER INTERNATIONAL LAW

In order to properly analyze trafficking in persons as a social and legal phenomenon and determine state responsibilities in combating such a phenomenon, one must understand its nature.

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91. *Id.*

92. Bosc, *supra* note 35 at 2.

93. *Id.*

94. For instance, Tajik "girls often [are] pressured to marry men that they did not choose themselves, and polygyny, although illegal, [is becoming] increasingly common." *Tajikistan 2002, supra* note 21.

95. TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17 (quoting the U.S. Department of State).

96. Najibullah, *supra* note 12.

97. TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17.

98. *Id.* (referring to the convenient geographic placement of the Kyrgyz Republic).

First of all, trafficking is a global or transnational crime that goes beyond the domestic territory of a particular state.<sup>99</sup> The United Nations Convention Against Transnational Organized Crime (“U.N. Convention”) defines a transnational crime broadly. Under the U.N. Convention, the term includes crimes committed in more than one state and crimes committed in one state where “a substantial part” of incidental activities takes place in another state. Additionally, transnational crime also includes organized criminal groups engaging in criminal activities in several states and crimes committed in one state that have “a substantial effect in another state.”<sup>100</sup> Thus, as a transnational crime, trafficking in persons is similar to drug trafficking and money laundering.

Trafficking in persons is generally an organized crime. While trafficking in persons may be committed by an individual or a couple, in most cases it involves an organized criminal group. The U.N. Convention defines an “organized criminal group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>101</sup> A “serious crime” is “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”<sup>102</sup> Often,

99. It should be noted that although most cases of trafficking are transnational in nature, internal trafficking must nevertheless be included in any definition of trafficking in persons. Crossing international borders should not be an element of the crime itself, although it may warrant additional penalty. Internal trafficking is a problem in many countries, including Afghanistan, Brazil, Haiti, India, Malawi, the Philippines and Russia. See *Anti-Trafficking Legislation Hearings*, *supra* note 63 (explaining why transnationality should not be an element of the crime of trafficking).

100. United Nations Convention Against Transnational Organized Crime, Nov. 2, 2000, art. 3(2), 40 I.L.M. 353, 354-55 [hereinafter U.N. Convention]. The U.N. Convention provides:

[A]n offense is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effect in another State.

*Id.*

101. *Id.* art. 2(a).

102. *Id.* art. 2(b).

organized criminal activity allows for maintaining a complex trafficking infrastructure, which facilitates the falsification of travel documents, the setup of organized recruitment of potential victims, and involves corruption of public officials.<sup>103</sup> The U.N. Convention requires that certain measures be taken to combat organized crime, including provisions relating to criminalization of participation in an organized group or the laundering of proceeds of a crime; measures to combat money laundering; criminalization of corruption; providing for the liability of legal persons; prosecution, adjudication, and sanctions; confiscation and seizure; and international cooperation for purposes of confiscation.<sup>104</sup>

Trafficking is also considered a crime against humanity under international law. The definition of "crimes against humanity" in the Rome Statute of the International Criminal Court (the ICC Statute) includes, *inter alia*, "enslavement," "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law," and "rape, sexual slavery, enforced prostitution, forced pregnancy . . . or any other form of sexual violence of comparable gravity."<sup>105</sup> According to the ICC Statute, the term "'enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."<sup>106</sup> Therefore, trafficking in persons falls into these definitions and is, consequently, a crime against humanity that may be prosecuted by the ICC if it meets the criteria set forth in article 7 of the ICC Statute.

The crime of trafficking in persons must also be distinguished from the smuggling of aliens.<sup>107</sup> The distinguishing characteristic

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103. See generally Louise Shelley, *Trafficking in Women: The Business Model Approach*, 10 BROWN J. WORLD AFFS. 119, 129-30 (2003) (describing various business models in modern human trafficking).

104. See generally U.N. Convention, *supra* note 100, arts. 5-13.

105. *Id.* In order to be classified as crimes against humanity, the above acts must be "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." *Id.* art. 7(1).

106. Rome Statute of the International Criminal Court, July 17, 1998, art. 7(1)(c), (e) & (g), U.N. Doc. A/Conf. 183/9 (1998), 37 I.L.M. 999, 1004 [hereinafter Rome Statute of the ICC].

107. "Smuggling of migrants" is defined as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, or illegal entry of a person into

between these two offenses is based on the premise that trafficking in persons is a crime against the individual, not against the state. Consequently, the trafficked person should be recognized as a victim of a crime and must not be treated as a criminal. This is the human rights approach to trafficking in persons, which inherently recognizes certain fundamental rights that victims of trafficking are entitled to, including the right to victim assistance, the right to witness protection, the right to civil compensation, the right to a residency status, and the right to be free from slavery or servitude.

In contrast, in the case of alien smuggling, the smuggled alien initiates his or her own smuggling in search of better economic opportunities. Consequently, such a person is considered a criminal, since he or she knowingly and consensually participates in the smuggling scheme, and thus should become subject to deportation. Even the smuggled migrants, however, are entitled to be treated with dignity prior to their deportation, and to protection of certain rights, in particular "the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment . . . [the right to] appropriate protection against violence . . . [and the right to] appropriate assistance to the migrants whose lives or safety are endangered."<sup>108</sup> Finally, unlike trafficking in persons, which may be transnational or internal in nature, alien smuggling is always transnational, since it involves "crossing [of national] borders without complying with the necessary requirements for legal entry into the receiving state."<sup>109</sup>

It should be noted that migrant smuggling exists in Central Asian countries, which serve primarily as transit routes for migrants from the southern Asian regions traveling onward to Western Europe and North America.<sup>110</sup> A particularly common smuggling route involves migrants from Sri Lanka and Afghanistan, who travel "via Kyrgyz Republic and Kazakhstan to

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a State Party of which the person is not a national or permanent resident." Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 2, 2000, art. 3(a), G.A. res. 55/25, U.N. Doc. A/55/383 (2000), 40 I.L.M. 384, 385 [hereinafter Protocol Against Smuggling].

108. *Id.* art. 16(1)-(3), 40 I.L.M. at 390-91.

109. *Id.* art. 3(b).

110. See *People Smuggling: Smuggling Routes*, Interpol, at <http://www.interpol.int/Public/THB/PeopleSmuggling/Default.asp> (last visited Jul. 25, 2005).



Russia, then to Belarus and Ukraine from where they are eventually smuggled to Germany, Denmark and the Netherlands.”<sup>111</sup> Further, a case of alien smuggling may give rise to trafficking in persons, if it later involves a condition of servitude that negates the consent of the victim.

#### IV. STATE'S OBLIGATIONS TO COMBAT TRAFFICKING IN PERSONS UNDER INTERNATIONAL LAW AND PERFORMANCE OF THESE OBLIGATIONS BY THE STATES OF CENTRAL ASIA

Trafficking in persons violates several principles of international law and the fundamental rights guaranteed to individuals by global human rights conventions.<sup>112</sup> Although a number of international treaties explicitly prohibit trafficking in persons, it was not until the 2000 United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children<sup>113</sup> that a comprehensive approach to combating trafficking in persons was formulated. The U.N. Protocol became international law on December 25, 2003,<sup>114</sup> a little over three years from the date of its adoption.<sup>115</sup>

111. Tamara Makarenko, *Traffickers Turn from Balkan Conduit to "Northern" Route*, JANE'S INTELLIGENCE REV., Aug. 1, 2001, available at <http://jir.janes.com/> (analyzing drug trafficking routes and suggesting that the Central Asian "route is increasingly being used for illegal human trade").

112. The fundamental principles of international law violated by trafficking in persons have been discussed in a number of the author's previous works. See generally Linda Smith & Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges*, 28 FLETCHER FORUM WORLD AFFS. 155, 157-58 (2004) (providing an overview of international agreements related to trafficking in persons); Mattar, *supra* note 84, at 721-23 (2003); see also *The Role of the Government in Combating Trafficking in Persons – A Global Human Rights Approach: Hearing Before the Subcomm. on Human Rights and Wellness of the House Comm. on Gov't Reform*, 108th Cong. 85-86 (2003) (prepared statement of Mohamed Y. Mattar, Co-Director, The Protection Project of the Johns Hopkins University School of Advanced International Studies.) [hereinafter *Government Role in Combating Trafficking Hearing*].

113. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 20, 2000, art. 17, 40 I.L.M. 377, 383. [hereinafter the U.N. Protocol].

114. According to article 17, the U.N. Protocol needed forty instruments of ratification to become international law. It was scheduled to become a binding international document within ninety days following the deposit of the fortieth ratification instrument. U.N. Protocol, *supra* note 113, art. 17, 40 I.L.M. at 383.

115. For example, it took thirteen years for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to

At the same time, the governments in Central Asia have been reluctant and slow in accepting the U.N. Protocol. Thus, to date, only Tajikistan has ratified it.<sup>116</sup> Uzbekistan and the Kyrgyz Republic have signed but not ratified it, Kazakhstan and Turkmenistan have yet to sign it,<sup>117</sup> but the Kazakhstan parliament is reportedly preparing to ratify the Protocol.<sup>118</sup>

I discern five main international obligations that each state must fulfill in accordance with the U.N. Protocol in order to effectively combat trafficking in persons. These are: 1) recognizing trafficking in persons as a specific and serious crime, 2) undertaking measures with respect to the prevention of trafficking in persons, 3) providing protection for the victims of trafficking, 4) guaranteeing repatriation of the trafficked victims, and 5) prosecuting the cases of trafficking. The sections below analyze each of these international obligations and review their performance by the Central Asian states.

#### *A. Recognizing Trafficking as a Specific and Serious Crime*

The very first obligation placed upon the state by the U.N. Protocol is that the state must recognize trafficking as a specific and serious crime. In order to fulfill this obligation, the first step that the state must undertake is to define what actions constitute trafficking. Article 3 of the U.N. Protocol adopts a broad definition, an expansive view of what is recognized as “trafficking in persons”:

“[t]rafficking 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,

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become international law. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, May 2, 1991, 30 I.L.M. 1517 [hereinafter Convention on the Protection of Migrant Workers].

116. A list of signatories and parties to the U.N. Protocol is available at [http://www.unodc.org/unodc/crime\\_cicp\\_signatures\\_trafficking.html](http://www.unodc.org/unodc/crime_cicp_signatures_trafficking.html) (last visited Jul. 25, 2005).

117. *Id.*

118. Press Release, Embassy of Kazakhstan to the United States of America and Canada, Kazakhstan Fights Human Trafficking (Aug. 2003), available at <http://www.homestead.com/prosites-kazakhembus/humantrafficking.html>; see also Interfax News Agency, *Kazakhstan Adopts Tough Stance on Human Trafficking*, BBC WORLDWIDE MONITORING, Sept. 26, 2003, LEXIS, News Library, ALLNWS File (citing Kazakhstan’s Justice Minister urging the national parliament to ratify the U.N. Protocol).

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.<sup>119</sup>

The same article further defines exploitation as the purpose of trafficking to include, "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor, or services, slavery, or practices similar to slavery, servitude, or the removal of organ."<sup>120</sup> Trafficking, thus broadly defined, must be recognized as a crime. To this end, article 5 of the U.N. Protocol provides that "[e]ach state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol."<sup>121</sup> Therefore, a state must recognize trafficking, in all its forms, as a specific offense.

Only two governments in Central Asia criminalize trafficking as a specific offense. A review of the relevant provisions of the criminal codes of other Central Asian republics reveals their failure to adequately define the trafficking offense, implying that these countries criminalize only certain aspects of trafficking; however, no laws exist that explicitly criminalize trafficking in persons as a specific offense. In Turkmenistan, the laws only criminalize "involving someone in prostitution."<sup>122</sup> In Uzbekistan, the legislation prohibits hiring people for sexual or other forms of exploitation, through fraud or coercion.<sup>123</sup> The laws also

119. U.N. Convention, *supra* note 100, art 3.

120. *Id.*

121. *Id.* art. 5.

122. UGOLOVNYI KODEKS [UK TURKM.] art. 139 (Turkm.), *reprinted in* Kristi Severance, *Survey of Legislative Frameworks for Combating Trafficking in Persons*, in AMERICAN BAR ASSOCIATION CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE RESEARCH PAPER SERIES 158 (2003). It provides:

(1) To involve someone into prostitution is punishable with public services work for up to 2 years or with imprisonment for up to 2 years.

(2) The same offense committed: a) again; b) deliberately by a group of people; c) in regard to an underage person; d) using physical violence or menacing to use physical violence; e) using blackmail or deception is punishable with imprisonment from 3 up to 8 years.

*Id.*

123. UGOLOVNYI KODEKS UZB. [UK UZB.] art. 135 (Uzb.), *reprinted in* Severance, *supra* note 122, at 166-67. Article 135 provides:

criminalize forcing a woman to perform sexual acts when the woman is dependent on the perpetrator.<sup>124</sup>

There are a number of articles in the Criminal Code of Kazakhstan that can be used to prosecute the cases of trafficking in persons. The laws of Kazakhstan criminalize trafficking in minors,<sup>125</sup> as well as the recruitment of persons for purposes of

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Hiring people for the purposes of sexual or other kinds of exploitation, committed by means of a lie, shall be punished by a fine from 100 to 200 minimum salaries or correctional labor up to 3 years or arrest up to 6 months, with confiscation of property or without it.

The same acts, committed: [¶]—repetitively or by a recidivist; [¶]—by a group of people based on conspiracy; [¶]—against a juvenile [¶] shall be punished by deprivation of liberty up to 5 years with or without the confiscation of property.

The same acts, committed for the purpose of taking such people outside of Uzbekistan, punished by deprivation of liberty from 5 to 8 years with the confiscation of property.

*Id.*

124. UGOLOVNIY KODEKS UZB. [UK UZB.] art. 121 (Uzb.), *reprinted in Severance, supra* note 122, at 167. Article 121 provides:

(1) The compulsion of a woman to sexual intercourse or to the satisfaction of sexual needs in the unnatural form by a person to whom the woman was in official, financial or other state of dependence, shall be punished by corrective labor measure for up to 2 years or by arrest for up to 6 months.

(2) The same action, entailed with the sexual relation or satisfaction of the sexual needs in unnatural form, is punished by corrective labor measures from 2 to 3 years or by imprisonment from 3 to 5 years.

*Id.*

125. UGOLOVNIY KODEKS KAZ. [UK KAZ.] art. 133 (Kaz.), *reprinted in Severance, supra* note 122, at 85: Article 133 provides:

A person who sells or buys a minor or makes other bargains to transfer the minor to another person and/or to possess the minor, shall be punished by imprisonment from 2 to 7 years.

If an offender committed this crime more than once, or he/she sold/bought two or more minors, or the crime is committed by an organized group, or the offender used his/her authority or position to commit the crime, or the crime is related to illicit transportation of a minor out of the position to commit the crime, or the crime is related to illicit transportation of a minor out of the borders of Kazakhstan, or the minor is bought/sold for purposes involving him/her into criminal or anti-social activities (including prostitution) or for purposes of taking his/her tissue for transplantation, the offender(s) shall be punished by imprisonment from 3 to 10 years, with or without confiscation of property.

If this offence caused the death of the minor or other serious consequences, the offender(s) shall be imprisoned from 7 to 15 years, with or without confiscation of property.

*Id.*

exploitation.<sup>126</sup> Kazakh laws also criminalize involving others in prostitution, whether by force or other forms of coercion,<sup>127</sup> as well as the organization and maintenance of brothels and procurement of prostitution services.<sup>128</sup> In July 2003, Kazakhstan amended article 128 of its criminal code to criminalize "recruiting" and "exporting and transit."<sup>129</sup> This amendment, however, is quite limited in nature. It was intended primarily to close a loophole in the existing legislation by explicitly criminalizing the transportation of trafficking victims through the territory of Kazakhstan. This reflects the fact that Kazakhstan is not only a

126. UGOLOVNIY KODEKS KAZ. [UK KAZ.] art. 128 (Kaz.), *reprinted in* Severance, *supra* note 122, at 85:

A person recruiting other persons for sexual and other exploitation shall be punished by a fine of 100-500 indexes or corrective work for up to 2 years or limitation of freedom from 2 to 5 months or arrest for up to 6 months or imprisonment for up to 1 year.

If the recruitment is committed by a group of persons, who previously agreed to commit this offense, or the recruited victim is a minor and the recruiter(s) knew he/she is, the recruiter shall be punished by imprisonment up to 5 years.

If the recruitment is committed by an organized group and/or for purposes of transporting the recruited victims over the borders of Kazakhstan, the recruiters shall be imprisoned for 3 to 8 years, with or without confiscation of property.

*Id.*

127. UGOLOVNIY KODEKS KAZ. [UK KAZ.] art. 270 (Kaz), *reprinted in* Severance, *supra* note 122, at 84:

A person involving other persons in prostitution, by force or threat of force, or suing the dependency status of the victim, or threatening to use blackmail against the victim, or threatening to destroy or damage her/his property, or by deceit, shall be punished by a fine of 200-500 indexes or imprisonment up to 5 years.

If this crime is committed by an organized group/or by a person who was already punished for involvement into prostitution or for organizing and keeping a brothel, the offender(s) shall be punished by imprisonment of 3 to 5 years.

128. UGOLOVNIY KODEKS KAZ. [UK KAZ.] art. 271 (Kaz.), *reprinted in* Severance, *supra* note 122, at 84. Article 271 provides, "A person organizing and or keeping brothel(s) for prostitution activities, as well as a person who finds clients for a prostitute for purposes of gaining an interest from this activity shall be punished by a fine of 500-1000 indexes or imprisonment up to 3 years." *Id.*

129. Excerpts of the Amendments to the Criminal Code (July 10, 2003), *available at* <http://www.legislationonline.org> (The amendment changed the title of the act by adding the words "and trafficking and transit" after the word "recruiting." The amendment also added the following words in the third part after the word "Kazakhstan": "as well as trafficking in persons beyond the borders of Kazakhstan, and transit of human beings through the territory of the Republic of Kazakhstan, who travel from one foreign state to another willfully for sexual and other kind of exploitation").

source and destination country for trafficking victims, but a transit country as well.<sup>130</sup>

All of the Central Asian countries should adopt a more comprehensive approach, similar to that adopted in other legal systems. They should criminalize trafficking in persons as a specific offense, defining it as covering all forms of trafficking.

At the same time, two governments in Central Asia have introduced comprehensive definitions of trafficking in persons into their legislation and should serve as examples to neighboring countries. First, while previously the laws of Tajikistan criminalized only the recruitment of people for exploitation<sup>131</sup> and involving people in prostitution through violence, threats, or fraud,<sup>132</sup> in August 2003 the country adopted a comprehensive definition of trafficking in persons, as mandated by the U.N. Protocol. This step included passing amendments to the country's

130. This is suggested by the 2003 TIP Report, which states that “[v]ictims are trafficked to and through Kazakhstan from the Kyrgyz Republic, Tajikistan, and Uzbekistan and are trafficked from Kazakhstan to the United Arab Emirates, Greece, Cyprus, France, Italy, Portugal, Switzerland, Belgium, South Korea, Turkey, Israel, and Albania.” TIP REPORT 2003, *supra* note 4, at 87.

131. UGOLOVNIY KODEKS TAJ. [UK TAJ.] art. 132 (Taj.), *reprinted in* Severance, *supra* note 122, at 151. Article 132 provides:

(1) Recruitment of people for sexual or other exploitation, committed by fraud, is punishable by a fine in the amount of 500 to 1000 times the minimum monthly wage, or limitation of freedom for up to 2 years, or imprisonment for the same period of time.

(2) The same actions, committed: a) by a group of individuals in a conspiracy; b) knowingly towards a minor; c) repeatedly – shall be punishable by a fine of 1000 to 5000 minimum wage, or by freedom limitation for the period of 3 years, or by custodial sentence of 2 to 5 years.

(3) Actions specified by Parts 1 and 2 of the present Article, committed: a) by an organized group; b) with the purpose of exporting recruited people out of the Republic of Tajikistan; c) by an especially dangerous recidivist – are punishable by deprivation of freedom for a period of 5 to 12 years.

*Id.*

132. UGOLOVNIY KODEKS TAJ. [UK TAJ.] art. 238 (Taj.), *reprinted in* Severance, *supra* note 122, at 155. Article 238 provides:

(1) Involving in prostitution by violence, blackmail, threat, fraud, as well as by destroying and damaging property, is punishable by a fine in the amount of 500 to 1000 times the monthly wage or limitation of freedom for up to 3 years, or by up to 2 years' deprivation of freedom.

(2) The same action committed repeatedly or by an organized group, is punishable by a fine of 1000 to 2000 minimum monthly wages or by imprisonment of 2 to 5 years.

*Id.*

criminal code,<sup>133</sup> which added two new articles that specifically criminalize trafficking in persons<sup>134</sup> and trafficking in minors.<sup>135</sup> It is noteworthy that the proposed definition of trafficking under the Tajik law not only adopts the definition of the U.N. Protocol, but goes beyond it and criminalizes other forms of trafficking in persons.

Similarly, until August 2003, the Kyrgyz Criminal Code prohibited the purchase or sale of children<sup>136</sup> and the recruitment

133. ITAR-TASS, *Tajik MPs Adopt Law to Prevent Trafficking in People*, BBC WORLDWIDE MONITORING, May 22, 2003, LEXIS, News Library, ALLNWS File.

134. UGOLOVNYI KODEKS TAJ [UK TAJ.] art. 130 (Taj.) (as amended in 2003), available at [www.legislationline.org](http://www.legislationline.org) (Country: Tajikistan, Topic: Trafficking in Human Beings). Article 130 provides:

Trafficking in human beings is purchase or sale of people with or without their consent by means of deception, attraction, hiding, handing over, transportation, kidnapping, forgery, abuse of a person's disability, giving bribe for acquiring consent of a person controlling another person, as well as other forms of compulsion with the purpose of further sale, involvement in sexual or criminal activity, use in armed conflicts, pornography, forced labor, slavery or likewise activity, debt related detention, or adoption of children with commercial aims.

*Id.*

135. UGOLOVNYI KODEKS TAJ [UK TAJ.] art. 167 (Taj.) (as amended in 2003), available at [www.legislationline.org](http://www.legislationline.org) (Country: Tajikistan, Topic: Trafficking in Human Beings). Article 167 provides:

The sanction for trafficking in minors, that is purchase or sale of the wittingly minor persons irrespective of the forms and types of compulsion, is fixed in the form of imprisonment for the period from 5 up to 8 years with the confiscation or property.

The sanction for deeds envisaged in the part 1 of this Article, if: committed repeatedly; committed by a group of persons on the basis of a preliminary agreement; committed with regard to two or more minors; committed by the use or threat of violence; committed with the purpose of removing the victim's organs or parts of body for transplantation; committed by officials or governmental representatives abusing office, or other persons possessing leading positions in commercial organizations or other institutions; involving the displacement of the victim across the state borders of the Republic of Tajikistan – is fixed in the form of imprisonment for the period from 8 up to 12 years with the confiscation of property.

The sanction for deeds envisaged in the first and second parts of this article, if they: entailed the death or other grave consequences for the victim of trafficking; were committed by an organized group; in case of repeated perpetration of a specially grave offense – is fixed in the form of imprisonment from twelve up to fifteen years with the confiscation of property.

*Id.*

136. UGOLOVNYI KODEKS KYRG. [UK KYRG.] art. 159 (Kyrg.) (2002) (repealed in 2003), reprinted in Severance, *supra* note 122, at 97. Article 159 provides, "(1) Transactions related to the purchase and sale of children as well as other forms of transfer and acquisition shall be punishable by a custodial sentence of 2 to 5 years." *Id.*

of people for sexual or other types of exploitation.<sup>137</sup> In August 2003, article 124 of the Kyrgyz Criminal Code was amended to provide for a specific offense of trade in humans, which generally follows the definition of trafficking in persons suggested by the U.N. Protocol. Article 159 of the Kyrgyz Criminal Code, which was used to prosecute trafficking in children, was repealed, thus allowing for greater uniformity in application of the law. In addition, article 346-1 was added to the Criminal Code, criminalizing “organizing illegal migration,”<sup>138</sup> and can therefore be used to prosecute traffickers in persons.

An interesting observation from the reading of the criminal codes of the Central Asian countries relates to their attitude towards criminalization of forced marriages. This traditional practice is officially criminalized in some of the Central Asian countries, in particular the Kyrgyz Republic<sup>139</sup> and Turkmenistan.<sup>140</sup> But because victims of this crime often fear rejection and reprimand from their families and society as a whole, very few prosecutions actually occur under this article. Yet, some

137. UGOLOVNIY KODEKS KYRG [UK KYRG.] art. 124 (Kyrg.) (2002), *reprinted in* Severance, *supra* note 122, at 96:

(1) The recruitment of people for the purpose of sexual or other exploitation committed through deception, shall be punishable by a fine of 50 to 100 minimum monthly wages or by a custodial sentence of up to six months with or without the confiscation of property.

(2) The same offense, committed: a) repeatedly; b) by a group of persons by previous concert; c) knowingly to an underage person; d) by an organized group; e) with the intention of exporting the recruited persons outside the Kyrgyz Republic – shall be punishable by a custodial sentence of 5 to 8 years and with the confiscation of property.

138. This article provides:

Organizing illegal migration by providing means of transportation, counterfeited documents, accommodations or other premises, and other services to individuals for the purpose of illegal entry into or exit from the territory of the Kyrgyz Republic, or illegal travel within it – shall be penalized by fine in the amount of 50 to 100 minimal monthly wages or up to 3 years of imprisonment.

UGOLOVNIY KODEKS KYRG [UK KYRG.] art. 346-1 (Kyrg.) (as amended in 2003), *available at* [www.legislationline.org](http://www.legislationline.org).

139. UGOLOVNIY KODEKS KYRG. [UK KYRG.] art. 155 (Kyrg.) (criminalizing the kidnapping of a woman for the purpose of forced marriage or against her will, punishable by a fine of 100-200 minimum monthly wages or imprisonment of up to five years), *cited in* A FORM OF SLAVERY, *supra* note 15, at 36.

140. UGOLOVNIY KODEKS TURKM. [UK TURKM.] art. 127 (Turkm.) *reprinted in* Severance, *supra* note 122, at 158. Article 127 provides, “The kidnapping of a woman contrary to her will for making her enter into actual marriage relationships will cause deprivation of liberty for up to 3 years[.]” *Id.*



countries such as Kazakhstan have actually decriminalized the practice of arranged and forced marriages.

Prior to 1998, these practices were criminalized under article 106 of the Kazakh Criminal Code and were punishable by imprisonment of up to one year; however, this article was repealed in the new Criminal Code.<sup>141</sup> Considering that arranged marriages may become a form of trafficking in Central Asia, criminalizing forced marriages would provide the governments with an additional tool for combating trafficking in persons.

It is not enough for states to recognize trafficking as a crime; they must also recognize trafficking in persons as a serious crime. In order to recognize trafficking as a serious crime, the penalties for trafficking must reflect the severity of the crime. The penalties for crimes related to trafficking and prostitution vary from state to state within Central Asia and these penalties are generally lenient. For example, in the Kyrgyz Republic, the penalty for trade in humans is imprisonment of up to five years but may be increased up to fifteen years in certain aggravated circumstances.<sup>142</sup> In Kazakhstan, the penalty for recruiting people for sexual and other exploitation is up to two years of imprisonment, which may be increased to a maximum of eight years in highly aggravated cases.<sup>143</sup> Obviously, these penalties rarely meet the requirements of the U.N. Convention regarding the minimum punishment that should be provided for "serious crimes."<sup>144</sup>

At the same time, the amended Criminal Code of Tajikistan carries much higher penalties of five years and, in aggravated circumstances, for a maximum imprisonment of up to fifteen years and confiscation of property.<sup>145</sup> In most cases, the penalties

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141. UGOLOVNYI KODEKS KAZ. [UK KAZ.] art. 106 (Kaz.) (1997) (criminalizing the forcing of a woman into marriage or preventing a woman from marriage against her will, combined with violence or threat of violence, punishable by imprisonment of up to one year), *cited in* A FORM OF SLAVERY, *supra* note 15, at 32.

142. UK KYRG. art. 124 and accompanying text, *supra* note 137. This is a big step forward in comparison with the earlier legislation, which previously carried a penalty of up to six months of imprisonment for recruitment of people for exploitation, and up to eight years in aggravated circumstances. UK KYRG. art. 124, *supra* note 137 and accompanying text (pre-2003 version).

143. UK KAZ. art. 128, *supra* note 126 and accompanying text.

144. See definition *supra* Section III.

145. See UK TAJ. art. 130, *supra* note 134 and accompanying text; UK TAJ. art. 167, *supra* note 135 and accompanying text; see also *Tajik MPs Adopt Law to Prevent Trafficking in People*, *supra* note 133. Previously, the punishment for recruitment of

provided for trafficking-related offenses are much less severe than penalties for comparably dangerous crimes. For example, some of the Central Asian countries allow the possibility of capital punishment for crimes related to drug trafficking. In Tajikistan, such punishment may be imposed for trafficking of drugs in especially large quantities or by an organized group,<sup>146</sup> and in Uzbekistan the death penalty can be imposed for drug dealing in large quantities.<sup>147</sup> Although the death penalty is severe, the possibility of imposing such sentences for drug-related offences, when compared with the relatively mild punishments for human trafficking-related crimes, suggests that the Central Asian governments consider drug trafficking to be a far more serious crime for their national security.

It is important to note that the Central Asian states criminalize and provide penalties for offenses related to trafficking, but do not do so for the specific offense of trafficking. In order to comply with the international law requirements, a state must recognize trafficking, in the broad definition of the word, to be a crime of a serious nature. Consequently, failure of a state to enact specific anti-trafficking legislation that provides for an appropriate sentence for trafficking, in accordance with the U.N. Protocol, constitutes a violation of the state's international obligations.

### *B. Prevention of Trafficking in Persons*

The second international responsibility of the state is to undertake measures with respect to prevention of trafficking in persons. The U.N. Protocol provides that "State Parties shall establish comprehensive policies, programmes and other measures. . .to prevent and combat trafficking in persons."<sup>148</sup> Such measures include, but are not limited to, "research, information and mass media campaigns and social and economic initiatives to

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people for exploitation was fixed at a maximum of two years of imprisonment (up to twelve years in highly aggravated circumstances). UK TAJ. art. 132, *supra* note 131 and accompanying text.

146. See *Tajikistan Repeals Death Penalty for Women*, GAZETA.RU, July 1, 2003, at <http://www.gazeta.ru/2003/07/01/last90698.shtml> (Russ.).

147. See UGOLOVNIY KODEKS UZB. [UK UZB.] art. 272(b) (Uzb.), available at <http://lawlib.freenet.uz/laws/uzbek/ukuz/19.html> (last visited Jul. 25, 2005).

148. U.N. Protocol, *supra* note 113, art. 9(1), 40 I.L.M. at 380.

prevent and combat trafficking in persons.”<sup>149</sup> In addition, these measures should include steps “to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”<sup>150</sup>

As a part of trafficking prevention, a state must also educate potential victims to the dangers of trafficking. The state must initiate informative campaigns targeting vulnerable or high risk groups within society. A state is obligated to enact necessary preventive measures as a part of its international obligations. Consequently, failure of the government, or its inaction, in preventing trafficking in persons constitutes a violation of its obligations under international law.

The 2003 TIP Report references the limited preventive measures taken by the Central Asian countries, and observes that in Kazakhstan, then a Tier 3 country, “[t]he government’s anti-trafficking prevention campaigns were limited to activities conducted in varying degrees at the regional level.”<sup>151</sup> The 2003 TIP Report also notes that in the Kyrgyz Republic, a Tier 2 country, “[t]he government’s preventive efforts were weak.”<sup>152</sup> For Tajikistan, the 2003 TIP Report refers to the IOM distributing brochures at railway stations and airports,<sup>153</sup> while in Uzbekistan, at that time a Tier 3 country, “[t]he government has . . . taken only limited preventive actions of its own.”<sup>154</sup>

The 2004 TIP Report indicates certain positive changes with regards to preventive measures implemented in Central Asia. For the Kyrgyz Republic, a Tier 2 country, the 2004 TIP Report notes, “the Kyrgyz Government over the last year displayed a willingness to work with NGOs and donors on joint programs to prevent trafficking.”<sup>155</sup> The 2004 TIP Report observes that the government of Kazakhstan, a country that was removed from Tier 3 to the Tier 2 Watch List, “supports efforts by international organizations, though rarely financially, that conduct information campaigns and

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149. *Id.* art. 9(2).

150. *Id.* art. 9(4).

151. TIP REPORT 2003, *supra* note 4, at 88.

152. *Id.* at 93.

153. *Id.* at 147.

154. *Id.* at 159.

155. TIP REPORT 2004, *supra* note 7, at 153.

establish hotlines for trafficking victims.”<sup>156</sup> Shifting Uzbekistan from Tier 3 to Tier 2, the 2004 TIP Report remarks that even though the government lacks the funds “to do as much as it would like in support of preventative programs,” it “actively informs the general public about trafficking in persons.”<sup>157</sup>

The 2004 TIP Report, however, expressed regrets that in spite of establishing a working group in Tajikistan to create “a national plan of action to fight trafficking in persons” the working group failed to actually form such a plan.<sup>158</sup> Tajikistan was moved from Tier 2 to the Tier 2 Watch List.<sup>159</sup>

The Kyrgyz Republic has been, perhaps, the only country in Central Asia that has received some praise from the U.S. government and international organizations for its apparent achievements in combating human trafficking. The 2003 TIP Report stated: “Overcoming a lack of available resources, the government showed increased political will to respond to trafficking, maximized its cooperation with IOM, and improved its collaboration with local NGOs to institute preventive... mechanisms.”<sup>160</sup>

Among the preventive efforts undertaken by the Kyrgyz government is The National Council on Counter-Trafficking established back in April of 2002.<sup>161</sup> The Council is headed by the State Secretary of the Kyrgyz Republic and brings together officials from the Prosecutor General’s Office, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Health, the National Security Service, State Agency for Migration, and the State Committee for Tourism, Sports and Youth Policy.<sup>162</sup> The Council also cooperates closely with various NGOs and civil

156. *Id.* at 151.

157. *Id.* at 187.

158. TIP REPORT 2004, *supra* note 7, at 181.

159. *Id.*

160. TIP REPORT 2003, *supra* note 4, at 93.

161. See Kyrgyz Republic: Human Trafficking on the Rise, IRIN NEWS, July 2, 2003, at <http://www.irinnews.org/>. The tasks of the National Council are outlined in Presidential Decree No. 94, *On Measures to Combat Smuggling of and Trafficking in Human Beings* (Apr. 21, 2002) and include, inter alia, ensuring successful implementation of the government’s Anti-Trafficking Plan of Action and coordinating government efforts in fighting trafficking (sources on file with author).

162. See Kyrgyz Republic 2003, *supra* note 69, § 6(f).

society groups dealing with anti-trafficking issues.<sup>163</sup> The performance of the Council, however, is hampered by the lack of adequate resources.<sup>164</sup>

In addition to the National Council on Counter-Trafficking, the Kyrgyz Ombudsman has been active in trafficking prevention activities. In October 2003, the Ombudsman's office hosted a conference on trafficking for officials from the Ministry of Foreign Affairs, the Ministry of Interior, and parliament members and staff.<sup>165</sup> Furthermore, his office investigated six private complaints involving trafficking.<sup>166</sup> The government also investigated the activities of several international travel and employment agencies for their compliance with licensing laws. Three such agencies were reportedly shut down after being identified as illegally sending people abroad; however, these agencies more likely involved smuggled migrants rather than trafficked persons.<sup>167</sup>

The bulk of trafficking prevention activities in the Kyrgyz Republic are carried out by the local IOM office. In particular, IOM has organized a number of training seminars for the heads of teaching curriculum departments at the local high schools. These department heads are expected to provide similar training to high school curators.<sup>168</sup> The curators will ultimately conduct anti-trafficking courses for their students. IOM has also staged a theater play dedicated to trafficking in persons. The play, which premiered on March 28, 2003, expands upon the stories of the trafficking victims featured in IOM's report on trafficking in the Kyrgyz Republic.<sup>169</sup> It should be noted that although the Kyrgyz government has not directly participated in or provided funding

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163. *Id.*

164. *Id.*

165. *Kyrgyz Ombudsman Holds Conference on Human Trafficking*, RFE/RL NEWSLINE, Oct. 22, 2003, at <http://www.rferl.org/>.

166. *Id.*

167. *Kyrgyz Republic* 2002, *supra* note 27, § 6(f) (citing the information of Kyrgyz NGO "Golden Goal").

168. *Main Accomplishments of the Program as of March 2003*, at <http://www.iom.elcat.kg/ct-accomplishments.htm> (last visited Jul. 25, 2005).

169. See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17. A similar play, titled *Surob-ho* [Specters] has also been staged in Tajikistan and premiered on April 10, 2003. This event was sponsored by the IOM, the Swiss Development Office, and the French Embassy in Tajikistan. See Nuirka Piñeiro, *Press Briefing Notes: Tajikistan-Play on Human Trafficking Marks a New Trend in Theater*, INT'L. ORG. FOR MIGRATION, Apr. 11, 2003, at <http://www.iom.int/en/archive/pbn110403.shtml#item4>.

for these measures, the National Council on Counter-Trafficking has approved and endorsed all of these actions. For its part, the government has provided “free airtime on [state-run] television and radio for anti-trafficking announcements,”<sup>170</sup> and has “instituted stringent licensing procedures for [recruitment] firms. . . .”<sup>171</sup>

The 2004 TIP Report honors the steps taken by the Kyrgyz Government by stating that “[d]espite few resources, the government improved law enforcement efforts and continued to work with NGOs and international organizations on prevention and protection efforts.”<sup>172</sup> In particular, the government has “publicized arrests and prosecutions of traffickers . . . reported by state-run and independent media.”<sup>173</sup> In addition, the Foreign Affairs Ministry took measures to increase awareness of labor migrants’ rights among Kyrgyz citizens looking for jobs abroad in former Soviet Union countries.<sup>174</sup>

This year, the Kazakhstan government also started to take some concrete steps towards preventing trafficking. One of the country’s most important achievements to date was the approval of a “comprehensive [and] detailed” action plan for 2004-2005 aimed at preventing crimes related to trafficking in persons.<sup>175</sup> The plan defines specific areas and methods of cooperation between the government and law enforcement agencies and takes into account the three crucial components of anti-trafficking strategy: prevention, protection, and prosecution.<sup>176</sup> In addition, the government established an interdepartmental commission dedicated to anti-trafficking, which includes representatives from the Ministry of Justice, Ministry of Interior, National Security Committee, Agency for Migration and Demography, and the

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170. TIP REPORT 2003, *supra* note 4, at 93.

171. *Id.*

172. TIP REPORT 2004, *supra* note 7, at 152.

173. *Id.* at 153.

174. *Id.*

175. See Interfax News Agency, *Kazakh Government Approves Action Plan to Counter Human Trafficking*, BBC WORLDWIDE MONITORING, Feb. 27, 2004, LEXIS, News Library, ALLNWS File; see also *World Migration Body Logs 170 Human Trafficking Cases in Kazakhstan Since 2001*, *supra* note 28.

176. *Id.*

Prosecutor-General's Office.<sup>177</sup> The primary task of the commission will be developing specific anti-trafficking measures.<sup>178</sup>

Kazakhstan is also beginning to engage in targeting the vulnerable groups of the population and educating them on the issue of trafficking. The country's Ministry for Labor and Social Protection, through its regional offices, launched a program to provide special counseling on trafficking in persons to the unemployed, while the Ministry of Education organized lectures on this issue in secondary schools and universities throughout the country.<sup>179</sup> Moreover, the Justice Ministry created an anti-trafficking awareness campaign on the illegality of trafficking which aired on the public broadcasting service, and it also provided educational materials on trafficking.<sup>180</sup>

It should be noted, however, that the 2003 TIP Report criticized the Kazakh government for such overly broad decentralization of its anti-trafficking measures, which had the effect of shifting the bulk of the responsibility for prevention activities to the regional levels.<sup>181</sup>

Finally, the government has been increasingly using its state media in providing information on the danger of trafficking.<sup>182</sup> In particular, a special report segment, aired on Kazakh national TV on July 17, 2003, emphasized the involvement of travel agencies in abetting traffickers. The segment included an interview with Deputy Chairman of the Kazakh Senate, Omirbek Baygeldi, who stated his determination "to . . . ensure that tourist companies with licenses bring back . . . all the . . . people they have taken out."<sup>183</sup>

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177. Press Release, Ministry of Foreign Affairs of the Republic of Kazakhstan (Aug. 7, 2003), available at <http://www.mfa.kz/> (Russ.).

178. *Id.*

179. Kazakhstan Today, *Kazakhstan Drafts Preventive Measures Against Human Trafficking*, BBC WORLDWIDE MONITORING, Aug. 22, 2003, LEXIS, News Library, ALLNWS File.

180. See TIP REPORT 2004, *supra* note 7, at 151.

181. See TIP REPORT 2003, *supra* note 4, at 88.

182. The media has been utilized, on a limited scale, since 2001. In particular, in 2001-2002, the government, in cooperation with the IOM and with over twenty NGOs, has carried out the National Information Campaign on prevention of the trafficking in women. See Press Release, Embassy of Kazakhstan to the United States of America and Canada, *supra* note 118, available at <http://www.homestead.com/prosites-kazakhembus/humantrafficking.html>.

183. Kazach Television, *Human Trafficking: Kazakh Tourist Firms Warned*, BBC WORLDWIDE MONITORING, July 17, 2003, LEXIS, News Library, ALLNWS File. This

He also called for revoking the licenses of those firms that fail to fulfill this requirement and jailing their managers if the agency's complicity in human trafficking is confirmed.<sup>184</sup> The government of Kazakhstan has only recently introduced strict licensing and control requirements for travel agencies and employment firms that take people abroad. As stated in the 2004 TIP Report, the Committee for National Security removed licenses from five travel agencies issuing illegal documents to the citizens of Kazakhstan trying to obtain citizenship in Russia.<sup>185</sup> Presently, the government is also considering a resolution that would require such agencies and firms to strictly observe contractual terms negotiated with persons traveling abroad and to provide them return guarantees and social insurance.<sup>186</sup> A draft legislation "On Insurance of Civilian and Legal Responsibility of the Tourist Operators and Agents" is under consideration at the parliament.<sup>187</sup>

The increased coverage of trafficking by the media has also been noted recently in Uzbekistan, whose government has given more leeway on the issue to its state-controlled media. Thus, following the designation of Uzbekistan as a Tier 3 country on the 2003 TIP Report, a growing number of publications warning women about the dangers of trafficking and condemning the traffickers appeared in local newspapers.<sup>188</sup> Furthermore, the state

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statement has been provoked, perhaps, by the results of the Prosecutor-General's inspection of tourist agencies at the end of last year, which found that many of the agencies "failed to provide for the return of their clients to Kazakhstan." See *Kazakhstan 2002*, *supra* note 19, § 6(f). Most of these firms have voluntarily surrendered their licenses following the prosecutorial inspections.

184. *Id.*

185. See TIP REPORT 2004, *supra* note 7, at 151.

186. *Kazakhstan Adopts Tough Stance on Human Trafficking*, *supra* note 118.

187. Press Release, Embassy of Kazakhstan to the United States of America and Canada, *supra* note 118. In the meantime, individuals are allowed to bring civil claims for breach of contract against travel and employment agencies that trafficked them abroad. There were at least two such suits in Kazakhstan in 2003. In one trial, a group of victims lost their suit against a travel agency; however, the civil action resulted in the arrest and prosecution of a woman who was in charge of the agency. The outcome of the criminal proceedings is yet unknown. See *Kazakhstan 2002*, *supra* note 19, § 6(f). Another civil action resulted in the success of a male victim who was trafficked for the purpose of forced labor to the Czech Republic. See Kazakh Television, *North Kazakh NGOs Help Human Trafficking Victims*, BBC WORLDWIDE MONITORING, Oct. 16, 2003, LEXIS, News Library, ALLNWS File.

188. See *US Human Trafficking Report Faults Georgia, Kazakhstan, Turkey and Uzbekistan*, EurasiaNet, Aug. 21, 2003, at <http://www.eurasianet.org/departments/>



radio station started airing a weekly call-in show for women involved in the sex trade.<sup>189</sup> On July 2, 2003, Uzbek national TV ran a twenty-minute documentary segment, "Dangerous Trade," which featured stories of six women trafficked to the United Arab Emirates for the purpose of prostitution and warned the people about the increasing danger of human trafficking for Uzbekistan.<sup>190</sup> The government, with the help of NGOs and the IOM, has also set up regional telephone hotlines in seven Uzbek regions, to provide legal advice to persons considering going abroad for work (who are seen as potential victims of trafficking) and legal assistance to those who have already fallen victims to traffickers.<sup>191</sup> The government, in close cooperation with international and local NGOs, worked on "programs to place anti-trafficking awareness posters in public buses, passport offices, and consular sections."<sup>192</sup>

A number of central government agencies in Uzbekistan have undertaken specific steps aimed at trafficking prevention. The country's Ministry of Education allowed some anti-trafficking NGOs to give trafficking awareness lectures in public schools.<sup>193</sup> Uzbek National Tourism Company also undertook measures against some of the tourist firms involved in trafficking and has revoked the licenses of several such firms.<sup>194</sup> The government is

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rights/articles/eav082103.shtml (citing an article published on August 1, 2003 in "Pravda Vostoka," which "hint[ed] a government crackdown against human trafficking;" also citing an article published on August 5, 2003 in "Qishloq Hayoti," indicating "that human traffickers were taking advantage of the desperate circumstances confronted by many Uzbeks").

189. *Uzbekistan* 2003, *supra* note 22, § 6(f).

190. Uzbek Television, *Uzbek TV Warns of Human Trafficking from Uzbekistan*, BBC WORLDWIDE MONITORING, July 20, 2003, LEXIS, News Library, ALLNWS File.

191. See Tribune-UZ, *US-Backed Project Aims at Raising Uzbek Public Awareness of Human Trafficking*, BBC WORLDWIDE MONITORING, Feb. 16, 2004, LEXIS, News Library, ALLNWS File; Pravda Vostoka, *Uzbek Law-Enforcers, NGOs Join Forces Against Human Trafficking*, BBC MONITORING INT'L REPS., Jan. 15, 2004, LEXIS, News Library, WBMS File.

192. TIP REPORT 2004, *supra* note 7, at 187.

193. TIP REPORT 2003, *supra* note 4, at 159. For example, educational activities are carried out by the educational center "Promising Generation." *Uzbek TV Warns of Human Trafficking from Uzbekistan*, *supra* note 190. Another NGO, the Ayol Woman Resource Center for Women and Family, conducts awareness-raising campaigns among orphans and the rural poor, who are considered to be at the highest risk for becoming trafficking victims. See *Uzbek Woman Recalls Her Days as Sex Slave*, *supra* note 34.

194. *Uzbek TV Warns of Human Trafficking from Uzbekistan*, *supra* note 190. But see *supra* at II.C. regarding the extent of corruption in Central Asia and the possible

further addressing the issue of labor trafficking by restricting issuance of licenses to employment agencies. It has been publicly announced that the only entity licensed to recruit labor migrants for working abroad is the National Agency for External Labor Migration.<sup>195</sup> Since there are many firms that operate under counterfeited or expired licenses, potential migrants have been urged to contact the country's Labor Ministry and report the employment agency.<sup>196</sup> Reports have also noted that the country's national police has been instrumental in setting up an anti-trafficking NGO run by retired police officers, which carries out research on trafficking-related issues.<sup>197</sup> Finally, the government directed border control officers at the country's airports to screen more closely any unaccompanied young women traveling to Turkey, the United Arab Emirates, South Korea, Malaysia, and Indonesia, and to deny them permission to leave the country if there is suspicion that they are being trafficked.<sup>198</sup>

It should also be mentioned that Uzbekistan's central government has followed other Central Asian countries and established an inter-department coordination working group on human trafficking, as well as finalized a comprehensive action plan to combat trafficking.<sup>199</sup> Further, just recently the Uzbek government announced its intention to increase the scope of activity on preventing trafficking in persons.<sup>200</sup> The additional governmental activities will likely include various anti-trafficking seminars, as well as educational and explanatory activities among the population. It will be carried out under a 700,000 USD grant from the United States Agency for International Development

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involvement of Uzbekistan President's daughter in the travel business that involves trafficking of Uzbek women to the United Arab Emirates.

195. Pravda Vostoka, *Uzbek Newspaper Warns of Dangers of Women Trafficking*, BBC WORLDWIDE MONITORING, Aug. 4, 2003, LEXIS, News Library, ALLNWS File.

196. *Id.*

197. *Uzbekistan* 2003, *supra* note 22, § 6(f). However, the same report also mentions that there is only one NGO in Uzbekistan that focuses primarily on anti-trafficking issues.

198. *Id.* It has been reported, however, that border control and customs officials commonly accept bribes from such women or even from their traffickers to ignore the instructions to closely scrutinize the travel of such women.

199. UzReport.com, *Uzbekistan Cracks Down Harder on Human Trade*, BBC WORLDWIDE MONITORING, Sept. 22, 2003, LEXIS, News Library, ALLNWS File (citing U.S. Charge D'Affairs to Uzbekistan David Appleton).

200. *Id.* (citing Uzbekistan's Deputy Foreign Minister Vladimir Norov); *see also* *Uzbekistan* 2003, *supra* note 22, § 6(f).

(USAID) that will involve printing special brochures and preparing TV and radio programs.<sup>201</sup> The 2004 TIP Report praised the steps taken by the Uzbek government by stating that “[p]revention of trafficking has been a key focus of government efforts.”<sup>202</sup>

Tajikistan, despite being the poorest country in Central Asia, has also received high commendations from the U.S. government for attempting to combat trafficking in persons. In the field of prevention, however, the Tajikistan government's activities have been limited to setting up an inter-ministerial committee to coordinate efforts in combating trafficking, chaired by the Deputy Head of the President's Office on Women and Children.<sup>203</sup> To date, the inter-ministerial committee has drafted a comprehensive anti-trafficking legislation and submitted it to the Tajikistan cabinet for consideration.<sup>204</sup> The Tajikistan government has also endorsed educational and prevention campaigns carried out by the IOM and the local NGOs, which include distributing brochures at the country's train stations and airports and supporting education and business associations for women in remote rural areas.<sup>205</sup> The government also runs an educational center informing potential migrants about migration and trafficking.<sup>206</sup> Most recently, the Organization for Security and Cooperation in Europe (OSCE) has conducted a four-month awareness-raising campaign in one of the northern regions of the country, consisting of eighteen seminars for secondary school teachers, *mahalla* (small village) leaders, doctors, collective farm leaders, migration service staff, local law enforcement authorities, marriage departments, and representatives of youth organizations.<sup>207</sup> As stated in the introduction, little is known about trafficking in Turkmenistan, or about the steps that the government is taking to combat it. There is, however, information regarding at least two measures

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201. *Uzbekistan Cracks Down Harder on Human Trade*, *supra* note 199 (quoting David Appleton).

202. TIP REPORT 2004, *supra* note 7, at 187.

203. TIP REPORT 2003, *supra* note 4, at 147.

204. *Tajikistan* 2002, *supra* note 21, § 6(f).

205. *Id.*

206. *See* TIP REPORT 2004, *supra* note 7, at 181.

207. Press Release, Org. for Sec. & Cooperation in Europe, OSCE Holds Training Seminars on Fight Against Human Trafficking in Northern Tajikistan (July 4, 2003), at [http://www.osce.org/news/generate.php3?news\\_id=3402](http://www.osce.org/news/generate.php3?news_id=3402).

undertaken by the Turkmen government in recent years that appear to be aimed at preventing trafficking. The first of such “preventive” measures is perhaps unique to Turkmenistan. In 2001, the Turkmen president issued a decree requiring foreigners wishing to marry Turkmen nationals to pay a 50,000 USD fee to the state insurance company.<sup>208</sup> Officially, the decree is said to have a two-fold purpose: to support children produced by such marriages in the instance of divorce, and “to protect Turkmen women against a growing trade in women from Central Asia being smuggled to . . . the Gulf States where they work as prostitutes.”<sup>209</sup> It seems, however, that such measure is nothing more than a disguised legalization of bribe payments to the government to shut its eyes at possible cases of trafficking from the country.

The second “preventive” measure approved by the Turkmen government should, supposedly, make it more difficult, if not impossible, for traffickers to take their victims abroad. The government now requires any Turkmen citizen wishing to leave the country to first obtain an exit visa.<sup>210</sup> Given the widespread corruption, however, it is highly likely that traffickers will be able to overcome this requirement through bribing local officials in charge of issuing such visas. In fact, several NGOs alleged that traffickers bribe government officials, in large amounts, in order to obtain exit visas for Turkmen citizens traveling abroad in a non-official capacity.<sup>211</sup>

It should be noted that the system of restricting the exit of citizens is not unique to Turkmenistan. Other countries in the Central Asian region, notably Uzbekistan, have similar systems in place. The experience of Uzbekistan in implementing the exit visa system has been mixed. Although the system functions to significantly restrict foreign travel, most of the people wishing to travel abroad may overcome the restrictions by paying “costly

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208. *Hefty Tax to Marry Turkmens*, BBC NEWS, June 14, 2003, at <http://news.bbc.co.uk/1/hi/world/asia-pacific/1388361.stm>.

209. *Id.*

210. *Turkmenistan* 2002, *supra* note 46, § 6(f).

211. See, e.g., *Turkmenistan*, in FREEDOM IN THE WORLD 2003: THE ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES (Piano et al. eds., 2003), available at <http://www.freedomhouse.org/research/freeworld/2003/countryratings/turkmenistan.htm>.

bribes.”<sup>212</sup> Thus, it has been reported that “[s]ome officials in the Ministry of Internal Affairs, Customs, or Border Guards accepted bribes in return for ignoring their instructions to deny exit to young women they believe to be traveling abroad to work as prostitutes.”<sup>213</sup>

In Uzbekistan, the Ministry of Foreign Affairs, jointly with the Consulate General in the United Arab Emirates, has been implementing a pilot exit-restrictions system. Under this system, Uzbek border control officials are not permitted to let an Uzbek woman traveling to the United Arab Emirates out of the country unless her entry visa carries a special note from the Consul General of Uzbekistan.<sup>214</sup> It is unclear, however, how efficient this system actually is in practice. The widespread corruption among the border control officials is certainly capable of hampering the implementation of such a system.

### *C. Protection of Trafficking Victims and Non-Criminalization*

A state's third international obligation is to protect the victims of trafficking. The U.N. Protocol does not use mandatory language with respect to this obligation. Rather, the U.N. Protocol only calls upon the state parties to protect the privacy and identity of victims of trafficking in persons “[i]n appropriate cases and to the extent possible under [their] domestic law. . . .”<sup>215</sup> This can include “making legal proceedings relating to such trafficking confidential.”<sup>216</sup> Further, states parties are only required to

212. See *Uzbekistan*, in FREEDOM IN THE WORLD 2003: THE ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES (Piano et al. eds., 2003), available at <http://www.freedomhouse.org/research/freeworld/2003/countryratings/uzbekistan.htm>.

This is particularly true with regard to young Uzbek women traveling to Turkey, United Arab Emirates, and South Korea, as government officials seem to have a natural inclination to deny them exit visas. See BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP'T OF STATE, *Uzbekistan*, § 6(f), in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18373.htm> [hereinafter *Uzbekistan* 2002].

213. *Uzbekistan* 2003, *supra* note 22, § 6(f).

214. Kairat Abuseitov, *The Experience of Kazakhstani Embassies and Consulates in Combating Trafficking in Women*, in INT'L ORG. FOR MIGRATION, WOMEN, LAW AND MIGRATION: PROCEEDINGS OF THE CONFERENCE (2001), available at <http://www.iom.kz> (citing the Uzbek system as an example of a rather efficient way of preventing young women from entering the United Arab Emirates illegally).

215. U.N. Protocol, *supra* note 113, art. 6(1), 40 I.L.M. at 379.

216. *Id.*

“consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons. . . .”<sup>217</sup> Finally, the U.N. Protocol provides that the state parties should merely “endeavour to provide for the physical safety of [such] victims,”<sup>218</sup> provide for “legal . . . measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered,”<sup>219</sup> and only “consider” granting a victim of trafficking residency status.<sup>220</sup> Nonetheless, the U.N. Protocol establishes state responsibility in protecting victims of trafficking.

This obligation to protect the victims of trafficking in persons implies that states must treat a trafficked person as a victim, not as a criminal. This means that states must not criminalize the act of the trafficked person and should not penalize the victim for illegal acts, such as illegal immigration or prostitution, as long as these acts have been committed in relation to the act of trafficking itself.<sup>221</sup> It also means that states should not summarily deport the

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217. U.N. Protocol, *supra* note 113, art. 6(3), 40 I.L.M. at 379. Article 6(3) provides: Each State Party shall *consider* implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

*Id.* (emphasis added).

218. U.N. Protocol, *supra* note 113, art. 6(5), 40 I.L.M. at 379.

219. *Id.* art. 6(6), 40 I.L.M. at 379.

220. *Id.* art. 7, 40 I.L.M. at 379 (“[E]ach State Party shall *consider* adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases[.] . . . giv[ing] appropriate consideration to humanitarian and compassionate factors.”) (emphasis added).

221. This interpretation is consistent with 18 U.S.C. § 1592 (2000), which provides: Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor:

- (a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person . . . shall be fined under this title or imprisoned for not more than 5 years, or both.
- (b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section

victims of trafficking; instead, they should consider granting them residency status.<sup>222</sup>

The 2003 TIP Report states that the Central Asian countries do not have comprehensive programs for protecting the victims of trafficking. They do not have methods for referring trafficking victims to NGOs or ensuring that they are not arrested or prosecuted for their actions. Thus, according to the 2003 TIP Report, in Kazakhstan, "[t]he government [did] not have a system for identifying potential victims amongst vulnerable groups, which put possible victims at risk for summary deportation and criminalization during police street sweeps."<sup>223</sup> In the Kyrgyz Republic, "[t]he Government does not have a method for screening trafficking victims nor for referring them to NGOs for assistance."<sup>224</sup> The Tajik government "has no protection or reintegration programs for victims or witnesses. In most cases, the government . . . does not jail, fine, or detain victims, although on rare occasions victims are punished for prostitution offenses. The government lacks the expertise in dealing with victims and the level of awareness of trafficking amongst police and social service providers is still low."<sup>225</sup> Finally, in Uzbekistan, "[t]he government

103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

See also U.N. Interim Admin. Mission in Kosovo, Regulation on the Prohibition of Trafficking in Persons in Kosovo § 8, No. 2001/4 (Jan. 12, 2001), *available at* <http://www.unmikonline.org/regulations/2001/reg04-01.html> ("A person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking.").

222. The 2003 TIP Report, for instance, considers whether a country provides a victim of trafficking a temporary or permanent residency status. The 2003 TIP Report referred to the following countries in this regard: Austria, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, Denmark, France, Germany, Hong Kong, Hungary, Israel, Italy, Macedonia, Moldova, the Netherlands, Norway, Pakistan, Portugal, Romania, Russian Federation, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. See TIP REPORT 2003, *supra* note 4, *passim*. In addition to the above mentioned countries, the 2004 TIP Report referred to Cameroon, Croatia, Finland, the Philippines, Slovakia, and Slovenia. See TIP REPORT 2004, *supra* note 7, *passim*.

223. See TIP REPORT 2003, *supra* note 4, at 88-89. While the government does not screen for potential trafficking victims, it does offer some protection to those individual victims who have been brought to its attention, and local law enforcement officials casually refer victims of trafficking to local-level NGOs. *Id.* at 89.

224. *Id.* at 93. The local police and prosecution officers in the Kyrgyz Republic, however, do cooperate with the local NGOs that refer cases for investigation.

225. *Id.* at 147.

does not have a mechanism for screening, recognizing, sheltering or otherwise assisting victims, nor does it have a referral mechanism to victim-assistance NGOs.”<sup>226</sup>

It is encouraging, however, that the 2004 TIP Report specifically references the developments made in programs for protecting the victims of trafficking in some of these countries. In Kazakhstan, the 2004 TIP Report observes that “the government announced the establishment of a victim referral system, though it was employed for only 15 victims during the reporting period.”<sup>227</sup> It further states that out of thirty-three victim assistance centers operated by NGOs and international organizations, the government entirely sponsored six and provided certain funds to some other centers.<sup>228</sup> Police protection of victims, however, remains “inconsistent.”<sup>229</sup> In Uzbekistan, “[a]lthough the government has no budget for victim assistance, it supported efforts through other means. The Ministry of Foreign Affairs . . . developed its assistance and repatriation program. While no formal mechanism for screening and referral exists, in practice the police at Tashkent’s airport contact a local NGO offering protection when they identify trafficked women.”<sup>230</sup>

However, with regards to the Kyrgyz Republic and Tajikistan, there have been few changes in protection services provided to the victims of trafficking. The 2004 TIP Report remarks that “[p]rogress by the Kyrgyz Republic on victim protection remained weak” and the “formal referral protocols are under development.”<sup>231</sup> The Tajik government “encourages victims to cooperate with enforcement officials, but offers no protection or reintegration programs for victims or witnesses.”<sup>232</sup> In general, the

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226. TIP REPORT 2003, *supra* note 4, at 159. Lately, the Uzbek government has, however, improved its dialogue with NGOs that provide assistance to victims of trafficking in persons. In particular, the government began sharing information with one NGO and has agreed, informally, to provide it with greater access to returning victims at the airport. *Id.* at 159-60.

227. *See* TIP REPORT 2004, *supra* note 7, at 150.

228. *Id.*

229. *Id.* at 151.

230. *See id.* at 186.

231. *See id.* at 152.

232. *See* TIP REPORT 2004, *supra* note 7, at 181.



2004 TIP Report comments that "Tajikistan has a weak record of assisting victims of trafficking."<sup>233</sup>

Moreover, there are provisions in the laws of the Central Asian countries that appear to criminalize certain conduct of the trafficked victims, in essence making them complicit in the crime of trafficking. An example of such a provision is article 330 of the Criminal Code of Kazakhstan, amended in February 2003, which criminalizes the illegal crossing of the state borders of Kazakhstan.<sup>234</sup> This provision may, therefore, apply to any person who is illegally crossing the borders, including victims of trafficking.<sup>235</sup> Similar provisions can also be found in article 335 (Illegal Crossing of State Boundaries)<sup>236</sup> and in article 340 (Forgery, Making or Sale of Faked Documents, State Awards,

233. *Id.*

234. Article 330 provides:

1. Deliberate illegal crossing of guarded state borders of the Republic of Kazakhstan without proper official documents and necessary permission – shall be punishable by a fine of 200 to 500 monthly calculation bases, or in the amount of wages or other income of a given convict for the period of 2 to 5 months, or by imprisonment of up to 2 years.
2. The same act by a group of persons upon a preliminary collusion, or by an organized group, or with a threat of violence or threat to apply it – shall punishable by imprisonment of up to five years.

UGOLOVNYI KODEKS KAZ. [UK KAZ.] art. 330 (KAZ.). available at <http://www.legislationline.org>.

235. One reason trafficking victims from Central Asian republics are reluctant to refer to the local law enforcement authorities is that victims often knowingly agree to accept illegal or forged passports before leaving the country, thus placing themselves in a vulnerable position. Victims often fear being arrested if they come out and accuse their traffickers, since this would also inform the officials about the victim's own violation of local laws. See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17, at 16. In this respect, it should also be noted that in the Kyrgyz Republic, where a similar criminal code provision has already been in place for some time, "[in 2001] there were 28 criminal cases (on charges of illegally crossing the border) brought against 31 persons who were potential victims of trafficking." *Kyrgyz Republic* 2002, *supra* note 19, § 6(f). These statistics suggest that criminal code articles of this kind have a strong effect of actually prosecuting the victims.

236. Article 335 provides:

- (1) Illegal (without certain documents and necessary permission) crossing of the state boundary of the Republic of Tajikistan, is punishable by imprisonment for a period of 2 to 5 years.
- (2) Illegal crossing of the state boundary of the Republic of Tajikistan by an organized group or by a group of individuals in a conspiracy with violence or threat of violence is punishable by imprisonment for a period of 5 to 10 years.

UK TAJ. art. 335, *reprinted in* Severance, *supra* note 122, at 156.

Stamps, Seals and Blank Forms)<sup>237</sup> of the Criminal Code of Tajikistan, as well as in article 214 (Illegal Border Crossing)<sup>238</sup> and in article 218 (Forgery, Issuance, Selling of Fraud Documents, Stamps, Letterhead or Usage of Fraudulent Documents)<sup>239</sup> of the Criminal Code of Turkmenistan. None of these laws contain any exception for the acts committed by the victim of a crime of trafficking. The legislatures in all of these countries would be wise to consider providing for an explicit exception so that the provisions outlined in this paragraph do not apply to victims of trafficking, as long as the act of illegal crossing of borders or documents fraud is related to the act of trafficking itself.

Nevertheless, the governments in Central Asia are slowly starting to implement measures related to the protection of trafficking victims. In August 2003, the Kyrgyz Republic became

237. Article 340 provides:

(1) Forgery of an official document, which grants a right or releases someone from responsibilities, committed with an intent to use it by the forger himself or any other person or sale of such document, as well as counterfeiting of stamps, seals, blank forms... committed with the same intent, is punishable by limitation of freedom for up to 3 years, or confinement for a period of 2 to 4 months, or deprivation of freedom for up to 2 years.

(2) The same actions committed: a) repeatedly; b) by a group of persons in an intentional conspiracy; c) using a computer – are punishable by correctional labor for up to two years or imprisonment for a period of 2 to 5 years with confiscation of property.

UK TAJ. art. 340, *reprinted in Severance, supra* note 122, at 156.

238. Article 214 provides:

1. Crossing the guarded State border of Turkmenistan without relevant documents and relevant permission is punishable with public services work for up to 2 years or with imprisonment for up to 2 years.

2. Illegal crossing of guarded State border of Turkmenistan committed again either by a group of people acting deliberately or by an organized crime group, with use of violence or menacing to use violence is punishable with imprisonment for up to 5 years.

UK TURKM. art. 214, *reprinted in Severance, supra* note 122, at 159.

239. Article 218 provides:

1. Forgery of identity card or of any official document that grants rights or frees from obligations, for the purpose of selling it, or issuance and selling of fraudulent stamps and letterheads is punishable with public services work for up to 2 years or with imprisonment for up to 2 years.

2. The same offenses committed repeatedly are punishable with imprisonment for up to 4 years.

3. Usage of fraudulent documents is punishable with a fine ranging from 10 to 20 medium salaries or public services work for up to 1 year or with imprisonment for up to 1 year.

UK TURKM. art. 218, *reprinted in Severance, supra* note 122, at 159.

the first country in the region to decriminalize the acts committed by a victim of trafficking in connection with the act of trafficking; however, the victim must cooperate with the investigators in order to be eligible for this benefit.<sup>240</sup> The Ministry of Interior of Kazakhstan has recently set up a special department for the protection of female victims of trafficking,<sup>241</sup> although the specific results of its activity are yet to be seen. The Kazakhstan government, in conjunction with the local IOM office, also established the *Zabota* (Care) Crisis Center, which provides protection and rehabilitation assistance to victims of trafficking.<sup>242</sup> Overall, thirty-two crisis centers for trafficking victims operate throughout Kazakhstan, providing counseling, legal and paramedical assistance, as well as temporary housing to victims of trafficking.<sup>243</sup> Uzbekistan's Women Committee, a government-sponsored NGO, has established the Center for Rehabilitation and Adaptation of Sexual Traffic Victims in one district; however, the Center has not been operational due to lack of financial resources.<sup>244</sup> The government of Tajikistan has endorsed the efforts undertaken by various NGOs to provide assistance to trafficking victims, although it did not make any government resources available for this purpose.<sup>245</sup>

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240. UK KYRG. art. 124, *supra* note 137 and accompanying text. This article provides:

Victim of trade in humans shall be released from criminal liability for the crimes committed in the course of this process (keeping and using counterfeited documents, illegal crossing of the boundary, harboring, non-reporting, and other crimes committed in the state of extreme need, with the exception of particularly grave crimes) *on condition of the victim's cooperation with the law enforcement agencies*, i.e., testifying against the organizers, executors, and co-executors of the process of trade in humans.

*Id.* (emphasis added).

241. See Press Release, Ministry of Foreign Affairs of the Republic of Kazakhstan, *supra* note 177.

242. *Id.*

243. See Embassy of the Republic of Kazakhstan, *U.S. Lauds Kazakhstan for Actions Against Human Trafficking*, 3 KAZAKHSTAN NEWS BULLETIN (Sept. 10, 2003), available at <http://www.homestead.com/prosites-kazakhembus/091003.html>. Although the operation of such centers has been cited as an example of Kazakhstan's achievements in combating trafficking in persons, the extent of government involvement in these centers is unclear.

244. Alisher Taksanov, *Modern Slavery Hits Uzbekistan*, TIMES CENTRAL ASIA, June 25, 2003, available at <http://www.times.kg/news/1084110.html>.

245. See *Tajikistan 2002*, *supra* note 21, § 6(f).

### D. Repatriation of Victims of Trafficking in Persons

According to the U.N. Protocol, a state has the international responsibility to take necessary measures towards repatriating the victims of trafficking.<sup>246</sup> The country of origin “shall facilitate and accept, with due regard for the safety of [the victim of trafficking in persons], the return of that person without undue or unreasonable delay.”<sup>247</sup> This means that the Central Asian countries, as all other countries, have a basic duty to assist their citizen and permanent resident victims to return home. In addition, the country of origin “shall agree to issue . . . such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.”<sup>248</sup> This means that a state has the responsibility to ensure the safe return of the trafficked victim, which includes the issuance of travel documents for the victim, since in most trafficking cases, the trafficker confiscates the victim’s travel documents.<sup>249</sup> This responsibility must also encompass reintegration, since in many cases the community rejects the victim of trafficking.<sup>250</sup> Accordingly, the victim faces threats of reprisals by the trafficker as well as the societal shame of having worked in prostitution. The latter problem is particularly acute throughout the conservative societies of Central Asia, where a woman with a history of prostitution is often simply refused.<sup>251</sup>

Unfortunately, the Central Asian governments do not have comprehensive programs aimed at repatriation and post-return

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246. U.N. Protocol, *supra* note 113, art. 8(1), 40 I.L.M. at 380.

247. *Id.*

248. U.N. Protocol, *supra* note 113, art. 8(4), 40 I.L.M. at 380:

In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

249. Mohamed Y. Mattar, *The Role of the Government in Combating Trafficking in Persons—A Global Human Rights Approach*, Address Before the House of Representatives Committee on Government Reform Subcommittee on Human Rights and Wellness (Oct. 29, 2003), available at [http://sais-jhu.edu/pubaffairs/SAISArticles03/Mattar\\_Testimony\\_102903.pdf](http://sais-jhu.edu/pubaffairs/SAISArticles03/Mattar_Testimony_102903.pdf) [hereinafter *The Role of Government in Combating Trafficking*].

250. *Id.*

251. See Najibullah, *supra* note 12.

rehabilitation. Such programs are offered to an extent by the local offices of the IOM and a number of NGOs. The IOM office in Tajikistan, for instance, has "a special project to reintegrate trafficking victims into society by organizing special job training and allocating financial support to the women to start their own small businesses."<sup>252</sup> Many NGOs are able to provide basic reintegration counseling to the victims, but NGOs generally lack financial resources to provide victims with adequate repatriation assistance.<sup>253</sup> In the Kyrgyz Republic, the IOM operates a shelter that provides secure accommodation and assistance to victims of trafficking detained in the country.<sup>254</sup> Recently, some Central Asian countries have undertaken to extend the scope of the repatriation assistance to victims of trafficking through their consular offices abroad. The most notable example is Kazakhstan, which, in response to international criticism of its weak anti-trafficking efforts, ordered its diplomatic missions and consular offices abroad to provide any necessary assistance to victims of trafficking in persons, and to cooperate with local law enforcement authorities.<sup>255</sup> Although the Kazakh government already provided repatriation assistance to victims of trafficking on a limited basis, the assistance was not carried out under any special government program. Additionally, "in spring of 2003, the government [of Uzbekistan] . . . began using temporary travel documents to bring trafficking victims home from abroad."<sup>256</sup> Later in the year, "[t]he Consular Department of the Ministry of Foreign Affairs [of Uzbekistan] reported that it began developing an assistance and repatriation program designed to make it easier for trafficking victims to return" home.<sup>257</sup>

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252. *Id.*

253. *Id.* According to Ms. Karimova, a lack of funding limits the activities of her NGO to meeting trafficked women and girls at the airport upon their return, providing them free counseling from psychologists and consultation with gynecologists, and assisting them with obtaining new passports and with finding employment. *Id.*

254. See Int'l Org. for Migration in the Kyrgyz Republic, *Assistance to Victims of Trafficking* ¶ 3, at [http://www.iom.elcat.kg/CT\\_VA.htm](http://www.iom.elcat.kg/CT_VA.htm) (last visited Jul. 25, 2005).

255. Press Release, Ministry of Foreign Affairs of the Republic of Kazakhstan, *supra* note 177; see also Kazakhstanskaya Pravda, *Kazakhstan Tells Its Diplomatic Missions to Help Human Trafficking Victims*, BBC WORLDWIDE MONITORING, Aug. 9, 2003, LEXIS, News Library, ALLNWS File.

256. TIP Report 2003, *supra* note 4.

257. *Uzbekistan 2002*, *supra* note 212.

Kazakhstan's consular offices, however, have experienced numerous problems carrying out victim repatriation programs. As a result, women arrested for illegal prostitution "spend months in preliminary detention [facilities] waiting for return certificates to be issued by the Consular Service."<sup>258</sup> Although a number of consular offices called for the establishment of a more efficient personal identification mechanism for Kazakhs traveling abroad, to date no official governmental efforts have been taken. Another common problem for Kazakhstan's consular offices is the lack of earmarked funding for the repatriation of trafficking victims. Consequently, victims often report being forced to live in the consulate while officials process their documents.<sup>259</sup>

A problem of particular concern in Central Asian countries is the abuse of trafficking victims en route to their home countries by customs and law enforcement officials. This problem demonstrates that even if the government officially recognizes trafficked persons as victims of crime, trafficking victims still face major obstacles reintegrating into society. Ultimately, only a change in local attitudes and morals will improve the victims' situations. In Uzbekistan, for example, border control officials commonly harass and require bribes from returning persons who may be potential victims of trafficking.<sup>260</sup> The 2003 TIP Report observes that

victims complain of harsh treatment by police and border agents when returning. The government continued to charge a \$25 fee to victims abroad who are seeking new travel documents. Most victims were not able to pay this fee. NGOs were unable to secure effective assistance from consular officers in many cases throughout the year. . . .<sup>261</sup>

Further, about seventy-three percent of Kyrgyz women interviewed by the IOM as trafficking victims experienced harassment from local officials upon their return.<sup>262</sup> Many of these women were also forced to bribe law enforcement officials to

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258. Abuseitov, *supra* note 214.

259. *See id.* (noting an example received from Kazakhstani consulate in Istanbul, Turkey).

260. *See* TIP Report 2003, *supra* note 4, at 159.

261. *See id.* at 160.

262. TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17, at 24.

avoid imprisonment.<sup>263</sup> A study of trafficking in Tajikistan revealed similarly shocking results. The study reported that fifty percent of Tajik trafficking victims interviewed by the IOM faced extortion demands from customs officials, while thirty-three percent were "victims of racket by law enforcement officials upon return."<sup>264</sup>

A recent study by Human Rights Watch<sup>265</sup> suggests that police abuses of sex workers in Kazakhstan have become commonplace. The overall attitude of the police officers towards prostitutes is "[i]f you're a prostitute . . . you're not human."<sup>266</sup> According to the report, police officers in Kazakhstan subject commercial sex workers to abuses ranging from confiscation of their passports and other personal identification documents, systematic detention and extortion, to verbal and physical harassment and rape.<sup>267</sup> If these women refuse to comply with extortion demands, the police officers often force them to provide free sexual services or to confess to false charges and detain them for up to a month.<sup>268</sup> Also, sex workers are unwilling to report cases of abuse committed by their clients because in most cases police officers distort the reported information and attempt to lay the blame on the victim instead of the perpetrator.<sup>269</sup>

In addition to suffering harassment at the hands of government officials, people from victims' home countries

263. *Kyrgyz Republic, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003*, *supra* note 27.

264. *DECEIVED MIGRANTS FROM TAJIKISTAN*, *supra* note 3, at 22.

265. See generally *Kazakhstan: Fanning the Flames: How Human Rights Abuses Are Fueling the AIDS Epidemic*, 15 HUM. RTS. WATCH 25-29 (2003), available at <http://www.hrw.org/reports/2003/kazak0603/kazak0603.pdf> [hereinafter *Fanning the Flames*]. While the report focuses on the treatment of commercial sex workers who voluntarily choose prostitution, it is illustrative of the societal stigma associated with those who engage in sex for money or outside of marriage, irrespective of whether they were forced into prostitution or are victims of trafficking. *Id.* Further, although the report only addresses the situation in Kazakhstan, Human Rights Watch gathered some preliminary data from other Central Asian countries demonstrating similar trends in police abuse of sex workers. See Antoine Blua, *Kazakhstan: Rights Abuses Fuel HIV Infection Rates*, RFE/RL NEWSLINE, July 4, 2003, at <http://www.rferl.org/nca/features/2003/07/04072003160005.asp>.

266. *Fanning the Flames*, *supra* note 265, at 25.

267. See *id.* (quoting an interview with one of the sex workers).

268. *Id.* at 27 (quoting an interview with one of the sex workers).

269. *Id.* at 26 (quoting an interview with one of the sex workers). Furthermore, commercial sex workers in Kazakhstan are denied basic due process protections. See Blua, *supra* note 265.

stigmatize them. For example, in Tajik society, strong social stigma is placed upon trafficked persons who return. In a survey of Tajiks from all societal groups, almost ninety percent of respondents condemned commercial sex and tended to “exclusively support abolitionist approaches” to the problem of trafficking.<sup>270</sup> The prevailing societal view that “women who . . . are being trafficked are . . . only involved in voluntary prostitution” further reinforces this tendency.<sup>271</sup> Consequently, it is social suicide for victims to disclose their trafficking stories<sup>272</sup> as such revelations make it “almost impossible for [them] to be re-accepted and [re]integrate[d] in[to] their communities.”<sup>273</sup>

The IOM suggests that “[v]ictims’ needs are often overlooked as a result of inadequate knowledge to assist them.”<sup>274</sup> Therefore, to overcome these problems, it is necessary to raise awareness of the problem of trafficking among local law enforcement and social welfare officials in Central Asia. In addition, both society at large and local authorities still associate the problem of trafficking in persons with voluntary prostitution.<sup>275</sup> For this reason, the IOM is carrying out projects, particularly in the Kyrgyz Republic, to increase the understanding of trafficking and its dangers among local authorities.<sup>276</sup>

### *E. Prosecuting the Traffickers*

The state’s responsibility in combating trafficking in persons under the fifth international U.N. Protocol is the obligation to prosecute. While this responsibility is not directly stipulated under the U.N. Protocol, its existence is implied since effective enforcement of anti-trafficking provisions is not possible without prosecuting the traffickers. Consequently, a state would be in violation of its international obligations where it fails to investigate cases of trafficking or to punish traffickers. Although there are reports of some trafficking-related prosecutions in Central Asia,

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270. DECEIVED MIGRANTS FROM TAJIKISTAN, *supra* note 3, at 23-24.

271. *Id.* at 29.

272. *See id.*

273. *Id.* at 31.

274. INT’L ORG. FOR MIGRATION IN THE KYRGYZ REPUBLIC: ASSISTANCE TO VICTIMS OF TRAFFICKING, *supra* note 254.

275. *Id.* ¶ 1.

276. *See id.* ¶ 2.



these activities appear to be quite limited and cases of trafficking rarely go to court. Countries in Central Asia, however, have taken various efforts to prosecute traffickers.

### 1. The Kyrgyz Republic

Recently the Kyrgyz-Press International News Agency reported that in the Kyrgyz capital of Bishkek, police detained a man attempting to sell his two-year old daughter for about one-hundred dollars.<sup>277</sup> In addition, in August 2003, Kyrgyz authorities launched two separate investigations on charges of trafficking in persons using revised article 124 of the Criminal Code, which criminalizes trafficking.<sup>278</sup> In October 2003, the government convicted one trafficker under article 124 and sentenced him to five years imprisonment.<sup>279</sup> Moreover, Kyrgyz law enforcement agencies used a number of other sections of the Criminal Code to prosecute perpetrators for trafficking-related offenses. Between January and August 2003, Kyrgyz authorities prosecuted nineteen cases under other provisions.<sup>280</sup> Also, the government prosecuted trafficking in minors and related offenses under separate provisions of the Code. In fact, during the last three years the government obtained thirty-six convictions "for involving a child in prostitution, sexual actions, and for the production of pornography," and ten convictions "for sale and trafficking of children."<sup>281</sup> Nevertheless, the number of trafficking cases prosecuted in the Kyrgyz Republic is still very low. Further, traffickers that are taken to court generally receive lenient sentences.<sup>282</sup>

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277. Kyrgyz-Press International News Agency, *Kyrgyz Said Tackling Trafficking in People After US Warning*, BBC WORLDWIDE MONITORING, Dec. 20, 2002, LEXIS, News Library, ALLNWS File.

278. *Kyrgyz Republic* 2003, *supra* note 27, at § 6(f).

279. *Id.*

280. *Id.*

281. *Id.*

282. See *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17, at 26. This IOM report provides some statistics on the number of prosecutions and the degrees of punishment in trafficking-related cases. In 2001, Kyrgyz authorities convicted only four people of trafficking in children, all of whom the courts sentenced to less than two years of imprisonment. *Id.* In 2000, Kyrgyz authorities took only one trafficking-related case to court. *Id.* Authorities dropped the charges in that case, however, for reasons that remain unclear. *Id.* Of the eighteen people convicted for trafficking in children in 1999, the maximum sentence that was applied was five years for two people whose activities resulted in a

## 2. Tajikistan

Similar to the Kyrgyz Republic, in Tajikistan, trafficking-related crimes are still practically unpunished. Newly adopted amendments to the country's criminal code, however, may signal a reversal of this disturbing trend.<sup>283</sup> Since August 2003, the number of arrests for trafficking-related charges increased. For example, in January 2004, Tajik police arrested two women attempting to sell a five-day-old baby for ten dollars.<sup>284</sup> In November 2003, the prosecutor's office in Khujand initiated criminal charges against two Tajik citizens—a husband and wife who allegedly sold Tajik women to brothels in the United Arab Emirates for 5,000 USD.<sup>285</sup> In August 2003, the police arrested a woman in Dushanbe who was allegedly engaged in trafficking several Tajik females aged twenty-two to twenty-five to the United Arab Emirates for prostitution.<sup>286</sup> Another recent case involved the detention of two women at the Dushanbe airport.<sup>287</sup> These women were intermediaries in a chain that trafficked two Tajik girls, aged fourteen and fifteen years-old, with forged passports to the United Arab Emirates for prostitution.<sup>288</sup> In spite of these successes, however, the number of convictions in trafficking cases remains

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child's death. *Id.* In 1998, authorities convicted nineteen people of trafficking in children. *Id.* Each of them received less than one year imprisonment. *Id.* In addition, law enforcement agencies investigating the activities of recruitment and employment agencies recently discovered that two out of nine registered companies do not possess the appropriate licenses. See TIP REPORT 2003, *supra* note 4, at 93.

283. See discussion *supra* Section IV.A; see also U.N. Protocol art. 10(2), *supra* note 113, 40 I.L.M. at 381.

284. Galina Gridneva & Valery Zhukov, *Tajik Police Arrest 2 Women Who Tried to Sell a Baby*, ITAR-TASS, Jan. 30, 2004, LEXIS, News Library, ALLNWS File.

285. See Varorud, *Tajikistan: Two Detained on Suspicion of Human Trafficking*, BBC WORLDWIDE MONITORING, Nov. 20, 2003, LEXIS, News Library, ALLNWS file. However, the investigation of this case, and several other similar cases, is hampered by lack of effective contacts between the Tajik and the United Arab Emirates law enforcement authorities. According to the investigators, thus far they were only able to collect circumstantial evidence against the traffickers as gathering more direct evidence requires a visit to the United Arab Emirates. *Id.*

286. See Crime Info, Dushanbe, *Tajik Woman Detained on Suspicion of Human Trafficking*, BBC MONITORING INT'L REPS., Aug. 9, 2003, LEXIS, News Library, WBMS File.

287. Asia-Plus, *Tajik Police Foil Attempt to Traffic Two Underage Girls to UAE*, BBC WORLDWIDE MONITORING, Aug. 4, 2003, LEXIS, News Library, ALLNWS file.

288. *Id.* The duo is reported to have trafficked ten girls to the United Arab Emirates since the beginning of 2003. *Id.*

very low. Only one major conviction was reported in Tajikistan in 2003. In that case, the court sentenced a female pimp to fourteen years imprisonment for selling fourteen Tajik girls to brothels in Dubai for 20,000 USD.<sup>289</sup> In 2002, authorities prosecuted only four trafficking-related cases.<sup>290</sup> Those cases resulted in two convictions for kidnapping, exploitation for prostitution, and document and immigration fraud.<sup>291</sup> While the courts sentenced the traffickers in each case to five years in prison, one of the traffickers was released under a presidential decree of amnesty after serving only several weeks of the sentence.<sup>292</sup> At the same time, the country's Ministry of Interior reported that there are sixteen transnational criminal groups currently involved in human trafficking in Tajikistan.<sup>293</sup> Given the problem's known magnitude, the rate of prosecution for trafficking-related offenses is still low despite the fact that the Ministry of Security is running a project that documents activities of potential traffickers, and that the Ministry of Interior, in cooperation with the Prosecutor General's office, has set up a specialized department to investigate prostitution-related offenses.<sup>294</sup>

### 3. Uzbekistan

Between 2002 and 2003, Uzbekistan instituted twenty-three criminal proceedings against twenty citizens who allegedly smuggled thirty victims abroad for physical and sexual exploitation.<sup>295</sup> During 2003, the government convicted a total of

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289. See Tajik Television, *Tajik Woman Gets 14 Years in Jail for Human Trafficking*, BBC WORLDWIDE MONITORING, Dec. 17, 2003, LEXIS, News Library, ALLNWS File; see also Yelena Akhmedova, *British NGO Holds Conference on Child Prostitution in Tajikistan*, BBC WORLDWIDE MONITORING, Jan. 31, 2004, LEXIS, News Library, ALLNWS File.

290. Mattar, *The Role of Government in Combating Trafficking*, *supra* note 249.

291. *Id.*

292. See TIP Report 2003, *supra* note 4, at 147.

293. VECHERNIY DUSHANBE, *Some 16 Transnational Criminal Rings Exporting Women From Tajikistan*, BBC WORLDWIDE MONITORING, July 14, 2003, available at LEXIS, News Library, ALLNWS File.

294. See DECEIVED MIGRANTS FROM TAJIKISTAN, *supra* note 3, at 23.

295. Vecherniy Tashkent, *Uzbekistan Charges 20 with Human Trafficking in 2002-2003*, BBC WORLDWIDE MONITORING, June 3, 2003, LEXIS, News Library, ALLNWS File; see also Taksanov, *supra* note 57 (citing Col. Sergey Shinyayev of the Ministry of Interior of Uzbekistan).

eighty individuals for trafficking-related offenses.<sup>296</sup> These types of cases mostly involved recruitment of victims through marriage agencies and travel firms.<sup>297</sup> A notable example of a recent investigation was a case of fifty-six men who may have been victims of labor trafficking in Siberia.<sup>298</sup> Another case involved a group that set up a tourist company named “Twenty-First Century” as a front for trafficking young women aged eighteen to twenty-five to an Arabic country.<sup>299</sup> Nonetheless, there have been “no final prosecutions or convictions of traffickers” in Uzbekistan.<sup>300</sup>

#### 4. Kazakhstan

In Kazakhstan, prosecutions for trafficking-related offenses remain rare and very few cases go to court, despite the fact that in August 2003, the Prosecutor General’s office issued detailed guidelines to law enforcement authorities on how to investigate and prosecute such trafficking offenses.<sup>301</sup> In fact, the government tried only one case under article 128 of the Criminal Code of Kazakhstan (Recruitment of People for Exploitation). In that case, the court sentenced a Kazakh citizen to four years imprisonment for recruiting fifteen women to work abroad.<sup>302</sup> Additionally, authorities convicted one person of counterfeiting documents used

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296. *Uzbekistan 2003*, *supra* note 22.

297. Donna M. Hughes, *The Role of “Marriage Agencies” in the Sexual Exploitation and Trafficking of Women from the Former Soviet Union*, 11 INT’L REV. OF VICTIMOLOGY 49, 56 (2004).

298. See TIP Report 2003, *supra* note 4, at 159.

299. Uzbek Television, *Over 30 People Prosecuted for Trafficking Women Abroad*, BBC WORLDWIDE MONITORING, July 3, 2003 (citing Uzbek Television First Channel), LEXIS, News Library, ALLNWS File (discussing an interview with Jasur Nematov, an Uzbekistan National Security Service officer). In this case, officials brought criminal charges against thirty persons, including Mrs. Chuprikova, the organizer of the group, her daughter, who was married to a citizen of the destination country and who met the victims upon their arrival, passport department officials from central Uzbekistan who were involved in forging the victims’ passports, two border control officers from the Tashkent airport, and several other women who assisted with the operations of the company. See *Uzbek TV Warns of Human Trafficking from Uzbekistan*, *supra* note 190.

300. See TIP Report 2003, *supra* note 4, at 159.

301. BUREAU OF DEMOCRACY, HUM. RTS. & LAB., U.S. DEP’T OF STATE, *Kazakhstan*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/18373.htm> [hereinafter *Kazakhstan 2003*].

302. *Id.* Two victims trafficked to Switzerland who managed to escape brought the charges against this man. *Id.*

for trafficking Kazakh women from Almaty to the United Arab Emirates.<sup>303</sup> Most recently, law enforcement agencies instituted eight criminal cases under article 128—two cases in 2002 and six cases in 2003.<sup>304</sup> Kazakh police initiated one of the latest investigations on May 16, 2003, when they arrested two individuals on charges of trafficking girls for prostitution abroad.<sup>305</sup> In addition, a regional office of the National Security Committee of Kazakhstan uncovered and disabled two organized gangs involved in trafficking young women to Asian countries for sexual exploitation.<sup>306</sup> Kazakh authorities are also prosecuting trafficking in minors and related offenses under different provisions of the Criminal Code. For example, in 2002, the government prosecuted five persons under article 133 of the Criminal Code (trafficking in children) and seventy-one persons under article 132 of the Code (enticing minors into prostitution).<sup>307</sup>

Nevertheless, Central Asian government officials face obstacles in convicting traffickers of persons. One problem commonly cited by Central Asian law-enforcement officials is proving that purported victims of trafficking were taken abroad by deceit, as most victims actually fill out applications accepting foreign employment.<sup>308</sup> Another impediment facing prosecutors is the fear that trafficked persons experience before deciding to contact law enforcement agencies. This fear effectively prevents law enforcement authorities from initiating an investigation in many trafficking cases because criminal procedure rules commonly

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303. TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17.

304. *Kazakhstan 2002*, *supra* note 19.

305. See Kazakhstan Today, *Kazakh Police Arrest Two for Trafficking Girls Abroad for Prostitution*, BBC WORLDWIDE MONITORING, May 16, 2003, LEXIS, News Library, ALLNWS File.

306. See Kazakhstan Today, *Kazakhstan Drafts Preventative Measures Against Human Trafficking*, BBC WORLDWIDE MONITORING, Aug. 22, 2003, LEXIS, News Library, ALLNWS File. As of 2001, however, officials have uncovered and dissolved only four organized criminal groups involved in trafficking in persons. See TRAFFICKING IN KYRGYZ REPUBLIC, *supra* note 17, at 6.

307. Comm'n on Hum. Rts., U.N. ESCOR, *Rights of the Child: Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, 58th Sess., U.N. Doc. E/CN.4/2003/79 (2003).

308. *Kazakhstan Drafts Preventive Measures Against Human Trafficking*, *supra* note 306 (citing round-table participants' statements from a meeting on trafficking held in Kustanay, Kazakhstan).

require a victim to file a complaint as a prerequisite to an investigation.<sup>309</sup>

As part of its responsibility to prosecute trafficking cases, states have a related responsibility to provide special training to law enforcement officials and judges in the methods of detecting, investigating and prosecuting those crimes related to human trafficking. Article 10(2) of the U.N. Protocol mandates this obligation and states:

State Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and . . . encourage cooperation with non-governmental organizations. . . .<sup>310</sup>

The reality of dealing with trafficking-related crimes is a new phenomenon for Central Asian countries. Accordingly, local officials lack sufficient knowledge on how to deal with these crimes properly. In this regard, it is particularly important for states to institute regulations to educate their officials. A good example of such a training program is the Kazakh government's regulations requiring the country's prosecutors to participate in a mandatory re-certification training program, which includes a three-hour anti-trafficking training module.<sup>311</sup> Similarly, the national police academy of Tajikistan provides cadets with mandatory training on anti-trafficking law.<sup>312</sup>

In fact, Central Asian authorities, U.S. government representatives, and international organizations now discuss some training-related activities.<sup>313</sup> Various European organizations also

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309. See *Kazakhstan Adopts Tough Stance on Human Trafficking*, *supra* note 118.

310. U.N. Protocol, *supra* note 113, art. 10(2), 40 I.L.M. at 381.

311. TIP REPORT 2003, *supra* note 4, at 88.

312. See *id.* at 159.

313. See, e.g., *Kazakhstanskaya Pravda*, *Kazakh Prosecutor-General, US Envoy Discuss Fight Against Human Trafficking*, BBC WORLDWIDE MONITORING, June 11, 2002, LEXIS, News Library, ALLNWS File (referring to a meeting between Rashid Tusupbekov, Prosecutor-General of Kazakhstan, and Larry Napper, U.S. Ambassador to Kazakhstan, where they discussed possible U.S. participation in such training); *Kazakhstan Today*, *US Envoy Briefed on Kazakh Government Efforts Against Human*

provide capacity-building assistance to the Central Asian governments in combating trafficking in persons. Accordingly, the OSCE recently announced plans to create a model police unit in the Kyrgyz Republic to deal with the issues of organized crime including human trafficking.<sup>314</sup> This organization intends to provide EUR 3.6 million for the implementation of this project, with the expected launch date for this police unit set for April 2004.<sup>315</sup> The European Commission also approved a EUR 2.5 million project to provide intensive training for border control officials in Central Asia, which should help these countries fight trafficking.<sup>316</sup>

Finally, anti-trafficking prosecution efforts should also focus on corrupt government officials complicit in trafficking crimes. Article 9 of the U.N. Convention mandates a duty to address corruption, and requires governments to "adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials."<sup>317</sup> It is evident, as discussed above, that in many cases corrupt Central Asian officials facilitate trafficking in persons.<sup>318</sup>

While some investigations of such cases are underway in all of the Central Asian countries, efforts to prosecute corrupt officials do not appear particularly effective. For example, in the Kyrgyz Republic from 1999 to 2000, "11 law enforcement officers were accused of preparing fraudulent documents for trafficked women, and criminal proceedings were instituted against 3 of the accused officers. The results of the proceedings were unknown [and] there

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*Trafficking*, BBC WORLDWIDE MONITORING, July 24, 2003, LEXIS, News Library, ALLNWS File (citing the U.S. government's agreement to organize training seminars and courses involving U.S. anti-trafficking experts for Kazakh law-enforcement officials and the participation of IOM experts in designing "methodological training aids on the tactics and methods of detecting and investigating [trafficking-related] crime"); *Uzbekistan Cracks Down Harder on Human Trade*, *supra* note 199 (referring to U.S. Charge D'Affairs to Uzbekistan David Appleton's report on training for Uzbek law enforcement officers and consular officers).

314. See *Excerpts from a Recent Selection of Articles on the OSCE and Its Activities*, 10 OSCE NEWSLETTER 19 (2003), available at <http://www.osce.org/publications/newsletter/2003/nl042003.pdf> (citing a Mar.17, 2003 publication by AKIpress Agency, Bishkek, Kyrgyz Republic).

315. *Id.*

316. See *European Commission Commits Funds for Central Asian Border Management and Police Reform*, RFE/RL NEWSLINE, July 22, 2003, at <http://www.rferl.org/newsline/2003/07/220703.asp>.

317. U.N. Protocol, *supra* note 113, art. 10(2), 40 I.L.M. at 381.

318. See discussion *supra* Section II.C.

was no indication that the officers were tried.”<sup>319</sup> In Kazakhstan in 2000, a similar case was reported. There, authorities investigated a number of customs and border officials “for possible complicity with a trafficking ring in the southern part of the country; however, no charges had been brought against any officials by year’s end.”<sup>320</sup> In Uzbekistan, in 2002, the government convicted two border control officials for corruption and allowing people to be trafficked abroad.<sup>321</sup> Lastly, in Uzbekistan in 2003, “one official . . . is under criminal investigation for selling travel documents and preparing fraudulent exit visas for traffickers.”<sup>322</sup>

## V. INTERNATIONAL COOPERATION IN COMBATING TRAFFICKING IN PERSONS

The five aforementioned responsibilities are the main international obligations of a state in combating trafficking in persons. Because of the transnational nature of the crime of trafficking, however, combating trafficking successfully requires further transnational measures. This means that countries of origin, transit, and destination must cooperate in fighting this crime.<sup>323</sup> First, destination countries for victims of trafficking coming from Central Asia have a duty to curb demand. The U.N. Protocol states that “State Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”<sup>324</sup>

As an example of such a measure, in 1998, the United Arab Emirates, then a Tier 1 country,<sup>325</sup> issued a special decree

319. *Kyrgyz Republic 2002, supra* note 27.

320. *See id.*

321. *See* TIP REPORT 2003, *supra* note 4, at 159.

322. *See* TIP REPORT 2004, *supra* note 7, at 186.

323. *See generally* Smith & Mattar, *supra* note 112, at 167 (discussing the need for international and regional cooperation in combating trafficking in persons).

324. U.N. Protocol, *supra* note 113, art. 9(5), 40 I.L.M. at 380.

325. The 2003 TIP Report lists several reasons for placing the United Arab Emirates on Tier 1:

The Government of the United Arab Emirates fully complies with the minimum standards for the elimination of trafficking. . . . The penal code specifically prohibits trafficking; cases of trafficking can also be prosecuted under other



prohibiting single women from the Newly Independent States (NIS) under the age of thirty-one from entering the United Arab Emirates, unless accompanied by male relatives or visiting the country for business purposes.<sup>326</sup> The effect of this rule, however, has been mixed, as traffickers often manage to overcome the stated restrictions. For example, travel agents and pimps often recruit men in the NIS to assume the role of a husband or a brother to the trafficked woman.<sup>327</sup> In many cases, United Arab Emirates citizens are paid to obtain papers of a "false" marriage to allow the woman to enter the country.<sup>328</sup> In addition, traffickers enlist the help of corrupt law enforcement officials in Central Asia to obtain passports for their potential victims that show different dates of birth.<sup>329</sup> The practice is evident as "almost all the women trafficked to the United Arab Emirates as [commercial sex workers] are at least ten to fifteen years younger than the age recorded in their passports."<sup>330</sup>

Second, states must recognize trafficking in persons as an extraditable offense, apply domestic anti-trafficking laws extraterritorially, and exchange information regionally. These "three ex's"—extradition, extraterritoriality, and exchange of information—are essential measures to combating the transnational crime of trafficking. It should be noted that several intergovernmental cooperation efforts are currently taking place

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statutes. Law enforcement actively investigates trafficking cases and complaints of abuse. The government recently criminalized the use of child camel jockeys. It conducts DNA and medical tests to investigate 'parents' of camel jockeys. . . . The government provides assistance and protection to victims; they are not detained, jailed or deported. Victims are not prosecuted for violations of other laws, such as immigration or prostitution. Counseling services are available in public hospitals. . . .

See TIP REPORT 2003, *supra* note 4, at 155-56; see also TIP REPORT 2004, *supra* note 7, at 204. The 2004 TIP Report shifted the United Arab Emirates back to Tier 2 "because of the lack of the evidence of appreciable progress in addressing trafficking for sexual exploitation." See TIP REPORT 2004, *supra* note 7, at 204.

326. *TRAFFICKING IN KYRGYZ REPUBLIC*, *supra* note 17, at 15 & n. 32.

327. Mohamed Y. Mattar, *Trafficking in Persons: The Scope of the Problem and the Appropriate Responses*, Global Perspective, Address Before Dod Seminar on Globalization and Corruption (Sept. 14-15, 2004), available at <http://protectionproject.org/commentary/mattar9-14.htm> [hereinafter *Trafficking in Persons, Scope and Responses*].

328. *Id.*

329. *Id.*

330. *DECEIVED MIGRANTS FROM TAJIKISTAN*, *supra* note 3, at 17 (stating that most of the victims trafficked to the United Arab Emirates were under the age of forty).

within the Commonwealth of Independent States (CIS), which includes the Central Asian countries. In October 2002, for example, the CIS countries signed a new Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters replacing a similar convention signed in Minsk in 1993 ("1993 Convention").<sup>331</sup> Some evidence suggests that countries have used the 1993 Convention to extradite persons charged with human trafficking.<sup>332</sup> In addition, all of the CIS member states have signed the 1998 CIS Agreement on Cooperation in Fighting Illegal Migration in 1998.<sup>333</sup> The most recent intergovernmental agreement, which includes all Central Asian countries except Turkmenistan, was signed by the CIS Ministers of Interior on September 23, 2003.<sup>334</sup> This latest agreement is the very first document to specifically address the issue of trafficking in persons in the CIS countries.<sup>335</sup> It provides for the exchange of legal, operational, and investigative information related to human trafficking between police authorities of participating countries.<sup>336</sup>

The Central Asian governments also signed a number of bilateral legal assistance treaties with known destination countries for Central Asian trafficking victims. Kazakhstan has mutual legal assistance treaties with common destination countries for Kazakh victims, including China, Mongolia, Pakistan, and Turkey.<sup>337</sup> The Kazakh government also plans to expand cooperation with law enforcement authorities of other destination countries for Kazakh victims. In particular, the Kazakh government is currently implementing a bilateral labor agreement with the Kyrgyz Republic, which will monitor the treatment of Kyrgyz workers in

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331. The Role of Government in Combating Trafficking, *supra* note 249.

332. See, e.g., Press Release, Embassy of Kazakhstan to the United States of America and Canada, *supra* note 118.

333. Assoc. for Participatory Democracy, Legal Commentaries: Parliament Activity Review 25-28 February, 2002 (Mar. 5, 2002), at <http://www.e-democracy.md/en/comments/legislative/20020305>.

334. Trafficking in Persons, Scope and Responses, *supra* note 327.

335. *Id.*

336. Tajik Television, *Tajikistan: CIS Police Chiefs Sign Deal on Combating Human Trafficking*, BBC WORLDWIDE MONITORING, Sept. 23, 2003, LEXIS, News Library, ALLNWS File.

337. See, e.g., Press Release, Embassy of Kazakhstan to the United States of America and Canada, *supra* note 118.

Kazakhstan.<sup>338</sup> The government of the Kyrgyz Republic has also set up "labor offices in destination areas in Russia to better serve Kyrgyz nationals working in Russia who may be exploited."<sup>339</sup> In addition, the Kyrgyz government directs its "embassies and consulates . . . to cooperate with NGOs and law enforcement agencies to search for and assist Kyrgyz citizens who wish to return."<sup>340</sup> Although the government of Tajikistan has not yet entered into any bilateral legal assistance treaties related to anti-trafficking efforts, it does cooperate with authorities in transit and destination countries for Tajik nationals on a case-by-case basis, and has directed the country's consular offices in Russia to oversee the condition of Tajik laborers there.<sup>341</sup>

## VI. PRACTICAL ISSUES RELATED TO THE STATE'S INTERNATIONAL OBLIGATIONS TO COMBAT TRAFFICKING

As illustrated above, Central Asian states have certain international responsibilities in combating trafficking in persons. Under the traditional rules of international law, the state is responsible for a wrongful act that constitutes a breach of its international obligations.<sup>342</sup> Two major questions arise in this respect. The first question is whether states should be held responsible for acts committed by non-state actors. The second question is, to what extent may a state claim the principle of "state sovereignty" in carrying out its international obligations. This section briefly addresses both of these questions.

According to contemporary principles of international law, a state may be in violation of its international obligations on one of three separate bases: original responsibility, responsibility by

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338. See TIP REPORT 2003, *supra* note 4, at 88. The agreement provides for a quota of legally protected Kyrgyz migrant workers in Kazakhstan. *Id.*

339. *Id.* at 19.

340. See TIP REPORT 2003, *supra* note 4, at 153.

341. See *id.* at 147. The two countries expect to sign an agreement soon, which would provide legal protection to Tajik migrant laborers in Russia. Farangis Najibullah, *Tajikistan: Unemployed Forced to Become Migrants or Participate in "Slave" Markets*, RFE/RL NEWSLINE, May 12, 2003, at <http://www.rferl.org/nca/features/2003/05/12052003154314.asp>.

342. See Rebecca J. Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125, 127 (1994).

endorsement, and vicarious responsibility.<sup>343</sup> Essentially, where a state is under an international obligation to prevent and punish injurious acts committed by a private agent within the state's control, failure to do so amounts to a breach of the state's international obligations.<sup>344</sup> Accordingly, states are responsible for the acts committed by state and non-state actors. As such, a state may be held responsible for a privately committed wrongful act.<sup>345</sup> Further, "state responsibility is determined by an objective standard. Thus, whether or not the state intends an act to be harmful or not is largely irrelevant. Responsibility is imposed because the act or omission was committed."<sup>346</sup> This implies that government complicity is not the only circumstance where a state can be held responsible for trafficking in persons as a human rights violation. A state is also responsible for its "inaction" or "failure to

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343. See Davis Brown, *Use of Force Against Terrorism After September 11th: State Responsibility, Self-Defense and Other Responses*, 11 CARDOZO J. INT'L & COMP. L. 1, 7 (2003). Original responsibility arises "for acts which are directly imputable to [the state], such as acts of its government, or those of its officials," as well as acts committed by persons acting as the state's agents. *Id.* at 7 (quoting 1 OPPENHEIM'S INTERNATIONAL LAW §§ 145, 501 (Sir Robert Jennings & Sir Arthur Watts, eds., 9th ed. 1992)). Responsibility by endorsement allows imputing the acts of private persons to a state, even where private persons "are not agents of the state, [their acts] do not translate into acts of state, [but] a state has the duty to exercise due diligence to prevent wrongdoing and to punish those who commit wrongful acts on its territory." *Id.* at 10 (citing 1 OPPENHEIM INTERNATIONAL LAW §§ 167, 550). If a state permits such acts by private persons and expresses official approval of them, the state becomes responsible for having endorsed such acts. *Id.* at 10. Finally, vicarious responsibility of a state for a wrongful act committed by a non-state actor "flows from the failure to take measures to prevent or punish the act." *Id.* at 13 (citing 2 OPPENHEIM, INTERNATIONAL LAW §§ 145, 502 (H. Lauterpacht ed., 7th ed. 1952)).

344. See Dawn J. Miller, *Holding States to Their Convention Obligations: The United Nations Convention Against Torture and the Need for a Broad Interpretation of State Action*, 17 GEO. IMMIGR. L.J. 299, 304 (2003) ("An act or omission which produces a result which is on its face is a breach of a legal obligation gives rise to responsibility in international law. This is the same whether the breach is committed by an individual or by a state.") (internal quotations omitted). This principle is also well established in international human rights law, which recognizes that a state can be held responsible for violations of human rights perpetrated by non-state actors whose actions a state fails to control. *Id.* at 305 (citing Deborah E. Anker, *Boundaries in the Field of Human Rights: Refugee Law, Gender, and the Human Rights Paradigm*, 15 HARV. HUM. RTS. J. 133, 147 (2002)).

345. Brown, *supra* note 343, at 13. International law recognizes that for vicarious responsibility to attach, "the state must know the injurious act will occur or has occurred, and take no action to prevent it, to cause the private person(s) to make reparations for it, or punish those private person(s) for the act." *Id.*

346. Miller, *supra* note 344, at 306.

act" in preventing trafficking or protecting the victims of trafficking.<sup>347</sup>

This approach is taken by the TVPA which, in determining whether a government has made "significant efforts" to bring itself into compliance with the minimum standards for the elimination of trafficking, the TVPA considers "the extent of noncompliance with the minimum standards by the government . . . ."<sup>348</sup>

This approach, however, may intervene into the domestic affairs of a state in violation of the principle of state sovereignty. The U.N. Convention provides that "State Parties shall carry out their obligations under [the U.N.] Convention in a manner consistent with the principles of sovereign equality and territorial integrity of states and that of non-intervention in the domestic affairs of other states."<sup>349</sup> Furthermore, "[n]othing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."<sup>350</sup>

But "where the government is not in control or the controlling authority is unable or unwilling to create the conditions necessary to ensure rights, and gross violations of the rights of masses of people result," arguably such government forfeits its sovereignty.<sup>351</sup> Thus, arguably, the TVPA does not violate the principle of state sovereignty when a government fails to protect the rights of its people because that government has temporarily forfeited its sovereignty. This is the theory of "conditional sovereignty," also known as "the forfeiture of sovereignty" or the

347. In this respect, one may draw parallels between trafficking in persons and torture. Thus, because the purpose of the U.N. Convention Against Torture and Cruel, Inhumane and Degrading Treatment (CAT) is to protect people from being tortured, state responsibility for torture should be defined broadly to include responsibility for omission or failure to act. See Miller, *supra* note 344, at 304-06. In other words, "public official involvement in torture [s]hould be implied unless appropriate punishment was imposed on the torturer by state officials." *Id.* at 304.

348. Trafficking Victims Protection Act (TVPA) of 2000 § 110(b)(4), 22 U.S.C. § 7107(b)(4)(B) (2000); see also discussion *supra* Section VII.

349. U.N. Convention *supra* note 100, art. 4(1).

350. *Id.*

351. FRANCIS M. DENG, PROTECTING THE DISPOSSESSED: A CHALLENGE FOR THE INTERNATIONAL COMMUNITY 135 (1993) (stating that "the real issue is not so much deficiencies in the law as inadequacies of enforcement procedures").

“temporary surrender of sovereignty.”<sup>352</sup> Whether it should apply in the context of trafficking is uncertain. The theory has some validity, however, in cases where the government refuses to recognize the problem of trafficking or where the government lacks the political will to take action, but is nevertheless complicit in the crime of trafficking.

Moreover, a state’s international obligations to combat trafficking in persons should not be considered as interfering with state sovereignty because such sovereignty could be sacrificed as a result of activities of various transnational criminal groups.<sup>353</sup> For instance, it is suggested that transnational criminal groups usually target weak states as their favored operational environment.<sup>354</sup> Accordingly, such groups already infringe upon the state’s weak sovereignty. At the same time, no single country likely has the capacity to combat complex international criminal activities, such as trafficking in persons. Although a particular country might be required to sacrifice some of its procedural or substantive sovereignty in order to combat transnational crime, this trade-off may be necessary in order to protect that very sovereignty from the encroachment by transnational organized criminals. Should a country adopt a conservative approach towards its sovereignty and refuse to make such a trade-off, it would immediately be viewed as a safe haven for the perpetrators of human trafficking and other transnational organized crimes of similar gravity.

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352. *Id.*

353. See Ronald K. Noble, *Interpol’s Way: Thinking Beyond Boundaries and Acting Across Borders Through Member Countries’ Police Services*, Presentation at the Education for Public Inquiry and Int’l Citizenship Symposium (Mar. 1, 2003), available at <http://www.interpol.int/public/ICPO/speeches/SG20030301.asp>. The following paragraph draws upon the ideas and suggestions presented in Mr. Noble’s speech.

354. *Id.*

## VII. SANCTIONS FOR FAILURE TO FULFILL THE INTERNATIONAL OBLIGATIONS TO COMBAT TRAFFICKING IN PERSONS: THE U.S. APPROACH<sup>355</sup>

In response to the growing problem of trafficking throughout the world, the United States, by passing the TVPA in 2000, adopted an innovative foreign policy approach that may effectively compel governments throughout the world to adhere to basic standards in the fight against trafficking. To achieve this end, the United States utilizes a complex mechanism under which some countries can be penalized for failure to comply with basic anti-trafficking standards, while other countries are rewarded with bilateral and multilateral aid to finance their anti-trafficking efforts. Specifically, section 110 of the TVPA requires the U.S. Department of State Office to Monitor and Combat Trafficking in Persons to prepare an annual report on "the status of severe forms of trafficking in persons."<sup>356</sup> This report divides the countries of the world into three tiers on the basis of their compliance with "the minimum standards for the elimination of trafficking"<sup>357</sup> or, in the

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355. For a more detailed overview of U.S. legislation authorizing sanctions against the countries that fail to meet the minimum standards for combating trafficking in persons, see generally Mohamed Mattar, *Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated Under the U.S. Trafficking Victims Protection Act*, 10 BROWN J. OF WORLD AFF. 159 (2003).

356. See Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. § 7107(b)(1) (2000). The statute states that

the Secretary of State shall submit . . . a report with respect to the status of severe forms of trafficking in persons that shall include—

(A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and

(C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

*Id.*

357. TVPA § 108(a), 22 U.S.C. § 7106(a). The statute includes the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of

case of non-complying countries, the “significant efforts to bring themselves into compliance [with the minimum standards]” taken by those states.<sup>358</sup> If a country is placed on Tier 3 of the annual

giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

*Id.*

358. TVPA § 108(b)(3), 22 U.S.C. § 7107(b)(4). The statute defines “significant efforts” and provides that in making a determination in this respect, the Department of State must consider the following:

(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe form of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

*Id.*

In addition, Section 108(b) of the TVPA, 22 U.S.C. § 7106(b), lists additional criteria to be considered in determining the “serious and sustained efforts to eliminate severe forms of trafficking in persons,” as provided under the definition of “minimum standards:”

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons. . . .

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the



report, section 110 of the TVPA calls for imposition of sanctions prohibiting the flow of any non-humanitarian, non-trade-related official foreign aid to the country's government.<sup>359</sup>

government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

*Id.*

359. TVPA § 110, 22 U.S.C. § 7107(a). This statute declares "the policy of the United States not to provide non-humanitarian, non-trade-related foreign assistance to any government that – (1) does not comply with minimum standards for the elimination of trafficking; and (2) is not making significant efforts to bring itself into compliance with such standards." The extent of and restrictions on imposing such sanctions are outlined in 22 U.S.C. § 7107(d) as follows:

(1) Withholding of non-humanitarian, non-trade-related assistance. The President has determined that –

(A)(i) the United States will not provide non-humanitarian, non-trade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no non-humanitarian, non-trade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) Ongoing, multiple, broad-based restrictions on assistance in response to human rights violations. The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in

Following the classification adopted in the 2003 TIP Report, the Department of State placed Kazakhstan and Uzbekistan on Tier 3, threatening them with sanctions if they failed to begin implementing the minimum standards.<sup>360</sup> The governments of both countries acted quickly to avoid possible sanctions by taking “significant steps . . . to fight trafficking in persons.”<sup>361</sup> In fact, a number of public officials in both Kazakhstan and Uzbekistan “spoke out on this emerging human rights issue,” underscoring the importance of combating human trafficking to these countries.<sup>362</sup> In describing the “notable progress” achieved by ten Tier 3 countries that allowed them to meet the standard for placement on Tier 2, the U.S. State Department mentioned the following actions taken by these countries: “drafting or passage of new [comprehensive] anti-trafficking legislation and procedures; conducting high-profile public awareness campaigns on national press and television; developing new anti-trafficking training programs for police, immigration and judicial officials; creating national task forces and action plans; establishing confidential hotlines to fight corruption and trafficking in persons; and building referral systems for victims.”<sup>363</sup> Importantly, due to efforts undertaken to combat trafficking by both Uzbekistan and Kazakhstan, the 2004 TIP

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significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). . . .

(3) Subsequent compliance. The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) Continuation of assistance in the national interest. Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of non-humanitarian, non-trade-related foreign assistance, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this division or is otherwise in the national interest of the United States.

360. TIP REPORT 2003, *supra* note 4, at 21.

361. Press Release, U.S. Dep’t of State, Presidential Determination Regarding the Trafficking Victims Protection Act for 2003 (Sept. 10, 2003), *available at* <http://www.state.gov/g/tip/rls/prsr/23961pf.htm>.

362. Press Statement, U.S. Dep’t of State, Progress in the Fight Against Trafficking in Persons (Sept. 10, 2003) *available at* <http://www.state.gov/r/pa/prs/ps/2003/23963pf.htm>.

363. Press Release, U.S. Dep’t of State, Presidential Determination Regarding the Trafficking Victims Protection Act for 2003, *supra* note 361; Press Statement, U.S. Dep’t of State, Progress in the Fight Against Trafficking in Persons, *supra* note 362.

Report shifted Uzbekistan to Tier 2 status and Kazakhstan to Tier 2 Watch List status.<sup>364</sup>

Overall, the actions taken by the ten countries to prevent imposition of U.S. sanctions suggests that "peer pressure" resulting from U.S. "intervention on this issue is spurring the international community to action and, most importantly, is yielding results."<sup>365</sup> Such progress, however, was not only a result of the steps undertaken by the countries themselves, but is also due to the "intensive effort on the part of [American] diplomats in the field,"<sup>366</sup> and particularly the State Department's Office to Monitor and Combat Trafficking in Persons.<sup>367</sup>

Another side of the U.S. approach towards addressing worldwide trafficking involves "constructive engagement" with nations working to end trafficking in persons, as well as working with foreign governments to help them meet the minimum standards.<sup>368</sup> Under the aegis of this provision, the U.S. Agency for International Development (USAID) provided assistance to Kazakhstan by conducting media training for journalists on anti-trafficking issues. The training aimed to create an informal journalist network that specializes and reports on human

364. TIP REPORT 2004, *supra* note 7, at 39.

365. Press Release, U.S. Dep't of State, Presidential Determination Regarding the Trafficking Victims Protection Act for 2003, *supra* note 361.

366. Press Statement, U.S. Dep't of State, Progress in the Fight Against Trafficking in Persons, *supra* note 362.

367. Press Release, U.S. Dep't of State, Presidential Determination Regarding the Trafficking Victims Protection Act for 2003, *supra* note 361.

368. Trafficking Victims Protection Act (TVPA) of 2000 § 109, 22 U.S.C. § 2152(d) (2000). The statute outlines "constructive engagement" as follows:

(a) The President is authorized to provide assistance to foreign countries directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for the elimination of trafficking . . . including –

- (1) the drafting of laws to prohibit and punish acts of trafficking;
- (2) the investigation and prosecution of traffickers;
- (3) the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and
- (4) the expansion of exchange programs and international visitor programs for governmental and nongovernmental personnel to combat trafficking.

(b) Amounts made available to carry out the other provisions of this part . . . and the Support for East European Democracy (SEED) Act of 1989 shall be made available to carry out this section.

*Id.*

trafficking issues in Kazakhstan.<sup>369</sup> USAID also assisted the Kyrgyz Republic with an awareness-raising campaign designed to increase understanding of the dangers and consequences of trafficking in persons, and to “develop a program on criminalization of trafficking, and [to] provide policy guidance.”<sup>370</sup>

The United States also provides technical assistance and aid to the Central Asian countries under the 1992 Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act, commonly known as the FREEDOM Support Act.<sup>371</sup> Between 1992 and 2000, the United States provided about 610 million USD in bilateral economic assistance to Kazakhstan.<sup>372</sup> Similarly, the United States provides humanitarian assistance, military assistance, and economic support to the Kyrgyz Republic,<sup>373</sup> Tajikistan,<sup>374</sup> and Uzbekistan, which, in 2001 alone,

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369. See USAID CENT. ASIA REGION, KAZAKHSTAN PORTFOLIO OVERVIEW (2002), available at [http://www.usaid.gov/locations/europe\\_eurasia/car/pdfs/overkaz.pdf](http://www.usaid.gov/locations/europe_eurasia/car/pdfs/overkaz.pdf).

370. *Reducing Gender Bias*, USAID Europe & Asia, at [http://www.usaid.gov/locations/europe\\_eurasia/car/briefers/gender\\_bias.html](http://www.usaid.gov/locations/europe_eurasia/car/briefers/gender_bias.html) (last visited Jul. 25, 2005).

371. 22 U.S.C. §§ 2295, 5801 (2003). Section 201 of the FREEDOM Support Act, 22 U.S.C. § 2295 (2003) contains broad authorization for the provision of bilateral aid to the countries of the former Soviet Union, including the Central Asian republics, for the following purposes: urgent humanitarian needs; democracy and rule of law; independent media; free market systems; trade and investment; food distribution and production; health and human services; education and educational television; energy efficiency and production; civilian nuclear reactor safety; environment; transportation and telecommunications; drug education, interdiction, and eradication; and migration.

372. See Cent. Intelligence Agency, *Kazakhstan*, in THE WORLD FACTBOOK 2003, available at <http://www.cia.gov/cia/publications/factbook> (last updated Aug. 1, 2003). Between 2001 and 2003, Kazakhstan received an average of 45 million USD under the FREEDOM Support Act. See USAID, *Kazakhstan*, in BUDGET JUSTIFICATION TO THE CONGRESS: FISCAL YEAR 2004, available at [http://www.usaid.gov/policy/budget/cbj2004/europe\\_eurasia](http://www.usaid.gov/policy/budget/cbj2004/europe_eurasia) (last visited Jul. 25, 2005).

373. In 2001, the Kyrgyz Republic received a total of 50 million USD in bilateral aid from the United States, of which about 33 million USD came under the FREEDOM Support Act. See Cent. Intelligence Agency, *the Kyrgyz Republic*, in THE WORLD FACTBOOK 2003, available at <http://www.cia.gov/cia/publications/factbook> (last updated Aug. 1, 2003); USAID, *the Kyrgyz Republic*, in BUDGET JUSTIFICATION TO THE CONGRESS: FISCAL YEAR 2004, available at [http://www.usaid.gov/policy/budget/cbj2004/europe\\_eurasia](http://www.usaid.gov/policy/budget/cbj2004/europe_eurasia) (last visited Jul. 25, 2005). In 2004, assistance under the FREEDOM Support Act will increase to 40 million USD. See *id.*

374. In 2001, Tajikistan received a total of 60 million USD from the United States, of which about 16 million USD came under the FREEDOM Support Act. See Cent. Intelligence Agency, *Tajikistan*, in THE WORLD FACTBOOK 2003, available at <http://www.cia.gov/cia/publications/factbook> (updated Aug. 1, 2003); USAID, *Tajikistan*, in BUDGET JUSTIFICATION TO THE CONGRESS: FISCAL YEAR 2004, available at [http://www.usaid.gov/policy/budget/cbj2004/europe\\_eurasia](http://www.usaid.gov/policy/budget/cbj2004/europe_eurasia) (last visited Jul. 25, 2005).

received about 150 million USD in humanitarian aid.<sup>375</sup> Due to being largely isolated from the outside world, Turkmenistan was on the low end of receiving bilateral foreign assistance from the United States; however, it too received about 16 million USD in 2001.<sup>376</sup> Failure by the Central Asian countries to comply with the minimum standards for the elimination of trafficking may jeopardize this cooperation with the United States.

### VIII. CONCLUSION

Much remains to be done by Central Asian countries to combat trafficking in persons. All countries have the responsibility to work with other countries in a transnational setting, and the Central Asian states are only beginning to realize these responsibilities. Such state responsibilities include criminalizing the act of trafficking as a specific and serious offense and providing the necessary measures in the areas of prevention, protection, prosecution, and repatriation, as stated in the U.N. Protocol. These states must also cooperate with destination countries for their victims of trafficking in order to curb demand for trafficked persons.

The number of international and bilateral initiatives to combat human trafficking in Central Asian countries is increasing. Accordingly, this problem is of pressing concern, as evidenced by the July 2003 visit of the OSCE chairman to Central Asia.<sup>377</sup> Even

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375. See Cent. Intelligence Agency, *Uzbekistan*, in THE WORLD FACTBOOK 2003, available at <http://www.cia.gov/cia/publications/factbook> (last updated Aug. 1, 2003). Uzbekistan received about 25 million USD of aid from the United States under the FREEDOM Support Act. See USAID, *Uzbekistan*, in BUDGET JUSTIFICATION TO THE CONGRESS: FISCAL YEAR 2004, available at [http://www.usaid.gov/policy/budget/cbj2004/europe\\_eurasia](http://www.usaid.gov/policy/budget/cbj2004/europe_eurasia) (last visited Jul. 25, 2005). The amount of appropriations under the Act has been increasing steadily and will reach 42 million USD in 2004. *Id.*

376. See Cent. Intelligence Agency, *Turkmenistan*, in THE WORLD FACTBOOK 2003, available at <http://www.cia.gov/cia/publications/factbook> (last updated Aug. 1, 2003). Turkmenistan received about 6 million USD from the United States under the FREEDOM Support Act, with similar amounts provided in the subsequent years. See USAID, *Turkmenistan*, in BUDGET JUSTIFICATION TO THE CONGRESS: FISCAL YEAR 2004, available at [http://www.usaid.gov/policy/budget/cbj2004/europe\\_eurasia](http://www.usaid.gov/policy/budget/cbj2004/europe_eurasia) (last visited Jul. 25, 2005).

377. See Antoine Blua, *Central Asia: OSCE Chief Focuses on Regional Human Rights, Political Reform*, RFE/RL NEWSLINE, July 11, 2003, at <http://www.rferl.org/nca/features/2003/07/11072003170720.asp> (recognizing "the theme of trafficking—trafficking in young women and girls mainly" as "the important central theme of the Dutch presidency of the OSCE").

after anti-trafficking measures are fully adopted, however, the issue of their enforcement and effectiveness will remain a major problem for the Central Asian countries in the foreseeable future. Kazakhstan, for example, "has adopted 230 various documents [addressing illegal migration], but they are uncoordinated and some of them contradict [each] other, the country['s] Constitution and international agreements."<sup>378</sup>

The Central Asian governments will not be able to fully control the growing issue of trafficking unless they undertake serious efforts to address the economic situation in their countries. As stated above, poverty and unemployment are among the key "push" factors that make women and children particularly vulnerable to trafficking. Thus, unless the governments address these problems by increasing the level of wages and helping to create domestic job opportunities for women, the problem of trafficking will not be eliminated. Some steps are being taken in Tajikistan where the government has recently approved a program for reducing unemployment rates in the country over the next two years.<sup>379</sup> The projected outcome of the program is the creation of some 140,000 new jobs by 2005.<sup>380</sup>

Central Asian governments should also address the root causes of trafficking, which include improving women's access to education, providing them with opportunities for micro-finance credits to establish their own businesses, as well as measures aimed at decreasing corruption of public officials and overall criminality. While addressing the root causes of the trafficking infrastructure is not an easy task and would require long-term measures, there are other immediate and direct actions that the Central Asian governments must take immediately. For instance, they should engage in capacity-building efforts by providing training for interior ministry staff, prosecutors, and judges in applying the new anti-trafficking laws, as this is crucial for the successful implementation of an anti-trafficking framework.<sup>381</sup>

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378. Yakovleva, *supra* note 26.

379. Najibullah, *supra* note 341.

380. *See id.*

381. Not only is cooperation between governments, NGOs, and other elements of civil society important in implementing the above measures, the private sector is also an important ally in the fight against trafficking in persons, as it has "a vested interest in keeping organized crime and trafficking activities out of [its] legal businesses. . . ." Ivo

In the meantime, while the Central Asian governments struggle to adhere to the minimum standards for the elimination of trafficking in persons, innocent victims, having suffered abuses and humiliation abroad and fearful of disclosing their ordeals in conservative societies, are utilizing extreme forms of revenge against their traffickers. One such case in the Kyrgyz Republic involved a triple murder in the office of a Bishkek recruitment firm Peniel, which specialized in offering high-paid jobs to Kyrgyz women in South Korea.<sup>382</sup> Although the investigators still have no strong evidence suggesting that “the employees were killed by victims who wanted revenge on those who condemned them to a life of prostitution[,] . . . the investigation is leading in this direction.”<sup>383</sup> To prevent such cases from happening in the future, governments are urged to put an end to trafficking in persons.

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Kersten, *Moving On from Rhetoric to Results: Examining the Economics of Trafficking*, 10 OSCE NEWSLETTER 14, 15(2003), at <http://www.osce.org/publications/newsletter/2003/nl052003.pdf>. Commentators cite self-regulating measures undertaken by the transportation sector and by travel and employment agencies as effective in curtailing the extent of trafficking. *See id.*

382. Kubat Otorbaev, *Trafficking Link to Bishkek Murders*, MUSLIM UZBEKISTAN: DOMESTIC & REG'L NEWS, Aug. 14, 2002, at [http://www.muslimuzbekistan.com/eng/ennews/2002/08/ennews14082002\\_10.html](http://www.muslimuzbekistan.com/eng/ennews/2002/08/ennews14082002_10.html).

383. *Id.*