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Implementation by Ukraine of paragraph 31 of CEDAW Committee Concluding Observations, based on consideration of the combined sixth and seventh periodic report of Ukraine in 2010

The International Women's Rights Center "La Strada-Ukraine", in cooperation with partner organizations, Informational Consultative Women's Center, All-Ukrainian Network Against Commercial Sexual Exploitation of Children, School of Equal Opportunities, Women's Consortium of Ukraine, Center of Democracy Development, Rozrada Center, and others elaborated shadow NGOs report on implementation by Ukraine of paragraph 31 of CEDAW Committee Concluding Observations, including implementation of Art. 29 of the Law of Ukraine "Against Trafficking in Human Beings".

Actuality of the trafficking problem in Ukraine. Trafficking in human beings is still an actual problem for Ukraine. During the years of 2010-2011, 1,899 identified trafficked persons (1,085 in 2010, 814 in 2011) received assistance from the IOM Mission in Ukraine. For the same period of time, La Strada-Ukraine provided assistance to 169 persons (61 in 2010, 108 in 2011) who suffered from trafficking and violence. The law enforcement bodies found 454 trafficking related crimes (257 in 2010, 197 in 2011). The problem itself is changing and it creates difficulties to identify trafficked persons and provide them assistance, as well as to prevent and prosecute. For instance, the number of trafficked persons coming back from EU countries decreased (18% in 2011 compare to 28% in 2010). Russia and Poland are the most popular destination countries for Ukrainians. Internal trafficking cases make up 7.5% and concern mostly children and young girls suffering from begging and sexual exploitation. Ukraine has more and more cases of being the country of destination for labour trafficking in agriculture and construction – 8 trafficked persons identified in 2010 and 23 in 2011. 43% of foreign trafficked persons are citizens of Moldova. There is an increase of trafficking for labour exploitation cases. More than 2/3 of trafficked persons assisted in 2011 suffered from trafficking for labour exploitation and 25% suffered from trafficking for sexual exploitation¹.

CEDAW Committee Concluding Observations, based on consideration of the combined sixth and seventh periodic report of Ukraine. Ukraine received the Concluding Observations in March 2010. The document highlighted such problems as (1) roots causes of trafficking are not addressed, (2) shelters lack governmental financial support, (3) in general, resources for anti-trafficking activity is very limited, (4) lack of international cooperation in prosecution of traffickers. The problems are still relevant after 2 and a half years have passed.

The Committee called upon Ukraine: 1. to address the root causes of trafficking, 2. to accelerate adoption of legislation on trafficking, 3. to provide sufficient funding for the effective implementation of the State Programme for the Prevention of Trafficking in Persons in Ukraine and of other measures aimed at combating human trafficking, 4. to regularly monitor their impact, 5. allocate sufficient funding, 6. establish additional shelters for the rehabilitation and social integration of women and girl victims of trafficking, 7. to ensure a systematic investigation, prosecution, and punishment of traffickers, including through enhanced international cooperation, 8. to provide information about the number of victims, as well as the number of investigations and their outcome. The Committee requested Ukraine to provide written information on the steps undertaken to implement the recommendations contained in paragraph 31 in 2012.

¹Statistical and analytical materials of IOM Mission in Ukraine for 2010-2011 were used.

Legal provision of the state anti-trafficking policy in Ukraine. There were active and positive steps made by Ukraine during 2010-2012 to provide legal frames for anti-trafficking activity and assistance to trafficked persons:

- CoE Convention on Action Against Trafficking in Human Beings was ratified by the Parliament in September 2010.
- Law of Ukraine “Against Human Trafficking” was adopted by the Parliament in September 2011.
- CoE Convention № 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse was ratified by the Parliament in 2011.
- CoE Convention № 210 on Preventing and Combating Violence against Women and Domestic Violence signed on November 7, 2011. It can be treated like an intention to ratify it in the future.
- Memorandum of cooperation on anti-trafficking activity was signed with the U.S. Government in February 2011.
- A range of documents were adopted to implement the Law of Ukraine “Against Trafficking in Human Beings” in 2012.

The Law of Ukraine “Against Trafficking in Human Beings” was submitted by the Parliament Member O. Zarubinsky and adopted by the Parliament. It was mostly grounded on the draft law, developed by the working group within the Ministry of Ukraine on Family, Youth, and Sport Affairs (2008) supported by the OSCE Project Coordinator in Ukraine with participation of international and non-governmental organizations, as well as independent experts. The Law is aimed at defining ways of legal provision for anti-trafficking activity, minimizing trafficking consequences via establishing relevant organizational and legal basis, defining the competence of state bodies, and the legal status of trafficked persons, including procedures to provide assistance to them. The law defines: principal directions of the state anti-trafficking policy; competence of the state bodies; mechanism to prevent and combat human trafficking, as well as to provide assistance to trafficked persons; rights of trafficked persons; and basis for international cooperation in the anti-trafficking sphere. The Law also includes actions on protection of trafficked foreigners and stateless persons and the procedure of their repatriation. It also has special principles and measures for counteraction trafficking in children. Art. 5 contains information about the main actors. Special attention is paid to the national coordinator and the Ministry of Social Policy, who was defined as the national coordinator in January 2012.

The Law has a range of innovative positions, especially those related to the protection of trafficked persons. The National Cooperation Mechanism of anti-trafficking actors is foreseen to provide efficient assistance to trafficked persons (Art.13). The potential trafficked persons have the right to apply to the local administration with a request for status of the trafficked person. The status is provided for the period up to 2 years. (Art.15). The person with the status has the right to receive free medical, psychological, social, legal and other assistance, such as accommodation in special premises for trafficked persons for a period up to 3 months. In case of necessity, the period can be prolonged, in particular if a trafficked person acts like witness or victim in the criminal proceeding. The trafficked persons also have the right to claim moral and material damage compensation within the Civil Code system, to receive a state one-time payment, assistance in employment, professional training, and education, etc. So, there is hope that such legal basis for the state anti-trafficking policy will ensure stable work in the field, regardless of the political interests, the professional level, and understanding of the problem of heads of relevant ministries and institutions.

At the same time, the Law does not fully comply with the CoE Convention against Trafficking in Human Beings. The Law doesn't provide paying compensations and building a special compensation fund, as requested by the Convention (Art.15). The positions on “recovery and reflection period” are not reflected in the Law, as well as the terms themselves.

There are also provisions that bring concerns. Art.6 defines the necessity to create the Unified State Register of trafficking crimes. Here, there are doubts about the proper protection of

personal data of trafficked persons. The revealing of such data can bring additional traumas for persons affected.

There is also a doubt concerning the conclusion, which states that the adoption of the law does not need any amendments or changes to existing documents. For example, all centers that provided assistance to people in crisis situations today do not accept persons older than 35. And it is due to documents that regulate their activities. That means if a person is older, she/he will not be accommodated there. That document needs to be changed.

Expectations from the adoption of the Law are rather high, but its realization depends on political will, quality of other relevant documents, and scope of financial resources.

The following documents were adopted to implement the Law.

1. About the National Anti-Trafficking Coordinator (*Decree of the Cabinet of Ministers from 18.01.2012, №29*). The Ministry of Social Policy is defined as the National Anti-Trafficking Coordinator.
2. On approval, the Provision about the establishment and operation of the Unified State Register of trafficking crimes (*Decree of the Cabinet of Ministers of Ukraine from 18.04.2012 № 303*). The Provision defines the procedure of the creation, formation, and maintenance of the Unified State Register of trafficking crimes. The Unified State Register will contain the statistics on crimes related to trafficking in human beings, persons who have committed them, including the database uniform system of accounting crimes and those who committed them in Ukraine, except the data that contains information which is considered as state secret. MIA is the Holder (owner) and administrator (manager) of the Register.
3. On approval, the State Targeted Social Programme on combating trafficking in human beings for the period till 2015 (*Decree of the Cabinet of Ministers of Ukraine of 21.03.2012, № 350*). It contains 8 key objectives and a number of measures for them to combat human trafficking for the period from 2013 to 2015. The objectives include: 1) improvement of legislation and management, 2) conducting the inspections of shelters that have provided assistance for the trafficked persons, 3) establishing a uniform system of monitoring and evaluating the activities undertaken at national and regional level, 4) professional development of public authorities employees, 5) prevention of trafficking in human beings, its primary prevention, 6) prevention of trafficking in human beings among vulnerable populations, 7) the providing of proceedings at the appropriate level of law enforcement in combating human trafficking, and 8) providing assistance for the trafficked persons. The financing of program will be implemented by the state and local budgets, as well as other sources. The estimated budget is 7,393,184 million UAH. The program contains indicators which will measure the success of its implementation, but it is only quantitative indicators and one-by-one for each task. The concept of the program, with reasoning of its necessity, was pre-approved by the Decree of the Cabinet of Ministers of Ukraine from 15.02.2012, № 90.
4. On approval, the defining procedure of the trafficked persons status (*Decree of the Cabinet of Ministers of Ukraine from 23.05.2012, № 417*).
5. On approval, the ratified payment of a one-time financial assistance payment for trafficked persons (*Decree of the Cabinet of Ministers of Ukraine from July 25, 2012, № 660*).

In 2011, the draft of the Decree of the Cabinet of Ministers of Ukraine "About the National Mechanism for Interaction of the Agents", which carry out activities in combating the trafficking of human beings (with the assistance of the Coordinator Office of the OSCE Project in Ukraine), was prepared. This document should specify the powers of the subjects, the mechanism of their

interaction, and procedures of assistance for trafficked persons. Currently the document is under revision and approval with all relevant structures. On August 14, 2012, the decree was not adopted.

Providing the sufficient funding for effective implementation of government programs to prevent human trafficking in Ukraine and other measures aimed at combating human trafficking. A separate line in the State Budget of Ukraine in 2010, 2011, and 2012 is: funds for activities in combating human trafficking were not allocated.

Allocating the sufficient funding to create more shelters for rehabilitation and social integration of women and girls who are trafficked persons. During the reporting period, state funding to assist trafficked persons were not allocated. Additional shelters for rehabilitation and social integration of women and girls who are trafficked persons have not been established. As in previous years, assisting trafficked persons remained a sphere of responsibility of International organizations and NGOs. Together with a network of partner NGOs throughout Ukraine, for the period from January 2000 to September 2011, 7,954 trafficked persons (611 for 9 months in 2011), were assisted within the reintegration program of IOM, which, depending on the individual needs of each beneficiary, included legal advice and their representation in criminal and civil court; medical and psychological assistance, providing shelter, professional training, programs providing small grants to support those trafficked persons who wish to start their own business, and other forms of assistance. Since 2002, within the assistance provided by the IOM, the Medical Rehabilitation Center works. It is the only one in Ukraine where complete medical and psychological support are provided free of charge, on a safe and confidential basis. From 2002 till 2010, more than 1,700 trafficked persons got the services of the Centre. For 6 months in 2011, the IOM, in Ukraine by itself and through a community of organizations, provided assistance for 397 trafficked persons (in 2010 for 1,085 trafficked persons). For 6 months in 2011, they provided assistance to 47 children (in 2010, 123 children), 26 girls, and 21 boys were provided assistance.

Providing a systematic investigation, prosecution and punishment of traffickers, including through enhanced of the international cooperation. The statistics of criminal cases opened by law enforcement agencies of Ukraine by the Article 149 of the Criminal Code remains stable, although with a tendency to decrease. So, for 6 months in 2011, 126 cases (in 2010 for 337) were opened. This trend, in our opinion, related to the deterioration of the relevant sections of MIA of Ukraine related to the reorganization and reform of the lengthy time inside the Interior - the elimination of the Department to combat trafficking crimes, creating in its place the Department combating cybercrime and human trafficking, and plans to eliminate this newly created department and its subordinate to the Department of Criminal Investigation. The existing official data absolutely do not reflect the real extent of this phenomenon in Ukraine, but show a low level of efficiency of the police in combating human trafficking. These measures, related to the detection of small and not significant evidence of criminal activity of persons in this area. Comparative statistics and surveillance experts give reasons also talk about the low efficiency of the judiciary, which is ineffective in proceedings in court. The sentences are made less than a quarter criminal cases. The consideration of the problem in the court cases, and sentencing for criminals is a serious obstacle in the realization of trafficked persons rights to a fair trial.

Providing the information on the number of trafficked persons, number of inquiries carried out, and their results. Due to the lack of programs and responsible authorities, the information and reports on the status of issues and activities in combating human trafficking in 2011, by government agencies, are not gathering and analyzing, contrary to the UN Committee on the Elimination of Discrimination against Women. The information gathered concerning the use of the information management system on the status of trafficking in human beings in Ukraine

(TIMS - The Trafficking Information Management System), indicates it is not a safe website, which was launched by the Council of Europe in May 2010, although this system is an effective tool for managing information, which allows for GRETA (Group of Experts on the monitoring of the Council of Europe Convention on action against trafficking in human beings) and the governments to share key documents, prepared during the monitoring procedures, including evaluation reports of GRETA and comments of governments thereon, as well as recommendations of the Committee of the Convention Parties .

Problem issues of coordination. The weak coordination of activity at this level in the past is a problematic issue for now. In 2011 - the first half of 2012, the public measures of coordination has not been carried out at all.

Describing the situation in Ukraine, on cooperation between state bodies and NGOs, should be noted that the initiative on such cooperation, in most cases, were received from community organizations and largely depended, and still depend on, the personal attitude of a manager or civil servant to NGOs.

The negative consequences of administrative reform in 2010 for the development and implementation of state policy against human trafficking. The problem of 2010-2011 was the destruction of the institutional mechanism for combating human trafficking. The Presidential Decree on December 9, 2010, on the management optimization was liquidated the Ministry of Ukraine for Family, Youth, and Sports, which was the authorized and coordinating body of central executive authorities in combating human trafficking. With the Presidential Decree on April 6, 2011, the provision was approved on the central executive bodies and its functions were partly transferred to the Ministry of Social Policy. The direction of trafficking in persons remained outside the remit of all central government (on August 14, 2012, changes were made). As a result, after finishing the previous State program against trafficking in human beings up to 2010 (approved by the Cabinet of Ministers of Ukraine on March 7, 2007), the new Program was adopted in March 2012, and its implementation will begin in 2013. It was expected that it would be State programme with dedicated funding. This caught the attention of international and NGOs, but that was not the reaction from the government.

State of conducting the monitoring realization of the State Anti-Trafficking Program in Ukraine and other activities aimed at counteraction trafficking in people.

Paragraph 4, Article 29 of the Council of Europe Convention on Action against Trafficking in Human Beings states: "Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements". Though this provision was not reflected in the final variant of the Law of Ukraine "Against Trafficking in Human Beings".

At the same time, the Law foresees different mechanisms of monitoring the policy in this sphere. In the explanatory note to this Law, it is stated that there is annual necessity in 3, 264, 100 UAH for monitoring the activity of the subjects of counteraction trafficking in people and publishing of the annual report². The concretization of the expenses was not provided. In the budget for 2012, such funds were not allocated as there was no central body of executive power responsible for coordinating anti-trafficking activity and funds allocation in 2011. As in the result of the administrative reform, any of the central body of executive power has responsibility to provide assistance to trafficked persons. In 2011 and 2012, the funds for this work were allocated. Referring to Article 7 of the Law "General Powers of Central State Executive Authorities in Combating Trafficking in Human Beings", the central state executive authorities, in accordance with the duly established scope of their powers in the field of combating trafficking in human beings, shall monitor the activities of agents for combating trafficking in human beings (para-

² http://www.la-strada.org.ua/ucp_mod_news_list_show_140.html

graph 4); prepare and publicize, in accordance with the procedure established by the Cabinet of Ministers of Ukraine, the annual report on the status of implementation of activities in the field of combating trafficking in human beings (paragraph 5).

The Law of Ukraine “Against Trafficking in Human Beings” contains Article 25 “Control in Combating Trafficking in Human Beings” stating that “The Verkhovna Rada of Ukraine shall exercise parliamentary control in the field of combating trafficking in human beings within the scope, established by the Constitution of Ukraine” (paragraph 1). The Law also foresees public control over the implementation of legislation in the field of combating trafficking in human beings (Article 26) that is organized in the following directions: 1) correspondence of the activities of the agents for combating trafficking in human beings to the provisions of this Law and other legislation; 2) observation of Ukraine’s international commitments in the field of combating trafficking in human beings; 3) provision of inevitability of punishment for the crimes of trafficking in human beings. Control over observing and implementation of the laws in the anti-trafficking sphere is ensured by the Prosecutor General of Ukraine and the prosecutors subordinated to him (Article 27)³. As in 2011, the Anti-Trafficking Program was absent, as well as its monitoring by the state structures and gathering information about the problem and activities in this sphere.

At the same time during reporting period (2010 – first half of 2012), a number of public monitoring activities of the state anti-trafficking activity on the national and oblast levels were conducted. At the beginning of 2011, “La Strada-Ukraine” finalized data analysis on the state of realization of the State Program on Counteraction Trafficking in People for the period till 2010. The results of the monitoring were published, translated into English⁴, and presented during the international and national events. The reports on the results of the monitoring in Odeska, Rivnenska, Volynska, Ivano-Frankivska, Kharkivska, Mykolaivska, and Kyrovogradska oblasts were prepared as well⁵.

On the results of the research, “Status of Implementation the Educational Programs (themes) on Prevention Trafficking in People in the System of Preparing Pedagogues and Social Workers in the Higher Educational Establishments”, the information about including the educational programs of the higher educational establishments and the scope of the special courses, as well as separate themes and issues on the problems of trafficking in people and exploitation of children programs was gathered and analyzed⁶.

The chapter “Trafficking in Persons as Violation of Human Rights” was prepared for the annual report, coordinated by the Ukrainian Helsinki Human Rights Union “Human Rights in Ukraine 2009-2010. Human Rights Organizations’ Report”. A similar chapter was prepared for the annual report “Human Rights in Ukraine 2011. Human Rights Organizations’ Report”.

On the 30th of July, “La Strada – Ukraine” sent information on ignoring the problem of providing assistance to trafficked persons and women, in particular in the state policy of Ukraine to the UN Commission on the Status of Women. Conducting administrative reform, liquidation of the Ministry of Ukraine on Family, Youth, and Sport Affairs, not including the work on the issue in the Regulations of the central executive bodies, not adopting the comprehensive legislation on counteraction of trafficking in people – these issues became the base of the information sent to this institution⁷.

In September 2011, trying to influence the difficult situation with the institutional provision of human trafficking counteraction in Ukraine at the state level, “La Strada-Ukraine” sent

³ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3739-17&p=1321023406208732>

⁴ http://www.la-strada.org.ua/ucp_mod_library_showcategory_89.html - укр. мов., http://www.la-strada.org.ua/ucp_mod_library_showcategory_89.html - англ. мов.

⁵ http://www.la-strada.org.ua/ucp_mod_library_showcategory_89.html

⁶ http://www.la-strada.org.ua/ucp_mod_news_list_show_207.html

⁷ http://www.la-strada.org.ua/ucp_mod_news_list_show_120.html)

letters to the monitoring group GRETA and The UN Special Rapporteur in Trafficking in Persons, especially Women and Children⁸.

⁸ Текст листа: http://www.la-strada.org.ua/ucp_mod_news_list_show_134.html