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***Human Rights Approach to Trafficking
in Human Beings in South Eastern Europe***

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Human Rights Approach to Trafficking in Human Beings in South Eastern Europe ¹

1. Human Rights Approach to Trafficking in Human Beings *versus* State Security Approach

The human rights approach to the prevention of trafficking in human beings in South Eastern Europe region is based on the UN documents and regional commitments. The SEE States, including Moldova, have committed themselves to prevent and combat trafficking, to protect victims of trafficking and to prosecute traffickers. However, these commitments are often not fully observed for several reasons. First of all, the majority of international instruments has either not become international law or do not have strong human rights provisions. The States do not comply with the international standards because there are no sanctions. The countries of origin claim that they cannot afford to introduce human rights based protection measures for trafficked persons because of the difficult economic situation and lack of funds. The countries of destination focus on restrictive anti-migration policies rather than supporting the countries of origin to address the root causes of trafficking.

Secondly there is a double message coming from the EU regarding the recommended approach to trafficking. While human rights organisations are advocating for the human rights approach and support the governments of the SEE states in introducing human rights based policies, other institutions, especially the European Union, are supporting the approach that gives an impression of giving priority to measures focused in the first instance on state security.

To offer just one example: The Stabilisation and Association Process (SAP) for South Eastern Europe² and in particular the Stabilisation and Association Agreements³, are

¹ This paper is based on the report entitled *A Human Rights Analysis of Anti - Trafficking Practices in South Eastern Europe*, prepared by the author for the Office of the High Commissioner for Human Rights in 2005.

being used by the countries of the region to prepare for possible accession to the EU. In return for the EU's offer of the prospect of accession and their assistance to support that process, the countries of the region accepted a set of EU conditionality rules. The issue of trafficking in human beings is perceived within the SAP to be exclusively an issue of security and organised crime prevention. It is mentioned only in the context of the security threats relating to organised crime and illegal migration in both the EU and the SEE countries.⁴ According to the text of the agreements, on the level of working agreements and the implementation of the new policies leading to EU accession, the SEE countries are neither encouraged in any way nor obliged to use a human rights approach to trafficking and to protect the rights of trafficked persons, but rather to focus on "hard" anti- migration and organised crime measures.

Without a more open, positive approach and support for the SEE countries, especially countries of origin, that are not able to fulfil their positive obligations of prevention and protection towards trafficked persons, the restrictive approach, focused on prosecution and control instead of empowering measures, will not be able to move forward the human rights agenda in relation to preventing and combating trafficking.

2. Anti-trafficking Structures in the Region

It has to be acknowledged that there are well established anti-trafficking structures in the SEE region, based on the model initially proposed by the Stability Pact Task Force against Trafficking in Human Beings and further developed by the governments with the assistance of the international organisations. The existing

² The Stabilisation and Association Process for South Eastern Europe (SAP), initiated by the EU in 1999, includes a wide range of reforms including political dialogue, regional co-operation, trade, movements of people and goods, capital and services, justice and home affairs as well as fighting corruption and organised crime (including trafficking).

³ The Stabilisation and Association Agreements established the formal mechanisms and agreed benchmarks for each country of the region to develop standards similar to those which apply in the EU. The standards reflect the political, economic and institutional criteria established by the Copenhagen European Council in 1993 and are basic entry requirements for the countries that aspire to join the EU. The countries of the Western Balkans must also meet the criteria specific to the SAP, including the creation of real opportunities for refugees and internally displaced persons to return, respect for human and minority rights, and a visible commitment to regional co-operation.

⁴ "...the authorities in the countries of the region (should) work together to respond effectively to the common threats to the region's and the EU's security which come from organised crime, illegal immigration and other forms of trafficking. In many cases, e.g. on visa policy, a common approach by all the countries will be needed to deal with the threat effectively". See: http://europa.eu.int/comm/external_relations/see/actions/sap.htm

system based on the appointment of governmental National Co-ordinators and the development of National Plans of Action allows a co-ordinated approach and co-operation between governmental institutions, international organisations and NGOs. However, the structures developed by this system are not always effective or even operational. In general, the anti-trafficking responses:

- Focus, firstly, on repressive, prosecutorial measures implemented by law enforcement agencies, rather than empowering measures which protect and promote the rights of the victims;
- Lack established procedures and standards, especially in the area of identification, referral and assistance to the victims of trafficking;
- See prevention of irregular migration not only as a tool to prevent trafficking but as a goal in itself;
- Are not well co-ordinated - especially between governmental and non-governmental institutions - and international co-operation is lacking;
- Lack long term governmental plans and strategies equipped with monitoring and evaluation mechanisms to measure their efficiency.

The situation is paradoxical; there are well developed structures to combat trafficking in the region but they often do not work in the way envisioned. Although the protection and promotion of the human rights of victims of trafficking should be the fundamental objective of anti-trafficking interventions, policies and legislative measures, this objective is still not met in the majority of cases.

3. Definition of Trafficking - Misunderstandings

While the UN definition of trafficking is widely used in the region,⁵ there are still misunderstandings and problems on the ground with its interpretation and implementation. First of all, not all victims are identified as such. The definition is used mostly in cases of women trafficked for the purpose of sexual exploitation. Cases of trafficking of children have only recently started to be recognised as such (in 2002), and still not all trafficked children are identified as children or as victims and so do not receive proper assistance. Most cases of trafficking in men are still not recognised as such. While there is, at least anecdotal, evidence that men and young

⁵ *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*: <http://www.uncjin.org/Documents/Conventions/conventions.html>

boys from SEE, including Moldova, are trafficked for the purpose of forced labour to Portugal, Spain, Italy, Greece, Russia and the former CIS countries, such cases are not generally considered as cases of trafficking.

Similarly, cases of trafficking within the Roma community are often described as “traditional practices” or “customs” rather than by their real name. Although there has been more evidence in recent years of Roma involvement in trafficking, the responses are still not adequate and the problem not recognised at local level. Quite often internally trafficked persons are not considered to be victims of trafficking and are prosecuted for the crimes related to trafficking (prostitution, begging, etc.) and not assisted.⁶

It seems that, despite continuous training for law enforcement agencies and policy makers in the region, the distinctions between prostitution, illegal labour migration and trafficking are still not clear for those working on the ground and responsible for identifying and assisting victims of trafficking. As a result not all victims are identified as such and not all of these are offered assistance. There is also evidence of victims of trafficking being deported and unnecessary obstacles being created for young women at border crossings from SEE countries. Instances of women from Moldova being refused entry to Serbia, justified as the prevention of trafficking, had been quite common until recently.

These situations mostly arise because of the poor understanding of the definition of trafficking on the ground and lack of information about the rights and the protection to which trafficked persons should be entitled.

4. Prevention and Re-integration

The international documents dealing with trafficking in human beings only mention the issue of the re-integration of trafficked persons in their countries of origin in a very general way.⁷ The recommendations for supporting the re-integration of the victims

⁶ In Bulgaria underage prostitutes were routinely placed in correction institutions for juveniles. Only during special actions against trafficking were all underage prostitutes judged to be trafficked and placed in shelters for victims of trafficking.

⁷ See: Limanowska, B. (2005). *Trafficking in Human Beings in South Eastern Europe. 2004 - Focus on Prevention in: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of*

developed by the international organisations reflect the legal situation in which there are no legal grounds for victims of trafficking to remain in the country of destination and that they have to be repatriated.⁸ Return and re-integration are in the majority of the countries of destination the only legally available option open to the victims of trafficking. Although recently there has been more discussion about alternatives to repatriation, and the SEE countries have signed the Zagreb Declaration,⁹ still the only available practical option for victims of trafficking in the SEE region, who do not want to be deported as illegal migrants, is to agree to take part in the “voluntary return programme” and be send back home by IOM. Otherwise, in almost all cases,¹⁰ even when there is clear evidence that they are victims of the crime of trafficking, these persons are treated by the law enforcement agencies in the countries of destination as illegal migrants, not as victims, and are deported.¹¹

Although the return of trafficked persons to their countries of origin is seen as the main assistance tool by the governments of the countries of destination and by the international agencies, policy makers and implementing agencies in the SEE countries have still not developed clear standards and even an understanding of what should and could be done to ensure “re-integration” (or in more general terms, social inclusion) of returned victims of trafficking. Neither do they make it obligatory for the governments of the countries of origin to provide returning victims with even the possibility of social inclusion.

Macedonia, Moldavia, Romania, Serbia and Montenegro, and the UN Administered Province of Kosovo, United Nations Children’s Fund, United Nations Office of the High Commissioner for Human Rights, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights.

⁸ According to the *Trafficking Protocol* (Article 8), countries of origin are obliged to accept and facilitate the return of trafficked persons with due regard for their safety and without undue or unreasonable delay. The *Trafficking Protocol* further states that returns shall “preferably be voluntary”, but does not include provision for the case when the trafficked person is expelled from the country of destination.

⁹ Statement on Commitments instrument to the Stability Pact Palermo Declaration. Information Exchange Mechanism concerning Trafficking in Human Beings in South Eastern Europe. Zagreb, 27 November 2001.

¹⁰ Only in the UN Administered Province of Kosovo can victims of trafficking remain in Kosovo after they have been identified as victims of trafficking. This situation arises because there are no legal provisions allowing deportation orders to be implemented in Kosovo.

¹¹ See: Kroger, T., Malkoc, J., Uhl, B.H. (2004). *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, OSCE/ODIHR, Warsaw, pp. 59-65.

It seems that the theory and practice of re-integration is still not understood across the region. With exception of the SPTF documents from 2002,¹² there is little information about the meaning of re-integration and the obligations of states to support trafficked persons after their return. The strategies mentioned in the SPTF documents are also very general, relating more to general assistance than to re-integration, such as actively preventing stigmatisation, legal assistance, social, medical and psychological care, the provision of shelter, counselling, material assistance and skills training and job counselling.¹³ Only the skills training and job counselling elements can indicate that assistance should be long term and aim at social inclusion for the returned trafficked persons.

In practice, for agencies supporting trafficked persons in their countries of origin, assistance usually means direct help to the victims upon return, including shelter, legal assistance, social, medical and psychological care, counselling and material assistance. This assistance is usually limited to women who stay in the shelter and it lasts only for a short time. The term “re-integration” (also called integration or social inclusion) is broadly used by the assisting agencies to describe work with returned women that lasts longer, offers long term solutions, enables social inclusion in the home countries and communities of origin and is broader than the short term, direct help.

While there is not much attention paid to the issue of reintegration in the international documents, the need for such support is broadly recognised on the ground by the agencies working with returned victims of trafficking in their countries of origin. During the last three years, the assisting agencies have repeatedly drawn attention to the fact that some women are being trafficked several times, and that the lack of long term support and options after return make them easy prey for traffickers. Re-integration has started, therefore, to be seen not only as humanitarian help offered in individual cases, but also as a part of a necessary and comprehensive system to

¹² *National Programmes to Combat Trafficking in Human Beings (National Plans of Action) Background Paper*. Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings, Vienna, 2001. Kartusch, A. (2001) *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe*, Ludwig Boltzmann Institute of Human Rights, Vienna. The Reference Guide was prepared for OSCE/ODIHR.

empower victims (and potential victims) to break the trafficking circle and find other life options. As the result of this recognised need, implemented re-integration programmes became, in many cases, more far reaching than the provisions outlined in the international documents. Re-integration has started to be understood not only as a part of the immediate assistance to which victims of human rights violations are entitled, but also as a part of broader prevention strategy. However, as the governments are not obliged by international law to provide re-integration assistance to the victims of trafficking, re-integration programmes in majority of cases are implemented by international organisations and NGOs, with only limited support from governmental institutions. Re-integration programmes are, therefore, still scarce and often do not function very well. They are not sustainable and depend on funds from foreign donors.

In the majority of cases, the assisting agencies have to deal with women who do not see their future back at home, and do not believe that “re-integration” is possible, given the labour market situation and the problems that they have to face after return. Unemployment and poverty are the main reasons behind women’s decisions to migrate (and sometimes, in the process, become victims of trafficking), and they remain the main problems after return. According to *A Practical Handbook* published by OSCE/ODIHR, women trafficked to Germany revealed that they would have to face the following problems on their return home: no possibilities for paid employment; psychological problems; medical problems; debts that they cannot pay off; and stigmatisation or rejection by society.¹⁴

Although the existing programmes try to help and support returning women, they are usually too short in duration and too limited in capacity to answer the real needs and to offer long term solutions. The experience of one local NGO assisting trafficked persons in a country of origin in the last few years showed that at least 30 percent of victims accepted into the shelter need long-term therapy and assistance before they

¹³ *National Programmes to Combat Trafficking in Human Beings (National Plans of Action) Background Paper*. Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings, Vienna, 2001. p.2.

¹⁴ Kartusch, A. (2001). *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe*. Ludwig Boltzmann Institute of Human Rights, Vienna, p.80. The Reference Guide was prepared for OSCE/ODIHR.

could even enter any “re-integration” programme.¹⁵ The short-term hairdressing, sewing or cooking courses offered to traumatised women directly after their return are not enough to ensure employment and do not offer durable solutions to their problems. The help offered in finding jobs is also not usually sufficient. The majority of women and girls do not have appropriate education, skills or work experience to be able to take a job without additional training or schooling. Those who accept unskilled work are not able to keep it (due to psychological problems or low pay). Re-integration, to be successful, has to be designed as a very comprehensive, long term programme that will take into consideration the psychological and physical condition of the woman, her family situation, education, skills and aspirations.

The welfare systems in the countries of origin pose more problems for returning victims of trafficking; they are either not functional or they lack funds.¹⁶ Women have problems with registering as unemployed, receiving medical help, registering children at schools or receiving social benefits. In many cases even persons entitled to social support such as unemployment benefits or medical care cannot access it, or, when they can, the support is not sufficient.

In general, the re-integration programmes cannot overcome the economic reality in the countries of origin: very high rates of unemployment, especially among women; and low wages for unskilled workers that keep them below the poverty line. In such conditions returning victims of trafficking are not able to survive on their own without help. Trafficked women are aware of this situation and of the fact that after a couple of weeks or months of schooling or vocational training they will have to face the hard reality that after “re-integration”, which usually means short term support and vocational training in not very popular professions, they will be left on their own.

¹⁵See: Limanowska, B. (2003). *Trafficking in Human Beings in South Eastern Europe. Update on situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, Serbia and Montenegro including the UN Administered Province of Kosovo and Romania*, UNICEF, UNOHCHR and OSCE/ODIHR, Sarajevo, pp.213-214.

Problems:

- Weak re-integration programmes due to lack of funding and co-operation between government, NGOs and international organisations;
- Lack of legal obligations to provide returned trafficked persons with social inclusion support. Such programmes are often not included in NPAs;
- Lack of support from governments and their agencies. All responsibility for re-integration programmes is left to international agencies;
- Lack of long term support programmes that would address the need of returning persons for medical and social support, housing, re-schooling/training/education and employment;
- Lack of opportunities for returnees due to the difficult economic situation in the countries of origin and discrimination against women and girls in general;
- Re-integration of trafficked persons in their old environment due to the attitudes of their family and community – the women are stigmatised, labelled as prostitutes and discriminated against;
- Lack of security and witness protection programmes for the victims and their families;
- Lack of legal provisions and/or legal practice for keeping information confidential by assisting agencies and the media;
- Disempowerment of local NGOs and their lack of capacity to develop and run social inclusion programmes.

Most NGOs working on long term re-integration programmes are convinced that there is no perfect solution to the problems of returning trafficked women and children, but nevertheless long term help and support can bring very good and lasting results, when given for long enough and matched to the individual needs of the trafficked persons.

NGOs offer not only accommodation in a shelter after return but also places in half way houses, help in finding independent accommodation, various courses, training and re-schooling, entrepreneur courses, and scholarships to finish high school or university. Some women find employment in anti-trafficking NGOs, some are offered

¹⁶ *Ibid.*

jobs arranged by NGOs and stay in touch with them as long as they feel that it is necessary. Other NGOs offer alternatives to employment. For example, there are NGOs working with victims of trafficking that encourage self-employment and have provided entrepreneur training for women who have returned after being trafficked or who belong to high risk groups. Women have been trained in writing business plans and awarded non-refundable grants to start their own business or income generating activities. While such an option is not open to all victims as it requires a certain level of education, skills and strong self esteem, it has brought good results in some cases, offering a long term solution for successful participants.

Long term support for women who have left the shelters is a very difficult and sensitive issue. On the one hand, no system of long term support has been developed and there are no financial means to help women in the long term after they leave the shelter. On the other hand, there is no system in place either which would make it possible to reach women who had left assistance programmes with offers of help. Assisting agencies, in their effort to prevent re-victimisation of their clients, and not to contact them against their will, make sure that their contact information is secure and not shared.¹⁷

5. Proposed Recommendations for Re-integration

- In the situation where there are legal alternatives to the return of trafficked persons to their countries of origin, the return and re-integration should be seen as one of the available options and not the ultimate solution;
- In the situation where repatriation is judged to be the right solution to a victim's problems, the question about what is going to happen to her/him after return should be answered before the return is organised and a re-integration/social inclusion plan should be developed;
- Long term reintegration programmes/activities, leading to economic sustainability, should be incorporated into NPAs, which should ensure involvement of governmental agencies in re-integration and co-operation between governmental and non-governmental institutions;

¹⁷ When the Italian NGO ISC started entrepreneurial training for victims of trafficking in Moldova, they managed to reach only 40 of more than a thousand former clients of the shelter for victims in Chicinau.

- Re-integration should be seen as part of the prevention of re-trafficking. When possible re-integration and prevention programmes should be combined and returned victims should be included in activities aimed at high risk groups (social and legal support, education and vocational training, re-schooling in skills relevant to local needs, sustainable jobs, system of micro-credits etc.);
- NGOs should be supported to develop innovative programmes of assistance and re-integration for victims of trafficking especially those developed in co-operation with trafficked persons;
- Victims of trafficking should be included in existing initiatives for disadvantaged groups (scholarships, programmes of job placements, social support, re-schooling, etc.);
- Special attention should be paid to education programmes on trafficking and programmes for the re-integration of children. This should mean family re-integration, when possible, rather than institutionalisation.
- The needs and expectations of returning women with respect to re-integrations should be researched;
- Existing re-integration programmes should be monitored and evaluated for effectiveness;
- Joint training and educational activities should be organised for trafficked persons and high risk groups, employment opportunities for both, etc.
- Special support should be available to persons under 18;
- In cases of health problems (including mental health), counselling and long-term support for traumatised victims should be available.

There are also some general suggestions for the better protection and promotion of the human rights of victims of trafficking in the process of anti-trafficking interventions that should be at least mentioned here. These recommendations address issues not sufficiently reflected in the current anti-trafficking policies such as building co-ordinated, human rights based and prevention oriented, long term anti-trafficking strategies, and placing anti-trafficking interventions within the broader socio-economic context and linking them with development and gender issues.

While return and re-integration are seen as the main option open to victims of trafficking, the capacity of the countries of origin to offer proper social inclusion

opportunities for returning victims is rarely questioned. It has to be stated that, in the general situation of poverty, unemployment and the absence of working social support structures and resources that the countries of origin in SEE, including Moldova, have to deal with, it is not very realistic to expect of them to develop sustainable programmes and measures offering returning victims the necessary long term support. The factors that forced the women to take their chances and resort to irregular migration in the first place, and in the process become victims of trafficking, do not disappear after their return but are often strengthened by stigmatisation and newly emerged problems.

At the moment almost all re-integration programmes are implemented by international organisations and local NGOs. The help they offer, while invaluable, is *ad hoc*, not well organised and not sustainable. Those organisations admit that there is great need not only for re-integration but also, in the first place, for prevention activities. Prioritising prevention would allow them to work with potential victims and high risk groups, and to prevent trafficking from happening. However, to achieve this goal, prevention and social inclusion should be integrated into the broader context of the development and anti-discrimination programmes of governments and development agencies.

Governments that have not yet included prevention and re-integration programmes into their NPAs should do so, and co-ordinate them with poverty reduction and anti-discrimination strategies. Potential victims and victims of trafficking should be included in existing initiatives for disadvantaged groups (scholarships, programmes of job placements, social support, re-schooling, etc.). Special attention should be given to programmes for the re-integration of children. This should mean family re-integration (when possible) rather than institutionalisation.

Prevention, seen as empowerment, the development of life skills and employment opportunities for high risk groups, should be the priority for governments and international organisations. It has to be stressed, however, at this point, that such prevention programmes are beyond the financial and technical capacity of the implementing agencies in the countries of origin; these needs should be recognised and more support offered.

The best programmes developed by NGOs, especially those combining prevention with re-integration, should be seen as models and be further developed, elaborated and duplicated. NGOs should be encouraged and supported to develop new, innovative programmes of prevention and re-integration for potential victims and victims of trafficking.

There should be a system to monitor and evaluate the existing prevention and re-integration programmes and the implementing institutions should be accountable for the results. The evaluation should include looking at the long term results of prevention and re-integration, and should also include the opinions and views of the beneficiaries of the programmes.

Those issues are still waiting to be properly unpacked and included into the new strategies to prevent trafficking in human beings in Eastern Europe.

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