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PANEL II

**Women's human rights
and elimination of all forms of violence against women and girls
as defined in the Beijing Platform for Action
and the outcome documents of the twenty-third special session
of the General Assembly**

Written statement submitted by

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[English only]

Barbara Limanowska,
Recommendations of the Expert Group Meeting on Trafficking in Human Beings.

During the last ten years trafficking in human beings gradually lost its invisibility and in the end became an issue placed high on the international agenda¹. In almost all the countries of the world where trafficking is a major problem it also started to be recognized as such and combated. Numerous initiatives, programmes and projects to combat trafficking are designed and implemented around the world by international organizations, local NGOs and governments². Trafficking is acknowledged to be a serious problem for countries of origin, transit and destination. Strategies to combat it focus on prevention, prosecution of the perpetrators and protection of the victims. Numerous studies and reports give better knowledge about the phenomenon itself, its causes and consequences.

Does it mean that, thanks to all the information and attention paid to trafficking we are closer to stopping it or at least controlling its development? Unfortunately the answer to this question is “No”. There are three basic criteria which allow to evaluate and measure anti-trafficking efforts up to date:

First, the number of the victims of trafficking - Is the number of the victims, that we know about, decreasing? Can we say that as the results of all the anti-trafficking initiatives trafficking is decreasing?

Second, the number of assisted victims – Is the number of the victims taking part in assistance programmes increasing? Can we say that we are able to help more victims, as the result of anti-trafficking action?

Third, the number of prosecutions – Is the number of the convicted traffickers growing? Can we say that as the result of the anti-trafficking initiatives we are able to arrest, prosecute and sentence more perpetrators?

The answer to all three questions is “No”. There is no evidence that as the result of all the effort in the last ten years we managed to significantly decrease trafficking in human beings, increase the number of assisted victims and punish more traffickers.

There are several reasons for that situation, which has to be highlighted:

1. Use of the law enforcement approach to combat trafficking instead of the human rights approach;
2. Lack of clear, based on human rights principles, mechanisms to identify and assist the victims;
3. Not sufficient role of civil society, including local NGOs, in combating trafficking;
4. Lack of development of comprehensive, inclusive governmental structures to combat trafficking.

1. Law enforcement approach

The prosecution of traffickers is the most basic precondition for preventing trafficking and stopping the “recycling” of women and girls. Otherwise, the anti-trafficking action will stimulate illegal migration and trafficking rather than reduce it. Return programmes will become free travel agencies used by traffickers to send back, at the international community’s expense, those women and girls whom they choose to release. Involvement of the law

¹ See: Thematic issues before the Commission on the Status of Women. Report of the Secretary-General. E/CN.6/2003/7.

² This presentation is based on the information from the Balkan region.

enforcement agencies in combating trafficking is necessary and welcomed. Unfortunately, majority of the police actions against trafficking do not result in prosecution of traffickers. Police is using traditional approach to combat trafficking – they raid bars, check documents of women working there, those without valid documents interrogate, some of them (willing to return to their home countries) refer to organizations providing assistance in return, some (unwilling to return) place in detention and deport. This approach raises several concerns.

First of all we have to acknowledge that the traditional law enforcement approach to the issue of trafficking – with massive bar raids as the most common action - is not effective, and proves to be even counter-productive, as it is pushing trafficking deeper underground and makes it impossible to have access to trafficked women. As the result of the police actions and bar raids of previous years, traffickers and bar owners started to change their modus operandi. There are many examples of using new methods by traffickers in response to police action. More often trafficked women are provided by traffickers with valid documents and therefore cannot be interrogated by the police. They are also kept outside of bars, in rented houses and apartments; some of them are paid for their work to prove their legitimate status. Therefore bar raids became even less useful than they used to be. They do not result in prosecution of traffickers. Police is not able to identify victims, and therefore to find witnesses of crime of trafficking and to collect enough evidence to secure successful prosecution.

According to the police, IOM and local NGOs, women and girls without valid documents constituted in 2001 about 70 percent of all trafficked women and girls³. This group is becoming smaller as the bar owners learn that the lack of proper documentation exposes women to police interrogation. This is the group that the police have right to question and detain. This group is also further divided on the basis of:

- being illegal migrants;
- working as prostitutes;
- being willing to return to their country of origin

The identification however is not really based on the testimonies of the women and the assessment of their situation. Even if the stories of women fit the Palermo Definition (women were recruited and transported for the purpose of exploitation), it seldom happens. In reality only those who ask for help in returning to their country of origin are treated as such. Also the statements confirming participation in criminal acts of the owners of the bars or other actors are becoming irrelevant, as women self are treated as criminals, not as victims able to testify. Regardless all the training and evidence that the police receives, they still tend to see trafficked women as illegal migrants working in prostitution, not as victims of crime.

There are couple of reasons for this situation.

1. Lack of clear instruction for the police about what they should pay attention to while identifying victims of trafficking, and lack of standardised set of questions they should ask women. Therefore police facing “prostitutes” prefer to rely on the familiar patterns and reduce interrogation to general questions, placing women in roles of criminals and establishing more comfortable and safer, based on power, relation between law enforcement agent and criminal.
2. The identification is closely related to the provision of assistance. The police are responsible for the identification of the victims, but when the victim is identified, they

³ Barbara Limanowska, Trafficking in Human Beings in South Eastern Europe. Current situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova and Romania. UNICEF, OHCHR, OSCE/ODIHR. Belgrade, 2002.

also must know where to refer identified trafficked persons. Due to the fact that until now there is assistance available almost only for the women who want to return home, only they are identified as victims and referred further⁴. Others, regardless all the evidence, are judged to be and are treated as criminals.

To be short: Police continue to use bar raids as the main anti-trafficking strategy. As the result bars are re-opened, women are re-trafficked, and traffickers walk free.

We have to acknowledge that the law enforcement approach, which in the last years has dominated anti-trafficking initiatives, proved to be ineffective and even dangerous. The result of this approach seems to be opposite to what was expected as it strengthened the notion that trafficked women (perceived to be and treated as criminals), are the problem that the police and border police have to deal with, not the traffickers.

But, while not very effective in combating trafficking, traditional law enforcement anti-trafficking approach has impact, on other parts of the law enforcement and state's policies. Some of them are positive:

- Strengthening the cooperation between law enforcement agencies on national and regional level;
- Giving an impulse for strengthening border control system and registration systems of migrants and foreigners.

Other negative:

- Anti-trafficking programme allow to put restrictions (often unlawful) on young women's decisions to migrate or even to travel. Very often information about women stopped or questioned at border crossings is presented as information about trafficking prevention. Refusal to issue a visa or to allow a young woman to enter the country is presented as anti-trafficking measure;
- Women are treated as criminals, detained and deported instead of being recognized as victims and referred to assisting agencies.

Law enforcement approach is therefore effective in assuring state security but not effective if we measure it by its impact on combating trafficking, understood as decreasing the crime through 3 P's approach (prevention, protection of the victims and prosecution of perpetrators). Therefore if we don't want to mix combating trafficking with combating migration and strengthening state security it is necessary to look for alternative solutions and methods to approach the issue. Police should have much more knowledge about trafficking as well as understanding for the situation of the victims. They should understand that the cooperation with institutions and organizations responsible for the assistance to the victims is the "must" and they should involve them from the beginning in the identification process. Only then they will be able to identify victims of trafficking and hear their stories. Some of them might become witnesses, if not worried about their security and provided with assistance and legal advice. Those women who want to testify should be able to do so. But than the testimonies should be used, not wasted. Witnesses should be able to await the trial in the country where it will take place, to testify during the trial, and, when appropriate, take part in witness protection program afterwards. Police should be responsible for the security of trafficking victims and their families, especially those who decide to testify, not only in the country of destination but also after their return to the home country.

⁴ In the majority of the destination and transit countries, the main organisation that has developed and has been providing services to assist trafficked persons is IOM. IOM programmes for stranded migrants are designed to support those migrants who voluntarily want to return to their countries of origin. The same requirement applies in the case of the IOM's support for trafficked persons – IOM assists those who are voluntarily willing to return home. IOM co-operates with state institutions, Ministries of the Interior and the police, and has agreements with those institutions for the referral of trafficked persons to IOM programmes of assistance.

2. Lack of strategies based on human rights to identify and assist the victims

But to achieve that we need institutional agreements and comprehensive system of identification and assistance to the victims which contribute to the prosecution of traffickers. According to local NGOs working on the issue of trafficking in the Balkan region, fast majority of foreign migrant sex workers in the Balkan countries can be recognised as victims of trafficking, according to the Palermo Definition. However, the identification process and the referral and assistance system in the countries of transit and destination reaches only a small group of trafficked persons. The UNICEF Report on Trafficking in the Balkan Region⁵ from 2002, estimated that only 1/3 of all foreign trafficked women and girls were recognized/identified as victims. At this moment even this number seems to be overoptimistic as growing number of trafficked women is equipped by traffickers in valid documents and therefore cannot be questioned by the police. Also there is still no system to identify or refer internally trafficking women and children, children trafficked for forced labour or younger children trafficked for prostitution.

Girls under 18 are a special group - even if their transportation and work in the country of destination was arranged with their consent, and not by force or deceit, they must still be recognized as victims and provided with assistance. However they are usually not recognized as minors. Some of them have false documents and pass as adults. But even those who are recognized as minors are not assisted as there are no guidelines or procedures in place that clearly outline the obligation of the police to identify children under 18 and steps they should take to ensure that this obligation is met. There are also no clear instructions defining and describing what the “best interest of the child” should mean in the context of trafficking and which special measures should be taken to protect and support minors.

There should be new types of actions designed to reach the victims, which will respond better to the changing situation. There should be clear instructions for the police how to treat victims and potential victims of trafficking. Police should also be aware that the identification of the victims is a complicated and sensitive process, which requires time, effort and professional skills. Cooperation between police and specialized NGOs and participation of the representatives of NGOs during the identification should be the standard procedure, formalized by the MoU between NGOs and the Government.

To be effective NGOs should also work much more with victims and potential victims in bars and other places (HIV/AIDS prevention work, social support, health information). In general NGOs should try to reach women working in prostitution (potential victims) with information, which might be useful to them, offering:

- Empowerment, equipping women in necessary information and survival skills;
- Building contacts and trust between NGOs and potential victims;
- Building contacts and networks between potential victims.

Pro-active approach and making known to the victims where and how they can receive assistance should be the part of the routine work with the high risk groups.

All women identified as victims of trafficking have to be assisted. NGOs should be able to organize safe places or shelters for the victims and potential victims (women who cannot decide if they want to request assistance) with the aim to protect rights of the women and support them. Women should have access to shelters regardless their decision to return to

⁵ Barbara Limanowska, *ibidem*.

their home country. Shelters should be seen by women and other agencies (including law enforcement agencies), as safe places designed to support victims – safe spaces where they could reflect on their situation and, with the support of social workers and legal assistance, decide on the future steps.

As many NGOs point out repeatedly, working with trafficked women is a very difficult and long process. It requires well-trained and committed staff, a good understanding of the issue and a well-developed work methodology and individual approach to each case. Some of the women, who are suffering from post-traumatic stress disorder, need long-term (two to three years) individual therapy. The majority need far reaching economic and social support: vocational training; jobs; housing; micro-credits. This kind of reintegration assistance should be available to all returning victims of trafficking. However, at this moment is available to almost no one. The NGOs' capacity to assist victims is very limited – shelters are small and mainly used for the victims of domestic violence. Often, there are no trained psychologists or social workers that could help the women. The special needs of girls under 18 are not addressed at all. Few organisations that could help have no resources for starting programmes for trafficked persons. No one is offering long term reintegration programmes – housing, professional skills training, educational opportunities, or loans. Except for very basic temporary accommodation for the most desperate women, there is no alternative to returning to the traffickers or going back home, usually to the situation, which had created the conditions for the woman to be trafficked in the first place.

Another issue is the security of the returning women. While their security is a priority in the country of destination and during the journey home, there is not much consideration for their safety after return. There are no security measures for the women once they have returned. In situations where women still owe money to the traffickers, or where they have testified against them, they or their families can be in danger. Women placed in the same environment from which they were trafficked, without any protection, are easy targets for re-trafficking and, if they had decided to testify, for revenge.

3. Role of the civil society, including local NGOs in combating trafficking.

The existing system of assistance and reintegration does not work well. It requires the provision of support, services and security to ensure that women and girls are not caught up in a cycle of repeated trafficking. Local NGOs while giving the reasons why returned women do not continue to seek support point out at: a lack of resources, of local capacity and of long-term service provisions. While NGOs are the main agencies that understand the problem of trafficking, work from the human rights perspective and are willing to organize support to the victims, they are faced with lack of capacity and resources to do their work. It seems that in the last year the involvement of NGOs in anti-trafficking initiatives is rather decreasing instead of growing. Next to above mentioned reasons other obstacles are: difficulties in establishing good relationships with governmental agencies, especially the police, which often refuse to cooperate with NGOs, difficulties in establishing good relationships with international agencies working on trafficking and burn out of NGOs. Due to the weak position and lack of capacity NGOs from sending and receiving countries do not cooperate and do not exchange information. There is no well-established and efficient network of supporting agencies, which could assist victims in more comprehensive way. There is also no mechanism for evaluation of existing programmes. Nobody knows how many women, supported by IOM or NGOs and labeled as “successful reintegration cases” are re-trafficked, as usually the monitoring of the cases lasts no longer than 2-3 months

While NGOs should be supported and recognized as the key actors in combating trafficking, the system of long-term assistance to the victims and integration programmes are possible only if the governments play the leading role in anti-trafficking activities through development and coordination of the National Plan of Action to Combat Trafficking, that involves governmental, non-governmental and international actors. Lack of development of comprehensive, inclusive, governmental structures to combat trafficking seems to be the biggest obstacle in creation of the successful anti-trafficking strategies.

We have to go back to the human rights perspective and acknowledge the fact that without proper support to the victims and good prevention programmes, combating trafficking is impossible. Protection and assistance to the victims must be seen not as an expensive luxury or charity to poor disadvantaged people but rather as the main anti-trafficking activity and necessary condition for successful anti-trafficking work. We have to acknowledge that the key organizations in the battle with trafficking are not law enforcement agencies but governmental institutions responsible for the implementation of the National Plan of Action, supported by the women's and human rights NGOs.

Activities of the law enforcement agencies should be integrated into a comprehensive anti-trafficking plan, designed and implemented by all involved institutions. Such National Plan of Action, initiated by the government, should create the framework for all anti-trafficking initiatives including referral system for the victims of trafficking. Referral System should be put in place by the organizations, which are appointed to play the leading role in the National Plan of Action to Combat Trafficking – governmental institutions (including law enforcement agencies and the office of the prosecutor, but also social service providers and medical institutions), non-governmental organizations and international agencies. The system should have as the main aim assistance to the victims of trafficking and protection of their rights but it also should contribute to the prosecution of traffickers. Police should receive clear instructions about their role in the Referral System and shouldn't be burdened with the tasks, which are not part of their mandate – identification of and assistance to the victims of trafficking. All agencies together should take upon themselves the design of anti-trafficking strategies (based on human rights principles) and its implementation.

The above issues were discussed during the expert group meeting on trafficking in women and girls organized by the UN Division for the Advancement of Women and the UN Office on Drugs and Crime in Glen Cove, New York, from 18 to 22 November 2002 and are reflected in the Report of the Expert Group Meeting⁶.

The DAW Report and Recommendations are important for several reasons:

1. Clear human rights perspective, as offered in the Principles and Guidelines recommended by the UNOHCHR⁷;
2. Prioritization of the protection of the rights of the victims in all anti-trafficking programmes;
3. Placing responsibility with governments to design and implement comprehensive anti-trafficking strategies and programmes (National Plans of Action) in cooperation with civil society;

⁶Trafficking in women and girls. Report of the Expert Group Meeting, Glen Clove, New York, USA, 18-22 November 2002, EGM/TRAF/2002/Rep.1.

⁷Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Ad.1.

4. Stressing importance of implementation of domestic anti-trafficking regulations based on the Palermo Protocol on trafficking.
5. Stressing importance of comprehensive referral systems for the victims, implemented jointly by governmental institutions, including law enforcement agencies and NGOs.
6. Presenting “good practices” - examples of the anti-trafficking initiatives, which are based on the proposed by the Report principles.

While many international documents on trafficking stress importance of the human rights approach, and existence of appropriate legal framework, the Report of the Expert Group Meeting is the first one to recommend comprehensive approach to the issue and suggests structural solutions, in the form of National Plan of Action. I refer you to the document for more information.