

14 January 2004

United Nations
Division for the Advancement of Women (DAW)
Consultative Meeting on
“Migration and Mobility and how
this movement affects Women”
Malmö, Sweden
2 to 4 December 2003

**Anti-trafficking action in south-eastern Europe:
Lack of effectiveness of law enforcement and
migration approaches**

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Anti-trafficking action in south-eastern Europe: lack of effectiveness of law enforcement and migration approaches¹

1. Policy approaches to anti-trafficking responses

While all the institutions working on the issue of trafficking base their actions on the same international law, and in theory use the same definition of trafficking, in practice their approach differs depending on the broader context of their work and the mandate of the organisation/institution. These differences can be divided into three different categories: migration; law enforcement; and human rights. Approaching the issue of trafficking from one of these perspectives often results in different legal and administrative tools being used to solve the problems and in different actions being undertaken by the participating actors.

The **migration approach** to the problem of trafficking is primarily used by the International Organisation for Migration (IOM). IOM's counter-trafficking programmes have grown out of pre-existing programmes for assisting "stranded migrants" – economic migrants whose illegal status and/or inability to support themselves in a new country placed them in need of humanitarian assistance. From the IOM perspective the status of the "victim of trafficking" is similar to that of the "victimised migrant" – a person desperate enough to give up the "migration dream" to return home. As victims of trafficking began to be identified in the late 1990s, the IOM missions in the Balkan countries developed special voluntary return assistance programmes for them, based on humanitarian grounds, including special temporary shelters. While IOM staff clearly recognise the unique status of trafficking victims as particularly vulnerable and exploited, their model for assisting these victims is premised upon an understanding of the problem of trafficking as principally one of unregulated economic migration.

The **law enforcement approach** to trafficking is represented by the Ministries of the Interior of particular governments, police, border police and regional initiatives/organisations to combat organised crime, including the South Eastern European Co-operative Initiative (SECI). Trafficking in human beings is seen as a crime very similar to trafficking in arms and drugs, often committed by the same international organised crime groups. While the main goal of the law enforcement agencies is to prevent/combat crime and protect innocent victims, in the case of trafficking in human beings there is a visible tension and lack of understanding of the human rights violations involved and an inability to identify the victims of the crime.

¹ This presentation is based on the report by Barbara Limanowska, *Trafficking in Human beings in South Eastern Europe. 2003 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, OSCE/ODIHR. Sarajevo, 2003.

On the one hand, the police treat prostitution as breaking public order² and therefore accord prostitutes special attention, so that the victims of trafficking appear, from a law enforcement perspective, similar/identical to women working illegally, but more or less voluntarily, as prostitutes.

On the other hand, the pressure on the police to combat illegal migration, and to prove the efficacy of the anti-migration measures, makes them treat all women without legal documents as illegal migrants. As a result, they tend to use an “everybody or nobody” strategy when identifying victims. In an everyday situation the women and children are treated as criminals (illegal migrants or prostitutes), but during the special anti-trafficking actions the police, when clearly instructed or trained, treat all women as victims of trafficking. This approach also means that young women, nationals of certain countries, experience problems while crossing borders or are refused entry, and raises questions about the negative consequences of anti-trafficking measures and status of travelling and migrating women.

The police may also have problems recognising traffickers, when they are not members of organised crime groups but rather pimps or former victims of trafficking. The mandate for the police to apprehend criminals in contexts in which prostitution is illegal, and to control national borders against illegal migration, produces a tendency for the police to treat trafficking as synonymous with anti-prostitution and/or anti-migration police work.

The **human rights approach**, which underlines the need and obligations of states to protect the human rights of trafficked persons, should in theory underpin all anti-trafficking approaches, since the “human rights framework” is derived from the human rights standards and principles contained in international treaties, covenants and protocols. In other words states are obliged to adopt the human rights approach under international law. Significantly, both the UN Secretary General and the UN High Commissioner for Human Rights have identified trafficking in human beings as one of the grossest violations and challenges of human rights.³

The *UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking*⁴ establish the primacy of the human rights, stating that:

1. “The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims;
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons;

² In Bulgaria, FYR Macedonia and Moldova engaging in prostitution is not illegal, whereas it is illegal in the other SEE countries. However, the police attitude towards and treatment of prostitutes in these three countries is not dissimilar to that in the SEE countries where soliciting is illegal.

³ See: Trafficking in women and girls. Report of the UN Secretary-General, A/55/General Assembly/22 August 2000, see site: <http://www.un.org/womenwatch/daw/followup/trafficking.html>

Also: the Secretary-General’s statement to the High Level Conference in Palermo, Italy, to mark the opening for signature of the UN Convention against Trans-national Crime, 12 December 2000, see site: <http://www.odccp.org/palermo.convmain.html>.

Also: Traffic in women and girls. Report of the Secretary-General, E/CN.4/2003/74. See site: <http://www.unhchr.ch/Huridocda/Huridoca.nsf>

⁴ Recommended Principles and Guidelines on Human Rights and Human Trafficking. Addendum to the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, see site: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument)

3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”⁵

The human rights approach to anti-trafficking action has been adopted by intergovernmental, international and local human rights organisations, as well as by some governmental structures. The role of the international organisations is to support governments in fulfilling their human rights obligations. According to the Stability Pact Trafficking Task Force: “Overall responsibility (to combat trafficking) lies with individual states, which must ensure that they comply with their international obligations under human rights norms to respect and protect the rights of individuals through legal, administrative and other facility”⁶.

The tools that the international organisations are using are those of introducing human rights norms through active participation in the governmental and inter-agency bodies established to combat trafficking, as well as through monitoring the existing anti-trafficking initiatives.

Lack of information about and involvement in the actions “on the ground” – in identifying and assisting trafficked persons - makes the influence of the international organisations problematic. Standards for the treatment of victims of trafficking and for the work of assisting agencies (for example the *UNOHCHR Guidelines and Recommendations on Human Rights and Trafficking* and *UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in SEE*) have been developed and international organisations advocate their use, but do not have direct influence on the implementation of the human rights norms since this is the responsibility of government.

The impact of these three approaches, law enforcement, migration and human rights, on the anti-trafficking responses and actions in SEE, as well as their practical consequences for the functioning and results of the anti-trafficking structures and initiatives, are the main focus of this year’s report.

2. Changes and new trafficking trends in the region

The general situation of trafficking in human beings in SEE is similar to the one outlined in 2002 report:

- The majority of foreign women working in the sex industry in the Balkan countries are victims of trafficking, according to the definition contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Trafficking Protocol), which supplements the UN Convention on Trans-national Organised Crime;⁷

⁵ *Ibid*, p. 2.

⁶ Multi-year Anti-trafficking Action Plan for South Eastern Europe. Stability Pact for South Eastern Europe Task Force on Trafficking in Human Beings. Vienna, 16 March 2001, p.11. See site: <http://www.stabilitypact.org/trafficking/atap-2001.doc>

⁷ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention on Trans-national Organised Crime adopted by the UN General Assembly in November 2000. “Trafficking in persons” is defined in article 3 of the Protocol as follows:

a. “*Trafficking in persons*” shall mean the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of

- An estimated 10-15 percent are adolescent girls under 18 trafficked for prostitution;
- Younger children under 13, both girls and boys, are trafficked for forced labour, particularly from Albania to Greece and Italy, but also from Moldova and Romania to Western Europe and Russia.

While the general situation has not changed when compared to last year, there are, however, new or previously unnoticed, trends in the region. Briefly these include:

Decreases in the number of victims of trafficking identified and assisted

In the second part of 2002 and the beginning of 2003, the number of identified and assisted victims of trafficking was lower than during the same period a year before. In the 2002 report, an estimated 35 percent of all trafficked women and girls were identified and assisted to return to their country of origin.⁸ According to the information collected during preparation of this report, this estimate has dropped significantly. For example, only 14 percent of women interviewed during Operation Mirage, in September 2002, were identified as victims of trafficking, the majority of whom were girls under 18.⁹ According to the police, NGOs and IOM, this decrease has been mostly caused by women refusing the assistance offered by the police during bar raids, or refusing assistance from IOM to return home voluntarily. This raises questions about the efficacy of existing modes of identification and referral mechanisms for victim assistance, which mainly depend on police bar raids for identification and IOM programmes of voluntary return to the country of origin for victim assistance.

Increased trafficking within the SEE region

The number of reports about trafficking between the countries of the region has increased, indicating that the Balkan states are becoming not only countries of destination and transit but also countries of origin. Distinctions between countries of origin, transit and destination within SEE are blurring. Women from Kosovo, for example, are found in Montenegro, while Serbian women are identified as victims of trafficking in BiH.

Migration and trafficking

At the same time, there are reported changes in global migration trends:

- Escalation in the pace of migration;
- Growing number of female migrants;
- Growing number of unaccompanied children;
- Rising costs for mediation in migration;

sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- b. *The consent of the victim of trafficking in persons to the intended exploitation set forth in the subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*

Where children are specifically concerned, the article goes on to provide:

- c. *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- d. *"Child" shall mean any person less than 18 years of age.*

⁸Barbara 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, UNOHCHR, OSCE/ODIHR. Belgrade 2002, p. 142.

⁹See Regional Case Study (Regional Initiatives chapter) for a detailed description of Operation Mirage.

- Demand for cheap, unprotected labour in the countries of destination;
- Abusive conditions for migrant labour in the countries of destination;

These trends suggest that the demand for cheap labour combined with the readiness of people to migrate, and the increasing difficulties in organising legal migration and legal employment in the countries of destination, may lead to an escalation in trafficking.

Migration patterns are quite similar in the different SEE countries, including the organised networks of migrants and the type of persons facilitating migration. According to local sources, in all the countries there are well-known and well-developed safe, if not legal, migration channels and opportunities. Women, however, are often excluded from these migration networks. It is more difficult for them to find reliable information and the necessary connections to migrate safely, let alone legally. On the contrary, they often rely on information about contacts passed on by word of mouth, which leads to trafficking. The leading factor is not only a special demand for sex services but also the fact that women, as well as children, are the most vulnerable and an easy target for those who want to make money out of illegal migration processes. In the countries of destination, prostitution creates multiple threats for women who have been trafficked to work in the sex industry, as they are not only illegal migrants caught in a web of obligations, but also stigmatised persons committing illegal acts and connected with organised crime networks.

Trafficking and children

There is still no reliable information on trafficking in children within or from SEE. Reports confirm that there are two groups of children trafficked, girls under 18 trafficked for sexual exploitation, and younger children under 13, both girls and boys, trafficked for forced labour, mostly begging and street selling.

According to some organisations, traffickers seem to have become more interested in trafficking in children and a growing number of girls under 18 are being trafficked for sexual exploitation. However, there is no data to confirm this assertion, and an apparent increase in attention to child trafficking could be due to an increased awareness of child trafficking issues in general in the region, rather than actual changes in the patterns of trafficking. In addition, there seems to be confusion on what exactly constitutes child trafficking. Diverse situations of child exploitation and children at risk, including child labour, child prostitution, and unaccompanied or separated children, are labelled as trafficking in children. No analysis has been made of the differing situations and needs of these children, and consequently the responses may be neither appropriate nor effective.

There is also new information about countries of origin and destination. Children are trafficked not only from Albania but also from Moldova and Romania for begging and prostitution. They are trafficked to Italy and Greece, but also to Russia, the former Soviet Republics, Poland, the Czech Republic and the European Union. Reportedly, the majority of trafficked children are coming from the poorest disadvantaged and often dysfunctional families. Many of them are perceived to be from the Roma community.

There is still insufficient recognition of the issue of the rights of children victims of trafficking and no recognition at all of the problems faced by the children of trafficked women.

Internal prostitution and trafficking

There is more information, especially from Moldova, Romania and Bulgaria, that women and girls are often initially trafficked internally for sexual exploitation. There is information from many countries about the functioning of the internal prostitution market, which leads to the conclusion that the chain of trafficking in sex workers very often starts with the local market. Pimps, who “own” women locally and control the internal prostitution market often sell them or move them from place to place. After some time these women are sold abroad. However, access to information about women working in the sex industry is very limited, especially in the countries where prostitution is illegal. The real scope of the problem can only be guessed at. With a few exceptions, there are also no organisations or institutions that can provide sex workers with information about the potential dangers of being trafficked and offer solutions to their problems.

Lines between prostitution and trafficking are more blurred

There is also a lack of understanding of the problem on the part of the police. According to NGOs, the police have already started to see foreign women as potential victims of trafficking, but have problems applying the same standards to the local prostitution market. The police are reported quite often to take advantage of their position to co-operate with pimps, and to make profits from the local prostitution market. They are, therefore, reluctant to address the issues of violence against prostitutes and internal trafficking.

There is also, on the one hand, a lack of understanding by the law enforcement agencies of the interdependence between combating violence against women, including violence against sex workers, and combating trafficking in women for sexual exploitation, so that trafficking in women is not stopped at the internal level, that is before the women are trafficked abroad.

On the other hand, there are examples in the region of the police using the excuse of combating trafficking to conduct massive bar raids without collecting beforehand the necessary evidence to prosecute the traffickers. The usual result of such raids is harassment of the women working or forced to work in the sex industry and their deportation, while the bar owners, pimps and traffickers go free.

Trafficking routes

The victims of trafficking are nowadays more often travelling with valid documents and they are moved more frequently by air directly into Western Europe. This change is due to the less strict visa regimes for the citizens of some SEE countries,¹⁰ combined with the stricter border control and anti-trafficking measures introduced in the SEE region in recent years.

There is also information that the patterns of trafficking in Albania are changing, since the smuggling of migrants and trafficking of women by speedboats from Vlora to Italy was stopped by persistent police action. The place most notorious for trafficking in Albania is no longer active. However local sources are sceptical about the permanent effect of these actions and are pointing to the other border crossings and other routes used by traffickers, who are now using the port of Durrës and overland routes into Greece and FYR Macedonia.

¹⁰ Bulgarian citizens (since 2001) and, Romanian citizens (since January 2002) are now able to obtain Schengen visas, which allow them to travel without any restrictions in the majority of EU countries. This regulation also has implications for the many Moldovan citizens with Romanian passports.

Traffickers

Traffickers are not a homogenous group and several types can be identified:

- Members of organised, often international, criminal groups. Involved in various types of criminal activity, they organise trafficking in the same way as the smuggling of goods and gain profits from the sexual exploitation of trafficked women in the bars/brothels owned by them or their acquaintances.
 - Pimps/small crooks, local persons from the places where the victims were recruited. This group also includes women who were trafficked themselves, but have started to co-operate with the criminals and work for them as middlepersons.
 - Businessmen, policemen and politicians, who co-operate with organise crime and gain profits from trafficking. Often they themselves own bars or help to run them.

While the police combating trafficking concentrate on the high profile cases and focus on combating organised crime, i.e. international criminal groups, not much attention is paid to the role of intermediaries and local organisers. This situation has implications primarily for the process of social integration of the victims after return and their willingness to testify against traffickers. Women who are sent back home are often less afraid of the criminals from other countries than of the local people who contributed to their trafficking, know them and their stories, have access to them and their families, can blackmail them and are obviously not afraid of being arrested and convicted.

The discussion, started in 2002, about the need in the region for witness protection programmes and laws, as well as for intelligence based investigations, shows that the issue of correlation between the lack of prosecution of traffickers and the lack of protection for victims of trafficking has become one of the priorities in anti-trafficking work.

3. Current criteria for the assessment of anti-trafficking responses

Three basic questions are usually asked to assess the impact of anti-trafficking action in SEE to date. Has trafficking decreased overall? Has there been an increase in the number of victims identified and assisted? And finally, has the number of prosecutions and convictions increased?

However, from a human rights perspective, anti-trafficking actions should not only contribute to the short-term results, as measured by the number of assisted/returned victims and the number of arrested and prosecuted traffickers, but should also support the creation of sustainable local democratic structures that promote the protection of human rights. An additional question can therefore be added to the assessment criteria: have anti-trafficking responses supported the development of local sustainable structures to protect the rights of victims of trafficking?

3.1 Trafficking in SEE has not decreased

The information gathered from various institutions and organisations for this report indicates that there has been **no major change** in the situation of trafficking in the region compared to the situation described in the report of June 2002:¹¹

- Approximately 90 percent of foreign women working in sex industry in the Balkan countries are victims of trafficking according to the Palermo Trafficking Protocol definition;
- 10-15 percent of them are children under 18. The estimated proportion of children is higher in Albania – up to 30 percent.

New trends have been observed in the region:

- Trafficking has increased between the countries of the region, which means that *the Balkan States are increasingly becoming countries of origin*. Distinctions between different countries of origin, transit and destination are becoming blurred and are less relevant.
- *Trafficking in men* to Western Europe, Russia and Former Soviet Republics for forced labour.
- *Trafficking in children*, not only from Albania to Greece and Italy, but also from Moldova and Romania, for begging and child prostitution in the Russian Federation, the former Soviet Republics, Poland, the Czech Republic and the European Union.
- *Negative impact of trafficking on children*. In the region, there is a large group of children of female migrants or victims of trafficking who are being raised without parents or by their extended families or placed in institutions while their mothers work abroad.
- *Internal trafficking* of women and girls for sexual exploitation (especially in Moldova, Romania and Bulgaria, but also in other countries, including BiH and Serbia and Montenegro). Trafficked women and girls are often initially internally trafficked. Information from the police and NGOs in many countries on internal prostitution markets leads to the conclusion that the chain of trafficking for sex workers very often starts at home. Pimps, who “own” women locally and control internal prostitution markets, often sell women or move them from place to place within a country. After some time, these women are often sold abroad.

3.2 The number of identified and assisted victims of trafficking has decreased

Although there seems to be no overall decrease in the scope of trafficking in human beings in the region, there has, however, been **a decrease in the estimated number of victims identified and assisted**.

During 2001, an estimated 35 percent of all victims of trafficking were identified and assisted in the countries of destination with only an estimated seven percent receiving long-term reintegration assistance.¹² In the second half of 2002, however, these figures, with exception of those from FYR Macedonia, have decreased substantially:

¹¹ 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, UNOHCHR, OSCE/ODIHR Belgrade, 2002. Report can be found at www.unicef.org/sexual-exploitation/trafficking-see.pdf

¹² *Ibid.*, p.142

- In Kosovo, although using the same operational procedures as before – extensive bar raids combined with document checks and interviews with the women and the bar owners – the police did not have the same results and only brought a few women to the shelter each month;
- In BiH during the same period, the UN STOP Team conducted many bar raids, before leaving the country at the end of 2002. The STOP Team raided the same bars many times and repeatedly detained the same women, who continued to refuse assistance on offer;
- During Operation Mirage, organised by the SECI Centre and conducted simultaneously in ten countries of the region in September 2002, only 237 alleged victims were identified as such (14% of re-interviewed women and girls suspected of being victims of trafficking). Moreover, only 63 victims were assisted (4% of 1,738 women and girls suspected of being victims of trafficking and re-interviewed by the police). This is out of a total of 13,000 women and girls who were interviewed during raids in more than 20,000 locations throughout SEE.

3.3 Traffickers go unpunished

There has been **no substantial increase in the arrest, prosecution or sentencing of traffickers**. For example, during Operation Mirage, 293 traffickers were identified and 63 victims of trafficking were assisted. That means that in an average case of trafficking, exposed during Operation Mirage, four or five traffickers were engaged in the process of trafficking one woman. The problem with prosecuting these traffickers is collecting the evidence against them. The victims' testimonies are still often the only available evidence in trafficking cases, but the victims are frequently unwilling to testify for a whole host of reasons (see section 2.4 below). When there are no witnesses willing to testify, there is a strong possibility that the traffickers will be identified by the police but neither prosecuted nor sentenced. The inability to identify and protect victims of trafficking means that the traffickers will not be prosecuted.

3.4 Victims' human rights are not protected

In the last 18 months, many positive changes have taken place in the general area of anti-trafficking work:

1. Better understanding of the definition of trafficking. The definition has expanded to include groups which were not usually mentioned in the context of trafficking in 2001, internally trafficked persons, trafficked men, trafficked children and children of trafficked women;
2. Improved legislation. In almost all countries the legislation now criminalises trafficking, and in many countries efforts have been made to create a legal framework for witness protection and to assist the victims of trafficking;
3. Better organisation of governmental structures, including the appointment of a National Co-ordinator and the preparation of a National Plan of Action;
4. Development of police structures to combat trafficking/organised crime;
5. Better regional and bi-lateral co-operation in the region; and
6. Better inter-agency co-operation.

Despite many positive changes in general anti-trafficking work, in relation to identification, referral and assistance for the victims of trafficking, the most important statements and recommendations from last year's report are still valid:¹³

1. Not all victims of trafficking are identified as such; many are treated as illegal migrants, detained and then deported;
2. There is no assistance available to trafficked women, except for those victims who take part in IOM's return programmes;
3. There are no standard operating procedures for the agencies working with victims of trafficking and no minimum standards for the treatment of the victims of trafficking used by the assisting agencies;
4. There are almost no HIV/AIDS prevention programmes or treatment for the victims;
5. Child victims are not identified as such, nor provided with the special protection to which they are entitled.

A year later, the situation for victims of trafficking has not improved. **Victims are still not identified; assistance is limited; there are no standard operating procedures for the agencies working with victims of trafficking; and no minimum standards exist for the treatment of the victims of trafficking, especially children.** Very little has changed in the area of HIV/AIDS prevention either. The only positive change has been the recognition of and assistance to trafficked children and, to some extent, to internally trafficked women.

It is a paradoxical situation where, on the one hand, we can note great progress in the creation and development of anti-trafficking measures in the region, but on the other hand, little progress in implementing these measures to support the victims of trafficking.

The challenges that remain are related not to the direction of the changes, which have to be valued very highly, but rather to the way in which the policies have been implemented. While the structure for action is much better developed than a year ago it does not always work in the way envisaged and suffers from:

1. Lack of a human rights framework;
2. Improper interpretation of what trafficking is; mixing up trafficking with illegal migration and smuggling, and victims of trafficking with illegal/smuggled migrants and prostitutes;
3. Lack of a holistic approach to trafficking; not addressing the issues of protection, prevention and prosecution as interrelated;
4. Very strong emphasis on law enforcement and policing migration;
5. Insufficient co-operation between organisations working on anti-trafficking within the different approaches (human rights, law enforcement, migration);
6. Lack of protection mechanisms for victims and witnesses; especially the lack of proper identification procedures for the victims and the lack of appropriate assistance/protection;
7. Lack of comprehensive long-term goals for the anti-trafficking strategies, and the frequently unclear role of the international organisations.

While all organisations and institutions claim that they operate within the human rights framework and are acting in the best interest of the victims, this best interest is not clearly

¹³ 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, UNOHCHR, OSCE/ODIHR. Belgrade, 2002. p. 142 Report can be found at www.seerights.org

defined and not always even well assessed. For many agencies, the main focus is on acting within the mandate of their agency, achieving their goals and co-operating efficiently with others without engaging in analytical and policy development work.

Given that the number of women identified as trafficked is decreasing and the system of assistance does not offer adequate support to the victims, there is a need for new and more effective strategies to combat trafficking. In order to find an alternative to shelters where the few women and children that agree to go there remain locked up, there should be a change in the way that the system of identification and assistance operates. Comprehensive national referral mechanisms should be created based on human rights and the best interests of the victims.

This is especially pertinent if combating trafficking is not to be turned into combating migration and strengthening state security, without really addressing the crime of trafficking in human beings as such. It is necessary to look for new, alternative solutions and methods to approach the issue of the referral of trafficked persons, i.e. identification, assistance and re/integration, based on human rights principles that prioritise the victims' rights. We have to acknowledge that there is no other way to fight trafficking but through the protection of the victims of trafficking. All victims have to be identified as such and all have to be protected and assisted, offered real options to choose from and then integrated back into society in the country of destination, in their home country or in a third country. If properly protected, provided with assistance, legal advice and security, some of the victims of trafficking will then become reliable witnesses in prosecution cases against traffickers.

4. Identification of victims by law enforcement: victim or criminal?

The decrease in the number of assisted victims might lead one to assume that trafficking in the SEE region is decreasing. This situation is complicated by issues such as changes in visa regimes and border controls, as well as shifts in the international political scene. Since January 2002, Romanian citizens have been able to obtain Schengen visas, allowing them to travel without any restrictions to the majority of EU countries. This regulation also has implications for the many Moldovan citizens in possession of Romanian passports. Combined with information that victims of trafficking are increasingly travelling with valid documents, and that more victims are moved by air to Western Europe, this implies changes in the trafficking routes rather than any decrease in trafficking itself. Increased border controls resulting in reportedly lower numbers of illegal border crossings might also indicate that illegal migration and the accompanying trafficking are decreasing. In addition, the downsizing of the peacekeeping forces, whose arrival *en masse* in the Balkans has been directly linked with an increase in trafficking, may have decreased the demand for sex workers and consequently trafficking.

However, various sources in the SEE countries claim that the reason for the lower numbers of assisted victims and

Impact of law enforcement and migration approaches to anti-trafficking action in SEE:

- No overall decrease in human trafficking;
- BUT**
- Increasingly fewer victims of trafficking are identified and assisted;
- No substantial increase in prosecution or sentencing of traffickers;
- Victims' human rights are not protected.

Police action -centred / migration approach needs to be complimented by and turned into a human rights-centred approach when combating human trafficking

lack of prosecutions in the region is not a decrease in trafficking but rather the ineffectiveness of both police activity and the migration approach to victim assistance in the face of new trafficking patterns.

4.1 Change in the *modus operandi* of traffickers

Traffickers seemed to have changed their *modus operandi*, but this has not been followed by changes in police strategy or action, whose effectiveness has decreased as a result:

- Trafficked women are increasingly kept in rented apartments and hotels, to which the police find access more difficult – hence bar raids are becoming increasingly ineffective;
- More women have valid documents - hence documents checks are also less effective;
- Women are being paid more than before and are therefore hesitant to accept the very limited help that is offered to them, because this means the loss of their only source of income as well as an immediate return home.

Police action, as characterised almost solely by bar raids, has proved to be not only ineffective but also counter-productive. Traffickers and bar owners are simply moving victims of trafficking from bars to other, non-accessible places, driving the business of trafficking underground and making access to the victims more difficult. Moreover, as trafficking has become less visible, it has also become less socially and politically disturbing. The situation in SEE has become very similar to that in Western Europe, where trafficked women and girls are confused with and often perceived as voluntary prostitutes.

This situation has had some positive consequences for trafficked women: the bar owners pay them more; treat them better; and there has been a decrease in reports of extreme abuse and violence against trafficked women. As a result, the women usually do not consider themselves as victims of trafficking, especially when the police can offer them no real alternative. However, the negative impact of these changes is that trafficked women and girls have less contact with the outside world and are even more dependent on their traffickers.

4.2 Lack of criteria for victim identification

Although the police are mainly responsible for the identification of victims of trafficking, it is still unclear what criteria they use for this purpose. Or rather, it becomes more and more clear that the police, despite countless trainings and reassurances, still have no reliable methodology or criteria on the basis of which to identify victims of trafficking.

The report from Operation Mirage suggests that the women labelled suspected victims of trafficking were all those whose identity and residence status in the country were checked and found to be suspect. It is not clear on what basis some women and girls were referred to the shelter and others were subjected to “administrative measures”.¹⁴ It is widely known by the police and assisting organisations that most trafficked women have legal documents, as visas and even working permits are often obtained illegally by the traffickers; yet the police continue to treat only women and girls without valid documents as suspected victims of trafficking.

¹⁴ The meaning of these “administrative measures” is unclear but most likely they refer to the issue of deportation orders or the refusal by the border police to allow women or girls to enter or leave the country.

In this context, the interplay between the law enforcement and migration approaches comes to light. Criteria commonly used by the police to identify potential victims of trafficking includes:

- Working in bars/brothels;
- Lack of proper documents;
- Willingness to enter a return and reintegration programme.

For the border police, the criteria for identifying victims of trafficking include:

- Trying to cross the border illegally;
- Being stopped at collecting points for persons awaiting to be smuggled cross a border;
- Being a young female;
- Returning after an illegal stay in an EU country or deported/expelled from an EU country.

While these criteria are a good start to identifying victims in certain cases, they also exclude a large number of other victims of trafficking, including victims who have legal documents, victims working in places other than bars/night clubs, and those victims unwilling or not able to accept immediate return to their country of origin.

4.3 Identification conditional on co-operation with the police

It seems that the police often give women and children the impression that their status as trafficking victims and the provision of assistance depend on their willingness or ability to provide the police with information and to testify. The women are unaware that they can receive help without giving information to the police, perhaps because they come into contact with the police first.

Another condition for support, generally imposed by the police, is being included in a database, which is described, depending on the country, as the database of illegal migrants, or foreign women working illegally in the country, foreign prostitutes, prostitutes in general, potential victims of trafficking, or victims of trafficking. No matter what the name, victims of trafficking are registered and entered in such a database if they come in contact with law enforcement agencies in any of the countries of the region.

Victims of trafficking are interviewed by the police and IOM several times in the process of identification and assistance.¹⁵ Women and children, persons under extreme stress have to repeatedly give answers to the questions, which on the one hand might put them in danger, and on the other might traumatise them even more. The reliability of information so obtained has also to be questioned.

4.4 Victims do not trust the police

Generally, women and children stopped by the police, with or without legal documents, do not want to co-operate with the police and are usually cautious about providing them with any information that might identify them as victims of trafficking. They tend to repeat well-rehearsed stories and omit the real facts. Women and children are aware that their status (illegal stay, illegal work, illegal prostitution, involvement/connections with members of

¹⁵ They are interviewed up to four times in Macedonia, and Romania, three times in Serbia, two, three times in other countries. One person can be interviewed up to eight times during the process of assistance.

organised crime groups/criminals) makes them vulnerable and are trying primarily to protect themselves. Persons working with the victims in shelters confirm that they share the real stories and facts after a while, but would rather share them with social workers or psychologists than the police, if at all.

Therefore, we should ask several questions when thinking seriously about new, more reliable and effective ways to identify victims. Firstly, is it possible to change the attitude of the police towards trafficked women and children? Secondly, would it be possible to change the attitude of trafficked women and children towards the police? Thirdly, is it possible to establish a relationship built on trust and understanding, so that the victims start to trust police officers and come forward? The challenges are well known:

- The attitude of the police and society at large towards sex workers in general; quite often when confronted with prostitutes, policemen behave more like clients or pimps (women and girls are pushed around, bullied into giving testimonies, treated in a patronising way) than protectors;
- Corruption of the police, including co-operation with organised crime or direct involvement in trafficking as well as co-operation with pimps and general acceptance of the local prostitution scene with broadly spread violence against prostitutes by pimps, clients and police;
- Illegal status of trafficked women: being illegal migrants, having contacts with organised crime or working as prostitutes in countries where prostitution is illegal.

4.5 Pros and cons of the law enforcement approach

While not very effective in combating trafficking the traditional law enforcement anti-trafficking approach has had a positive impact on other areas of law enforcement and state policies:

- Strengthening the co-operation between law enforcement agencies at national and regional level;
- Giving impetus to strengthening border control systems and registration systems for migrants and foreigners;
- Collaborative efforts to fight organised crime and the smuggling of migrants.

However, police actions to combat trafficking in human beings should not be undertaken in parallel with actions against illegal migration, as this has proved to be counter-productive:

- Anti-trafficking programmes have discouraged, often unlawfully, 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 the prevention of trafficking. Refusal to issue a visa or to allow a young woman to enter the country is sometimes presented as a valid anti-trafficking measure;
- Trafficked women and children are treated like criminals, detained and deported instead of being recognised as victims and referred to assisting agencies.

So far, the protection of victims has not been considered a priority for law enforcement anti-trafficking action since most often victims are not identified as such. Rather than being identified and assisted, victims of trafficking are more often treated as offenders and deported as illegal migrants.

5. Victims' access to assistance: the only option is to return home

3.1 Identification and referral: law enforcement and migration approaches in action

Once identified, most victims are only offered the option of returning to their home countries. This is largely a result of the situation in SEE where the only operational and well-organised assistance system available for victims of trafficking is the one developed and operated by IOM. The operational identification, referral and assistance system that has developed in SEE is based on the almost exclusive co-operation between the police and IOM. Women without valid documents are interviewed by the police in a bar or at a police station. Those who decide to ask for help and agree to take part in IOM programme are sent to a shelter. The transfer to the shelter is immediate - often women are not even able to collect their belongings or demand that the owner of the bar/trafficker pays them the money owed to them. The knowledge that agreement to enter the return/assistance programme is connected with the loss of the few belongings that they possess and the money that they have earned is one of the key factors in the victim's decision making process; some women decide to stay in the bar rather than part with their possessions.

3.2 Assistance equates to repatriation

Women who take part in the IOM programme of voluntary return for victims of trafficking have agreed to be repatriated. However, it is difficult to talk about free choice and voluntary participation in the programme when this choice is limited to: a) being deported by the police; or b) being repatriated by the IOM. This choice does not say much about the real wish of a woman to return to her home country, it only says that she prefers to return with IOM rather than as a deportee.¹⁶

From the point of view of the victims, the part of the offered support that is most often unacceptable is the requirement of the helping agency (IOM) that the women agree to go back to their home countries. In the situation where a woman is the only financial provider for her family and for her children left at home, this requirement is often too difficult and too unrealistic. Given the limited choice between staying in an abusive situation and sacrificing themselves for the well being of their families or going back and feeling responsible for the family's poverty, women often decide to refuse help. This is especially the case if they know that they are going back to a situation, which does not promise them much more freedom from abuse and discrimination.

Some NGOs even expressed the opinion that some women are manipulated into agreeing to return, and that the return is no more their free choice than deportation but only conducted in a more humane way. This needs to be taken into consideration while seeking alternative ways of assisting victims of trafficking and developing new social integration strategies.

3.3 Re-victimisation in the process of assistance

Despite the prevailing opinion that victims of trafficking should be grateful for any kind of help that would allow them to leave abusive conditions, and that anything assisting agencies

¹⁶ There are cases of women choosing to be deported as an illegal migrant rather than to be repatriated and stigmatised as a "prostitute".

can offer is better than the exploitation to which they are subjected, victims often have a quite different opinion. When approached by police, many women refuse to be recognised/identified as victims of trafficking. Police officers and service providers interviewed for this report clearly stated that the identification itself is not such a problem and that they have had no difficulties recognising victims of trafficking. The challenging part in their opinion was convincing the victims of trafficking that they should accept the assistance offered and that they would be better off in the hands of law enforcement agencies and IOM than in the hands of traffickers.

Victims often express the opinion that they do not receive adequate assistance. They associate the existing provision of support with:

- Stigmatisation – participating in an IOM programme means that they are in danger of being recognised as a prostitute. Returning with such a programme means that people in their country, family and friends might also find out about their past;
- Criminalisation – women are included in databases and are registered with the police. In some cases, they have stamps put in their passport preventing them from re-entering the country from which they were repatriated. They can also be accused of crimes related to trafficking;
- Re-victimisation – alleged victims have to undergo a medical examination (so called “Fit to travel” examination), they have to answer many questions, including some very personal and embarrassing ones, posed by the police, border police and IOM in the countries of destination and upon return to the country of origin. Their freedom of movement is restricted; they may be locked in the shelters and their activities controlled.
- Lack of protection – while in the custody of law enforcement agencies and with IOM in the country of destination, as well as during the journey to the country of origin, the women are protected by the police. This protection stops when they arrive in their home country and leave the shelter there. The return and possible encounters with their traffickers can be traumatic and dangerous experiences, especially for the women who have divulged information to the police. Quite commonly victims of trafficking try to protect themselves and their families by changing their testimonies after their return so as not to accuse the traffickers.
- Lack of long-term support – after repatriation victims of trafficking are usually sent back to the places from which they were trafficked. They have to face the same problems of unemployment, lack of means to survive, lack of perspectives, abuse, discrimination, all of which are often exacerbated by the new stigma. Some women decide to co-operate with traffickers and become one of them, while others are re-trafficked.
- Lack of real options – as it has already been pointed out, many women decide to stay in an abusive situation and not to accept assistance, because they perceive sex work as the only available way to support themselves and their families. Assistance programmes, from the victims’ perspective, do not offer any viable long-term options.

To sum up, victims of trafficking are stigmatised and victimised in the process of assistance. “Do no harm” in the process of assistance should be the condition *sine qua non* for all involved agencies. Even though this condition is rarely met, the voluntary character of the victim’s actions and choices needs also to be incorporated in all assistance programmes.

6. Inadequate victim/witness protection results in the lack of prosecutions

Priorities for the police are investigation and the prosecution of traffickers. The law enforcement approach to date has relied on the testimonies of witnesses/victims of trafficking identified during bar raids, often regardless of the consequences for the witnesses. Victims are not informed by the law enforcement agencies or the organisations providing victim assistance about the consequences and the dangers associated with testifying. They do not receive proper legal advice and often have no legal representation.

4.1 Lack of legal assistance

Lack of knowledge and understanding of their situation and of the status of victim of trafficking, in addition to the lack of available options, contribute to the inability of victims of trafficking to make informed decisions. During the process of identification and assistance, with few exceptions, women and children are still not receiving legal support and do not have legal representation and sometimes there is not even any translation of the proceedings into their language.

When asked about the reasons for the lack of legal support for victims of trafficking in 2001, the IOM shelter management in many countries of the region claimed that there were no trained lawyers and no NGOs that were capable of offering these services to the victims. A year later, there were many NGOs across the region prepared and ready to offer these services. All of these NGOs claimed that they were unable to use their knowledge for the benefit of the victims as it was either too difficult to reach agreements with direct service providers or that they were requested to work without any compensation for their services. As a result, despite the capacity for legal assistance in almost all countries of the region and local organisations ready to offer their services, victims continue to be left with little legal support and offered only the very limited legal information available from the social workers in the shelter. One assisting agency even claimed that the lack of legal representation is in victims' interest as the lawyers could make problems for the police and change the police attitude towards the victims for the worse. Only women who are testifying against traffickers are usually assured of legal assistance.

4.2 Lack of information about legal procedure

Due to the lack of legal assistance, victims of trafficking in shelters often do not understand the legal process and consequences of testifying. Since victims are often treated as criminals rather than victims if they do not co-operate with the police, they agree to testify without any assurance of protection and security, simply because they do not know their rights as witnesses.

In Bulgaria, for example, there is no functioning witness protection system and according to NGOs, women are often harassed by traffickers and re-trafficked after return. Over 90 percent of women in the IOM programme of return and reintegration in Bulgaria agree to talk to the police, while almost no women assisted by La Strada in the same country wanted to do the same. While IOM Bulgaria provided no legal assistance or information to victims in relation to being witnesses, La Strada informed their clients about the fact that they did not have to talk to the police if they were afraid of the consequences and their security. Similarly, the

women in the IOM programme in Moldova who were informed by the shelter staff about the possible dangers related to testifying, refused to co-operate or provide information to the police.

According to most IOM offices in the region, victims who have benefited from the IOM return and reintegration programmes usually co-operate with the law enforcement agencies. However, without information and legal advice, the “voluntary” character of such co-operation with the police is questionable.

4.3 Lack of victim/witness protection

The police priority for investigating and prosecuting traffickers entails collecting evidence, taking testimonies from the victims and creating databases on victims. The police are under pressure to show results from the anti-trafficking actions and to prove their effectiveness. ‘Effectiveness’, however, is usually measured by the numbers of identified victims, collected interviews and files in databases, rather than the numbers of arrested traffickers and successfully prosecuted cases. Too often the police focus their actions not on the perpetrators, but on the victims of trafficking. Repeated interviews, combined with lack of understanding of the process, lack of knowledge of their rights as victims or witnesses, often re-traumatise victims of trafficking.

Protection for the victims of trafficking who decide to testify does not exist, nor does special protection for child witnesses. The “Moldovan case”¹⁷ showed that the existing system of support has not adjusted to the situation when a victim does not directly return to her home country and is supposed to stay longer in the country of destination to testify against the traffickers. In many countries, there is no accommodation for a woman in such a situation, because of the “high risk” she represents which would put the personnel and other persons staying at the same place in danger. The system of assistance created by IOM focuses primarily on the efficient repatriation of the victims, within the existing legal framework. Very rarely are the needs of the prosecution met, because in the majority of SEE countries there is still no legal basis for allowing women who are willing to testify to stay longer.

Women are protected against traffickers while in the shelters by being locked inside. But once inside the shelters they do not have professional legal assistance, nor are they properly informed about the possible consequences of the testifying, or giving information to the police. Victims usually have to leave the country after giving their written testimonies. They do not know if or how their testimonies will be used in court. As women do not appear in court, their testimonies are usually only read out, with very limited if any impact on the jury.

Protection of witnesses is presently the weakest point of anti-trafficking programmes in all countries of the region. Even in countries that have developed legal provisions to ensure witness protection in criminal cases, such laws are most often not implemented due to missing implementation legislation, political will, etc. Shelters are not prepared to take care of the victims of trafficking requiring high security. The police in the countries of origin are also not able to provide sufficient protection. *Ad hoc* remedies, such as resettlement in a third country, are scarce although in some recent high profile cases in the region, women have received this sort of assistance. Moreover, third-country resettlement and asylum do not necessarily ensure protection of the victim/witness.

¹⁷ See chapter on Montenegro in this report, pp.

4.4 Lack of data protection

The police are collecting enormous amount of information, including information so explicit that, while not really relevant to prosecution, reads as pornographic material, for example about numbers of clients, or performed services. Although they are creating enormous databases of victims/alleged victims of trafficking, the results are not translating into the successful prosecution of traffickers, and in the process they are victimising and criminalising victims of trafficking as well as possibly putting them in danger. There are also no international standards for data protection used in the process of developing and maintaining these databases.

At the same time, police intelligence gathering is still extremely weak across the region and SECI is still in the process of developing and improving its operations. Evidence of criminal activity that would stand up in court without victims' testimonies is almost never gathered. Hence, the traffickers are rarely arrested. When they are arrested and prosecuted the process usually ends in the charges being dismissed, while the victims are re-traumatised and re-victimised. There is a need for a long term, structural solution to this problem to secure the safety and the rights of the witnesses and the successful prosecution of traffickers.