

## Responding to transitions and new challenges in combating human trafficking

*Marieke van Doorninck, La Strada International at the conference marking the 10<sup>th</sup> anniversary of the opening of the signing of the Council of Europe Convention on Action against Trafficking in Human Beings*

Good afternoon ladies and gentlemen,

Congratulations to the Council of Europe with the 10<sup>th</sup> anniversary of this very important convention and thank you very much for inviting me to speak here today.

La Strada International has always been an active supporter of the Convention as it is, although developed within the criminal justice framework, the first international treaty on combating trafficking in persons that included the protection of the rights of trafficked persons and that was serious about the implementation of the provisions by providing for a monitoring body. GRETA was from its early days very clear about that following the implementation of these rights into the national counter trafficking policies would be one of the priorities in their evaluations. Almost six years ago, when the first Group of Experts was just established, I had the honour to speak at the Council of Europe conference on GRETA and was asked to give a presentation on how information can be gathered from civil society. I broadened my assignment and gave recommendations on how NGOs could be partners of GRETA in the monitoring of the efforts of States to implement the Convention. Looking back at the first evaluation round, I am happy to say that the cooperation of GRETA with civil society has indeed been one of real partnership. GRETA has shown much interest in establishing contacts and ensuring to get information on the protection of the rights of trafficked persons, with a focus on rights in practice and not only rights on paper. This cooperation is of mutual benefit, GRETA was ensured of getting information from grass roots level and NGOs knew that their - and more importantly the voices of trafficked persons were heard at the international level and that their experience and expertise is acknowledged.

For today I was asked to focus on the main transitions and new challenges in combating human trafficking. First I want to address an old and ongoing challenge, the lack of identification of trafficked persons. We all know that identification is the first condition that needs to be met, for trafficked persons to be able to receive their rights and also of utmost importance in the prosecution of traffickers. All international and intergovernmental organisations active in the fight against trafficking have flagged the serious lack of identification of trafficked persons as one of the biggest obstacles to address trafficking. It is in the 'top 10' of GRETA's recommendations in the latest general report. When observing a lack in the implementation of international legislation, it is always important to distinguish what the reason could be for this non compliance. This is needed in order to know how to address the problem and to formulate recommendations. It can be ignorance, or to put it nicer a lack of awareness. It can be incompetence meaning a lack of skills and knowledge, but it can also be a lack of (political) will. Trainings and awareness raising campaigns for professionals can still make a world of difference to increase identification of trafficked persons. But how do we deal with a lack of political will to identify victims, as the result of a lack of political will or courage to grant rights to migrants, even if they are severely exploited? This lack of political will is reflected in the lack of resources for the labour inspectorate and the fact that there is no firewall between

the inspectors who inspect the working conditions and signs of exploitation and those who inspect the residence status of the workers. NGOs report that that their governments are more interested in fighting irregular migration, rather than detecting exploitation and identifying victims. Also GRETA reports that in some countries victims of trafficking appear to be treated first and foremost as irregular migrants rather than victims in need of specific assistance and protection as guaranteed by the Convention.

At the same time, exploited persons might be very reluctant to come forward in fear of deportation or other repercussions. For many trafficked persons, it is doubtful if identification is always in their best interest. In the majority of countries, they are still expected to fully cooperate with the law enforcement and their access to support and justice is still conditional to this cooperation.

When addressing the problem of the lack identification, it might be interesting to consider what it is we want to identify. It is the crime, or is it the person in need? If it is the first, it is interesting to look if there are also other indicators that can be used that can identify exploitative circumstances. We do not always need the person as witness and who has to deliver the 'burden of proof'. For the prosecution of the crime of trafficking, not only the exploitation is important, but also how the person got into this exploitative situation. For the exploited person it is mainly important to end the situation of exploitation, to overcome the harm done, to receive unpaid wages and find a job with decent working conditions.

If we are serious about the human rights approach to trafficking in human beings and that our first obligation is towards the trafficked persons, we have to consider if it would be better to separate, at least in the first beginning of the process, the identification of the crime and the identification of a person in need, leading to a criminal process and a social process.

In the slip stream of the attention to trafficking in human beings of the last 10 years, the awareness and knowledge on labour exploitation itself has tremendously increased. Because the two are interlinked and often discussed at the same time, quite often the two are conflated or used as if they are the same. A representative from an NGO working with undocumented workers in Belgium, says he wishes his clients were victims of trafficking, then they would be granted rights, but because they are only severely exploited workers, they are not entitled to any support. The report of the EU Fundamental Rights Agency (FRA) on Extreme forms of labour exploitation that was published and presented last week in Brussels, shows that extreme forms of labour exploitation in Europe occur on a large scale and is often referred to as trafficking, but it not always involves the three elements of the crime of trafficking (act, means and purposes). How can we use this increasing knowledge on labour exploitation that happens in Europe to support and protect the rights of the exploited workers? Do we allow for a 'function creep', meaning lowering the threshold of the trafficking suspicion in order to widen the operative space of assistance services for victims of trafficking. The recommendations in the FRA report are hinting in this direction, to open up the protective measures that are there for trafficked persons also for severely exploited persons. For NGOs working with exploited persons, this conflation does not have to be problem, as for us the exploitation itself is the core of the problem, not the circumstances how the person got into that exploitative situation. But restricting this to the most extreme cases detracts attention from less-severe exploitation.

Where do we draw the line in the continuum of exploitation. To what extent do we allow the function creep in trafficking in human beings. In Germany, there are now discussion to outlaw labour exploitation all together. I do not know if that is the way forward, or if it would just be adding another confusing criminal concept.

We need to acknowledge that in labour exploitation in Europe is much bigger than trafficking in human beings and the fact that only a smaller number of exploited workers got into the situation of exploitation through trafficking, does not make the situation less problematic.

Last challenge has already been mentioned today, the human tragedies in the Mediterranean sea and increasingly in Balkan countries, caused by the humanitarian disasters in the Mena region and Africa. It seems that in its answer to this disaster, the European Union confuses prevention with deterrence. I am of the opinion that we as the anti trafficking community, should not allow States to use anti-trafficking rhetoric to introduce repressive measures, such as bombing the vessels and introducing stricter border controls. It is important not to conflate smuggling and trafficking, but we also have to acknowledge that those refugees and migrants that are so lucky to reach the shores of fortress Europe, are very vulnerable to trafficking, labour and sexual exploitation and other forms of abuses. The anti migration sentiments in Europe, fed by some of our politicians and even our government leaders lead to growing racism and xenophobia that can easily create circumstances in which exploitation and abuse of the 'others' is condoned or even tolerated by society.

When talking about the challenges we face when addressing human trafficking, there is often a desire to introduce new 'trends in trafficking'. I am not sure if there is such a thing as trends in trafficking, there are constant developments in the world that make people vulnerable and put them in precarious situations. In this time those are the armed conflicts and wars close to the European borders and economic hardship that make large groups of people fleeing from violence, discrimination and poverty. Also the growing inequality within Europe caused by the economic crisis, makes people vulnerable to exploitation and abuse. Our biggest challenge is acknowledge these as root causes, to seek ways to prevent that this vulnerability leads to human trafficking and to ensure that people can exercise their rights, not just as victims once they have been trafficked, but preferable before that happens. People must be able to exercise their rights as workers, as migrants, as human beings, so that they have the tools to protect themselves from exploitation and abuse.