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2012 HUMAN DIMENSION SEMINAR

**Rule of Law Framework for Combating Trafficking in
Human Beings**

Warsaw, Novotel Centrum
14-16 May 2012

**“Enforcing the Rule of Law -
Making Access to Justice and Rights a Reality for Trafficked
Persons”**



**Opening Remarks by Ambassador Janez Lenarcic,
Director of the OSCE Office for Democratic Institutions and
Human Rights (ODIHR)**

Warsaw, 14 May 2012

Excellencies,
Distinguished guests,
Ladies and Gentlemen,

Good morning and a very warm welcome to everyone at the 2012 Human Dimension Seminar on the rule of law framework for combating trafficking in human beings.

It is my pleasure to open this Seminar on trafficking in human beings and to welcome the Under-Secretary of State of the Republic of Poland, Ms. Grazyna Maria Bernatowicz and the Deputy Head of the Permanent Mission of Ireland to the OSCE, Ms. Martina Feeney. I am also very pleased to welcome my colleague - the Special Representative and Co-ordinator for Combating Trafficking in Human Beings – Ms. Maria Grazia Giammarinaro, who kindly agreed to deliver the keynote address at this event.

I am delighted that we have a large number of participants here from across the OSCE region and from our Partners for Cooperation, including many distinguished experts on combating human trafficking and representatives of NGOs and State officials. I am confident that during the Seminar - together - we will be able to take at least a small step forward in bringing about a change in the lives of millions of victims of human trafficking.

I would first like to express my appreciation to the Irish OSCE Chairmanship for having proposed this topic and for promoting this Seminar. This is an opportunity to exchange good practices on how to fight and how to end the trade of people for profit through exploitation and abuse. As - by now - we know with certainty that in a society that is not adequately governed by the rule of law, human beings will be traded as goods and treated as commodities, caught up in the chain of exploitation and abuse, from which they cannot escape and with little hope that justice would ever be done.

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So **first and foremost**, our focus should be on justice and human rights.

It is of fundamental importance in the global fight against trafficking that we strengthen the rule of law in each and every country across the OSCE region. Strategies and policies to combat human trafficking will only be successful if they are governed by the principles of rule of law and centered on the protection of the rights of the victims to access justice and regain their human dignity.

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) continues to actively promote an approach that recognizes trafficking as, first and foremost, a violation of human rights. ODIHR has been among the most active within the OSCE region and beyond in seeking a response to trafficking that is based on law and human

rights. A human rights approach to human trafficking means placing the victim at the centre of our consideration and our response.

In that context, the National Referral Mechanism (NRM), a framework that was developed by ODIHR in 2004, has become a useful tool to assist States and other stakeholders, including civil society, in developing functioning systems for protection of the rights of the victims of trafficking.

Trafficking is a violation of human rights, as it represents the failure of states to act with due diligence in effectively preventing the crime, protecting the victims and prosecuting the perpetrators. It therefore follows that a strong rule of law framework is fundamental to a rights-based approach.

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Secondly, our focus should be on the victim in the justice process.

Justice for human trafficking is not served without justice for the victims. And justice for victims goes beyond criminal justice. Victims need to be able to claim their rights and access justice – and this includes criminal, but also civil and administrative proceedings - even if they are irregular migrants.

In the experience of ODIHR, what we have observed in the OSCE region is that State responses to trafficking are still largely influenced

by policies to combat organized crime or control immigration. Protection of victims' rights is often of secondary importance and is sometimes absent from both policy and practical responses to trafficking. Difficulties in identifying trafficked persons leading to their continued invisibility are experienced in many States.

A 2010 opinion by the European Commission Expert Group on Human Trafficking found that EU member states are not investigating human trafficking cases because other crimes are easier, less expensive and more practical to prosecute.

The same year, not a single EU member state provided statistics on the number of cases and prosecutions involving human trafficking, according to Eurojust. Consequently, Eurojust is pushing that States are obliged to report and better monitor human trafficking. Such obligation apparently already exists for terrorism, why does it not apply to human trafficking as well?

There is also lack of understanding and knowledge among officials and civil society alike, about the nature and manifestations of trafficking for labour exploitation, in particular. At the same time insufficient information and legal assistance limits individual access to justice and undermines their recovery.

The need to focus on addressing trafficking for labour exploitation, does not mean we ignore other forms of trafficking that have been largely ignored in the past and also demand our urgent attention. These include: forced begging, organ trafficking, forced marriages, domestic servitude and other slavery-like practices.

Trafficked persons also experience violations of their human rights in their return to countries of origin. Systems are still lacking for trafficked persons to exit abusive conditions and claim their status as victims of trafficking, seek and obtain effective remedies, including compensation payments or unpaid wages.

Supporting trafficked and exploited persons' access to justice and rights is one of the main objectives of the ODIHR's Anti-Trafficking Programme. Trafficked persons may suffer serious moral and material injuries and losses through their exploitation, yet few ever receive compensation for this harm. In 2008 ODIHR published a study on *Compensation for Trafficked and Exploited Persons in the OSCE Region*, which highlighted many of the difficulties in law and practice that victims face in making successful claims for compensation. The study has served as guidance for civil society organizations, international organizations and state actors in many OSCE countries in developing concrete action to enhance trafficked persons' access to justice and remedies, including compensation.

In this context it is vital for our success in combating trafficking to emphasize the importance of ensuring that return of those exploited

and vulnerable is safe and human rights-based. ODIHR's working on developing a *Guide on Human Rights in the Return of Trafficked Persons*, which will be published later this year. It will provide needed guidance and assistance to participating States, civil society and justice officials on how better to protect the rights of the victims of trafficking and vulnerable individuals before, during and after their return.

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Ladies and Gentlemen,

My **third point** here today is that it is paramount that we understand, analyze and address the *causes* of trafficking. This is the only way we can be successful in preventing trafficking from happening in the first place.

All participants in the justice process – from civil society and lawmakers to law enforcers, prosecutors, judges and lawyers, have to understand the complex factors that cause trafficking and force vulnerable individuals into situations of perpetual abuse. However, this is not as simple as it sounds. The causes of trafficking are complex and not yet fully understood – or indeed agreed upon.

Leaving aside some room for disagreement, three distinct causative factors can be identified:

First: factors that increase vulnerability of victims and potential

victims;

Second: factors that create or sustain demand for the goods and services produced by trafficked persons;

Third: Factors that create or sustain an environment within which traffickers can operate with impunity.

Consequently prevention efforts need to address these factors by focusing on fighting corruption; mainstreaming of anti-trafficking approaches in development policies, as a means of addressing vulnerability; helping businesses clean up their supply chain; addressing the particular vulnerabilities of minorities – and even further, minority women; reducing demand and punishing businesses that recruited trafficked labour, etc.

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Ladies and Gentlemen,

In closing, allow me to give a special welcome to the moderators and introducers who accepted our invitation – thank you for taking up these important roles. As always, we look forward to the lively and enriching debate, to the productive exchange of ideas, good practices, and critical reflections.

Thank you.