

## Chapter 1 Introduction

### General overview

Efforts to tackle human trafficking have continued to receive a lot of both media and political attention in the last two years. Unfortunately, however, human trafficking still remains a very serious problem. The professionalism of those engaged in fighting human trafficking and caring for victims has increased in recent years. A task force has been set up, the police and the public prosecution service have made human trafficking a priority and there is more specialist help available for victims. With a Reference Framework for Human Trafficking (2008), the police have formulated a uniform method for dealing with the offence. They are developing a programmatic approach designed to foster cooperation between all of the agencies in any way concerned with the problem of human trafficking so that it can be addressed systematically. A survey has been conducted to identify areas in which obstacles can be placed in the way of human traffickers. The organisations that provide help for victims are also cooperating more closely with partners in the chain by sharing information and referring victims.

The perception that human trafficking is a serious problem has, if possible, become even greater. The sentences for human trafficking have been increased in recognition of the fact that it is a very grave offence that constitutes a grievous violation of human dignity and integrity, frequently involves serious organised crime and engenders intense and growing public anger. The tougher sentences more clearly reflect the seriousness of the offence.

By extension, the government proposes expanding its extra-territorial jurisdiction in accordance with the possibilities provided by the Council of Europe's Convention on Actions against Trafficking in Human Beings to encompass offences committed against Dutch people abroad, as well as increasing the possibilities of confiscating illegally gained profits.

Attitudes towards the prostitution sector have also changed. Whereas several years ago the predominant view was that prostitution should be regarded as an ordinary profession and the ban on brothels was lifted, there is now a wider realisation that prostitutes are highly vulnerable to exploitation and that human trafficking occurs even in the licensed sector of the prostitution industry. The *Sneep* case was particularly important in exposing significant abuses. In that context, a new framework law to regulate the prostitution sector is being drafted, which is intended to provide more direction and create greater uniformity in policy.

Professionals who are confronted with human trafficking in the sex industry are generally familiar with Article 273f of the Dutch Criminal Code, which makes human trafficking a punishable offence. However, the scope of the article is not entirely clear when it comes to exploitation in sectors outside the sex industry. When the application of the provision was expanded to these sectors, it was consciously decided to leave the practical details to the legal practice. The scope of the offence is not only relevant for the purposes of investigating and prosecuting human traffickers, but also for the victims. Victims of human trafficking are entitled to shelter and assistance and have certain rights, particularly under immigration law. Victims of human trafficking in sectors outside the sex industry are not universally recognised and in practice they are far less likely to be automatically granted the rights due to them than in the case of sexual exploitation. The legal position of the victims is the same, but in practice the perception of some actors is that exploitation in other sectors is less serious than in prostitution. However, the seriousness of the exploitation does not necessarily have anything to do with the sector in which it occurs. In mid 2009 a possible case of exploitation on an asparagus farm in Someren came to light. The reactions of the various agencies and authorities involved illustrated the difficulty of 'seeing' these other forms of exploitation as such. This case is discussed at length in Chapter 12 (Exploitation in sectors other than the sex industry).

Human trafficking takes place covertly. Even the victims are often unwilling to report their exploitation. This is why efforts to tackle human trafficking depend so greatly on recognising and responding to signs that it is occurring. It is therefore essential to raise awareness. It is crucial that indications of potential abuses are recognised. Police officers and employees of the various government inspectorates receive training to help in this. But numerous other professionals can also be confronted with situations involving exploitation. It is essential to find ways of informing these professional groups about the problem and how they can identify the signs.

The general public is no longer unaware of human trafficking, partly thanks to the aforementioned media coverage of the subject. The *Sneep* and *Koolvis* cases have attracted a lot of publicity. However, this does not mean that the general public are also watchful for situations that may involve exploitation. The same applies for

some local authorities. The larger municipalities have a human trafficking policy, but many small municipalities still believe they are immune to the problem. That is a misconception. Human trafficking occurs everywhere, despite the widely held view that it is a form of modern slavery that should not exist in this day and age. There is therefore still a lot that could be accomplished with an awareness-raising campaign.

The police and public prosecution services have given priority to investigating and prosecuting human trafficking in recent years. The policy has been adopted that in principle every serious indication of human trafficking will be followed up. Expertise is being accumulated in various ways. But the success of efforts to tackle human trafficking also depends in part on how the courts deal with the offence. The legal aspects and the context make human trafficking a complex offence. At the same time, there are not so many cases that judges hear them every day. The judiciary will also have to acquire expertise in the field in the coming years. This is equally important for cases involving forms of exploitation outside the sex industry. This is a relatively new area of law and consequently the case law has still not had time to take shape, while the practitioners rely heavily on the guidance provided by the case law. Chapters 11 and 12 contain information about the body of case law in recent years.

Although the need to give priority to human trafficking is recognised at national level, by the police and the public prosecution services and in the large cities, the availability of sufficient capacity is a problem in practice. It is a problem that has been referred to in all of the previous reports. Even at a time when public expenditure is under pressure at every level, it remains important to evaluate whether the policy objectives in this important area can be achieved with the available resources. Naturally, capacity is not the only determining factor in that regard. Awareness, attitude and training are also very important.

### **Human Trafficking Task Force**

The Dutch government's policy on human trafficking is laid down in the National Human Trafficking Action Plan (NAM) of December 2004, which was supplemented by an addendum in February 2006 specifically addressing the protection of underage victims. However, the practical significance of the NAM, as a coherent programme to combat human trafficking, seems to have faded somewhat into the background.

This is connected with the activities of the aforementioned Human Trafficking Task Force, whose objective is to identify and remedy shortcomings in efforts to tackle human trafficking by removing practical obstacles. To this end, in July 2009 the task force presented an action plan in which it formulated ten specific measures to address problems it had identified. Practical targets will be formulated for these measures, which will be implemented by the representatives of the organisations participating in the task force. For example, pilot projects will be organised to explore ways of developing a programmatic approach. In this way, the task force is making an essential contribution to the fight against human trafficking.

Regardless of the practical effects of the action plan, the policy principles laid down in the NAM still apply. The action plan does not encompass all of the elements of the NAM. Particularly striking is that the action plans fails to devote special attention to the plight of underage victims, although there is an urgent need to do so.

Given the task force's role in enabling policy to be implemented effectively through interventions by the relevant key figures, as the National Rapporteur on Trafficking in Human Beings (NRM) has repeatedly stated the NGOs that help to shape the policy should obviously be members of it. It is a sign of progress in this regard that Coordination Centre for Human Trafficking (CoMensha) is invited to attend the meetings of the task force.

The task force updated the action plan in its progress report in September 2009. In that report the task force presented a list of 'quick wins', the results that had already been accomplished up to the middle of 2009 in relation to the ten measures it had formulated. These quick wins are discussed in the review of the various topics in the following sections.

### **Reports of offences**

The report of an offence made by the victim often plays an important role as the starting point for a possible prosecution for human trafficking and in providing the facts on which an investigation can be based. However, for various reasons victims often have to surmount a formidable barrier before they will actually report an offence. This is generally connected with fear of the perpetrator, or even a sense of solidarity with the perpetrator, or a

sense of hopelessness at finding alternatives to the situation of exploitation. It is very important to conduct further research into the willingness of victims to report offences and to identify the factors that could make it easier for them to make complaints. Human trafficking was one of the offences included in a study by the public prosecution service into the possibilities of allowing offences to be reported anonymously. On the basis of their investigation, ROOD, the youth section of the SP party in Utrecht, Pretty Woman and a former victim of exploitation by a 'loverboy' (for a definition of what a loverboy is, see the section 'The loverboy method' below) provide a vivid description of the problems confronting victims of loverboys when they make a complaint.<sup>1</sup>

Victims regularly withdraw complaints and incriminating statements. However, this does not necessarily have any consequences for the suspect's liability for punishment. Human trafficking is not an offence that depends on a complaint: a defendant can be convicted without a complaint or a notification by the victim. Another factor that always has to be considered is that the victim may have withdrawn the complaint or the statement because of a threat. Since human trafficking cases can be investigated without a complaint, telephone taps and surveillance can also be used to gather evidence and victims could be interviewed after the suspects have been arrested. The *Sneep* case is a good example of this.

The NRM regularly receives comments and complaints from aid agencies and representative organisations of cases of victims of human trafficking that were not dealt with properly by the police and public prosecution service. Some of these cases involved foreign victims who were being held in aliens' detention, who were not given an opportunity to report an offence, were not offered a period for reflection or an opportunity to apply for the B9 regulation or who felt that the charges in their case were wrongly dropped or not properly investigated.

At the same time, the police and public prosecution service say they waste a lot of time dealing with 'hopeless B9 applications'. This is a reference to foreigners who are required to leave the Netherlands or have no prospect of being granted residence status and who then, sometimes at the very last moment, claim that they were victims of human trafficking or are recognised as such, for example by lawyers or social workers. A complaint of human trafficking is then made and the Immigration and Naturalisation Service (IND) grants the applicant a B9 residence permit, but the complaint provides few if any leads for an investigation and/or contains old facts that are difficult to investigate or verify. Consequently, these cases can seldom be prosecuted successfully but they do take up resources, sometimes considerable resources, because, according to the Instructions on Human Trafficking, they must be investigated. The Office of the National Rapporteur on Trafficking in Human Beings (BNRM) acknowledges this problem. However, there is no immediate solution for it.

Even cases where the complaints do provide sufficient leads for an investigation are not always dealt with. The BNRM has conducted research into these 'shelved cases'. The reasons they are shelved is a discrepancy between the priority given to the investigation of human trafficking cases on the one hand and the capacity actually available to investigate them on the other and the dedication of some of the available capacity to cases in which there are not many leads, as in some of the B9 cases. The results of the BNRM's study are presented in Chapter 8 (Investigation).

The BNRM has also conducted research into the procedure for filing objections with the appeals court against decisions not to prosecute human trafficking cases on the grounds of article 12 of the Dutch Code of Criminal Procedure. In 43 of the 44 cases that were examined, the appeals court declared the objection unfounded, usually because no leads were found despite a lengthy investigation by the police. The results of this study are presented in Chapter 5 on the B9 regulation and continued residence (B16/7).

## Compensation

The possibilities that are in principle open to victims to recover compensation for the damages they have sustained were described in the NRM's Fifth Report. This report considers whether the instrument of an order to pay compensation that the judge can award with the sentence, either on request or *ex officio*, is effective in practice. It also reviews the practical significance of making a claim to the Violent Offences Compensation Fund. The BNRM's review of the case law shows that judges often declare claims for compensation by victims inadmissible, especially claims for material damage, because they are too complex. Where all or part of the claim is awarded

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<sup>1</sup> ROOD Utrecht, June 2009. Slachtoffers of Loverboys, Een onderzoek naar ervaringen met politie and justitie of het proces of aangifte tot de veroordeling, [Victims of Lover Boys, an investigation of experiences with the police and the public prosecution service from the time of making a complaint to the sentencing], see also §4.2.3.

and an order to pay compensation is made, the amount awarded to the victim is collected by the Central Fine Collection Agency (CJIB). Section 4.3 of Chapter 4 (Victims and help for victims) shows that this procedure provides no guarantee that the matter will be dealt with quickly or even that the compensation will ultimately be paid. A claim to the compensation fund still offers the best chance of success. However, this fund does not make any payments for loss of earnings.

The situation could be otherwise, as is apparent from Van Delden's description of the situation in the United States:

*Restitution in the United States*<sup>2</sup>

In the US there are various ways in which restitution, or the instrument of compensation, should be applied in sentencing in federal cases. For some offences, restitution is discretionary. In most others – the so-called Title 18 offences, including various human trafficking provisions<sup>3</sup> – restitution is in fact mandatory. With this latter type of restitution, the legislature was thinking of an order for complete indemnification of the victim to be imposed *ex officio* by the court. All medical expenses – including psychological and psychiatric care and physiotherapy – loss of income, legal costs, temporary accommodation costs, child care and any other costs that can be regarded as a direct (*proximate*) consequence of a criminal offence must be paid by the perpetrator(s).<sup>4</sup> All damage that can be regarded as a direct consequence of the offence is therefore eligible for compensation in full. An additional advantage of mandatory restitution is that it is automatically included as an independent sanction with the special conditions attached to provisional release so that it can be used to apply pressure in the supervision of a perpetrator.<sup>5</sup>

The American approach differs remarkably from the Dutch situation with respect to the discretion concerning the awarding of damages to the victim. Whereas the Instructions on Human Trafficking<sup>6</sup> do not contain any obligation for the public prosecution service in the Netherlands to seek financial redress or specify an order of preference for methods of securing financial redress, the reparation of damage sustained by the victim is legally mandatory in the US. The prosecutor in America is also remarkably proactive in securing reparation of the damage caused to the victim. Although this study of restitution in America focused on cases involving forms of exploitation outside the sex industry, in various cases houses and offices were seized with a view to their forfeiture.<sup>7</sup> The legislature in the Netherlands has also made this possible on the grounds of an order of garnishment (article 94a of the Dutch Code of Criminal Procedure), but in practice this provision is rarely used in human trafficking cases.<sup>NRM5</sup>

The position of the victim is receiving attention in the Netherlands and in other countries. For example, the Netherlands has transposed some of the obligations in the EU's Framework Decision on the Standing of Victims in Criminal Proceedings (2001)<sup>8</sup> in the bill entitled 'Act to strengthen the position of victims in criminal proceedings'.<sup>NRM5</sup> It covers, among other things, the rights of victims to compensation and includes a scheme for providing an advance on compensation.<sup>9</sup> The scheme will obviously also apply to human trafficking, which after all usually involves a (serious) violation of a person's physical integrity.<sup>10</sup>

The report of the Organisation for Security and Cooperation in Europe (OSCE) entitled *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008) shows that victims also face problems in securing compensation in other countries.<sup>11</sup> There are criminal law, civil law and labour law procedures, as well as compensation funds similar to the Netherlands in some countries, but it is nevertheless difficult for victims to recover damages, either from the offender or from the State.

<sup>2</sup> Van Delden, 2009.

<sup>3</sup> See §12.6.3.

<sup>4</sup> USC Title 18, par. 2237, 2248, 2259(b)(3), 2264.

<sup>5</sup> See USC Title 18, par. §3563(a).

<sup>6</sup> *Bulletin of Acts, Order and Decrees* 2008, 253.

<sup>7</sup> *USA v. A.D. Kaufman and L.J. Kaufman*, no. 04-40141-01,02, US District Court for the District of Kansas, U.S. Dist. Lexis 39107. In this case, four buildings owned by the defendants were seized; *USA v. Jefferson N. Calimlin, Elnora Calimlin, Jefferson M. Calimlin, USDS Wisconsin*, no. 04-CR-248; *USA v. Varsha Mahender Sabhnani and Mahender Murlidhar Sabhnani*, USDC for the Eastern District of New York, no. 07-cr-429 (ADS) (WDW), Lexis 55108.

<sup>8</sup> EU Framework Decision on the Standing of Victims in Criminal Proceedings, Framework Decision of 15 March 2001, OJ 2001, L 082, pp.1-4.

<sup>9</sup> The bill contains the right to information about the criminal proceedings (including the outcome) against the defendant, a right to correct treatment, a right to information about the possibilities of claiming compensation as part of the criminal proceedings, a right to see trial documents and the right to add documents to the case file, the right to representation by a lawyer and the right to an interpreter, the right to speak during the trial, the rights of next of kin, and a scheme for payment of an advance on compensation: Amendment of the Code of Criminal Procedure, the Criminal Code and the Violent Offences Compensation Fund Act to strengthen the position of the victim in criminal proceedings, amended bill, Parliamentary Documents II 2007/08, 30 143, A, p.7.

<sup>10</sup> See also §2.6.

<sup>11</sup> OSCE-ODIHR, May 2008.

In this context, the OSCE, the United Nations High Commissioner on Human Rights (UNHCHR) and the Council of Europe recommend using ‘criminal assets’ to compensate victims or establishing funds to help and rehabilitate victims.<sup>12</sup>

### **The loverboy method**

There are many underage victims in the Netherlands who are exploited by human traffickers known as ‘loverboys’. This term is usually used to refer to a generally young human trafficker who seduces vulnerable young girls and persuades them to work as prostitutes for him. The Minister of Justice has introduced the term ‘pimp boy’ in this context in an attempt to remove any possible misunderstanding about the nature of this form of human trafficking. However, merely replacing the term does not solve the problem that the absence of a clear definition of what the offence involves can still easily lead to misunderstandings. This is connected with the fact that the methods employed by human traffickers are constantly changing. The loverboy method is one example of this. For example, it no longer involves just young men, or exclusively vulnerable young Dutch girls, or only seduction techniques, or even solely exploitation in the sex industry. Consequently, the term loverboy (or pimp boy) is no longer distinctive in every case. In practice, however, the term has entered the vocabulary and is not misunderstood. In that respect, the term ‘pimp boy’ is actually less clear.

### **Data collection**

The accurate registration of data is essential for the implementation of the anti-human trafficking policy. The national registration of (suspected) victims of human trafficking is delegated to CoMensha. The public prosecution service also keeps records about criminal cases and the IND maintain statistics on aspects relating to aliens law. The registers kept by these different organisations all suffer from constraints that are further discussed in Chapters 4, 5 and 10.

The development of an effective Dutch standard for the registration of data about human trafficking, including a uniform definition of who is a victim, is also important in an international perspective. Considerable efforts are being made at international level to generate statistics about human trafficking. There have been several recent initiatives to improve the collection of data about human trafficking, including a joint project by the Austrian government, the International Organisation for Migration (IOM) and various partners and financed by the European Commission, which produced guidelines for data collection. The International Centre for Migration Policy Development (ICMPD), one of the partners in that project, has also been engaged for years in building human trafficking databases in various European countries. The utility and usefulness of the database for the countries in question is an important guiding principle of the ICMPD’s work. These initiatives are described in more detail in Chapter 3 (International developments). The question that arises here is how important a role statistics can play. Statistical overviews may indicate where efforts need to be concentrated and give an indication of the capacity that is needed, but in order to formulate solutions of preventive and repressive nature qualitative information is also required. Nor can the aim of harmonising international data collection be expected to provide a complete solution, because although human trafficking is often organised on an international scale it occurs in a specific local context, so information about the specific situation in different countries is equally important. The efforts to establish a comprehensive system of data collection should therefore be in proportion to the anticipated results. One way or another, it is important to closely monitor international developments in the field of registration of human trafficking and its victims.

### **Systematic review**

Methodological restrictions, missing data,<sup>13</sup> differences of opinion about definitions, a lack of agreement on whether there is a difference between forced and voluntary prostitution<sup>14</sup> and contradictory findings are characteristic of and complicate research into human trafficking.<sup>15</sup>

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<sup>12</sup> *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE-ODIHR, May 2008, p. 42. The UN Convention against Transnational Organised Crime in fact provides that State Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of crimes, see art. 14, paragraph 2 of the Convention.

<sup>13</sup> Chawla et al., 2009.

<sup>14</sup> GAO, 2007.

Although there have been various initiatives to prevent human trafficking and to help its victims, and although a lot has been written about these initiatives, very little known is known about the implications of those initiatives. We don't actually know 'what works'. The reason for this is that most publications are primarily descriptive, based on qualitative research. Most research is based on information from key figures<sup>16</sup> and very rarely is research conducted to evaluate interventions. Certainly independent research, in other words research not conducted by those who designed or executed the intervention, is scarce<sup>17</sup> and random sampling seldom occurs.<sup>18</sup> Much of the research is conducted among very small research groups and there is no question of 'triangulation'.

However, good evaluations of anti-human trafficking interventions are scarce<sup>19</sup> even though the seriousness of the offence and its impact on the victims make it very important to learn more about the mechanics and effects of anti-human trafficking strategies and interventions, if only because we know that they can cause 'collateral damage',<sup>20</sup> for example by restricting the possibilities for young women to migrate or even to travel.

To make some progress in this regard, in association with the University of Amsterdam and the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) the BNRM carried out a systematic review of the literature concerned with research into strategies and interventions in the field of human trafficking.<sup>21</sup> For various reasons, the review, for which a detailed research plan (protocol) was being evaluated by the Campbell Collaboration<sup>22</sup> at the time this report was written, is limited to transnational human trafficking with a view to exploitation in the sex industry.<sup>23</sup> The aim of the review is to generate information on two fronts:

- the effects of anti-human trafficking interventions, and
- the strengths and weaknesses of research in this area.

## **The Netherlands Antilles and Aruba**

The NRM's tasks and powers are limited to the Netherlands. The Netherlands Antilles and Aruba, which are part of the Kingdom of the Netherlands, fall outside the scope of the NRM's research. Consequently, previous reports of the NRM did not cover the situation with regard to human trafficking in the Kingdom's island states. In light of the pending constitutional reforms, the human trafficking situation in these island states is also briefly reviewed here.

Steps are already being taken to tackle human trafficking in the Netherlands Antilles and Aruba. For example, in June 2008 a mini-conference was held in Aruba on human trafficking, human smuggling and illegal immigration in Aruba, the Netherlands Antilles and the Netherlands. During this conference the ministers of justice of the three countries described action against human trafficking, human smuggling and illegal immigration as a priority for all of the countries in the kingdom. The final conclusions of the conference also stressed the importance of cooperation in the chain, of building expertise, of training people who deal with victims and of publicity. On 28 January 2009, the ministers of justice of the three countries signed a Memorandum of Understanding on human trafficking, human smuggling and illegal immigration in the Netherlands, the Netherlands Antilles and Aruba. The Memorandum of Understanding states, among other things, that cooperation between the three countries will be intensified<sup>24</sup> and that priority will be given to tackling human trafficking. It was also agreed that the provisions of the UN's Palermo Protocol and the Council of Europe's Convention on Action against Trafficking in Human Beings will be transposed into the countries' legislation as soon as possible. The Memorandum of Understanding also contained agreements on control, investigation and prosecution and on measures to prevent and protect victims.

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<sup>15</sup> See also Cwikel & Hoban, 2005; GAO, 2006; Tyldum & Brunovskis, 2005; World Congress against CSEC, 2001.

<sup>16</sup> Gozdziaik & Bump, 2008.

<sup>17</sup> Chase & Statham, 2005; Laczko, 2005.

<sup>18</sup> Gozdziaik & Bump, 2008.

<sup>19</sup> GAO, 2007

<sup>20</sup> Boermans, 2009; Dottridge, 2007b; Limanowska, 2003.

<sup>21</sup> The Dutch Ministry of Justice's Research and Documentation Centre (WODC) is now also involved in the review.

<sup>22</sup> An international research network that produces and disseminates systematic reviews of social interventions and helps ensure that decisions are made on a well-informed basis (see [www.campbellcollaboration.org](http://www.campbellcollaboration.org)).

<sup>23</sup> For further information about and an explanation of the study, see the protocol which is published on the aforementioned site.

<sup>24</sup> One of the provisions states that the Netherlands will provide assistance in the form of expertise.

Criminal law relating to human trafficking has already been prepared in Aruba; the legislation largely corresponds with the Dutch legislation. As far as the BNRM is aware, no defendants have yet been prosecuted for human trafficking in Aruba. Four preliminary investigations have been carried out into human trafficking<sup>25</sup> but they did not lead to prosecutions.<sup>26</sup> There is still no criminal law on human trafficking in the Netherlands Antilles, although there is a bill before the Advisory Council. In practice, cases of human trafficking are prosecuted under other provisions of criminal law, such as the use of false documents and human smuggling.

The American Trafficking in Persons (TIP) Report 2009 assigns a Tier 2 (Watch List) rating to the Netherlands Antilles. The main criticism in the TIP report relates to the absence of legislation on human trafficking in the Netherlands Antilles. According to the report, the absence of legislation on this point prevents successful prosecution of human traffickers. Another criticism in the report concerns what the report describes as the mainly ad hoc nature of the protection afforded to victims. Although several measures have been taken in the area of prevention, no action has been taken to reduce demand for prostitution, according to the TIP report. Among other things, the TIP report recommends the implementation of human trafficking legislation, the formalisation of procedures relating to the proactive identification of victims and the provision of information to prostitutes and beneficiaries of economic exploitation. Although the TIP report is critical of the Netherlands Antilles, it also states that the country is striving to comply fully with minimum standards for tackling human trafficking.

As the above survey shows, various steps have been taken to prevent and combat human trafficking in Aruba and the Netherlands Antilles. It is also clear that legislation and policy are still evolving and that efforts to counter human trafficking are still not optimal. This is partly due to insufficient capacity and resources. Although, as already mentioned, the NRM has had no involvement with Aruba and the Netherlands Antilles up to now, that will change when Bonaire, Sint Eustatius and Saba, three of the islands making up the Netherlands Antilles, become special municipalities of the Netherlands and will therefore fall within the NRM's remit. Although Curacao and Sint Maarten will be countries within the Kingdom and Aruba will retain its separate status, there will be cooperation between those countries and the Netherlands as provided for in the Memorandum of Understanding.

## **Rapporteurs in the EU member states**

The Hague Declaration in 1997 called on all the EU member states to appoint a national rapporteur on trafficking in human beings. Up to now, several other countries, in addition to the Netherlands, have established an institution similar in nature to that of a national rapporteur on trafficking in human beings as recommended in The Hague Declaration. The NRM's independent position is almost unique in international terms. In other countries the national rapporteur, or a similar mechanism, is usually incorporated in a government organisation, such as a ministry or the police. Various other countries, even outside the EU,<sup>27</sup> have said that they are interested in appointing such an official or are considering appointing a national rapporteur.

The Council of Europe's Convention on Action against Trafficking in Human Beings (2005) also calls on states to consider appointing a national rapporteur – or another mechanism – to monitor efforts to combat human trafficking and the implementation of national statutory requirements.<sup>28</sup> The independent NRM in the Netherlands is mentioned as an example in the explanatory memorandum to the convention. Since it was founded in April 2000 the NRM has encouraged the appointment of rapporteurs on human trafficking in other EU member states and elsewhere.<sup>NRM1</sup> One of the reasons it did so was to make it easier to place the information collected in the Netherlands in a wider context and analyse it, to make comparisons and to identify more easily any movements across borders as a result of the policy. It is therefore nice to report that in June 2009 the Council of the European Union adopted conclusions on the

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<sup>25</sup> Three studies related to exploitation in the area of work, one study concerned sexual exploitation. Source: Conversation between the National Rapporteur for Trafficking in Human Beings with the national coordinators of Aruba and the Netherlands Antilles, 8 July 2009.

<sup>26</sup> Conversation between the National Rapporteur for Trafficking in Human Beings and the national coordinators for Aruba and the Netherlands Antilles, 8 July 2009.

<sup>27</sup> According to the OSCE annual report for 2008, 38.8% of the OSCE member states and partner countries said when asked that they have a national rapporteur or similar mechanism – a total of 26 – 23.9% of the states reported that their country did not, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms, 2008 Annual Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings presented at the Permanent Council Meeting*, 13 November 2008. For more on this subject, see chapter 3, §3.6.1.

<sup>28</sup> Art. 29, paragraph 4 of the Convention of the Council of Europe on Action against Trafficking in Human Beings (2005), *Trb.* 2006, 99.

establishment of an informal EU network of national rapporteurs on human trafficking or similar mechanisms. In this document all the member states are invited to participate in an informal and flexible network designed to increase understanding of the phenomenon of human trafficking and with the aim of providing the EU and the member states with objective, reliable and comparable – up-to-date – strategic information on human trafficking.<sup>29</sup> An important aspect of these conclusions is that every member state is (again) invited to appoint a national rapporteur or establish a similar mechanism. The EU states that it would be useful for every state to have a specific coordination and reporting mechanism and endorses the recommendations of the OSCE report that national rapporteurs or similar mechanisms should help states to collect, analyse and report on quantitative and qualitative data in order to improve measures against human trafficking.<sup>30</sup> Under Sweden's EU presidency a start was made in developing a network of national rapporteurs and similar mechanisms with meetings in Stockholm<sup>31</sup> and Vienna.<sup>32</sup> There was a similar meeting in Brussels.<sup>33</sup> It is not yet clear how the network will evolve in future.

## **The content of this report**

This report presents statistics for the period up to and including 2008, with the emphasis on the statistics for 2007 and 2008 to supplement the figures for the period up to and including 2006 presented in the sixth report. However, some data for 2008 are not available. For practical reasons, the data from the public prosecution service do not cover 2008. From this year statistics can be provided about compensation (from the CJIB) and appeals (from the Research and Policy Database for Judicial Documentation (OBJD)).

The information in this report supplements the content of earlier reports. The topics covered are victims, help for victims, the administrative approach, investigation and prosecution of human traffickers, relevant legislation and international developments. The report also addresses a number of more specific subjects, with separate chapters devoted to exploitation in sectors other than the sex industry, the non-punishment principle, human trafficking with a view to organ removal and the B9 regulation and continued residence on the grounds of B16/7 of the Aliens Act Implementation Guidelines. The results of the BNRM's study into the case law on human trafficking in recent years are also presented.

Each chapter concludes with a section containing the main conclusions to be drawn from the information in that chapter. As in the earlier reports, the final chapter contains a number of recommendations.

Chapter 2, Legislation discusses developments in legislation in the Netherlands that are relevant for tackling human trafficking. In addition to article 273f of the Dutch Criminal Code, the previously mentioned proposal for a new law to regulate prostitution (working title: Act regulating prostitution and tackling abuses in the sex industry) and the Police Information Act, which entered into force on 1 January 2008, are discussed. The chapter also explains changes in other laws that are relevant for dealing with human trafficking, such as the Housing Act. There is also discussion of pending legislation, including the (draft) bill on the liability of companies for temporary employees that they hire and the bill to expand the possibilities for confiscating criminal assets.

Chapter 3, International developments discusses relevant developments in the UN, the EU, the Council of Europe and the OSCE. These include findings of international (UN) mechanisms that monitor compliance with human rights, the implementation of the EU Action Plan against Trafficking in Human Beings, the appeal to countries to appoint a national rapporteur or a similar mechanism and the EU Directive providing for sanctions against employers of illegally staying third-country nationals, which entered into force on 20 July 2009. The chapter also draws attention to the risk that provisions of the European Commission's proposal for a new framework decision on human trafficking relating to help for and protection of victims will undermine what has been achieved in that regard by the Council of Europe's Convention (2005).

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<sup>29</sup> Council conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 2946th meeting, Luxembourg, 4 June 2009.

<sup>30</sup> Statement by the European Union at the 739<sup>th</sup> Meeting of the OSCE Permanent Council – In response to the report by the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, PC.DEL/972/08, 13 November 2008. Turkey, Croatia and the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro and Serbia, Iceland, Lichtenstein, Ukraine, Moldova and Armenia support this statement.

<sup>31</sup> 28 May 2009.

<sup>32</sup> 10 September 2009.

<sup>33</sup> 18 June 2009.



The position of victims of human trafficking and the shelter and help that can be provided for them are discussed in Chapter 4, Victims and help for victims. The chapter presents CoMensha's statistics on victims and describes several specific groups of victims. It also draws attention to the urgent need to provide shelter and help that is more specifically tailored to the needs and circumstances of victims of human trafficking, and particularly underage victims. Finally, important new initiatives in the area of care and shelter are discussed.

Chapter 5, B9 and continued residence (B16/7) contains information about the changes to the rules in chapters B9 and B16/7 of the Aliens Act Implementation Guidelines. The topics discussed include the problems experienced in practice in applying the B9 scheme. The BNRM organised a meeting of experts to discuss the problem of complaints that provide too few leads for an investigation and which, in view of the policy that every complaint must be registered and reported, takes up a lot of the police and public prosecution services' capacity. This issue is also known as 'abuse of B9(?)'. The results of this meeting are presented in this chapter. The BNRM also conducted a study into the use by victims of human trafficking of the possibility of objecting to a decision not to prosecute under article 12 of the Dutch Code of Criminal Procedure. The study reviewed 44 objections that were considered by the appeals court. Research was also conducted into the problems surrounding continued residence (B16/7 of the Aliens Act Implementation Guidelines). The findings from both studies are presented in Chapter 5.

The non-punishment principle is discussed in Chapter 6, Victims as offenders and the non-punishment principle. The non-punishment principle can establish grounds for not prosecuting. In this chapter the NRM draws attention to the fact that it can be very difficult to identify victims of human trafficking who are initially suspected of committing a criminal offence while in a human trafficking situation. Awareness of this problem is crucial. The chapter also zooms in on the potential consequences under immigration law for foreign victims who are also offenders and reviews how these problems are dealt with in other countries.

Chapter 7, Administrative and integrated approach to human trafficking starts by giving an impression of various new forms of prostitution and sex-related business activity that have emerged. It warns of the 'waterbed effect', the phenomenon that when measures are taken against exploitation in a certain sector or in a certain location the trade often quickly moves to another location. That effect is reinforced by the fact that municipalities can formulate their own policy, which leads to substantial local differences which the trade can take advantage of. Furthermore, in many municipalities there is no clear allocation of tasks between the municipality and the police with regard to supervision and enforcement. The powers of supervision can differ from one municipality to another, and sometimes no powers have been allocated at all. This can also prompt human traffickers to act in a calculating manner.

Chapter 8, Investigation once again highlights how difficult it can be to identify victims of human trafficking and why for that reason alone it is essential to be able to spot any apparent signs of it. This chapter also discusses the Reference Framework on Human Trafficking (2008) produced by the police's National Group of Experts on Trafficking in Human Beings (LEM). The framework contains useful practical guidelines on how the police should handle human trafficking cases. However, there is a need to ensure that police forces are required to follow those guidelines. The chapter points out that in practice the police do not always choose to deploy capacity to investigate human trafficking, that the creation of specialist teams is bearing fruit and that it is worthwhile removing obstacles to the sharing of information. In this context, it is good to report that the task force is addressing the concerns about the functioning of the Centre of Expertise in Trafficking in Humans and Human Smuggling (EMM).

Chapter 9, Suspects and offenders presents statistics about these groups. There is also a discussion of various methods employed by human traffickers and international human-trafficking organisations. One of these is the loverboy method, which was mentioned above. The chapter shows that various individuals and institutions, referred to as 'facilitators', consciously or unconsciously help human traffickers in their activities, either directly or indirectly. The chapter also describes the so-called barrier model, which represents an attempt to make human trafficking more difficult by exploring ways of removing the basic conditions for it; the conscious and unconscious facilitators reappear in this context. The chapter also draws attention to the need to develop methods to combat enforced Internet prostitution. Finally, there is a description of the *Koolvis* case, in which an entire criminal organisation was identified through cooperation with the country of origin of the perpetrators and the victims (Nigeria).

One of the points made in Chapter 10, OM and prosecution is that the public prosecution service has been very ambitious in its use of criminal law to tackle human trafficking in recent years but that, like the police, the service sometimes has difficulty putting that priority into practice. In that context, attention is drawn to the need to make sufficient capacity available. An important step in that regard is the appointment of regional public prosecutors, who will also have an important role in acquiring cases. The public prosecution service is also called on to handle cases involving exploitation in sectors other than the sex industry, partly with a view to developing case law that will help clarify what precisely is meant by human trafficking in these sectors. The Instructions on Human Trafficking were amended and clarified on certain points on 1 January 2009.

Chapter 11, Case law concerning exploitation in the sex industry presents the results of a study by the BNRM into this subject. The picture to emerge from the survey of judgments rendered since 2007 was of a complex legal field. The chapter includes statistics on the case law studied as well as a discussion of the method of formulating indictments and the interpretation by the courts of the various elements of article 273f of the Dutch Criminal Code.

Chapter 12, Exploitation in sectors other than the sex industry zooms in on the implications of the fact that human trafficking outside the sex industry is still a relatively new concept. The scope of the offence is still unclear, as emerges from the findings of a study by BNRM into the case law on these other forms of exploitation. It is in practice difficult for officers of investigative agencies and government inspectorates to identify and recognise victims. Other forms of exploitation are often regarded as less serious than sexual exploitation. In principle, however, the seriousness of the exploitation does not depend on the sector in which it occurs. This chapter reviews the scarce case law on this topic and examines a number of groups that are particularly at risk of exploitation.

Finally, Chapter 13, Human trafficking with a view to organ removal presents the results of a further exploration of the subject by BNRM. Although there is attention to the subject in the Netherlands (and in other countries), scarcely any information is available about actual measures to prevent it. At best, there are indications that certain activities are being undertaken. One way or another, it is essential to remain alert to this phenomenon.

The recommendations are to be found in Chapter 14 of this report.

They are followed by a summary and a list of the literature consulted.

The annexes include the text of article 273f of the Dutch Criminal Code (in the versions valid up to and after 1 July 2009), the explanation of the research methods used, additional tables and the explanatory notes to them and a list of the BNRM's activities.