

14.1 Introduction

In its previous reports the NRM has made recommendations on a number of key issues. The subjects included: giving sufficient priority to practical efforts to tackle human trafficking; ensuring that the agencies with a role in tackling human trafficking have sufficient capacity; creating the right attitude among agencies confronted in one way or another with human trafficking; raising awareness of human trafficking and its manifestations among professionals and the public; the provision of care for victims and the registration of victims; and education and training for professionals. Progress has been made on these issues in many respects. Nevertheless, they still require attention. This chapter contains a new set of recommendations, some of them constituting an updating of recommendations made in previous reports.

The NRM feels that the Human Trafficking Task Force has an important role to play in following up the recommendations. The task force was established to remove obstacles to the effective implementation of policy against human trafficking that have been found to exist in practice. It is for that reason that the task force consists of representatives of the agencies that play a key role in tackling human trafficking. The task force is asked to promote the implementation of policy.

The Dutch policy against human trafficking is laid down in the National Human Trafficking Action Plan (NAM; December 2004) and the additional measures adopted in 2006. The task force has also written an Action Plan, which was most recently updated in a Progress Report in September 2009. In the action plan, the task force enumerated ten specific measures to address problems it had identified. In this way, the task force is making an essential contribution to tackling human trafficking. Despite the existence of the action plan, the policy principles that are laid down in the NAM still apply. The action plan and the additional measures failed to devote specific attention to under-age victims.

As regards the earlier recommendation concerning the availability of sufficient capacity, it has to be remembered that capacity is not a goal in itself but that it is always important to assess whether the policy objectives in this important area can be achieved with the available resources. Factors such as priorities, attitude, awareness and training naturally play a prominent role in this regard. For example, it is important in this context that human trafficking teams already formed by the police are not abolished since otherwise the expertise they have gained will be lost.

One of the recommendations in the Fifth Report of the NRM was that the public prosecution service should give practical effect to its policy priority of fighting human trafficking, Major steps have been taken to address human trafficking in the sense of sexual exploitation. However, there are still shortcomings in the investigation and prosecution of other forms of exploitation (exploitation outside the sex industry). It is therefore necessary to formulate specific measures to address these other forms of exploitation and carry them out in practice.

Earlier reports also drew attention to the so-called facilitators: individuals and organisations that are not directly involved in human trafficking but who consciously or unconsciously contribute to it

through their work. Examples are forgers of documents, fraudulent employment agencies and job placement agencies, and financial and legal advisors, but also doctors for instance. There are also many more occupations that could become facilitators. One example is tattoo artists, since some human traffickers have their victims tattooed. This professional group could also be alert to possible signs of trafficking.

There are a large number of partners in the anti-human trafficking chain. Several years ago the police decided to evaluate its own performance in tackling human trafficking by introducing the Police Force Monitor. Other agencies could do the same and by doing so accept responsibility for their own performance in this field.

The new recommendations relate to legislation, aliens policy, enforcement and local policy, awareness and identification of human trafficking, training and education, help for victims, investigation, improving the quality of complaints, prosecutions, trials, the registration of victims, data collection and the human rights approach.

The recommendations are arranged by subject and differ in terms of their urgency. For example, some recommendations can be carried out relatively easily and quickly, while others will require more effort.

14.2 The recommendations

Legislation

1. It is important that the Act on the regulation of prostitution lays down rules to harmonise the policies of municipalities to prevent the so-called waterbed effect.
2. The aggravating circumstance for sentencing based on the age of sexual majority (which is 16 in the Netherlands) is irrelevant for human trafficking, in the sex industry or otherwise. The age prescribed in article 273f (3) (2) of the Dutch Criminal Code should be raised to 18.
3. It should be made possible by law for a decision on a claim by an injured party that is submitted in accordance with article 51b of the Dutch Code of Criminal Procedure to be made at the same time as the decision on the demand for an order to confiscate criminal assets.

Aliens policy

4. In ground a of Chapter B16/7 of the Aliens Act Implementation Guidelines the words ‘have led to a conviction’ should be replaced by the words ‘to have led to a prosecution’. Consequently, ground b would lapse and the explanatory memorandum will have to be amended. If ground a is amended, guarantees will have to be created to ensure that the victim remains available and willing to cooperate with an investigation and prosecution. Given the terms of the regulation, this amendment will not necessarily lead to more applications for continued residence being granted. It would significantly shorten the period of uncertainty for victims about their future. It might also make victims more willing to report offences. The decision to prosecute is also an objective criterion with respect to a person’s status as victim. Finally, this amendment would also resolve the problem that it is not easy for victims to submit the judgment in the human trafficking case relating to them.
5. Decisions based on immigration law concerning victims who are also offenders should take account of a person’s status as a victim and the relationship between the offence committed by the victim and the human trafficking situation. Every victim who cooperates in the criminal investigation of a human trafficker should be entitled to the rights under the B9 regulation, in principle even if the victim has criminal antecedents. In the case of a victim

who has committed a criminal offence, that person's status as a victim and the relationship between the offence and the human trafficking situation should also be explicitly taken into account in reaching a decision to declare that person an undesirable alien or on the right to continued residence and it is not enough to simply refer to a conviction as a ground for the decision.

6. Steps should be taken to ensure that the agreement to create security files to allow repatriation to proceed in a responsible fashion is actually complied with. The premise that when a complaint leads to a conviction of the defendants it is established in law that repatriation of the victim to the country of origin involves risks (B16/7, ground a) should also apply for complainants who are witnesses.

Enforcement and local policy

7. Municipalities should take the initiative for a 'chain approach' to human trafficking – which is not limited to dealing with the loverboy problem – directed by a single official. The logical solution for smaller municipalities that are unable or unwilling to adopt their own chain approach is to cooperate with larger municipalities. The VNG can provide the necessary support in establishing a chain approach.

8. A care coordinator should be appointed in every region.

9. A 'comprehensive approach' is required to guarantee the effectiveness of efforts to tackle human trafficking in the sex industry. Elements of such an approach are:

- improved control of the licensed prostitution sector to prevent human trafficking, including the investment of time in building up a relationship of trust with the prostitutes working in the sector and making thorough enquiries about signs of human trafficking;
- a crack down on illegal prostitution;
- clear written agreements concerning the allocation of tasks between the police and municipalities.

10. Municipalities on one hand, and police and the public prosecution service on the other, should improve the provision of relevant information to each other. Municipalities, the police and the public prosecution service should also monitor the various initiatives that have already been taken in this regard and try to ensure the sharing of information actually yields results.

Awareness and identification

11. Indications of human trafficking in the sense of exploitation in sectors other than the sex industry should be reported immediately to SIOD/EMM by the Labour Inspectorate and by other inspectorates and investigative agencies. The instructions to the Labour Inspectorate about which indications inspectors should report immediately to SIOD/EMM, and when, should be tightened up. This could also involve comparison of the databases of the Labour Inspectorate and the SIOD.

12. Identification of other forms of exploitation by all the relevant agencies needs to improve. Specifically, this means that the Labour Inspectorate (in the workplace), the SIOD (in the workplace), the aliens police and the Koninklijke Marechaussee (at the time of the detention of aliens), the IND (during the asylum procedure) and Repatriation and Departure Service (in aliens detention centres) can be expected to be proactive in making enquiries about and otherwise searching for signs of human trafficking.

13. In light of the sector's vulnerability to human trafficking and the unwillingness of victims to report offences, an effort should be made to establish more 'eyes and ears' in the prostitution sector. To realise this it is important for all relevant agencies, including the Labour Inspectorate, the fire brigade and the municipal health service, to scrutinise the applicable licensing conditions. The chain approach could play a role in this. Operators and

managers of sex establishments and prostitutes should also be informed of how they can report abuses and their responsibility to do so.

14. The Child Protection Council and child care services should be alert to signs of human trafficking, for example recognising and responding to signs of victims of loverboys, of victims among Roma children and in their advice on sentencing of underage victims as offenders.

15. Following recommendation 33 in NRM5 for the continuation of the publicity campaign on exploitation in the sex industry entitled *Appearances are deceptive*, a permanent public information campaign should be started to raise awareness about other forms of exploitation.

16. When they are being issued with a visa, domestic staff employed by diplomats should be given written information, in addition to a verbal explanation, about their rights, including the telephone numbers and addresses of relevant agencies, the police and the Ministry of Foreign Affairs for the event that they face exploitation.

Training and education

17. Police officers in executive positions, who can all encounter human trafficking, should be well informed about what human trafficking (including other forms of exploitation) involves and about the signs that could indicate human trafficking, and how they should make a record of these signs so that human trafficking can be traced and dealt with on the basis of information.

18. Every agency that could be confronted with victims of human trafficking should receive training in how to recognise signs of human trafficking and the exploitation of victims. Specifically, working conditions inspectors should be trained in how to identify other forms of exploitation and that human-trafficking training should start soon for SIOD investigators. It is also important to repeat the training and also provide it for new inspectors and investigators. Joint training for the Labour Inspectorate (labour market fraud and working conditions inspectors) and the aliens police could help to increase their awareness of each other's powers and duties and of their respective roles when potential victims of forms of exploitation outside the sex industry are discovered.

19. A course should be developed for the public prosecution service and the judiciary covering the entire spectrum of human trafficking. Professional meetings, as the SSR calls them, should also be organised.

20. With regard to the application of the non-punishment principle, the problems of victims of human trafficking who are also suspected of offences should be regularly reviewed by the police, the public prosecution service, the judiciary, lawyers, aid agencies, the Child Protection Council, the probation service and the IND. For example, the problems facing victims who are suspects and the non-punishment principle should be covered in courses and during training.

Help for victims

21. An early start should be made with the pilot project on category-oriented shelter, in which a distinction should be made between the various groups of victims in terms of gender, age and the nature of their exploitation. The pilot project should also encompass the shelter provided for underage victims. The key aspects of that part of the project should be a pedagogic climate, small groups, safety and education. Existing practical know-how and expertise should be used in the design and operation of these shelters.

22. The capacity for providing shelter for victims should be increased, including the capacity of residential (closed or protected or open) youth care as well as the capacity for accommodating both minors and adult victims who can move on from the initial shelter.

23. The agencies concerned with forms of exploitation outside the sex industry should make agreements about who is responsible for arranging help for possible victims of those forms of exploitation. As mentioned in the Council of Procurators General's Instructions on Human Trafficking, during specific actions detailed plans should be drawn up specifying which agency will do what and when so that victims do not fall through gaps in the system.

24. The nature of human trafficking is changeable and the authorities should therefore be conscious of potential ensuing changes in the categories of victims. The help provided should respond accordingly.

25. The Human Trafficking Task Force is advised to devote particular attention to underage victims.

Investigations

26. The reference framework on human trafficking prepared by the police, which contains useful measures and standards for handling human trafficking cases, should be adopted by every police force. Every police force should have a specialist human trafficking team.

27. The teams in the police forces that review which cases will be dealt with should assume that – in accordance with the Instruction on Human Trafficking – human trafficking cases must always be investigated.

28. It should be made clear which division of the police organisation will handle human trafficking investigations (including cases of non-sexual exploitation) so that it is not necessary to 'shop around' with cases. This recommendation applies for both individual police forces and the Supra-regional and National Criminal Intelligence Services, which must also earmark sufficient capacity for human trafficking cases.

29. Non-location-bound prostitution (for example via Internet and escort agencies) should also be controlled. This is difficult, since methods that formerly seemed effective now appear to be less successful, and effective control is only possible at national or international level. New methods should be developed and experts in electronic media should be hired. One instrument that could help in this respect is a multimedia covenant (similar to the covenant on erotic advertisements) requiring sex businesses to give their licence number and the address of their establishment in advertisements. This instrument is only useful, however, if the information can also be verified. Another idea might be to require these sex businesses to have a permanent telephone number, which is also used by clients.

30. When all of the forces were directly represented in it, one of the functions of the Dutch police's National Expert Group on Human Trafficking was to encourage and motivate forces for whom human trafficking was less of a priority. The group should continue to perform that role in the new, decentralised structure.

31. Information should be supplied to Europol in accordance with the agreements that have been made, with a view to increasing international cooperation between police forces, both operational and in terms of sharing information. This will yield a greater insight into the methods employed by human traffickers and what needs to be done to combat them.

Improving the quality of complaints

32. In connection with the fact that some complaints of human trafficking provide few if any leads for an investigation, take up capacity in terms of personnel (the public prosecution service and police) and reception facilities, but ultimately cannot be solved, the following recommendations are made. In the short term, the existing rules should be left as they are but the procedures (a decision not to prosecute, objection) should be speeded up as far as possible. Further research should be conducted into the reasons for the absence of leads that can be investigated and the unwillingness of victims to report human trafficking. There should also be a pilot project, involving a small number of complaints that provide few leads for an

investigation, in an attempt to improve the quality of the complaints and to assess whether this could produce more grounds for investigation. Such a pilot project could also investigate whether more specific form of help in category-oriented shelters could help to produce better complaints.

Prosecution

33. Attempted human trafficking is seldom prosecuted. Nevertheless, the case-law of the Supreme Court on attempted human trafficking provides an adequate basis for doing so. The public prosecution service is advised to address this issue. A successful prosecution for attempted human trafficking could have a preventive effect.

34. It is recommended that the public prosecution service should not decide not to prosecute a human trafficking case until after it has reported the case to the EMM for comparison with other ongoing human trafficking investigations and received feedback.

35. In cases involving exploitation outside the sex industry, a consolidated approach is important. This means that both human trafficking and the related criminal offences (offences under the Economics Offences Act, the Aliens Employment Act and the Minimum Wage and Minimum Holiday Allowance Act) are tried by the same forum at the same time so that the judge has a complete picture of the human trafficking.

36. The fact that a person is a victim of human trafficking should be made a ground for declining to prosecute in accordance with the non-punishment principle.

37. A provision should be inserted in the Instructions on Human Trafficking that when a victim commits a criminal offence the fact that the suspect is a victim must be noted in the official report. If it is decided to prosecute a suspect who is also a victim, the public prosecutors in the cases against the human trafficker and the victim should inform each other of their appointment.

38. Financial investigations are almost always conducted in human trafficking cases. It is important for the judge that decides on the victim's claim as an injured party to have the financial report. The public prosecutor can either bring the claim for confiscation of criminal assets at the same time as the main case or submit the financial report during the hearing of the main case.

Trial

39. There should also be judges that specialise in human trafficking. Given the number of cases on an annual basis, attention should also be given to finding ways of retaining the accumulated expertise.

40. Guidelines should be developed for the purposes of consistency of sentencing in human trafficking cases.

Registration of victims and data collection

41. Besides serving as a reporting centre for notifications by victims, CoMensha should also actively collect information and keep records about the further progress of the cases involving registered.

42. All of the relevant agencies should report all victims of all forms of human trafficking to CoMensha. This means that:

- not only the police and public prosecution service must report, but also all the other relevant agencies;
- not only victims of sexual exploitation must be reported, but also victims of other forms of exploitation
- not only aliens must be reported, but also Dutch victims.

43. Data from the public prosecution service should be structured in such a way that information can be derived from it about the occurrence of the different forms of human trafficking (sexual exploitation, exploitation in sectors other than the sex industry and for the purpose of organ removal).

44. It is recommended that a so-called cohort analysis should be carried out to provide insight into the entire course of the proceedings in registered cases.

45. A computerised system should be developed for keeping centralised and standardised records of all (potential) victims of human trafficking who have submitted an application or are known to the IND. The register should maintain a distinction between initial decisions, decisions on objections and decisions on objections after appeal.

Human rights approach

46. Provisions concerning help to and protection of victims in the new EU Framework Decision should not lead to restrictions on what has been achieved in the Council of Europe's Convention on Action against Trafficking Human Beings (2005).

47. For the purposes of a human rights approach to combating human trafficking, a strategy should be developed for dealing with the effects these measures against human trafficking can have on human rights and collateral damage should be avoided as far as possible in the implementation of new policy,.