

**HUMAN TRAFFICKING:
A HUMAN RIGHTS BASED APPROACH IN DUTCH
POLICY**



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“They sell you like a product. We girls were just part of the menu”.

The picture on the cover page named barcode is part of the exhibition in the Netherlands entitled *Bought and Sold: Voices of Human Trafficking*. BLinN, a Dutch organization that assists and support victims of human trafficking, asked American photographer Kay Chernush to capture the stories of trafficked victims in images.

Executive summary

With this report an attempt has been made to answer the following central research question: *How can Dutch policy regarding trafficking in human beings be improved to adequately and fully implement a human rights based approach as set in the Council of Europe Convention on Action against Trafficking in Human Beings to protect and support sexually exploited migrant women?*

The Netherlands ratified several important international legal agreements that form the basis in Dutch THB law and policy, for instance the Palermo Protocol and EU Council Framework Decision on human trafficking. However, the Netherlands are still in the process of ratifying the CoE Convention on Action against Trafficking in Human Beings. This Convention is one of the first binding agreements on human trafficking that specifically incorporates a human rights based approach. Taking a closer look at Dutch policy, in particular the B9 regulation offers victims of human trafficking the possibility to receive support and protection.

A human rights based approach is fundamental for the development of an effective response to THB and to protect human rights of victims. Protection measures, criminal and migration procedures should complement and not contradict each other. Cooperation of victims in the criminal investigation should not prevail in victim protection.

In general the Netherlands comply in theory to the minimum provisions set in the CoE Convention. However, on crucial points Dutch policy is in contradiction with a human rights based approach. Main issues exist that urgently require a proper response in order to fully implement this approach in Dutch policy. First of all, *adequate identification of trafficked victims is lacking*. Misidentification remains a tremendous issue. Furthermore, victims do not have the right to receive support before the official identification process by the police, which does not fully comply with article 10 of the Convention. Naturally, this has severe consequences for victims. Secondly, the right to *legal stay and support still depends on cooperation in the criminal procedure*. Options for legal stay for victims that do not cooperate in the criminal investigation are very limited, thus, the Netherlands in general only conform to the second requirement set in article 14, paragraph one. Although the CoE Convention obligates member states to implement at the minimum one requirement, full implementation of a human rights based approach demands providing protection and support unattached of any cooperation in the criminal process. Thirdly, the current Dutch *support system does not provide adequate protection and support*. The Netherlands do not fully comply with article 12, since assistance is often made conditional on the willingness of a victim to act as a witness. Furthermore, shelters and expertise directed towards specific groups of trafficked victims are lacking and forms a serious problem. Centralizing victim needs and protecting the human rights of victims should be at the center of all efforts. As the Netherlands is considered a

forerunner of defending human rights this situation remains rather unacceptable and requires creative and sustainable responses.

Table of Contents

Abbreviations

Introduction	9
1. Judicial framework	12
1.1 International legal binding agreements relevant for Dutch law and policy on human trafficking	12
1.1.1 <i>UN Palermo protocol</i>	12
1.1.2 <i>EU Council Framework Decision</i>	13
1.2 Council of Europe	15
1.2.1 <i>CoE</i>	15
1.2.2 <i>Convention on Action against Trafficking in Human Beings</i>	15
1.3 Dutch law and policy regarding human trafficking	16
1.3.1 <i>Dutch law</i>	16
1.3.2 <i>Dutch policy</i>	18
1.4 Conclusion	21
2. Human rights based approach	22
2.1 What is a human rights based approach?	22
2.2 Implementation of a human rights based approach	24
2.2.1 <i>Interwoven relation</i>	24
2.2.2 <i>Victim assistance and protective measures</i>	25
2.3 Conclusion	26
3. Trafficking in the Netherlands	27
3.1 Context of trafficking	27
3.2 Facts & figures	31
3.3 Support and protection	34
3.4 Conclusion	37

4. Analysis of Dutch policy and a human rights based approach	38
4.1 Dutch compliance with the CoE Convention.....	38
4.2 Implementation of a human rights base approach in the Netherlands.....	42
Conclusion.....	43
5. Recommendations.....	44

References

Appendices

Appendix 1: Overview of complete procedure

Appendix 2: Figures regarding THB in the Netherlands

Appendix 3: Case studies

Appendix 4: Interview with Mr Chief T. Osuji, director of Reach Africa Foundation

Appendix 5: Summary interview Sanne Kroon, lobby & communication BLinN

Abbreviations

ACVZ	Adviescommissie voor vreemdelingenzaken, Advisory Committee on Migration Affairs
BlinN	Bounded Labour in the Netherlands
CoE	Council of Europe
ECHR	European Convention on Human Rights
HCHR	High Commissioner for Human Rights (UN)
ILO	International Labour Organization
IND	Immigratie- en Naturalisatiedienst, Immigration and Naturalization Service
IOM	International Migration Organization
KMar	Koninklijke Marechaussee, Royal Military Constabulary
NRM	Nationaal Rapporteur Mensenhandel, National Rapporteur on Trafficking in Human Beings in the Netherlands
SRTV	Stichting Religieuzen Tegen Vrouwenhandel, Dutch Foundation of Religious against Trafficking of Women
THB	Trafficking in Human Beings
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
VAPP	Victim Assistance and Protective Package
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum, Research and Documentation Centre

Introduction

Trafficking in human beings [THB] is a global phenomenon. Despite the abolishment of slavery in the beginning of the 1800s, modern-day slavery practices still occur worldwide. Around the globe millions of people are subjected to modern forms of slavery, forced labor in all forms. The majority of trafficked victims have been identified as women and girls (56 percent) and they are mainly trafficked for purposes of sexual exploitation (U.S. Department of State, 2009, p.8). Trafficking in human beings is a severe violation of human rights - such as a violation of the right to liberty, physical and mental integrity¹. THB has been one of the most important focus points in combating organized crime for several years now: on international (UN), regional (EU) and national level (the Netherlands). THB has mainly been seen as a criminal issue to be solved from a criminal law perspective, where the protection and rights of victims are only relevant to the extent they are relevant for law enforcement. However, this one-sided approach has been criticized. It has increasingly been advocated for to place the protection of human rights of trafficked victims at the center of anti-trafficking measures. This approach is known as the *human rights based approach* (Rijken C. & Koster D., 2008, p.1, 8). The Council of Europe Convention on Action against Trafficking in Human Beings (2005) [hereafter: CoE Convention] is considered the most (and only) comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguarding of their rights.

The Netherlands are a source, transit and destination country for trafficked victims; in particular women that are trafficked for the purposes of commercial sexual exploitation (U.S. Department of State, 2009, p.8). Hence, the Netherlands has been making continuous efforts to revise, improve and extend their THB policy and are proud to profile itself as a forerunner in the field of human rights defense. Surprisingly, the Netherlands (as one of few CoE member states) did not ratify the CoE Convention, yet are still in the process. In addition to this, Dutch policy to protect and support migrant victims of trafficking (the B9 regulation) is still mainly based on the purpose of victim cooperation in the criminal procedure. Practice shows gaps and issues in policy that have severe consequences of human rights of migrant victims in the Netherlands. Therefore, with this paper an attempt has been made to assess and analyze Dutch policy regarding the protection and support of migrant victims of trafficking and to which extent it complies with a human rights based approach. The CoE Convention will form the main focus in the analysis. Since THB is a complex problem including several types of exploitation, sexual exploitation of migrant women will be the main focus. In this paper migrant women are referred to as non-European undocumented aliens.

¹ Chapter 2, section 2.1 will focus on the violation of human rights in trafficking.

The central question of this dissertation is:

How can Dutch policy regarding trafficking in human beings be improved to adequately and fully implement a human rights based approach as set in the Council of Europe Convention on Action against Trafficking in Human Beings to protect and support sexually exploited migrant women?

To answer the central question the following sub-questions will be answered:

- What are the main international agreements regarding THB and a human rights based approach for the Netherlands? And how do they define human trafficking?
- How can Dutch law and policy to protect and support victims of human trafficking be described?
- What is a human rights based approach? And why is it important and required in THB policy?
- How can a human rights based approach be implemented?
- What is the context of human trafficking in the Netherlands, in particular regarding sexually exploited migrant women?
- What are the main issues in the implementation of Dutch policy to protect and support sexually exploited migrant women?
- To which extend does Dutch THB policy comply with a human rights based approach, in particular with the CoE Convention? And where does it need improvement?
- What can be recommended to improve and fully implement a human rights based approach in Dutch THB policy to protect and support sexually exploited migrant women?

This paper is mainly based on desk research including books, articles and (research) reports from the library at The Hague University and the internet. Field research additionally formed a part of my research. I consulted GHRD (Global Human Rights Defense) to gain practical insights for my research. I attended a working group on ‘trafficking in human beings: the lucrative business of organized crime’ on December 9, 2009. The working group was part of writing a manifesto on human rights in occasion of the International Human Rights Day 2009, partly organized by GHRD. During the working group approximately twenty representatives of (international) NGOs were present to discuss various issues in international and national policy and provide recommendations for a manifesto. Among others several presentations were given:

- A human rights based approach, presented by BLinN.
- Issues and needs of African women that are victims of trafficking, in particular regarding support. Presented by Ms. Marthins, executive director of Vital Aid Foundation.
- Eradicate trafficking of Human Beings for sexual exploitation: raising awareness among the African migrant community. Mr. Ted Osuji, Chairman of Reach Africa Foundation.

In addition, I conducted two interviews with NGO's involved in supporting trafficked victims to gain a better insight in the practical experiences and issues of these organizations and the trafficked victims they encounter. One interview was held with Mr. Ted Osuji, chairman of Reach Africa Foundation on November 16, 2009 (see appendix 4). The second interview held was via telephone with Sanne Kroon responsible for the lobby and communication at BLinN on November 26, 2009 (see appendix 5).

This paper is composed of four chapters, a conclusion and recommendations. Chapter one will look at the international and Dutch juridical framework regarding THB. The two most relevant international agreements for the Netherlands are explained and a definition of human trafficking is set out. Furthermore, the CoE Convention is explored in further detail and Dutch law and policy regarding THB will be examined. Chapter two focuses on a human rights based approach. It will explain what a human rights approach contains and why it is required in THB policy. In addition, the implementation of such an approach will be discussed. Chapter three intends to provide the context of trafficking in the Netherlands. Facts and figures will provide a better overview of the situation and main issues with regards to trafficking in the Netherlands, its policy and protection of victims will be further explored. Chapter four provides an analysis of Dutch policy and its compliance with the CoE Convention. Finally, the conclusion will answer the central question based on the analysis of Dutch THB policy and a human rights based approach. Recommendations are provided in chapter five that are based on the main factors defined in the conclusion.

1. Judicial framework

This chapter will provide an overview of the international agreements regarding the trafficking in persons and their importance for the Netherlands. Of these agreements, there are two that are most relevant for the Netherlands and will be explained more elaborately. In addition, special focus is given to the Council of Europe [CoE] and the Convention on Action against Trafficking in Human Beings (2005). Finally, Dutch law and policy regarding THB will be explored in further detail.

1.1 International legal binding agreements relevant for Dutch law and policy on human trafficking

A number of important international efforts and initiatives were made to combat and prevent trafficking. Over the years a great number of protocols, treaties, framework decisions with specific focus on trafficking have been created by the UN, the European Union and the Council of Europe. The Netherlands has ratified several important international agreements and put effort in continuously revising and improving its THB policy. Two of the most important recent documents that form the basis for Dutch law and policy are the *UN Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime* (2002) (hereafter: Palermo Protocol) and the *European Union Council Framework Decision on Combating Trafficking in Human Beings* (2002).

1.1.1 UN Palermo protocol

The Palermo Protocol, one of the two Palermo protocols², is part of the Convention against Transnational Organized Crime. The protocol was ratified and accepted by the Netherlands on July 27, 2005, and has as goal to prevent and combat the trafficking in persons, protect and support victims with full respect of their human rights, and promote the cooperation between states (art 2, Palermo Protocol, 2002). It is considered the first global legally binding instrument with an agreed definition on trafficking in human beings. This definition has been widely accepted and has formed the basis for other (international) documents, such as the EU council framework decision. The wide definition is the result and consequence of an international compromise, that requires to be suitable

² The Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air are two of the three protocols which form part of the United Nations Convention against Transnational Organized Crime. Both were adopted by the General Assembly on November 15, 2000. The Convention is considered to be the main international instrument in the combat against transnational organized crime.

for implementation in the various national laws and policies of UN member states (Rijken, C & Koster, D, 2008, section 2.2). Article 3 provides the following definition of trafficking in persons:

*“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of **coercion**, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. **Exploitation** shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;”* (art 3, Palermo Protocol, 2002).

The protocol is primarily a criminal law instrument, and member states who have ratified this instrument committed themselves “to take a series of measures against transnational organized crime, including the creation of domestic criminal offences; the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities” (United Nations Office on Drugs and Crime [UNODC], 2004).

With the ratification of the protocol the Netherlands committed itself to adjust their national law and policy. The previous Dutch definition of trafficking only penalized sexual exploitation. The Netherlands had to extend their definition of trafficking in human beings and penalize other forms of exploitation besides sexual exploitation³. With this adjustment violation of THB has been considered as a violation of personal freedom instead of solely being an exploitation of sexual nature (UNODC, 2008).

1.1.2 EU Council Framework Decision

For several years there has been an increased attention regarding human trafficking on a European level. Joint action was taken by the European Council to combat trafficking in human beings and sexual exploitation of children on February 25, 1997. It has as goal to establish common rules within Europe to combat certain forms of unauthorized immigration and to improve judicial cooperation in criminal matters (Europa, 2002). After the joint action more initiatives have taken place; however, an instrument was needed to unify and set common European definitions and penalization in penal legislation of European member states. Therefore, the council framework was set up to complement existing instruments and to introduce a common European legal framework (Europa, 2007). The Council Framework Decision on Combating Trafficking in Human Beings is

³ The new and adjusted definition went into force on January 1, 2005

a legally binding document and commits member states to adjust their law and policy regarding human trafficking. The Council Framework Decision adopted the definition of trafficking in human beings for the purpose of labor or sexual exploitation from the Palermo Protocol, with the exception of the removal of organs (art 1, Council Framework Decision, 2002).

“Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harboring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labor or services, including at least forced or compulsory labor or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other” (art 1, Council Framework Decision, 2002).

Article 1 thus states that all criminal conduct that abuses the mental or physical vulnerability of a person will be punishable. States are obliged to take measures to penalize human trafficking according to law; penalties are included in the framework (art 3, Council Framework Decision, 2002). Furthermore, it declares that member states have the commitment to offer protection and assistance to victims (art 7, Council Framework Decision, 2002). Member states are able to choose their own measures to comply with the framework.

Smuggling VS trafficking

THB is not similar to smuggling. In the *UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* the smuggling of migrants is defined as:

““Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;” (UNODC, 2004, art 3).

Smuggling is usually considered as (paid) assistance for illegal crossings, transit and residence. In contrary to THB smuggling does not focus primarily on exploitation and is usually combated by protecting state borders (Advies Commissie voor Vreemdelingenzaken [ACVZ], 2009, section 2.1).

1.2 Council of Europe

The Council of Europe Convention on Action against Trafficking in Human Beings is considered the most (and only) comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguarding of their rights. This legal instrument is important for the initiation of a human rights based approach in policy regarding THB. Unfortunately the Netherlands only signed and did not ratify this Convention.

1.2.1 CoE

The Council of Europe [CoE] seeks to develop common democratic principles based on the European Convention of Human Rights throughout Europe. They find values such as democracy, human rights and the rule of law indispensable in a European society (Council of Europe, “Council of Europe in brief”). The CoE has adopted several initiatives regarding the combat against human trafficking and have been active in this field since the 1980s.

Conventions of the CoE are legally binding when ratified and are essential instruments that provide rights to individuals in Europe. The European Convention on Human Rights (Rome, November 4, 1950) is important for the protection of human rights and fundamental freedoms in Europe. With this convention the European Court of Human Rights was established (art 19, European Convention on Human Rights, 1950). The Court can take inter-state cases and individual applications. In other words, a victim of human trafficking has the right to file an individual complaint against a state party of the CoE Convention (Art 34, European Convention on Human Rights, 1950).

1.2.2 Convention on Action against Trafficking in Human Beings

The *Convention on Action against Trafficking in Human Beings* was adopted on May 3, 2005 and entered into force on February 1, 2008. The Convention can be considered as the first European treaty and advanced instrument that specifically focuses on the **protection** and position of victims of human trafficking and the safeguard of their rights. The human rights based approach forms an essential aspect in this Convention. In addition, it also aims at trafficking **prevention** and **prosecution** of traffickers (Nationaal Rapporteur Mensenhandel [NRM], 2007, p 51). The articles that are included in chapter III ‘Measures to protect and promote the rights of victims, guaranteeing gender equality’ in particular address the protection and promotion of the rights of victims - such as the identification of victims, assistance, protection of private life, recovery and reflection period, resident permit, compensation and legal redress, repatriation and return of victims (Art 10 – 16, CoE Convention). These articles are important provisions for implementing a human rights based approach in THB law and policy (CoE, 2005, “Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report”).

The Palermo Protocol serves as a basic principle and all forms of exploitation are included in the CoE Convention (CoE, “Council of Europe Convention on Action against Trafficking in Human Beings”). At this moment, the Convention is ratified by 26 council member states and signed by 15 council member states, including the Netherlands (CoE, Homepage of the Council of Europe).

1.2.3 The Netherlands and the Convention

The Netherlands did not ratify the Convention; however, the government is currently working towards the ratification (Kamerstukken II 2008 – 2009, 31702 and 31700V, No. 1). In order to comply, adjustments in Dutch policy are essential - such as in the B9 regulation (*B-9 regeling*). Adjustments are necessary as the Convention requires a human rights based approach (Ministerie van Justitie, 2007, p 12). According to a report from the Dutch National Rapporteur on Human Trafficking [NRM], one of the reasons for merely signing the Convention is due to the fact that the Netherlands felt that they already addressed all the (law) obligations from the Convention sufficiently. They announced in 2005 to investigate whether this Convention pushes towards adjustments in Dutch policy of non-legislative nature (NRM, 2009, p 78).

1.3 Dutch law and policy regarding human trafficking

1.3.1 Dutch law

The first section of Dutch law regarding human trafficking dates from 1911. It has been adjusted and extended over the years. The most recent adjustment was made in 2005, when article 250a Sr was replaced by article 273a Sr on 1 January 2005 (renamed to 273f Sr in 2006). The penalty clause 273f Sr in the Dutch Criminal Code under the title of ‘offences against personal freedom’ (*‘misdrifven tegen de persoonlijke vrijheid’*) describes the definition of human trafficking, what is understood by an offence, and which penalty relates to the offence. The Netherlands broadened the definition by including a section regarding the removal of organs in 2005 and by including other types of trafficking. According to 273f Sr, paragraph 1, human trafficking is defined as followed:

Being guilty to human trafficking will be penalized with imprisonment of at least six years or a fine in the fifth category: the one that recruits, transports, transfers, harbors or receipt persons, by means of coercion, force or other forms of coercion, or by the threat of force or other forms of force, of extortion, fraud, deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation or the removal of organs.

237f Sr, paragraph 2 describes what is considered as exploitation (to a minimum): exploitation of others in prostitution; other forms of sexual exploitation; forced or coerced labor or services; slavery and practices similar to slavery (Sr, “Artikel 273f Sr” / B9 informatie, “Wat is artikel 237f?”). ‘Other forms of exploitation’ is left to be further defined in court (Korvinus, D., Koster, D. & Jonge van Ellemeet, H., 2007).

The definition of THB in Dutch criminal law is based on international agreements such as the Palermo Protocol. All forms of human trafficking are included in the article, which makes it an extended yet also a complex article. However, in contrary to the Palermo Protocol the Dutch criminal law qualifies the removal of organs as separate from (other forms of) exploitation. In the underlying international law THB is considered as a (severe) form of organized crime and a violation of human rights. Therefore, one should look at the offence from this point of view (Ministerie van Justitie, 2007, p. 14-16).

The abolishment of the ‘brothel ban’⁴

After a long period of public discussions and political debates the Dutch government decided to abolish the ‘brothel ban’ on October 2001. In other words, prostitution on a voluntary basis by prostitutes of age that legally stay in the Netherlands has been legalized. All prostitutes have to be registered at the Chamber of Commerce, have shelter, fulfill their duty to pay taxes and be in the possession of a permit. This change in law was mainly meant to intensify the fight against unacceptable forms of sexual exploitation, and in particular human trafficking. It was concluded that with the old law the competent authorities were very limited and poorly operating in combating human trafficking.

With this adjustment in law brothels and pimps were made legal and the penalization of undesirable forms of sexual exploitation of minors was strengthened. According to an evaluation investigation in 2006 (by WODC) municipalities mention that they have better control over the prostitution businesses (such as clubs and ‘windows’) that are restrained to a certain location. However, businesses that are not restrained by location (such as escort services) are harder to control. In addition, there are also different types of businesses and locations that are difficult to detect and control, such as saunas and massage parlors. The police capacity to control these businesses is limited and signs of human trafficking are not always being investigated.

According to the investigation, the number of illegal prostitutes declined after the introduction of the brothel ban. However, involuntary work is hard to detect and it appears that no improvement has taken place in this area. A complicated factor in combating exploitation and involuntary prostitution is that policy and allotment of permits is directed towards operators of brothels and

⁴ In Dutch: *Opheffing bordeelverbod*

windows and not towards pimps; creating situations where businesses operate legally but where prostitutes might work under coercion (Ministerie van Justitie, 2007, p.64-76).

1.3.2 Dutch policy

B9 regulation (B9-regeling)

The legal stay of victims of human trafficking and regulations for protection and support are settled in article 3.48 of the Dutch Aliens Decree (*Vreemdelingenbesluit* [Vb] 2000) and chapters B9 and B16 of the Dutch Aliens Circular (*Vreemdelingencirculaire* [Vc] 2000). These regulations all together are also called the B9 regulation. It is part of an integral procedure by the police and judiciary to combat trafficking in persons. On the one hand, the B9 regulation is meant for the tracing and prosecution of suspects to make it easier for victims and witnesses to inform the police. On the other hand, it is meant to protect the (alien and undocumented) victim and offer humanitarian assistance (ACVZ, 2009, p.17).

The criminal investigation department, local police, alien police and royal military constabulary (KMar) are officially assigned to trace and investigate cases of human trafficking; depending on the task division and situation of the case. They are able to form multi-disciplinary teams to investigate THB when possible and have the authority to intervene in the situation (Aanwijzing mensenhandel, 2008, p.9)⁵. According to the B9 regulation authorities are required to be alert about several signals of human trafficking:

- A sex worker that has been found and does not have valid residence papers;
- During actions aimed at finding illegal aliens the authorities and police need to be aware that possible victims of trafficking can be among them;
- It is possible that a victim takes own initiative to report to the police;
- Possible victims might end up or are held in alien detention centers (B9/3.1 Vc 2000).

The police are responsible for the official identification of victims. One of the instruments used to identify victims is a list of signals of human trafficking set up by the public prosecutor and used by the police. When the police comes in contact with persons that are (possible) victims of trafficking they are obliged to point out their rights and inform about the B9 regulation; whenever there is a slight/insignificant indication of trafficking. This occurs during the first interview with the victim (on an informative basis). Interviewing victims is only allowed by certified police trained in

⁵ The EMM (*Expertise Centrum Mensensmokkel en Mensenhandel*) can provide information to the authorities to assist in investigations. The EMM is the national expert center for human smuggling and trafficking. Institutions that are involved in tracing, investigation and support regarding human trafficking can share their findings with the EMM. The EMM verifies and analyzes the information to provide strategic and operational information to all partners with the goal to map the greater context of investigating trafficking in the Netherlands.

hearing victims of trafficking (Aanwijzing mensenhandel, 2008, p9). The following persons are able to use the rights set out in the B9 regulation: aliens that are found during administrative or police inspections in sex businesses; aliens that were active in the sex industry and do not have a valid residence permit yet contact the police on their own initiative; aliens that have not (yet) worked in the Netherlands and are not in the possession of valid residence papers, however, might be possible victims of trafficking. During the interview the victim should officially be offered the following: a three month reflection period to recover and think about pressing charges or not; pressing charges immediately and request the temporary residence permit (B9 regulation); or to their home country⁶.

Possible victims are offered a (solely one) reflection period of three months. During this period the (possible) victim needs to decide whether to cooperate in the police investigation to track down and prosecute the offender by pressing charges or through alternative cooperation. During the three month reflection time the alien has the right to stay in the Netherlands and to receive shelter, medical care, legal assistance and financial support. Women who are already in possession of a temporary residence permit through the B9 regulation are allowed to follow an education or to have a paid job (only) for the duration of their stay (B9/ 3.2.6 - 3.2.9 Vc 2000). The police are obliged to inform the national coordination centre for THB 'CoMensha' in case one chooses to have a reflection period or to press charges. CoMensha is responsible for the national registration of victims and organizes and coordinates the support and assistance for victims.

In case migrant victims choose not to cooperate in the criminal procedure or when the time for the reflection period has passed they are obliged to leave the Netherlands (B9/ 3.4 Vc 2000). The reflection period is ended when the (possible) victim: disappears with unknown destination; decides not to press charges or to cooperate in the criminal procedure in other ways; presses charges or cooperates in the criminal procedure in another way; requests a residence permit (B9/ 3.3 Vc 2000).

When they do decide to cooperate – either via pressing charges or cooperating in the investigation through other means - the police will inform the immigration service (IND) via an M55 form. Within 24 hours a decision has to be made by the IND whether a residence permit will be provided (B9/ 7.1 Vc 2000). The B9 regulation provides similar rights and services to victims as the reflection period. In addition, one has the right to work and to a social security payment

⁶ The alien police can arrange return of victims in case they do not have identification papers and have the financial capacity to return (often in involuntary return). DT&V (Dienst Terugkeer en Vertrek) is responsible for the deportation procedure of illegal aliens. Organizations involved in arranging and supporting return for trafficked victims (each with their own expertise) are CoMensha, International Organization for Migration (IOM), BlinN (Bounded Labour Nederland) and SRTV. These organizations operate according to the Return Covenant and can assist the authorities to return victims of trafficking. Voluntary return will be facilitated by IOM under the REAN regulation (*Return and Emigration of Aliens from the Netherlands*.)

(ACVZ, 2009, p.19). The residence permit for (possible) victims is valid for one year and can repeatedly be extended by one year in case the criminal procedure takes longer (B9/ 3.57/8.1 Vc 2000). The B9 permit can only be granted when the victim has been officially identified as such and pressed charges or cooperated in an alternative way in the criminal procedure, and when there will be an investigation to track down and prosecute the offender (B9/ 2 Vc 2000). This also means that the residence permit is no longer valid and will be subdued when the case is dropped by the Public Prosecutor or in court or when the court has passed a sentence (B9/ 8.1 Vc 2000). However, an alien has the right to appeal at the court of justice and wait for their decision in the Netherlands (B9/ 10 Vc 2000 / Article 12 Sv). Yet, during this period they do not have the right to support.

Continued stay (B16/7)

A person that no longer has the right to a temporary residence permit as set in the B9 regulation is obliged to leave the Netherlands. One can request a residence permit for continued stay on grounds of explicit reasons of humanitarian nature. Victims of trafficking and witnesses can request this permit. It is a temporary permit, yet one can request a permanent residence permit after five years. A permit for continued stay can be assigned when: pressing charges or alternative cooperation in the investigation led to the prosecution of the suspect; pressing charges or alternative cooperation in the investigation did not lead to a prosecution, however, the victim at the time of the judgment legitimately stayed in the Netherlands on grounds of the B9 regulation for a minimum of 3 years; or the victim stays in the Netherlands on grounds of the B9 regulation for a minimum of 3 years while the case is still running (ACVZ, 2009, p.20).

A permit can be assigned when there are unique individual circumstances which form risks and cannot allow the alien to leave the country (Article 3.52 Vb). Indicators used for defining and assessing explicit reasons of humanitarian nature are – among others - the level of risks of reprisals towards to victim and family, the level of protection a native country can offer, possibilities of social re-integration, and the risk of persecution. The explicit reasons of humanitarian nature are listed in chapter B16 section 7 of the Dutch Immigration Circular (B16, “voorgezet verblijf”).

The last amendments of the B16 were made in August 2006 and February 2008. This extended the right for victims to request the permit for continued stay even when the case does not necessarily lead to a conviction, and when a victim stayed in the Netherlands legally (B9) for a minimum of three years. The fact that the investigation led to a prosecution or that a victim cooperated and legally stayed in the Netherlands for three years will now form enough evidence that returning include risks for the victim. Consequently, the B16 permit can be assigned on request of the victim. It has to be noted that the burden of proof remains with the victim (NRM, 2009, p.185).

Discretionary power

In case a victim cannot cooperate in the criminal investigation one can request the State Secretary for discretionary power (*discretionaire bevoegdheid*). One can ask for pardon from the State Secretary on grounds of unique personal circumstances. This option was only used five times since 2005 according to the IND, thus, it has to be noted that discretionary power is not requested and used often (NRM, 2009, p.177). Furthermore, this option cannot be seen as policy, yet as an exception of policy. ‘Discretionary power’, that is: exceptions to the rule, e.g. is aimed at cases that are not covered by policy and are based on personal (humanitarian) considerations (Netwerk VN-Vrouwenverdrag, 2009, p49).

1.4 Conclusion

The Palermo Protocol is being considered the first major global legally binding document with an agreed definition of human trafficking and forms the basis for other international agreements. Coercion and exploitation are two main elements in the human trafficking definition. The EU Council Framework Decision on Combating Trafficking in Human Beings is legally binding for European member states and adopts the Palermo definition of THB with the exception of the removal of organs. The Netherlands ratified both agreements which now form the basis in Dutch THB law and policy. The Convention on Action against Trafficking in Human Beings is one of the first binding agreements that specifically focus on the protection of victims in trafficking with special attention to their human rights. Unfortunately, the Netherlands has not yet ratified this agreement yet is in the process. In doing this, the Netherlands have to alter the policy in order to establish a victim centered approach to THB. When assessing Dutch law and policy, THB is considered to be a severe form of organized crime and violation of human rights. The B9 regulation attempts to offer victims assistance and support through the three month reflection period. However, support and assistance for (possible) victims still remains only for aliens that use the three month reflection period and the B9 permit, thus, highly depends on cooperation with the police. In addition, other options for legal stay are usually difficult. One needs to question whether this regulation is effective in the way that it fully provides protection and support and if it encourages possible victims to make use of this regulation and cooperate in the criminal process.

2. Human rights based approach

“Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked...” (High Commissioner for Human Rights [HCHR], Principles and Guidelines on Human Rights and Trafficking, guideline 1).

The severe violation of human rights is one of the most important reasons why the combat against trafficking has been prioritized both internationally and in the Netherlands. Therefore, it seems logical to centralize victim protection and support when combating THB. This approach is also important in order to prevent that THB is solely seen as a migration issue or a form of organized crime. This chapter will explain what a human rights approach is and why it is essential in trafficking policy. Furthermore, it will be discussed how this approach can be implemented in policy.

2.1 What is a human rights based approach?

Human trafficking violates a person's fundamental rights, such as the right to physical and mental integrity (Charter of Fundamental Rights of the European Union, Art 3), the right to free choice of employment, to just and favorable conditions of work (Universal Declaration of Human Rights [UDHR], Art 23), the right to life, liberty and security (UDHR, Art 22). No one shall be held in slavery or servitude or required to perform forced or compulsory labor (European Convention on Human Rights [ECHR], Art 4).

Many countries have adopted special protection and support mechanisms for victims of trafficking, including the Netherlands (Rijken, C & Koster, D, 2008). The assignment of a temporary residence permit and services for victims usually depends on their willingness to cooperate in the criminal proceedings. This one-sided approach to consider THB as a criminal issue to be solved merely in a criminal procedure has been criticized over the past years. This criticism has brought forward a new approach where human rights and victims are centralized in combating THB, with the intention of preventing the violation of a victim's human rights as a common denominator (Ministerie van Justitie, 2007, p.24, 25). This is known as the human rights based approach (or victim centered approach) and is essential in taking victims interests and vulnerable position sufficiently into account. The human rights of victims are a guideline for adopting policy

and legislation with regards to fighting THB. It is necessary that there are recourses available that will protect them and help them recover. It is essential to include the economic, social, cultural, and political rights in a human rights based approach when combating THB (Chew, L.). Experience has shown that a holistic approach to fight THB is highly needed. THB encompasses various issues making it a complex problem (such as organized crime, migration, prostitution, poverty, gender issues etc). The way trafficking is combated and certain measures are taken really depends from which issue policy makers view the problem. That is to say that if one views it from a human rights violation perspective different solutions will be proposed then when it is viewed as a problem of illegal immigration. Therefore, a multi-disciplinary and multi-faceted approach is needed when dealing in THB (European Commission, 2004, p.62).

“Essential elements of a human rights based approach are the observance of international human rights norms and the principle of non-discrimination, standard setting and accountability, the recognition of human beings and in particular trafficked persons as subjects and holders of rights, self organization, participation, empowerment and social inclusion of the groups and communities affected, including trafficked persons, and the integration of a gender, child rights’ and, where applicable, ethnic perspective” (European Commission, 2004, “Report of the Experts Group on Trafficking in Human Beings”, p.60).

The United Nations Higher Commissioner for Human Rights has developed principles and guidelines regarding human rights in trafficking policy. This forms an important instrument in the development of such an approach. According to these principles a human rights based approach should centre human rights of victims in all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims (HCHR, guideline 1). In short, a victim centered approach integrates principles, standards and norms of the international human rights system into policies, law, programs and processes (European Commission, 2004, Annex 3). Some essential elements regarding the protection and support of victims are the importance of identification of victims; ensuring an adequate legal framework to harmonize legislation and policy, including the right instruments for protection and support; appropriate protection and support in cooperation with all stakeholders to provide safe and adequate services to victims; and the right to remedies⁷. These important elements have also been included in international legislation in order to implement a human rights based approach in THB. The Expert Group in Trafficking in Human Beings (2004) considers the integration of a human rights perspective fundamental for the analysis of THB and the development of an effective response to it (European Commission, 2004, p60).

⁷ See guidelines 2, 4, 5, 6, 9 United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking.

2.2 Implementation of a human rights based approach

A holistic and integrated approach is required in order to combat THB effectively and protect victims, not only proclaimed in words but also implemented in practice. At this moment states like the Netherlands has already established quite a lot in criminal and migration law to assist and protect victims. However, it should be recognized that when THB is concerned negative effects often are caused due to the way migration and criminal law are interwoven. Furthermore, on the basis of international law and national obligations protective measures for victims are adopted. These measures are often not sufficient enough to centralize victims' needs and, thus, special protection and assistance measures should be provided to victims.

2.2.1 Interwoven relation

The interwoven relation between criminal law and migration law forms a conflicting factor in a human rights based approach. First of all, the assistance and protection of victims is not taken as a starting point in policy. Although some states like the Netherlands made efforts to protect victims - for instance through providing a residence permit - it ultimately has as primary goal to retrieve more testimonies from victims to help the investigation and prosecution of traffickers. The effect of this criminal law perspective is that victims often lose their rights to a residence permit and assistance when their case is decided or aborted. Meaning that the needs of victims are primarily acknowledged in order to help the prosecution of perpetrators, their rights have a subordinate role in criminal proceedings. Secondly, the interests and needs of victims, law enforcement and migration authorities are not in line and sometimes contradict each other. In combating THB both migration and criminal law play important roles. In the Netherlands the B9 regulation forms a good example of this interwoven relation, since it regulates the legal stay in the Netherlands for migrant victims and provides guidelines for protection and support with the aim to stimulate victims to report traffickers to the police. Assistance and protection of victims is made dependent on the criminal and migration law perspective (Rijken, C & Koster, D, 2008, p.9 – 11).

The interwoven relation of both laws can have negative effects. The lack of cooperation between authorities for example is not always satisfactory. When removal of illegal aliens on the basis of migration law is executed (for example when immigration authorities do not recognize THB victims when arresting illegal aliens) this will first affect the criminal proceedings to prosecute possible traffickers and secondly does not take into account the vulnerable position of the victim (Rijken, C & Koster, D, 2008, p.11).

A solution to these issues and to implement a victim centered approach in policy and practice is to disconnect victim protection from migration and criminal law. Naturally, both laws in combating THB are required to offer protection for victims. However, they should not be made

dependent on whether a victim cooperates in a criminal investigation and proceedings. A person that might be a possible victim of THB should be enough reason to provide a (temporary) residence permit (on humanitarian grounds), assistance and protection, where the granting of a residence permit and assistance for victims is not influenced by the outcome of the criminal procedure. Whether a victim cooperates or not, many factors can lead to not prosecuting the trafficker, such as lack of evidence, limited resources etc. Therefore, it does not seem right to include these factors in the question whether or not to assign rights to victims (Rijken, C & Koster, D, 2008, p.11 – 14).

Italian system

Italy is one of very few countries that have a system in place where the duration of the residence permit is not made dependent upon the cooperation of a victim in criminal proceedings. This so called '*Article 18 programme*' includes two options for victims to use the system. On the one hand, the 'legal option' - similar to Dutch policy – where victims report to the police to be able to receive a temporary residence permit. On the other hand, the 'social option' where victims report to certified support organizations. The organization files statements and facts and reports to the police on behalf of the victim. In both options victims are obliged to follow the integration program financed by the government and executed by certified support institutions. The Article 18 permit is valid for 6 months and can be prolonged twice with 6 months. Hereafter this can be transformed in a work or student permit. The Italian certified support organization '*Associazione On the road*' concluded that victims that choose the 'social option' after resting and gaining confidence in authorities decided to press charges. Furthermore, the number of arrests and prosecutions increased after the introduction of this program and abuse of the system was not detected.

Corine Dettmeijer, national reporter of human trafficking agrees that receiving protection and support should not be made dependent on the cooperation in investigation. On the other hand, she does not feel that the whole B9 regulation has to be changed or be replaced (Heijningen van, H., 2009, section '*schrijnend*'). The State Secretary of the Netherlands has agreed to conduct research on the Italian approach and its effects (NRM, 2009, p.179).

2.2.2 Victim assistance and protective measures

The fact that a person might be a possible victim of THB should be serious enough to receive protection and assistance. There should be one package of assisting and protective measures for victims of THB, naturally that includes measures recognized in international law. These measures are proposed in a Victim Assistance and Protective Package (VAPP). According to Rijken and Coster it should preferably be developed at the European level in order to realize a consistent human rights based approach that can be implemented on a regional level. As trafficking can exist in different forms and victims have individual needs, specific measures should be included in such

a package. Legal assistance, protection, the right to receive information, respect and recognition are examples of provisions which should be elaborately be set out. First of all, a possible victim should be properly identified, without identification they will be denied of the right to receive protection and support. Consequently, they should be informed about their rights and be offered safe accommodation. A residence permit should be granted on humanitarian grounds, not dependent on criminal procedures. In addition, a reflection period should be offered so that the victim has time to think about pressing charges and receives first medical assistance and time for recovery. They should be referred to an organization which is specialized in THB and can arrange assistance and support. It is important that victims of sexual exploitation are offered specialized help in the form of medical care and legal aid. Importantly, it should not be forgotten that relatives might need to be provided with safety and security measures as well. Education, training and the possibility to work should be available for victims. Protection of private life and data of victims is essential, as well as compensation and legal redress. A risk analysis to assess whether it is safe to return to a home country is necessary. These measures should not only be implemented in policy but highly needs an active attitude and awareness of the competent authorities. In order to form a holistic approach and start the implementation of a human rights based approach these measures should be taken as a starting point for human trafficked victims (Rijken, C & Koster, D, 2008, p.14, 15).

The UN Palermo Protocol and the CoE Convention are important legal instruments outlining the essential components in a victim centered approach (CoE Convention, Chapter III). It includes provisions which cover all types of trafficking; however, the protection and assistance of trafficked persons vary greatly depending on what form of exploitation and type of victims. It has to be noted that migrant women that are sexually exploited have very specific needs for assistance and support and consequently need a different approach for action (Nordic Baltic Network & European Women's Lobby, 2008).

2.3 Conclusion

The human rights based approach is based upon a philosophy that sets as its primary concern the protection of victims. It is therefore considered vital to offer assistance and protection to victims, even potential victims, both in the initial discovery stage as well as significantly beyond the period in which other legal matters are in process (regarding those accused of organization and encouraging THB). Human rights of victims should be a guideline for adopting policy and legislation to protect, assist and provide redress to victims. A human rights perspective is fundamental for the analysis of THB and the development of an effective response to it. Protection and support for victims should not be made dependent on whether one cooperates in the criminal investigation, thus, protection measures, criminal investigation, and migration law should

complement and not contradict each other. Thus, in order to implement a victim centered approach a VAPP is essential. In looking to restructure its THB policy, the Netherlands would be advised to look at the example of countries like Italy that have a system in place where the right to support is not made dependent on the cooperation of victims in the criminal process. Furthermore, it should be questioned to which extent the Netherlands actually implemented a human rights based approach.

3. Trafficking in the Netherlands

This chapter intends to provide the context of trafficking in the Netherlands. Facts and figures will provide a better overview of the situation (complemented with appendix 2: figures). Furthermore, main issues with regards to trafficking in the Netherlands, its policy and victims will be described as well (complemented with appendix 3: case studies). Finally, the system of support and protection in the Netherlands will be explained in more detail. An overview of the complete procedure can be found in appendix 1.

3.1 Context of trafficking

Human trafficking generates a huge amount of profit for criminal organizations. The ILO estimated that around 1.39 million people around the world are victim of sexual exploitation (U.S. Department of State, 2009, p.8). The number of victims in sex trafficking in the Netherlands was estimated to be around 3.500 people in 2003⁸, a number that increases each year (NRM, 2003, p.82).

Push and pull factors

Individuals leave their home country for various reasons. In their home country victims often deal with poverty, violence and unemployment, therefore, migration can form the solution and a way out for a better future. Due to the limitations in legal migration many people are dependent on intermediates. Victims accept offers to work abroad but are not aware of the consequences, thus, upon arrival they are forced into exploiting situations (BlinN, 2009, p.15). Traffickers and others involved in the trafficking crime networks primary focus is to earn as much money as possible from the exploitation of other persons. As long as the root causes of trafficking exist it is likely that

⁸ Estimated by the National Rapporteur on Trafficking in Human Beings (NRM), in the second report “tweede rapportage van de Nationaal Rapporteur Mensenhandel”, p.82.

this crime will continue and grow globally (EUROPOL, 2008). Some factors stand out and are more relevant than others, therefore these may be considered as factors that can ‘push’ and ‘pull’ people in dynamics. Naturally push and pull factors differ between the various forms of trafficking and between countries (EUROPOL, 2008, p.3). According to Europol some important push and pull factors for people vulnerable to be trafficked in general are:

Push factors:	Pull factors:
<ul style="list-style-type: none"> - high unemployment - labor market not open to women and gender discrimination - lack of opportunities to improve quality of life - sexual or ethnic discrimination - poverty - escaping persecution, violence or abuse - escaping human rights violations - collapse of social infrastructure - other environmental conditions including conflict and war 	<ul style="list-style-type: none"> - improved standard and quality of life - better access to higher education - less discrimination or abuse - enforcement of minimum standards and individual rights - better employment opportunities - demand for commercial sexual services - higher salaries and better working conditions - demand for workers within the sex industry and higher earnings - established migrant communities

(Source: EUROPOL, 2008, p.3)

The Nordic Baltic network⁹ claims that there is a possible link in the demand for women in the prostitution market in the country of destination. Countries where prostitution has been legalized or institutionalized as a form of work - such as in the Netherlands - trafficking of women for sexual exploitation is more widespread than in countries that restrain the demand (Nordic Baltic Network & European Women’s Lobby, 2008, p.7, 8).

Victims of THB

It is impossible to describe a typical victim of trafficking. Most victims originate from regions subjected to economic hardship; however their backgrounds are very diverse. Low and highly educated, employed as well as unemployed people can be vulnerable to being trafficked. Most victims are females; however, due to the increased awareness of other forms of trafficking (such as forced labor) more men are being identified as victims. Victims of THB often struggle with their own issues and already had to deal with traumatic events in their home country. Being trafficked

⁹ The Nordic Baltic network is part of the “Nordic-Baltic Pilot Project”, comprising of NGOs and government agencies from the eight Nordic and Baltic countries, working together to develop the best possible models to support and assist women who are trafficked, placing the needs of women at the centre of all activities.

will cause (additional) trauma, which can lead to chronic problems. In addition to being severely traumatized, some do not always realize they are victims according to Dutch juridical norms. These women, on the one hand, struggle with physical and physiological issues. While on the other hand, do not truly comprehend the cause of their issues causing them to feel solitary in the situation (BlinN, 2009, p.15, 16). Victims are often afraid to come out and to share their stories. Some important reasons are: they are severely traumatized and are not able to report what has happened to them; they are afraid for reprisals that can hurt them or their family; they do not trust the police or people in general and fear deportation; they often do not know about the possibilities for assistance and support (such as the B9 regulation) or feel that the risk to press charges weighs higher than the benefits included in the B9 regulation; in particular African victims also fear stigmatization (BlinN, 2009, p.16 / Interview Mr. Chief Osuji, director Reach Africa Foundation).

Vulnerable groups

Minors, women, and intellectual handicapped persons are –among others – highly vulnerable groups to be trafficked. The main regions of origin are women from West Africa, Asia, and Eastern Europe. They are mostly undocumented aliens which make them extremely vulnerable and exposed to various risks. One of the risks is being arrested as an illegal alien. Their human trafficking history can be overlooked and they can be misidentified with the consequence of being deported or being placed in detention (NRM, 2009, p.109 - 111).

Traffickers

People involved in the recruitment of victims for trafficking are likely to have similar nationalities or ethnic background as their victims. On the other hand, they are increasingly cooperating and engaging with other nationality crime groups to help realize their goals. In general, the majority of traffickers are male; however, the involvement of women in the recruitment and trafficking is significant and even increasing. The traffickers often search for vulnerable potential victims and use (continuous new) creative ways, false promises and deceptions with the objective to trick, coerce and win trust among women for trafficking purposes (EUROPOL, 2008, p.4). Once in the hands of a trafficker these violations can continue for a long time and repeat itself when a victim is ‘sold on’ or ‘re-trafficked’. In particular migrant victims are bounded to their trafficker via debt and voodoo rituals.

The case of Nigeria

Nigeria was in civil war for three years in the 1960s. This war was followed by the change in power of various dictators between 1970 and 1998. These events still affect the country and people in their daily life. Misgovernment and corruption are still present and violence and poverty

remains. High unemployment in combination with the increase of poverty in the 1980s were aspects that caused a swift. Families became dependent on women in order to survive with the result that not only men but an increasing number of women moved to Europe to conduct unskilled work. Once in the Netherlands they discovered there was a high demand for African girls in prostitution, with the result that many independent Nigerian prostitutes moved to Europe including the Netherlands. These women moved with the goal to build their careers in prostitution and start as a madam. Some of these women began to recruit other girls and they arranged investments by male ‘sponsors’ in Nigeria. Subsequently, these first madams took charge in criminal human trafficking organizations and started to use Nigerian voodoo rituals to keep control over the girls. Once the madams returned to their home country with enough money, a cycle was created. An increasing amount of women felt that a possibility for a good future could only be found abroad. To work in the west is seen by most Nigerian women and girls as the best strategy to escape their poor life standards and support their families. (Ministerie van Justitie, 2007, p.40-43 / NRM, 2009, p.389, 390)

Currently the Netherlands, Italy and Nigeria are collaborating in a project to set up referral mechanisms for victims of trafficking in the provinces of Benin and Lagos. The Dutch and Italian embassies finance the IOM Nigerian project. The project aims at mapping the social services of NGOs in the region and makes agreements with regards to support the victims (mainly shelter and reintegration). They focus on (possible) victims encountered in the region itself and victims that return from western countries (Openbaar Ministerie, 2009, p.32).

Sexual exploitation

Prostitution was legalized in the Netherlands since the lifting of the brothel ban in 2001. Every woman (of age) can work as a self-employed prostitute. However, human traffickers take advantage of this system. The trafficker will try to arrange all the documents necessary for them to work. In the Netherlands several forms of prostitution work can be found and various ways of coercion. Women who are trafficked end up in various prostitution sectors, such as in window prostitution, clubs/brothels/private prostitution houses, escort services or as a street prostitute. Other forms of prostitution can be found in an underground form such as in Turkish cafes, massage and beauty parlors, and Chinese hairdressers. Several investigations concluded that the foremost use of coercion on women is: (threatening with) physical violence, keeping a close eye on the victim and/or locking up the victim, and create a (fictitious) debt. Taking and keeping their passport, (threaten) violence towards family of victims, love illusions and the use of voodoo rituals are other forms of coercion often used. Furthermore, in general most victims are continuously moved to different places to work and almost half of trafficked victims were even moved to various countries (NRM, 2005, p.21-23).

3.2 Facts & figures

CoMensha is the national coordination centre for human trafficking where victims of trafficking in the Netherlands are reported, registered and offered the (first) assistance and support. They receive information regarding trafficked victims from various organizations in different ways. The received information is not always complete, thus, CoMensha is mostly only able to register the basic characteristics - such as country of origin, age, sex (CoMensha, 2009, p.4). Data regarding residence permits are registered by the IND.

Victims

The number of victims in sex trafficking was estimated to be around 3.500 people in 2003 (NRM, 2003, p.82). Exact numbers are difficult to find and to register since human trafficking includes hidden populations and occurs in illegal and criminal settings. The number of victims that have been reported has increased enormously over the past decade. Table 3.1 (see appendix 2) shows that 228 victims were reported in 1998 that significantly increased to 826 victims in 2008. Only a small minority are men and more than half of all victims work in the prostitution sector (480 persons). Relatively 39% from all victims are of Dutch origin. Migrant victims (non-European) mainly originate from China, Nigeria, Sierra Leone and Guinee. Among women victims most persons are between the age of 18 and 23. There are certain clarifications regarding the increase in registration: the rise of attention for human trafficking in politics, by police and press, combined with efforts from CoMensha to collect and receive reports of trafficked persons from various organizations have attributed to the growth (CoMensha, 2009, p.4).

Identification

The police and KMar are obliged to officially identify victims of trafficking and report them to CoMensha. However, other organizations do not have this obligation. They can report victims to CoMensha, however have to direct victims to the police for official identification. As a consequence, currently the greater part of victim reports originate from the police and the Network of Human Trafficking set up by CoMensha as indicated in table 3.1 (see appendix 2). The least number of reports were registered from the health care sector. It has to be noted that currently more than one organization is able to report the same case, thus, the figures might be higher than the actual number of cases (CoMensha, 2009, p5). Picking up signals and identifying possible victims still needs a lot of improvement and has been addressed for several years by various organizations and institutions – for instance BLinN, CoMensha, ACVZ, and NRM. It often happens that victims are not recognized when they enter the country for instance. In some cases victims did show signals of trafficking during questioning but were not questioned further. Some are considered to be not

more than illegal aliens and therefore deported, placed in detention or put in the asylum process. Between 2006 and 2008 BLinN has encountered at least 112 victims in detention (BLinN, 2009, p 12). Once placed in detention centers identification of victims is even more difficult and naturally often has severe negative consequences on the wellbeing of victims. Case one and two provide clear examples of these issues (see appendix 3).

Residence permit

Table 3.2 indicates (see appendix 2) that in total a marginally 28% of all registered victims pressed charges to track down and prosecute the offender. This percentage decreased in comparison with 2007. According to CoMensha the reason for the decrease is due to the growing lack of confidence and trust of victims in the Dutch system. An important reason for not pressing charges is that the current system is not very encouraging. When victims press charges they are forced to wait in an uncertain situation – there is no guarantee of receiving a residence permit. Their identity in the criminal process is not always secured and victims often do not always receive adequate and immediate support and assistance (CoMensha, 2009, p.10). It is not very encouraging when only half of requested B9 permits are assigned. Furthermore, possibilities for continued stay are also not abundant and easy. The number of requests for continued stay (B16/7) was merely 34 in 2006. Only 14 people requested continued stay after their B9 was finished, the other 18 requested continued stay in a different year. Out of the 34 requests merely half were granted. In most cases the procedure took one to two years (NRM, 2009, p.203). However, with the current change in policy victims are able to receive the permit easier, since victims who have a B9 for a minimum of three years can be assigned a permit of continued stay (B16). Another option for legal stay is requesting asylum or request the State Secretary for discretionary power on grounds of unique personal circumstances. However, the burden of proof remains with the victim which is very difficult. As mentioned previously discretionary power is only used and assigned sporadically, not structurally (Heijningen van, H., 2009, section '*schrijnend*'). Case five indicates the dilemma of uncertainty of gaining a residence permit and how this influences the rights of victims (see appendix 3).

Furthermore, it occasionally occurred that police did not inform victims during the interview and refused to file a complaint when they felt the information provided by the victim was insufficient to start a case. BLinN discovered that at least in ten cases police consulted the Public Prosecutor after the interview with the victim. Whereupon was decided not to start an investigation. This meant these cases never led to an official declaration by the victim. These occurrences are a violation of the law (Art 163 Sv) and deny victims their rights (BlinN, 2009, p.31). There are several reasons why police are unwilling or not able to file charges: they have doubts about the credibility of the possible victim and their story; arresting illegal aliens have a higher priority than

protecting victims of trafficking; there is a lack of certified detectives in THB to interview victims and file charges of trafficking; it is often unclear for police how to handle cases of trafficking that occurred abroad¹⁰; KMar does not want to place victims in the hands of traffickers by filing charges¹¹ and transferring them to shelter centers (BLinN, 2009, p33). Case study three and four provide a better insight in the practical situation of victims (see appendix 3).

‘Misuse’ B9 requests

Signals of trafficking among migrant victims are not always taken seriously. Authorities are worried that migrants will misuse the B9 regulation and its corresponding support to receive a temporary residence permit. Abuse of the B9 regulation is sometimes being suspected by police and the Public Prosecutor. Cases where misuse was suspected involved migrant women who had no perspective on a (permanent) residence permit and hardly provided any information and indications for successful investigation or provided contradicting stories (NRM, 2009, p.191 / ACVZ, 2009, p.33). According to the police, these cases consume a lot of time and capacity to investigate while beforehand it is already likely that the offenders will not be found. This works demotivating but also over exhausts the capacity, which could be used to support new victims of human trafficking. The possibility of abuse, as to say pretending stories of human trafficking to use the B9 cannot be excluded. In some cases, it even points strongly to abuse. There is the possibility that pretending stories are under command from the trafficker, which has occurred already. Since it is very difficult to distinguish these cases the NRM suggests speaking of ‘hopeless’ B9 requests instead of abuse. Cases where few indications for investigation and prosecution are present does not automatically indicate that there are no victims involved. NRM organized an expert meeting to discuss possible solutions to solve these issues. On the one hand, it was suggested to invest more time in the quality of the cases to make it more successful – for instance building trust bounds, question further, and use extra support. On the other hand, people suggested being stricter in putting a higher threshold for requesting a B9 to prevent the loss of too much capacity – for instance not assigning the B9 to individuals that refuse to share sufficient information. In addition, other solutions were presented such as offering facilities to victims regardless of their cooperation with the police. Currently the police are working on reducing the time of procedures to increase the efficiency and reduce the burden of the system (NRM, 2009, p.191). Even though one should consider - ‘misuse’ of B9 regulation or not - that B9 permits in half of the cases are not assigned.

¹⁰ Police does not see perspectives in investigating these cases and cooperation with other EU countries is lacking. Therefore many cases are not being investigated at all.

¹¹ It often occurs that victims who are released from detention and transferred to shelter are kidnapped by their traffickers and forced into prostitution or being re-trafficked.

The B9 regulation should be an incentive to press charges, however currently it does not appear to be very attractive in practice. Therefore solutions to increase capacity to handle more cases and encourage victims to press charges need to be found.

Support

As shown in table 3.3 (see appendix 2) CoMensha received 175 requests to find support for victims in 2008. The search for an adequate shelter in general took time from two hours till three days; however, there have been cases where adequate shelter was merely found after two weeks. Often victims could only be first placed in a crisis centre whereupon - after moving to several locations - permanent shelter was found (CoMensha, 2009, p4). In some cases victims are being accommodated in jail or in detention centers. This is due to the lack of capacity and the fact that victims of trafficking are a complex group requiring specific needs. The complexity of this particular group is that they are involved in complicated juridical procedures, perspectives for future are lacking, possibilities for continuity of support are not sufficient. In addition, various organizations do not offer support that fit the needs of victims. Victims are often placed in centers which are not specialized and do not have the expertise. Language issues, administration (lack of identity papers etc), and safety issues occur (NRM, 2009, p.134, 135). For eight victims it was not possible to find shelter in 2008, therefore they were placed in a centre for asylum seekers. CoMensha agrees that the shortage of adequate shelters for victims is a worrying situation (CoMensha, 2009, p.4). Case six in particular provides an example regarding these issues (see appendix 3).

3.3 Support and protection

With the B9 regulation migrant victims of trafficking have the right to support and protection. The manner in which this system is organized will be described in this section. Furthermore, specific support for migrants will be highlighted.

3.3.1 Chain method for support and assistance

CoMensha has set up regional and local networks that are responsible for providing support and assistance to victims. They developed a chain method network (*Ketenaanpak*) in 2006 to organize the collaboration more effectively¹². This integral working method is an instrument meant for local networks to provide more insight in who (which organization or institution) is responsible for

¹² One of the important elements in the *chain method* is that different cases (reports of victims) are being discussed with the various partners in the chain, where is decided on what approach and action taken is best for a particular case.

which task in the chain of support and assistance. The network - among others - includes shelter centers, lawyers, institutions for physiological and health care support, police, and social support organizations. CoMensha will organize the first support once a victim is officially identified by police and reported. They will arrange shelter at a crisis centre after which CoMensha hands over the coordination and further organization of support to the care-coordinator in the region. The care-coordinator is important since they coordinate and help to arrange shelter (continued shelter), provide appropriate care and support, inform the victim about the judicial procedures and inform social workers and organizations who are in contact with the victim. The regional network will be further responsible for assistance and support under the coordination of a care-coordinator. In case a region does not have a care-coordinator CoMensha will provide a staff member from the helpdesk. When the support and assistance in the shelter has ended the victim will be referred to ambulant care institutions that can offer practical support in case of continued stay (CoMensha, Opvang en Ketenaanpak / (CoMensha, 2007).

This method has been in practice in several municipalities, however there does not exist one unambiguous definition and approach of the *chain method* in the Netherlands. Some only focus on human trafficking while others focus on a specific form of human trafficking. Not all municipalities have a *chain method* and/or care-coordinator. In practice this method still needs improvement, particularly in the area of cooperation. Cooperation does not always take place and the role divisions and responsibilities in the support chain are not set out clearly or not known sufficiently among the local partners. The regions that do not have a *chain method* in place often do not see human trafficking as a problem, therefore, are not aware of the benefits of collaboration. At this moment it is also unclear how many municipalities use the chain method, what the differences and commonalities are in each region and if this method is effective (NRM, 2009, p.312 -319).

3.3.2 Categorical support

For the past few years social workers, police and policy makers are agreeing that categorical first support (for a period of at least three months) might solve some of the current problems. It is expected that this system can ensure that every victim will receive shelter and specific expertise is offered. Registering for assistance and protection should be organized centrally and be possible during day and night at DC centers (*Diagnostisch Centrum*). These centers of expertise can adequately and more rapidly make a diagnosis regarding the protection, psychosocial and juridical needs of victims in order to provide adequate shelter and support - such as 24 hour care, return to home country, or move to independent housing. To arrange effective continued care and support is seen as essential to create a low threshold for victims to receive the first support and protection. Currently there is agreement on how to approach this support content wise; however financial means and its realization remains an issue. According to the plan of action from the *Task Force*

*Aanpak Mensenhandel*¹³ the State Secretaries of Justice and Public Health, Welfare and Sports have planned to start a pilot regarding categorical support. They would like to investigate how victims of trafficking can be supported and protected more effectively and how this can be organized structurally. This pilot will be executed by one municipality where victims will receive support of welfare workers specialized in THB. It was suggested to develop joint methodology together with all the current expert centers, where shelters should have at least more specialists, return should be made more open to discuss, psycho-social and psychiatric care should be offered, it should be more multi-cultural and multi-lingual and be part of a network of cooperating organizations that continuously informs each other. The pilot was planned to start in September 2009; unfortunately the project did not start yet (NRM, 2009, p.137 -139).

3.3.3 Specific support for migrant victims of trafficking

BLinN: *Bounded Labour in Nederland* works to improve the position of trafficked victims in the Netherlands and in particular migrant victims. Their support is directed towards empowering victims and rebuilding their independence. BLinN has set up several means for support: an emergency fund for victims that do not have the right to receive social benefits or when they face large expenses; a buddy program that connects volunteers with victims to expand their social network and empower them; support groups to work on traumas; legal assistance; a training program that includes several courses mainly directed to social and communication skills, cooperation, conflict control, setting personal boundaries; client council for victims to share their experiences and knowledge (BlinN, “Wat doet BLinN?”). Furthermore, BLinN hands over their activities to several local organizations and works together with CoMensha to facilitate support. They are part of the *Return Covenant*¹⁴ to assist authorities in (voluntary) return of individuals. They cooperate with the countries of origin and support in providing the right contacts for victim in their home country (NRM, 2009, p.157). In addition to this, lobbying and influencing policy are important aspects of BLinNs’ work as well.

Private initiatives: on local level there are many initiatives and organizations that provide support to migrant victims. These initiatives arise from the need to support specific groups with expertise. These organizations form the bridge between victims and government due to the fact victims often do not know how to reach the authorities and vice versa or are afraid to reach them directly. They have a *low thresh hold* and are specialized. Some examples are two organizations situated in The Hague.

¹³ The national task force for human trafficking in the Netherlands

¹⁴ See chapter 1

Vital Aid Netherlands: this organization specifically focuses on sub-Saharan Africans in the Netherlands. The empowering of women - among which victims of trafficking - are an important aspect in their work. They provide consultation and record their conversations with victims in files to try to include as much information relevant for police investigation. Vital Aid also assists with preparing the return for victims to their home country, such as offering courses in order for victims to develop skills necessary for their independence and survival when they return (NRM, 2009, p156).

Reach Africa Foundation: this organization specifically focuses on educating and informing African communities to encourage them to integrate in Dutch society more effectively. They form the bridge between the African community and Dutch institutions and authorities. Reach Africa tries to raise awareness with regards to trafficking. Furthermore, Reach Africa cooperates with NGO's in Nigeria to arrange support for victims and rehabilitation when they return to their home country (Interview, Mr. Chief T. Osuji, Reach Africa Foundation, 2009).

Both organizations report similar obstacles. Victims that are encountered are very scared, do not trust the police and often are not aware of the possibilities of support. When they reach the organizations they can only depend on private initiatives regarding first support and shelter. It is very difficult to find shelter for migrant women. In case victims do want to report to the police an appointment needs to be made that sometimes can take several weeks. This makes it difficult to stay in touch with victims and keep them motivated to report when there is no shelter available. Victims are at high risk to fall back into an exploiting situation and being arrested as an illegal alien. Furthermore, both organizations mention that African victims are a group with specific needs and need to be treated with cultural sensitivity (NRM, 2009, p156 / Interview Mr. Chief Osuji).

3.4 Conclusion

Poverty, social exclusion, gender inequality, poor economic prospects and hope for a better life elsewhere in combination with the demand in the sex industry are aspects that make victims vulnerable to recruitment of traffickers and that sustain trafficking. Amongst all trafficked persons in the Netherlands sexual exploited women form the largest group. Migrant women are vulnerable and highly traumatized. Most women are afraid to come out, to trust people and share their stories. Although thorough investigation has not been done yet, the risks of reprisals, no guarantee to a (permanent) permit and the fear of being deported seem to be aspects that weigh higher than choosing the benefits of support which come with the B9 regulation. This forms a problem since many do not report to the police. Furthermore, identification is not always done adequately; some

victims are overlooked, or purposely not informed, which means that the rights they are entitled too are being denied. Offering support seems to contain obstacles as well. Capacity of shelters and offering adequate specialized support for trafficked victims is lacking. The new pilot for categorical support could offer results to improve the current system, therefore, should start as soon as possible. Furthermore, it has to be noted that private organizations that support specific groups of migrant victims arise from a particular need, they are reached by victims, and they are familiar with the exact needs of this group. Therefore, it should be utilized that these organizations can form the bridge between authorities and victims.

4. Analysis of Dutch policy and a human rights based approach

This chapter serves the purpose to analyze the Dutch policy with regards to their compliance with the CoE Convention. This chapter starts by analyzing the most important issues in Dutch policy, followed by other remaining points for discussion.

4.1 Dutch compliance with the CoE Convention

Identification (Article 10)

Correct and successful identification processes are crucial in providing the assistance necessary to guarantee full recovery from the harm suffered and to rehabilitate and reintegrate victims on a social and economic level. In the combat against trafficking proper identification, protection of and assistance to victims should be a priority (UN, 2009, p.10). Unfortunately the identification of victims still remains one of the most challenging issues. The Dutch policy regarding identification complies with article 10 of the CoE Convention, however, in practice proper and adequate identification is still lacking. According to the B9 regulation a slightest indication of trafficking is enough reason to inform a person about their rights and offer the reflection period. Naturally, identifying victims is a challenging job particularly when the majority of victims are afraid to share their stories. However, still too many victims remain unidentified or misidentified by the authorities. In addition to this, placing (unidentified) victims in detention centers is an unacceptable situation.

Furthermore, article 10 indicates that the identification process should be independent of any criminal proceedings (art 10 (134), CoE explanatory report). However several cases showed that police refused to offer the reflection period after they felt that the information provided by the victim was insufficient to start a possible investigation (BLinN, 2009, p31). Inadequate

identification consequently results in a denied right to support that is offered in the reflection period.

Article 10 also mentions that victims have the right to assistance measures during the identification process – even before they have been identified as such (art 10 (135), CoE explanatory report). Dutch policy does not fully comply with this provision since victims only contain the right to support once they have been officially identified as victims and not prior to the process. This also raises the issue that the official identification is not always conducted instantly; victims have to wait for days sometimes even weeks, due to lack of time, capacity and certified police. Thus victims do not receive the full assistance they are entitled to as indicated in article 10.

Furthermore, it is important to note that the issues mentioned above have severe implications on the victims' lives and rights. They are at high risk to remain undocumented and fall back into an exploiting situation. It is the moral obligation of nation states where the exploitation takes place to take all necessary action to identify women victims of trafficking in an adequate and timely manner (Art 10, sub 128, CoE explanatory report). One must be aware that the process of identification can take time. Therefore, the CoE Convention obligates member states to offer possibilities for first support from the moment a victim has been signaled and that criminal investigation or possibilities for such should not be made depended on offering the first support.

Reflection period (Article 13) and residence permit (Article 14)

A reflection period is offered after the official identification. This is essential for victims to recover and escape the influence of their traffickers and to take enough time to decide whether they would like to cooperate in the criminal procedure to prosecute their traffickers. In the Netherlands victims are offered a reflection period of three months, which is more than the CoE Convention obliges. The Dutch B9 regulation offers a renewable temporary residence permit and is issued when a victim presses charges or cooperates in the criminal investigation. With this the Netherlands fulfils the second requirement in paragraph one of article 14, that cooperation with the competent authorities in investigation or criminal procedures is necessary for the purpose of receiving a residence permit. The Netherlands reply that the discretionary power by the State Secretary fulfils the first requirement of paragraph one, thus, that receiving a residence permit is necessary owing to a victim's personal situation. Victims can use this last option for legal stay in case they cannot cooperate in the criminal procedure. This option can, however, not be seen as policy but merely as an exception of policy. In addition to this, a victim can request asylum. Nevertheless the burden of proof remains with the victim and is difficult to make plausible. Both options are not used often, thus, receiving a residence permit independent of police cooperation in general is not common (ACVZ, 2009, p.28). On the other hand, member states of the CoE convention can either choose to use both or one of the requirements, therefore Dutch policy suffices the obligations in article 14.

Still several important issues occur regarding assigning the reflection period and B9 permit which need to be mentioned. The police occasionally misinform victims about the reflection period and refuse to file charges. As also mentioned in chapter three this is due to various reasons. Nevertheless, it denies victims the right to support and violates the law (Art 163 Sv). Police are obliged to file charges independent of any ‘useful’ indications. Various experts concluded that the majority of victims that are not cooperating disappear back into illegality. If victims do cooperate and press charges they are still dependent on the criminal process for further stay. Cases can be dropped for numerous reasons without fault of a victim, with the result victims lose the right to support. Investigation and prosecution of offenders is, thus, clearly made more important than the situation and rights of victims.

Assistance to victims (Article 12)

Victims of trafficking are often severely traumatized and find themselves in a very vulnerable and insecure position, especially when they escape from their exploiting situation. Therefore all victims should be entitled to protection and support. According to the HCHR Principles and Guidelines the trafficking cycle cannot be broken when no attention is given to the rights and needs of trafficked persons; therefore adequate support and protection should be provided to victims of trafficking without discrimination (HCHR, 2002, guideline 6). Victims in the Netherlands are entitled to support as indicated in article 12. On the other hand article 12 also provides that assistance to the victim should not be made conditional on her willingness to act as a witness (art 12 (6)). This article contradicts with Dutch policy. Protection and support are usually not provided to victims that do not cooperate in the criminal procedure. Due to generally limited and difficult options for legal stay independent of police cooperation.

Furthermore, adequate support needs to be available in order to provide proper assistance measures as indicated in this article. Unfortunately, the Netherlands has a lack of capacity in services to provide shelter (for first and continued shelter). Furthermore, expertise and adequate shelter suitable for various types of trafficked victims are lacking as well. Victims have to wait for days and sometimes weeks, or have to change places a few times a week. In some cases victims are being accommodated in detention centers. In addition, the care system itself is not well attuned. Care-coordinators are not present in every region, and the role divisions and responsibilities in the support chain are not set out clearly or not known sufficiently among the local partners. Furthermore, not everyone (especially the municipalities) is well acquainted with the juridical framework, such as the B9 regulation (CoMensha, 2009). Thus, the Netherlands does offer the assistance measures but not always in an adequate manner. Finding timely and adequate support is important not only to enhance victim’s recovery but also to increase the likelihood of trafficked

victims to report to the police and contribute to the criminal lawsuit (Nordic Baltic Network & European Women's Lobby, 2008).

Remaining articles

Protection of private life (article 11), compensation (article 15) and safe return of victims (article 16) are essential elements in a human rights based approach as well. Less focus is given to these articles simply because the previous mentioned provisions form the main issues in Dutch policy where difficulty still remains in implementing these vital articles that form the first basis for support.

Protection of private life is essential for the physical safety of victims (protection from traffickers) and for preserving their chances of social integration (with regards to feelings of shame and stigmatization risk attached to trafficking) (art 11 (138), CoE explanatory report). In general, personal data from witnesses are protected in the Netherlands although this is not done automatically. Especially in court and during the criminal proceedings it has to be first requested to protect a witness from the perpetrator (*'beperkte anonieme getuige'*) (Art 190, 290 Sv). The Ministers of Justice and Internal Affairs are currently taking measurements to enlarge the anonymity of victims in the criminal procedure. Furthermore, the Public Prosecutor, police and victims are being encouraged to use the option of anonymous witness more often (Openbaar Ministerie, 2009, p23). Taking these measures is highly advisable, since adequate and continued protection of identity of victims is essential not only for their safety but also as a condition for being part of the criminal procedure (Nordic Baltic Network & European Women's Lobby, 2008, p 25).

Compensation is very important as well, especially for the redemption process of victims and as a confirmation of the harm that has been done. Dutch policy suffices the provisions set in article 15, although in practice requesting compensation is not a quick and easy process. As with regards to the Netherlands there are several options for victims to receive compensation (NRM, 2006, p.82-85). However, claiming compensation remains difficult. Only 14% out of the total trafficked victims in 2007 requested compensation and few were eventually allocated by the judge (NRM, 2009, p.505). According to the action plan from *Task Force Aanpak Mensenhandel* the Public Prosecutor will prioritize the role of victims in the criminal procedure and support them optimally in obtaining compensation (Openbaar Ministerie, 2009, p.28), which is a positive step forward.

Safe return must be seen as a process where services and support in the host country and country of return are available (art 16). The Netherlands does have arrangements to return victims, although this is mainly voluntarily. There are several institutions that arrange return and are able to finance. Repatriation programs are partly present, however, not fully available and in process

everywhere. Currently IOM Nigeria is setting up a project to facilitate reintegration of returned victims (see section 3.1, case of Nigeria), which is a positive initiative and highly required. Unfortunately, it still occurs that victims are returned to their home country without receiving the support needed.

4.2 Implementation of a human rights base approach in the Netherlands

The Netherlands has recognized THB as a violation of the human rights and has put this issue in the spotlights and high on the political agenda for some years now. However, they still experience difficulty to fully implement a victim centered approach into policy. One of the reasons is that the criminal proceeding to track down and prosecute the offender still prevails over the importance of the victim. The second reason is that there is an interwoven relationship between criminal law and migration law with regards to the protection and support of victims. This causes negative effects in victim protection and assistance and as mentioned in chapter two it is one of the obstacles to effectively implement a human rights based approach.

Firstly, the interest of victims with regards to protection and support are undermined by the criminal law procedure. In current policy the victim is only protected in case their cooperation is relevant in criminal investigation and procedure. The victims can lose all protection and support, regardless of whether they are in need or not. The aim of protection and support to the victims plays a subordinate role, which is obviously not in line with a victim centered approach (Rijken, C & Koster, D, 2008).

Secondly, the interest of the victims, law enforcement and migration law are interwoven and contradict one another. The conflict of interests of the authorities involved and consequences of decisions taken in criminal procedures are two negative effects of this interwoven relationship (Rijken, C & Koster, D, 2008, p11). Cooperation is lacking between various authorities, this can be seen in situations when a migrant victim is expelled on the basis of migration law. In this case the position of the victim and her relevance to the criminal procedure are not being taken into account. The assignment of a B9 permit and included services strongly depends on decisions taken in the criminal procedure. Therefore, victims lose their rights once their case has been decided on or dismissed; therefore, the protection of victims takes a subordinate role in criminal proceedings.

Conclusion

After having analyzed international law and Dutch THB policy and its bottlenecks regarding protection and support of victims one can conclude that in order for the Netherlands to adequately and fully implement a human rights based approach - in particular the full provisions of the CoE Convention - to protect and support sexually exploited migrant women important issues have to be overcome. The Netherlands in general comply in theory to the minimum provisions and the majority of articles set in chapter III of the CoE Convention. However, on crucial points Dutch policy is in contradiction with practice and a human rights based approach.

First of all, **proper and adequate identification is lacking**. Victims are unidentified, misidentified or not identified in a timely manner. Victims do not have the right to support before the official identification process, which is in contradiction with article 10. Furthermore, the official identification of victims – that should include protection and support – is in some cases made depended on the criminal procedure when police refuse to offer the reflection period for reasons of insufficient information provided by the victim to start a criminal investigation. In addition, victims are occasionally being misinformed about their rights. This does not comply with article 10. Inadequate identification and lack of providing information has serious consequences for victims.

Secondly, the **right to legal stay and support still depends on cooperation in the criminal procedure**. Options for legal stay for victims that do not cooperate in the criminal investigation are very limited. Discretionary power – that is used sporadically – cannot be considered policy and obtaining asylum is difficult partly due to the burden of proof by victims. Therefore, the Netherlands only comply with the second requirement set in article 14, paragraph one. Although the CoE Convention obligates member states to implement at the minimum one requirement, full implementation of a human rights based approach demands providing protection and support unattached of any cooperation in the criminal process. It is therefore highly advisable for the Netherlands to implement the first requirement in article 14, paragraph one as well. In addition to this, the residence permit is not always assigned adequately. In some cases charges are not being filed. This is a violation of law and should not occur. Furthermore it denies victims the right to support and protection, which can have severe consequences for a victim and their situation. It is important to note that lack of trust in the authorities and policy forms one of the main reasons for not reporting to the police, thus, the policy for legal stay for trafficked victims does not seem to serve as a facilitating and stimulating role.

Thirdly, the current Dutch **support system does not provide adequate protection and support**. The Netherlands do not fully comply with article 12, since assistance is usually made conditional on the willingness of a victim to act as a witness. In addition to this, shelters and expertise directed towards specific groups of trafficked victims are lacking and forms a serious problem. Furthermore, the current support system is not well attuned and does not always function sufficiently; consequently, this directly touches the rights of victims.

The remaining articles – in particular regarding protection of private life, compensation and safe return of victims – are required in a victim centered approach. Improvements in these areas are necessary as well. In fact, current initiatives to adequately provide these rights are undertaken by Dutch authorities that hopefully soon result in positive outcomes for victims.

The prevalence of criminal procedures over the rights of victims and the interwoven relation between criminal and immigration law still remain one of the most important issues which hold back the integration of a human rights based approach in Dutch THB policy. Although the Netherlands make continuous efforts and take initiatives to improve the THB policy they are far from implementing a genuine victim centered approach. Fundamental rights to protect and support migrant victims of trafficking are being denied in the current system. As the Netherlands is a forerunner of defending human rights this situation remains rather unacceptable and requires quick and sustainable responses.

5. Recommendations

The following recommendations are based on the three main issues in THB policy that require improvement in order to safeguard migrant victims' rights and genuinely implement a sustainable human rights based approach that protects and supports trafficked migrant victims of sexual exploitation.

Proper and adequate identification process

Firstly, support should be provided during the whole identification process (before, during and after) and adequate identification is highly required. Under no circumstances should victims of trafficking be placed in detention. Accordingly, more certified police are needed to increase the capacity to officially identify victims. In addition, the identification process should not solely depend on police and KMar. Other stakeholders that come in contact with trafficked migrant victims should utilize the opportunity to identify victims as well. Similar to the Italian case, this might work stimulating for victims to request support and report their stories. The official identification process, hence, should be complemented with certified NGOs or social workers. Consequently, closer and better multi-disciplinary cooperation, continuous training and awareness

raising on identification and signaling victims are necessary among all stakeholders. Support should be offered from the earliest moment when slightest indications of trafficking are indicated, importantly, even before the official identification. As recommended by the Nordic Baltic Network a process should be put in place that in practice ‘reverses the burden of proof’. This is essential to prevent charges and prosecution in criminal offences, such as ‘illegal residence’ (Nordic Baltic Network & European Women’s Lobby, 2008). Victims should first and by assumption be treated as possible victims of trafficking, and so be exempted from charges until proven otherwise. These solutions might contribute to a lower threshold for victims to report and share their stories. In case NGOs and social workers are included in the official identification, victims can approach (or be approached) these NGOs in order to receive the first support and take the time to rest and consider pressing charges with the police. Consequently, researching and assessing the Italian case is recommended.

Improve possibilities for legal stay and its including rights

Naturally, cooperation of victims to prosecute traffickers is essential in combating human trafficking. However, it has proven that the current THB policy insufficiently guarantees and protects victims’ rights and in general is not sufficiently used by victims. Therefore, a system needs to be installed that guarantees victims’ rights and is not made dependent on the criminal procedure. Different processes should work together and complement each other. Negative outcomes in criminal procedures should not influence the granting of a residence permit. Assigning a permit on humanitarian grounds could be a solution. This could be assigned once a victim shows ‘slightest indications’ of human trafficking. This means that options for legal stay - independent of cooperation with the authorities - will improve and reduce uncertainty. Consequently, more time can be taken to look at each case thoroughly to see whether a criminal investigation is possible. In addition, victims remain in less uncertainty with regards to receiving support, thus, they can take the time to rest and consider pressing charges with the police. This might work as an incentive and lower the threshold for victims to share their stories. Again, the Italian case provides a good example of implementing such measures. In addition to this, misinformation of victim and refusal of filing charges by the authorities should be monitored and combated.

Adequate protection and support

Firstly, as indicated and recommended in the previous section protection and support should be independent from police cooperation. Secondly, it is of primary importance to enlarge the capacity of shelters and specialized services for trafficked victims. It needs to be stressed that individualized and specialized services are needed for different types of victims – for instance which recognize the specific sexual abuse and violence in prostitution environments. It is essential to develop services

where awareness and respect for cultural differences is included. When a victim feels safe and secure, she is more likely to share her story and cooperate with authorities. In addition to this, closer and more cooperation in the support system is needed, ideally that forms a unified and institutionalize support system in the Netherlands. It is highly advisable to start the pilot for categorical support as soon as possible.

Further recommendations

Compensation for victims should be easier accessed. As suggested by FLARE¹⁵ network, confiscated goods from traffickers and criminal networks can be used to compensate victims and provide support – for instance use confiscated houses to use as shelter. In addition, safe return of victims should be arranged for all trafficked victims – in case of voluntary and involuntary return. A risk and needs assessment, to properly assess and prepare return of victims should be included. Furthermore, witnesses are often the principle witnesses in trafficking cases; thus, the need to protection is of paramount importance. Therefore, automatic protection of victims in the Netherlands should be in place.

In addition to this, the existence and expertise of migrant organizations that support specific groups of human trafficking should be utilized. They can form the bridge between the victims and the government and vice versa. This way, both sides can be adequately informed: the authorities regarding the exact needs and issues of the victims and the victims regarding the possibilities for support.

Centralizing victim needs and protecting the human rights of victims should be at the center of all efforts of the Netherlands to protect and assist the victims of human trafficking.

¹⁵ Freedom Legality and Rights in Europe (FLARE) is the first European network of civil society organizations committed to the social struggle against transnational organized crime.

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Appendices

APPENDIX 1: Overview of complete procedure

1. Identification and first support

a. Identification:

- When the police have reasonable grounds to believe a person is a victim of human trafficking she needs to be informed about her rights.
- The victim will be informed about the possibility to press charges or cooperate in the investigation and that she can use a three month reflection period as part of the B9 regulation. The police report the decision to the contact person of human trafficking at the immigration service (IND). If a victim is not in the possession of a passport the IND will arrange this or give dispensation regarding the obtainment of the document, in case it is too complicated to arrange.

b. First support:

- The police will report the victim of trafficking to CoMensha.
- CoMensha will register the victim and organizes the first support and assistance.
- The police will assign contact persons for the investigation.
- The central organ for support for asylum seekers (COA) will decide whether the woman has a right to a social security payment. During the reflection period the victim is not allowed to work.

c. Reflection period:

- In case the victim does not wish to use the reflection period she is requested to leave the country, but she can also disappear into illegality.
- In case she uses the three month reflection period but decides not to press charges or cooperate during the reflection period she loses the right to stay in the Netherlands. She will be requested to return to her home country. This places her in a vulnerable position with the risk of being re-trafficked. Another option is to request continued stay on humanitarian grounds, asylum or use the option of discretionary power.
- Her return will be arranged by the police or handed over to the International Organization for Migration (IOM). If she would like to return voluntarily

organizations that are member of the covenant of return are able to assist her.

2. Pressing charges and continued support

d. Criminal procedure:

- The police allow the victim to press charges or cooperate in the investigation. The IND will be informed and simultaneously a temporary residence permit is requested as part of the B9 regulation. The victim needs to undergo a medical test to exclude tuberculosis. The decision regarding assigning a temporary residence permit will be taken within 24 hours after pressing charges. The temporary residence permit is valid for one year and will be extended yearly until the case has ended in a prosecution by the court or when the case is dropped.
- The victim needs to request the extension of her permit at the IND four weeks before her temporary residence permit will be expired.
- In case the Public Prosecutor drops the case a victim is allowed to file a complaint and wait for the decision in the Netherlands, however, this does not include the right to support.

e. Support:

- Adequate shelter for support and assistance will be searched to place the victim during the criminal procedure in case the current center is not adequate. The care-coordinator will remain responsible for the arrangement and guidance of support and assistance. The victim is allowed to work and go to school.

3. Final stage

- When the case is closed or dropped the victim has two options:
 - A. leave the country and return to her home country: here again the victim is supported by organizations to prepare return and reintegration.
 - B. request for continued stay on humanitarian grounds: this can be requested if the cooperation led to the prosecution of the offender, the cooperation did not led to prosecution but the victim stayed at time of judgment legitimately in the Netherlands for a minimum of 3 years (B9 regulation), or the victim stayed in the Netherlands on grounds of the B9 regulation for a minimum of 3 years while the case is still running. One of these three possibilities should form enough evidence

to prove the victim is at risk to return. In case a victim does not fall within one of the three options she needs to provide enough evidence by her own to proof she is at risk, or request another type of permit to stay (mentioned in point 1). After having a permit for continued stay for five years victims can request a permanent residence permit.

(Overview of procedure is summarized from various sources by Marjolein Kok)

APPENDIX 2: Figures regarding THB in the Netherlands*Table 3.1: registration of victims*

<u>Victims:</u>	2006	2007	2008
No. of registered victims	579	716	826
From which where women	549 (95%)	667 (93%)	780 (94%)
No. of women who are minors	96 (18%)	182 (27%)	164 (21%)
No. of victims working in prostitution	311	374	480
Top 3 nationalities:			
Dutch	157	260	320
Chinese	30	37	78
Nigerian	91	102	64
Victims registered by:			
Police	310	385	493
Network Human Trafficking	104	144	136
Legal profession	7	18	42

(Source: CoMensha, Jaarverslag 2008)

Table 3.2: registrations regarding B9 regulation

<u>B9:</u>	2006	2007	2008
No. of requested B9 regulations	180	186	443
No. of assigned B9 permits	150 (83%)	143 (77%)	235 (53%)
No. of victims who presses charges	208	234	246
No. of migrant victims who pressed charges	Unknown	71	80
No. of migrant victims pressing no charges	Unknown	45	54
Top 3 origin victims who received B9 regulation			
Africa	60 (40%)	74 (51%)	110 (47%)
Asia	23 (15%)	16 (18%)	75 (32%)
Europe (new member states 2004)	51 (34%)	27 (19%)	26 (11%)

(Source: NRM, zevende rapportage mensenhandel 2009)

Table 3.3: support for victims

<u>Support</u>	2006	2007	2008
No. Of victims who requested support	229	133	175
No. of victims who received support	Unknown	Unknown	131
No. of victims for who could not be found support	Unknown	Unknown	8

(Source: CoMensha Jaarverslag 2008)

APPENDIX 3: Case studies

A wide range of case studies have been selected in order to illustrate the practical situation of THB in the Netherlands. These cases cover the main issues in THB policy and support.

The first two case studies indicate the complexity of victim identification. Police do not always identify victims correctly which has negative consequences for victims and their rights.

Case 1: Nigerian women

Two Nigerian women arrived at Schiphol airport. They fitted perfectly in the human trafficking risk-profile. Both women were not informed about the location of their destination or about the work they were expected to do. Furthermore, they did not arrange the trip themselves and did not pay for it. As a result both women were questioned to see whether they were possible victims of trafficking. However, they denied being victims of trafficking (possibly since they did not start to work in prostitution yet) and so were both placed in the asylum procedure. Sometime later both women were kidnapped from the asylum center by their exploiters and taken abroad. The women were exploited until the foreign authorities discovered them; after which they were send back to the Netherlands (on basis of the Dublin claim). As mentioned earlier it was not always clear if they were victims of trafficking. With the result that one woman ended up in the care of several support organizations and the other women was placed in a (alien) detention centre. At the center she was treated as an illegal immigrant to be deported. It took an additional four months before this victim was interviewed and able to press charges of trafficking. Authorities responded that they had to wait to start the B9 procedure due to the fact that the arrest of her traffickers was planned internationally and simultaneously (they were part of an organized network which was investigated internationally) (NMR, 2009, p.337).

Case 2: Jenny

Jenny from Africa arrived in the Netherlands on her own when she was a minor. She fled the center for unaccompanied (alien) minors in Vught as she was afraid to be deported to her home country. In Vught she had met a man that claimed he could help her remain in the Netherlands. Consequently, Jenny left with the man, however, was taken to the UK where she was held

imprisoned and forced into prostitution for one and a half year. As a result she fled her perpetrator and requested asylum in the UK; however she was send back to the Netherlands on basis of the Dublin claim and was placed in a detention center. Jenny was severely traumatized by her experiences. Therefore being in detention was unbearable for her. She started to behave rebelliously and was placed in an isolation cell for a week. Once BLinN contacted her in the detention centre she responded that being imprisoned and hearing keys locking her cell made her panic and could not handle being in detention. With the sound of the keys she remembered her imprisonment and forced prostitution in the UK. With the help of BLinN Jenny finally pressed charges of trafficking and received the B9 status (BLinN, 2009, p.27).

The following two cases present issues regarding misinforming victims about their rights and refusal to file charges by the police.

Case 3: Blessing

Blessing arrived from Nigeria in the Netherlands and was placed in detention at Schiphol airport at the moment of her arrival. She informed the police that she fled her country due to religious violence and was helped by a pastor to escape her country. Blessing carried a letter from the church community confirming her story. Her story fitted the profile of Nigerian victims of trafficking that arrived at Schiphol in large numbers. KMar confirmed this situation, however, decided after consultation with the Public Prosecutor not to file charges. KMar made this decision since they were afraid that Blessing - just like many other girls - would disappear from shelter and be forced to work in prostitution. Consequently BLinN contacted the Ministry of Justice that confirmed filing charges was obligated in Dutch policy. This happened eventually and Blessing is currently in the possession of a B9 status and shelter (BLinN, 2009, p.32).

Case 4: Police not filing charges

Joanne was brought to the Netherlands and forced into prostitution six years ago. “I have worked for several years; however I was not able to redeem my debt to my madam. Eventually I fled and went into hiding: I could not handle the work anymore. I was arrested by the police this year since I was not in the possession of legal residence papers. I shared my experiences with the police and filed charges of human trafficking. However, the police still placed me in a detention center. I was very lucky to have met BLinN in detention and they arranged a B9 permit for me. It appeared that the police had done nothing with my charges and did not request the B9 for me either. Because of

BlinN I am now aware of my rights. I am angry that I was placed for unjust reasons in detention; however I am happy to be free now. I would like to study and find a job, but in a different location than where I worked in prostitution. I do not want to encounter my madam again” (BLinN, 2008, p.16).

Case five indicates the dilemma of uncertainty of gaining a residence permit and how this influences the rights of victims, in particular regarding support. Furthermore, it provides an example that most women choose to live their lives undocumented rather than return to their home country or wait in uncertainty.

Case 5: Experience from Fier Fryslân

“A young woman lived in our women’s shelter. Her request for continued stay was denied after one and a half year. Currently she is trying to receive a residence permit on medical grounds. However, this means she does not have any right to support and a social security payment at the moment. Therefore, we were forced to stop providing shelter, even though she wanted to stay. In a highly disappointed, angry and depressive condition she decided to move in with a “friend”. Since she does not want to return to her home country (even with help and support) this woman will stay illegally in the Netherlands” (experience from Fier Fryslân, an expert and treatment center for women in violent and dependent relationships) (Dijke van, A. & Terpstra, L., 2008, p.18).

Case six provides an example of issues in the support system, in particular the lack of support and its consequences for victims.

Case 6: Email from KMar to NRM

“We received a phone call from a possible victim of trafficking on April 16, 2008. The first interview with the victim - held by a staff member from the detention center Schiphol airport – provided enough indications of human trafficking. In consultation we decided to have an informative conversation with the victim after the 48-hour asylum procedure¹⁶ had ended. This was held on April 21, 2008. It appeared from this conversation that there were clear signals of human trafficking and sexual exploitation. Consequently, the B9 was offered and the victim decided to use the reflection period. She is severely traumatized and needs adequate support and assistance.

¹⁶ The IND center for illegal aliens at Schiphol has a 48-hour asylum procedure. This procedure is meant to investigate and decide whether a person can be assigned to the asylum procedure.

Unfortunately there were no places available at the *HVO De Roggeveen* on Monday. *HVO De Roggeveen* is the first contact for KMar to place victims of trafficking and we give our compliments regarding their cooperation and willingness to look for solutions. They are really putting effort just like the municipality of Amsterdam. CoMensha is looking for shelter today, still without success. Meanwhile the victim is still in detention at Schiphol while she should have left this weekend already” (NMR, 2009, p. 135).

The following case presents one of the complexities of reaching victims of human trafficking and that a personal approach is suggested to be more effective.

Case 7: Letter from the client council

“We are victims of human trafficking and know from experience that other victims need our help. We would like to offer them our support. It is essential that they receive information regarding practical support and their rights. Most migrant victims have false or not sufficient knowledge about their position in the Netherlands. Furthermore, they are afraid and not willing to talk to the police or social workers. It is difficult to trust someone. Since we have been in a similar position as these victims we feel that we can provide that trust they are looking for and so we are able to improve the situation. It is our desire to extend the client council together with BLinN. Since we were able to develop ourselves, simultaneously, we are an example for women with similar experiences. Other victims should know that they too are able to build a better future” (some sentences from a lobby letter directed at several funds) (BLinN, 2008, p.9).

APPENDIX 4: Interview with Mr Chief T. Osuji, director of Reach Africa Foundation

The Hague, November 16, 2009

Could you briefly explain what Reach Africa Foundation does?

Reach Africa Foundation was set up in 2002. We focus on the African communities and try to see how they can be more effective in the Dutch society. Right now they are not effective at all. We encourage them to integrate more effectively by educating and informing them, such as through workshops and conferences. This way we can also bring them together. Furthermore we mobilize financial and material resources for development projects in home country, mainly Nigeria.

And what do you do in particular for trafficked women?

Since 2003 we have a partnership with one organization in Nigeria called WATCLIF, a women trafficking foundation. We cooperate with the Netherlands and Nigeria to reduce the victims that are trafficked to the Netherlands and rehabilitate victims that return. At this moment we are working on building a working center to rehabilitate trafficked victims that return. We also need to inform people in the Netherlands, the African community, about trafficking to make them aware. We need to see how we can reduce trafficking.

The problem in the Netherlands is that the government does not know how to reach the African community and have difficulty understanding what they really need. On the other hand the African community finds it hard to reach out to the government and say what they want. Therefore Reach Africa Foundation forms the bridge, to bridge the gap between government and society. We can see what the needs are in the community and inform them what the government can do for them.

How do victims of trafficking come in contact with your organization?

We are one of the first African organizations in The Hague. When victims of trafficking come to us we normally give them temporal shelter and consultation. Many victims run away from their traffickers because they are in real serious debt. They come here because they do not know what to do. They are promised so many things but have to pay for it. Ritual issues are used so they do not run away from the debt. Victims run to us for protection, we give them advise and we keep them around to council them.

But how do victims know about you organization and know how to reach it?

People in the community call us when they notify a victim or they give our contact to the victim. People know about our organization and they tell victims and they come to us.

You mentioned that you also offer temporary shelter, but you are mainly an educational organization? Could you clarify this?

We also give support, mainly trying to provide social, financial and material recourse where we can to support the less privileged. We also do development projects in Africa. We give victims a temporary place to stay for 2 or 3 days to comfort them and explain their options and offer food. They do not have access to facilities from the government. We try to find out what happened to them, they can tell their ordeal and we can try to see how we can counsel them and give information about the possibilities. Also explain that the voodoo rituals will not have an effect on them and they do not need to be afraid. We can give them rest and see what steps need to be taken next, like reporting to the authorities. Before we send them to the authorities we need to guarantee and convince them that we are not selling them out and can be trusted. However we have a problem with that because 90% are afraid to go to the police and government institutions. Victims are afraid to be returned and being punished. Also they are not always aware of the facilities the government has for them. Even when you explain it to them they say no we don't want to go to the government. So now we are working on a project with the Ministry of Justice to create more consciousness and awareness and give information about the possibilities. The reasons for setting up this project are the victims and the community does not trust the government, they feel rejected and not accepted. So we need to explain to both the victims and community that they are not in danger when they come out. The Ministry of Justice reached us because it is not easy for them to reach the African community. The community is scared and therefore hard to reach. We need to bridge this gap. We want to bring the African community together to inform them but also inform the government about the ordeals victims go through, so we can think of adequate solutions. We are organizing a festival to bring everyone together. Also we are setting up a film series which comprises out of five items: the importance of learning the Dutch language, creating awareness regarding domestic violence and trafficking, inform about voluntary return and the importance of doing volunteer work. The message is brought with humor.

What message do you want to send out with regards to trafficking?

We want to address the public with showing this movie in the African communities and pass out leaflets. We want to inform them about the possibilities of the government but also how they can identify trafficking. We want to explain the tricks used by traffickers to lure and deceive women. We want them to say no and let them come out and speak in public. Dutch community what they suffer, and share our vision of solutions. We are already working with min justice.

Can you estimate how many victims reach your organization?

On a yearly basis we encounter more than 10 victims.

What is the main reason that victims contact your organization? What are their first needs?

They are in trouble. They run away and have no food, no shelter, and no basics. They need a place to stay and want to follow education. We offer them the first support, let them relax and calm down and we talk a bit about what has happened.

They need to be counseled and receive the first basics. We give counseling and try to give physiological support. They cannot go to the government so we give it to them. We also know better what their problems are and take into consideration the cultural aspects.

Could you also tell how many cooperate to go to the police to report? Or what happens to them if they don't?

Many do not want to cooperate, normally not even when we inform them about the possibilities. They want to be sure nothing happens to them. We do not pressure them but only try to inform them. We need convince them that they have nothing to worry and everything will be fine. If they do not want to cooperate or go to the police they will be on their own. If they do not want to go to the police we try to keep in touch with them, because we can only offer temporary support. A lady who had fled from her trafficker called me the other day. She came here and I interviewed her. She was very afraid to open up and felt uncomfortable to come out. I told her it is difficult to help her if she can not share the correct information. Eventually she left and I tried to keep in touch with her through the phone number she gave me, to tell her to come back and help her out but she disappeared.

Could you tell me where the exact problem lies?

Yes they are afraid to use possibilities offered by the government. That is why we need to inform the African community and bring the message from a closer source, a source they can trust. Educating women and own people in the community and create confidence so that they will easily contact our organization.

What type of trafficked victims reaches your organization? (Such as their nationality, legal status, reasons for coming to the Netherlands etc)

They come from all over Africa but many come from Nigeria and some also from Ghana. We also work with Nigeria and the organizations. Before they come here it is well organized by the traffickers. They are lured with good promises, they say don't worry about the money, we will pay

the trip for you but when they come here they are being forced. Some do not realize they have been trafficked but after they are getting sick, there are beaten and don't feel good and are broken they know that there is seriously something wrong. Their passports are also collected so they cannot go anywhere and they are illegal.

Do you also cooperate with the government with regards to reporting victims of offering support?

No we do not cooperate with the government but we do cooperate with organizations like GHRD to think of projects and good solutions together so that the government can see that things are possible and can work. Victims cannot go to the police, they do not go so we need to involve the community and local organizations like ourselves to create trust so that people are more willing to cooperate and report victims.

Since many do not know anything about the government policy what would work to reach them?

Many just don't know because they don't hear about it. It is important that they need to come out in public so we can inform them and say this package works these possibilities work. We organized conferences but they don't work. We need a situation where we can bring them out, that is very important.

So what do you think would work?

We have plans to organize a festival, a campaign against trafficking, so that everyone will come out. It is important not to only reach victims directly but African leaders as well. The African leaders are important because they can be informed and they can convince victims and others what to do and inform them about trafficking. It's easier to inform victims through this way. They communicate with their own people, people they trust.

How do you think the government policy can be made more effective?

I do not think the policy is the problem. In my opinion the government policy is good but there are issues that play part, issues of cultural aspects. Every policy that does not think about culture and cultural aspects will fail. Victims need to be comfortable to come out, this can be done when cultural aspects and understanding is taken into account. The government needs to work with migrant organizations so that they can identify the problems and work together to think of adequate solutions. We can reach out to victims and create trust so that they are comfortable to cooperate and know they can depend on us. No adjustment need in policy I think but we do need to add flavor. More cooperation is needed; they need to work with organizations and migrants, because victims need us to be present. At this moment this is not done, no cooperation and cultural aspects are considered.

So in short, to conclude, what do victims need and what action needs to be taken?

Victims want to be convinced, feel safe and comfortable to come out. They need to be convinced they are not send back, that there is no penalty or that they are not send to prison when they come out, because now they are very much afraid. Let victims report to community leaders. We also need to cooperate with the government regarding policy making, that we are involved in decision making processes. This way we can help with thinking of adequate solutions. So victims need to be informed and educated more effectively and we as migrant organizations need to be part of the decision making and implementation of policy.

Now we are planning to set up an outreach center, a community education center. Where the African community and its leaders can come together, be informed and transfer knowledge into the community and to victims. It can be the center and mediator between the community and government. It is important to set up a center especially for the African community because there are not many facilities for this specific group and they feel discriminated and excluded. Then we can reach out to the community and government effectively regarding issues and provide correct information, but also the government is better able to reach us. We will also install a phone hotline for victims to report anomalously so we can give them the advice and information they need and organize a forum.

APPENDIX 5: Summary interview Sanne Kroon, lobby & communication BLinN

Samenvatting telefonisch gesprek met BLinN(for english translation see below)

Sanne Kroon, lobby en communicatie

26 november, 2009

Het verdrag van de RvE heeft juridische kaders waardoor het verdrag breed gedragen kan worden. De geest van het verdrag is het human rights based approach en de RvE probeert landen die kant op te bewegen. Men kan voldoen aan de minimale eisen die het verdrag stelt, maar hoe kan men het maximale eruit halen? Er zijn namelijk ook een aantal opt outs in het verdrag. Nederland kan en wil het verdrag ratificeren op basis van de minimale eisen. Artikel 12 bijvoorbeeld stelt dat ondersteuning van een slachtoffer niet afhankelijk moet worden gemaakt van de medewerking om als getuige op te treden. Daarentegen geeft artikel 14 twee opties wat eigenlijk een uitzondering is op artikel 12. Aan de ene kant kan men keizen om slachtoffers een verblijfsvergunning te geven op basis van de individuele situatie van het slachtoffer, of aan de andere kant op basis van de medewerking van een slachtoffer in het criminele process. Nederland zegt aan een human rights based approach in dit gedeelte van het verdrag te voldoen. Ten eerste hebben slachtoffers recht op een verblijfsvergunning als zij meewerken in het criminele process. In het geval een slachtoffer geen aanklacht in kan of wil indienen kan deze een aanvraag indienen op basis van discretionaire bevoegdheid (staats secretaris kan onder descretie iemand gratie verlenen) en op deze manier hulp ontvangen. Dit is echter geen beleid, maar een uitzondering op beleid.

Daarnaast is er een groot probleem in Nederland ten aanzien van de identificatie van slachtoffers. De identificatie moet via de politie plaatsvinden, maar dat gebeurt niet goed en niet voldoende. Als iemand een persoon identificeert als slachtoffer van mensenhandel dan wordt deze geacht zsm naar de politie te gaan om zo het slachtoffer recht te geven op opvang en bescherming. Soms moet men dagen wachten voordat de politie tijd heeft om de officiële identificatie van het slachtoffer te doen, waardoor misschien de rechten van het slachtoffer vervallen. Hoe moet een slachtoffer in de tussentijd opgevangen worden? Vaak trekken slachtoffers zich ook terug en besluiten niet meer naar de politie te gaan, omdat ze erg bang zijn. Er zijn bijvoorbeeld wel particuliere instellingen die tijdens deze periode slachtoffers kunnen opvangen, maar zo zou het niet moeten en is niet ideaal. Als een slachtoffer besluit niet naar de politie te gaan dan hebben ze uiteindelijk geen rechten.

De drie maanden bedenktijd gebeurt niet in veel gevallen. Tijdens de eerste verhooring van een slachtoffer bekijkt de politie gelijk of er voldoende informatie is om er een zaak van te maken. Als

zij besluiten dat er onvoldoende informatie is dan komt er geen zaak en kan het slachtoffer ook geen gebruik maken van de drie maanden bedenktijd en alle rechten. Indien zij de informatie van het slachtoffer voldoende achten dan zijn zij bereid er een zaak van te maken en hebben slachtoffers recht op bedenktijd. De rechten van het slachtoffer zijn dus direct gelinked aan de strafprocedure en niet vanuit een human rights based approach waar men slachtoffers beschermen omdat haar rechten zijn aangetast.

Er zijn twee cruciale momenten voor slachtoffers in het geval zij niet willen of kunnen gebruik maken van de rechten in de B9. Ten eerste voordat men naar de politie stapt om een verklaring af te leggen. Als zij dit niet doen kan er geen aanspraak gemaakt worden op hulp en bescherming. Ten tweede wanneer een slachtoffer na de drie maanden bedenktijd geen aangifte wil doen. Zij kan dan beroep doen op een verblijfsvergunning op humanitaire gronden. Dit process is echter heel lang en ligt de bewijslast bij het slachtoffer zelf. Stel dat iemand wel mee wil werken dan kan het zijn dat de politie er geen zaak van kan maken. Dit kan om verschillende redenen zijn zoals te weinig capaciteit of dat de daders gevlucht zijn. In dit geval vervallen ook de rechten van het slachtoffer en blijft de optie over om op basis van humanitaire gronden een verblijfsvergunning aan te vragen. Een voorstel in het verdrag van de RvE zou kunnen zijn om beter te kijken naar de identificatie van slachtoffers en hierbij hulpverlenings organisaties bij te betrekken.

Een oplossing is om het los te trekken en een 2 paden beleid te vormen. Ten eerste is het van belang meer mensen te betrekken bij de identificatie van slachtoffers en doormiddel van een multidisciplinair team mogelijke slachtoffers van mensenhandel te identificeren. Daarnaast slachtoffers ook gelijk ondersteuning bieden, zodat ze bij een organisatie even tot rust kunnen komen, hun verhaal kunnen doen en eventueel later naar de politie kunnen stappen. Daarnaast men ook veiligheid bieden als ze eenmaal meewerken aan het process. Voor de medewerking in het process vertellen slachtoffers alles wat hun overkomen is, maar als de zaak geseponneert wordt dan is alles voor niets geweest. Slachtoffers hebben dan hun verhaal gedaan, maar lopen wel veel risico. Nu kan men een vergunning aanvragen op humanitaire gronden, maar dat kan alleen als er voldoende bewijs is dat iemand risico loopt. Nu wordt dat automatisch bewezen en geacht als men meer dan drie jaar heeft meegewerkt aan het process. De NRM heeft in haar 7^{de} rapportage hiervoor een aanbeveling gedaan om het recht op een vergunning op humanitaire gronden naar voren te trekken. Een aanvraag voor voorgezet verblijf kan dan worden ingediend op het moment dat het OM besluit tot dagvaarding van verdachte over te gaan. Dit zou voldoende bewijs moeten zijn dat het slachtoffer risico loopt. Het kan tevens een stimulerende rol spelen op de bereidheid van het slachtoffer om aangifte te doen met voldoende opsporingsindicaties en zo een succesvolle vervolging te starten.

Wat betreft de huidige opvang het is de bedoeling dat er categorale opvang komt. Er zouden enkele pilots in september al van start gaan maar deze lopen nog niet. Met categorale opvang kan men veel specifiek de zorg afstemmen op het slachtoffer en expertise creëren mbt de identificatie van slachtoffers.

English summary telephone conversation with BLinN:

Sanne Kroon, Lobby and communication

The CoE Convention includes a juridical framework by which it can be widely accepted by each member state. The spirit of the Convention is the human rights based approach and tries to push states in a direction to implement such an approach. Member states can fulfill the minimum standards in the Convention, however how can they get the maximum out of the Convention? There are several opt outs in the Convention. The Netherlands can and will ratify the treaty on basis of the minimal standards. The Netherlands say they include the full human rights based approach, however when analyzing certain parts this can be doubted. When looking at article 12 for example, this states that assistance to a victim should not be made conditional on his or her willingness to act as a witness. However article 14 has included an exception regarding article 12. It gives two options for states: on one hand to issue a residence permit if legal stay for victims is necessary owing to their personal situation, and on the other hand issue a residence permit when cooperation with competent authorities is necessary in investigation or criminal procedures. The Netherlands currently utilizes the last option but say they fulfill the first option as well by providing the opportunity for victims to request discretionary power (to ask for pardon from the State Secretary) in case they cannot or will not press charges or cooperate with the police. So victims have the opportunity to receive pardon and stay in the Netherlands; however this cannot be considered as policy but as an exception on policy.

Besides this, the Netherlands have important issues regarding the identification of victims. The identification has to be done officially via the police; however this is not done well or sufficiently. If a person identifies someone as a victim of trafficking they need to report to the police as soon as possible to use the rights of assistance and support. In some cases one needs to wait several days before the police have the capacity and time to do the official identification of the victim, meaning that the rights of victims can be expired. How can a victim be supported in the meantime (between the waiting and official identification of the police)? Often victims are too much afraid to report to the police and decide not to go after all. If they decide not to report to the police victims will lose their rights for protection and support. There are private institutions and organizations that can

offer the first support to victims in case they need to wait to be officially identified, however this is not the right and ideal way to solve things.

The three month reflection period is also not always offered. During the first interview between the victim and police the police will check right away if there is enough evidence and information to make a case. If they decide that there is insufficient information there will be no case and the victim loses their rights to protection and support included in the three month reflection period. In case the police feels that the information provided by the victim is sufficient they are willing to start a case and the victim has the right to use the reflection period to see whether to press charges or not. The rights of the victim are therefore directly linked to the criminal procedure and not taken from human rights based approach - where victims are protected and supported on the basis of the violation of their human rights.

There are two crucial moments for victims in case they cannot or would not like to use the rights set in the B9 regulation. First of all, before victims go to the police to be identified and give a statement. In case they do not go to the police they will not have any rights to support and protection. Secondly, after a victim used the three month reflection period and does not wish to cooperate or press charges with the police. In case they do not proceed in the process they also lose their rights for protection and support. They have the option to request a residence permit on humanitarian grounds; however this is a real long process and victims are responsible to provide their own evidence and prove they are at risk. In case a victim does want to cooperate with the police it can occur that it is not possible to make a case. This can be due to several reasons such as no capacity or that the trafficker has fled the country. Also in this situation requesting a residence permit on humanitarian grounds remains the only option. It can be a suggestion regarding the CoE Convention to better look at the identification of victims and include more support organizations.

A solution could be to separate support from the criminal procedure and form a policy of two directions. First of all, it is important to include more people in the identification of victims through the use of a multi-disciplinary team. Besides this, offering direct support for victims when someone identifies a possible victim of trafficking is essential. This way a victim can be offered the first support already, rest a bit before they share their story and before they decide to press charges. In addition, offer victims protection when they cooperate in the process. In order to cooperate, victims need to share and tell their stories; however, when a case is dropped everything has been for nothing. Sharing their stories is on their own risk and they can be in more risk if they are send back or do not receive support. At this moment victims can request a residence permit on humanitarian grounds, but only if there is enough evidence that the victim is at risk. When they have cooperated in the process for three years or more victims can receive this kind of permit. The National

Reporter of Human Trafficking in the Netherlands suggests that the right to a permit on humanitarian grounds needs to be forwarded to an earlier stage, for example when the Public Prosecutor decides to summon the perpetrator. This should be enough evidence that a victim is at risk. This can also work stimulating and push victims to press charges and share enough details to lead to a (successful) prosecution.

Regarding the current support system there are intentions to organize categorical support. Several pilots were planned to start in September this year; however they still not took off. Categorical support will help offer specific assistance for a victim and expertise can be created regarding the identification of victims.