

Monitoring mechanisms in the fight against human trafficking Conference 14 October 2010 - Expert meeting

Ladies and gentlemen, dear guests and colleagues in the fight against trafficking in human beings.

A warm welcome to you all. For those who had not seen Journey before, this is the inspiration.

This expert meeting – together with the conference tomorrow – marks the tenth anniversary of the establishment of the post of National Rapporteur on Trafficking in Human Beings, an independent monitoring mechanism of the efforts in the Netherlands to combat human trafficking.

I am very happy to see so many national and international experts in our midst on this occasion.

The basis for the appointment of a National Rapporteur on Trafficking in the Netherlands was laid by the Hague Declaration, adopted in 1997. One of the recommendations made in this Declaration was that member states should appoint national rapporteurs to report to their governments on the scale, prevention and combating of trafficking in women. National rapporteurs were also encouraged to promote mutual cooperation on a regular basis.

This description of the tasks of national rapporteurs remains valid to this day.

The European Council's conclusions on the establishment of a network of national rapporteurs in 2009 also illustrates the need for objective, reliable, comparable and up-to-date strategic information. Other international bodies, too, have recommended the appointment of national rapporteurs.

Take, for example, the 2008 Annual Report of the OSCE which contains an evaluation of establishing of national coordination structures and national reporting mechanisms. The OSCE has drawn attention to the importance of monitoring mechanisms more than once.

The first Dutch NRM was established in 2000, but a brief trip into history shows that research into the nature and scale of human trafficking was done in the Netherlands as early as the beginning of the twentieth century. In 1900, a police inspector in Haarlem, called Balkestein, went undercover in the world of prostitution to unravel the practices of trafficking in women. The report of that investigation can be seen as an early precursor of the reports of today's Rapporteur. The author of the report made a number of recommendations. He advised the government to continue this research into the nature and scale of human trafficking. This goes to show that trafficking and the fight against it are ongoing processes. And monitoring the effectiveness of this fight is a way of holding up a mirror.

Monitoring of counter-trafficking policy

In essence monitoring means reflecting on your own activities and initiatives, to see to what extent your set goals are being reached. Monitoring the combat against THB thus means measuring the effectiveness of policy and counter-trafficking activities. In a Parliamentary democracy, the check of government policy and action is in the hands of Parliament. That is one of the reasons this expert meeting has been organised together with Parliament.

The Rapporteur and the monitoring the governmental counter-trafficking policy

The Rapporteur has an important role in providing information and advising the government. My Bureau collects data and facts on all aspects of THB. We do this through our own research, secondary analysis, and our vast network, to name but a few of our resources.

At the end of the day, fact-based debate will prove to be the most valuable, both in terms of commitment and willingness to strive for further improvements. By making use of our information in the debates, Parliament can critically assess and evaluate the achievements of governmental counter-trafficking policy. My reports therefore function as an impetus both to the government and to Parliament to perform their respective tasks of fighting trafficking and checking the effectiveness of that fight. The reports are commented on by the government and then discussed in a Parliamentary debate. The goal is of course for the recommendations to be recognised as relevant and to be adopted by government. The parliamentary debate on my last report, of October 2009, has unfortunately been cancelled due to recent elections. And has not been rescheduled yet. But, and here I am looking at Kadija Arib as chair of the Standing committee of Justice, I am confident that my report and its (47) recommendations will be put on the agenda shortly.

Independent

The nature of the mandate requires – in my opinion – independency. For the report that I will present to our new Minister of Public Safety and Justice tomorrow we interviewed three rapporteurs on trafficking in human beings: The UN special Rapporteur Joy Ngozi Ezeillo, my predecessor, Anna Korvinus and the first Finnish rapporteur, Johanna Suurpaa (Eva Biaudet's predecessor). All three of them stressed the importance of being independent.

An independent position in my opinion, and in the opinion of the interviewed rapporteurs, constitutes the basis for an objective and unbiased view of the developments and the pros and the cons of counter-trafficking policy and practice.

A rapporteur is not, and should not be a political activist, but neither should he or she be a government official. The rapporteur can highlight problems and try to help find solutions.

Not only through the reports and recommendations, but also in between times. A rapporteur can thus function as a liaison between governmental institutions and NGOs and can get the various partners to cooperate and hopefully trust one other. I cannot stress enough how beneficial this is for all the partners involved. Our Finnish colleague appears to be operating in a similar way on this issue. Nonetheless, there can also be a disadvantage to being independent. It might mean that access to government information is limited. Being independent, in any event, implies not operating at a steering level. One of the round tables this afternoon will be dedicated to this discussion.

Monitoring mechanisms and international instruments

Trafficking in human beings is a *worldwide* phenomenon. At this expert meeting we will focus on monitoring mechanisms, often based on international instruments.

The Palermo Protocol of 2000 is an important international instrument, now also marking its tenth year of existence. Several special Rapporteurs were appointed by the UN Human Rights Council to monitor its progress. And of course ILO standards are monitored, on the basis of periodic reports. Reports of UNODC, too, are important tools.

The 2005 Council of Europe Convention added a human rights approach to the fight against trafficking. The Convention has a dual supervision mechanism consisting of a group of

independent experts (GRETA) and the Committee of the Parties. GRETA is a unique instrument in terms of international documents relating to human trafficking.

And although the current (2002) EU Framework Decision does not include provisions on monitoring, the Expert Group of the European Commission plays an important role in helping the Commission to assess the evolution of policy at national, European and international level. The European Commission intends to appoint an EU Anti-Trafficking Coordinator (ATC) and then wants to present a new integrated strategy for tackling trafficking in 2011. Measures to protect and help victims through ad hoc cooperation agreements with third countries are also foreseen by the European Commission. A new EU Directive is currently being negotiated.

Of course initiatives at the national level as well, such as the US Trafficking in Persons reports, aim to encourage countries to intensify efforts to tackle human trafficking.

These developments further underline the importance of monitoring and supervising action being taken. The existence of various international reporting obligations and initiatives may, however, also imply the need for coordination. Good communication and information could help avoid duplication of efforts.

Human rights approach

Trafficking has been recognised as a human rights violation in other international documents as well. States have to protect human rights. States therefore have a duty to fight trafficking in human beings. Within the United Nations, trafficking in human beings is therefore often one of the items on the agendas of various human rights bodies.

It is important to stress that trafficking constitutes a human rights violation, which in turn emphasizes the role and importance of the European Convention on Human Rights and as a consequence the European Court on Human Rights in the fight against Human Trafficking.

European Convention on Human Rights

The European Court has rendered two landmark judgments concerning the question of what the human rights issue means for THB. In 2005, for the first time in its existence, the European Court established the existence of a violation of Article 4 of the European Convention on Human Rights (ECHR). Article 4 sets out the prohibition against slavery, servitude and forced or compulsory labour. The case was about a girl from Togo, working in a French household in very poor circumstances. The result of the conclusion in *Siliadin* was that the parties to the Convention are obliged to incorporate into their criminal law such provisions as will criminalise the conduct specified in Article 4. The European Court did not only impose an obligation to penalise this conduct but added that these penal provisions must also be applied in practice.

In *Rantsev v. Cyprus and Russia*, the European Court found that while Article 4 does not explicitly mention human trafficking, human trafficking as such runs counter to the object and purpose of Article 4 and therefore falls within the scope of that article. The Court furthermore judged that Article 4 led not only to the specific obligation on States to make human trafficking a criminal offence but also the requirement to put in place other measures to *prevent* trafficking and to *protect* victims. The Court quoted the UN Palermo Protocol and the Council of Europe's Convention, which refer to the need for a comprehensive approach to combat human trafficking. Hence a comprehensive approach should also be taken by those who *monitor* the fight against trafficking in human beings.

These judgments must have, and do have, an important effect on monitoring and supervision, including the jurisprudence of the national judiciary. After all, combating trafficking does not end with prosecuting offenders; the fight against trafficking also includes the results of criminal procedures by means of judgments. And although judges may not always read, for example the explanatory notes of international conventions, national judges will know of and read judgments of the European Court of Human Rights. Rulings of the European Court on article 6 or article 8 form a consequent part of national judgements on issues like the right to a fair trial or to family life. Given the Rantsev ruling I trust that national judges will incorporate article 4 into their judgements on Human Trafficking. Issues on how to involve the judiciary will also be the topic of one of the workshops.

Closing remarks

Although on paper a lot has been achieved in the Netherlands since 2000, a lot of challenges remain in almost all areas of our activities. No doubt these challenges also exist in other countries. Those challenges for example concern providing assistance to victims, fighting exploitation outside the sex industry, and involving the judiciary. Partnership should also constitute an integral part of anti-trafficking policies and their implementation, both on a national and international level. And in view of the frequent transnational character of trafficking, it is of paramount importance to acquire and exchange information on internationally comparable data on trafficking in human beings. I believe that the establishment of a network of national rapporteurs or equivalent mechanisms, within the EU, is a very good start in this respect.

Today's expert meeting is designed for us to exchange views and information on good practices, and thereby to contribute further to strengthening anti-trafficking policies. I am looking forward to hearing the results of the various workshops and sharing them with you later on this afternoon.

Before I introduce the themes of the workshops, I would first like to give the floor to Ms. Kadija Arib, Chairman of the Standing Committee on Justice of the Dutch House of Representatives.

Thank you.