

TRAFFICKING IN HUMAN BEINGS

Fifth Report of the Dutch National Rapporteur

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Abbreviations used

AECT	Alliance Expert Coordination Team
AG	<i>Advocaat-Generaal</i> Advocate General
AI	<i>Arbeidsinspectie</i> Health and Safety Inspectorate
AID	<i>Algemene Inspectiedienst</i> General Inspectorate Service
AIV	<i>Adviesraad Internationale Vraagstukken</i> Advisory Council on International Affairs
Ama	<i>Alleenstaande minderjarige asielzoeker</i> Unaccompanied underage asylum seeker
AMF-teams	<i>Arbeidsmarktfraude-teams</i> Labour market fraud teams
AMK	<i>Advies- en Meldpunt Kindermishandeling</i> Child Abuse Advisory and Reporting Centre
AMV	<i>Alleenstaande minderjarige vreemdeling</i> Unaccompanied underage foreign national
ANWB	<i>Algemeen Nederlandse Wielrijders Bond</i> Dutch Automobile Association
APV	<i>Algemene Plaatselijke Verordening</i> General Municipal Ordinance
ARBO	<i>Arbeidsomstandigheden</i> Working Conditions
ASC	American Society of Criminology
ATAU	Anti-Trafficking Assistance Unit
BD	<i>Belastingdienst</i> Tax Administration
BFO	<i>Bureau Financiële Ondersteuning</i> Financial Support Bureau
BFR	<i>Bureau Financiële Recherche</i> Financial Investigations Bureau
BLinN	Bonded Labour in the Netherlands
BNRM	<i>Bureau Nationaal Rapporteur Mensenhandel</i> Office of the Dutch National Rapporteur on Trafficking in Human Beings
BOD	<i>Bijzondere opsporingsdienst</i> Special Investigation Service
BOOM	<i>Bureau Ontnemingswetgeving Openbaar Ministerie</i> Public Prosecution Service Criminal Assets Confiscation Bureau
BR	<i>Bovenregionale Recherche</i> Supra-regional Crime Squad

BuZa	<i>Ministerie van Buitenlandse Zaken</i> Ministry of Foreign Affairs
BW	<i>Burgerlijk Wetboek</i> Dutch Civil Code
BZK	<i>Ministerie van Binnenlandse Zaken en Koninkrijksrelaties</i> Ministry of the Interior and Kingdom Relations
CAHTEH	Committee on Action against Trafficking in Human Beings
CAO	<i>Collectieve arbeidsovereenkomst</i> Collective Labour Agreement
CARIN	Camden Asset Recovery Inter-Agency Network
CBA	<i>Criminaliteitsbeeldanalyse</i> Crime Projection Analysis
CBS	<i>Centraal Bureau voor de Statistiek</i> Statistics Netherlands
CC	(Dutch) Criminal Code
CDPC	European Committee on Crime Problems
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGKR	<i>Centrum voor Gelijkheid van Kansen en voor Racismebestrijding</i> Centre for Equal Opportunities and Opposition to Racism
CIE	<i>Criminele Inlichtingen Eenheid</i> Criminal Intelligence Unit
CIROC	Centre for Information and Research on Organised Crime
CJIB	<i>Centraal Justitieel Incasso Bureau</i> Central Judicial Collection Agency
CNV	<i>Christelijk Nationaal Vakverbond</i> Christian National Union
COA	<i>Centraal Orgaan opvang Asielzoekers</i> Central Agency for the Reception of Asylum Seekers
CTOC	Convention against Transnational Organised Crime
DCI	Defence for Children International
DINPOL	<i>Dienst Internationale Politiesamenwerking</i> International Police Cooperation Service
dNP	<i>de Nederlandse Politie</i> The Dutch Police
dNRI	<i>dienst Nationale Recherche Informatie</i> National Crime Intelligence Service
EC	<i>Europese Commissie</i> European Commission
ECD	<i>Economische Controledienst</i> Economic Audit Service
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
EG	<i>Europese Gemeenschap</i> European Community
EHRM	<i>Europees Hof voor de Rechten van de Mens</i> European Court of Human Rights

EK	<i>Eerste Kamer</i> Upper House (of the Dutch parliament)
EMM	<i>Expertisecentrum Mensenhandel en Mensensmokkel</i> Expertise Centre on THB and People Smuggling
EP	<i>Europees Parlement</i> European Parliament
ER	<i>Europese Raad</i> European Council
EU	<i>Europese Unie</i> European Union
Eurojust	<i>Europees orgaan voor de justitiële samenwerking</i> European Union Judicial Cooperation Unit
Europol	<i>Europese politie</i> European Police Office
EVRM	<i>Europees Verdrag tot bescherming van de rechten van de mens</i> European Convention on the Protection of Human Rights
FIOD	<i>Fiscale Inlichtingen- en Opsporingsdienst</i> Fiscal Information and Investigation Service
FIOD/ECD	<i>Fiscale Inlichtingen- en Opsporingsdienst/Economische Controledienst</i> Fiscal Information & Investigation Service/Economic Audit Service
FIU-NL	Financial Intelligence Unit
FNV	<i>Federatie van Nederlandse Vakbewegingen</i> Dutch Trade Union Federation
FO	<i>Federatie Opvang</i> Federation of Reception Shelters
FP	<i>Functioneel Parket</i> National Public Prosecutor's Office for Economic and Environmental Offences
GA	General Assembly
GAATW	Global Alliance Against Trafficking in Women
GBA	<i>Gemeentelijke Basisadministratie persoonsgegevens</i> Municipal Personal Records Database
GAO	Government Accountability Office (United States)
GGD	<i>Gemeentelijke Gezondheidsdienst</i> Municipal Health Service
GG&GD	<i>Gemeentelijke Geneeskundige- en Gezondheidsdiensten</i> Municipal Medical and Health Services
GGZ	<i>Geestelijke Gezondheidszorg Nederland</i> Netherlands Institute for Psychological Care
GOC	<i>Grensoverschrijdende Criminaliteitsteam</i> Cross-border Crime Squad
HON	<i>Handhaven Op Niveau</i> Quality Enforcement Project
HR	<i>Hoge Raad</i> Dutch Supreme Court

HVO Querido	<i>Hulp voor Onbehuisden Querido</i> Querido Help for the Homeless
ICMPD	International Centre for Migration Policy Development
IGO	<i>Informatie Gestuurde Opsporing</i> Information-led investigation
IKP-S	<i>Informatie Knooppunt Politie Systeem</i> Police Information Node System
ILO	International Labour Organisation
IND	<i>Immigratie- en Naturalisatiedienst</i> Immigration and Naturalisation Service
IOOV	<i>Inspectie Openbare Orde en Veiligheid</i> Public Order and Security Inspectorate
IOM	International Organisation for Migration
IRC	<i>Internationale Rechtspraak Centra</i> International Legal Assistance Centres
JBZ(-Raad)	<i>(Raad van ministers van) Justitie en Binnenlandse Zaken</i> (Council of Ministers of) Justice and the Interior
JIT	Joint Investigation Team
JJI	<i>Justitiële Jeugdinstellingen</i> Judicial Institutions for Juvenile Persons
JOS (project)	<i>Juridische Opvang Slachtoffers seksueel geweld</i> Legal Assistance for Victims of Sexual Violence
KLPD	<i>Korps Landelijke Politie Diensten</i> National Police Services Agency
KMar	<i>Koninklijke Marechaussee</i> Royal Netherlands Marechaussee
LEM	<i>Landelijke Expertgroep Mensenhandel</i> National Expert Group on Trafficking in Human Beings
LJN	<i>Landelijk Jurisprudentie Nummer</i> National Case-law Number
LOGO	<i>Landelijk Overleg Gemeentebesturen Opvang en terugkeerbeleid</i> National Consultative Body for Municipal Administrations on reception and returns policy
LOS	<i>Landelijke Ongedocumenteerden Stichting</i> National Foundation for Undocumented Migrants
LOvJ mensenhandel	<i>Landelijk Officier Mensensmokkel en Mensenhandel</i> National Public Prosecutor for THB and People Smuggling
LP	<i>Landelijk Parket</i> National Office of the Public Prosecution Service
M.	<i>Stichting Meld Misdaad Anoniem</i> Report Crime Anonymously = Crimestoppers
MOB	<i>Met onbekende bestemming</i> destination unknown
MOT	<i>Meldpunt Ongebruikelijke Transacties</i> Centre for Reporting Unusual Transactions
MOE-landen	<i>Midden en Oost-Europese landen</i> Central and Eastern European countries

MvT	<i>Memorie van toelichting</i> Explanatory Memorandum
NAM	<i>Nationaal Actieplan Mensenhandel</i> National Action Plan on (Combating) THB
NCIPS	<i>Nederlands Centrum voor Internationale Politiesamenwerking</i> Netherlands Centre for International Police Cooperation
NGO	<i>Niet-gouvernementele organisatie</i> Non-governmental organisation
NIGZ	<i>Nationaal Instituut voor Gezondheidsbevordering en Ziektepreventie</i> National Institute for Health Promotion and Disease Prevention
NJCM	<i>Nederlands Juristen Comité voor de Mensenrechten</i> Dutch Section of the International Commission of Jurists
NeBeDeAgPol	<i>Nederland België Deutschland Arbeitsgesellschaft Polizei</i> Netherlands, Belgium and Germany Police Union
NPI	<i>Nederlands Politie Instituut</i> Netherlands Police Institute
NR	<i>Nationale Recherche</i> National Crime Squad
NRI	<i>Nationale Recherche Informatie</i> National Crime Intelligence Service
NRM	<i>Nationaal Rapporteur Mensenhandel</i> National Rapporteur on Trafficking in Human Beings
NRM ₁	<i>Eerste rapportage van de Nationaal Rapporteur Mensenhandel</i> First NRM Report
NRM ₃	<i>Derde rapportage van de Nationaal Rapporteur Mensenhandel</i> Third NRM Report
NRM ₄	<i>Vierde rapportage van de Nationaal Rapporteur Mensenhandel</i> Fourth NRM Report
OCTA	Organised Crime Threat Assessment
OKIA	<i>Ondersteuningskomitee Illegale Arbeiders</i> Support Committee for Illegal Workers
OM	<i>Openbaar Ministerie</i> Public Prosecution Service
OOM	<i>Operationeel Overleg Mensenhandel</i> Operational Consultation Group on Trafficking in Human Beings
OR	<i>Ondernemingsraad</i> Works Council
OSCE	Organization for Security and Cooperation in Europe
OSR	OSCE Special Representative
OvJ	<i>Officier van Justitie</i> Public Prosecutor
OVSE	<i>Organisatie voor Veiligheid en Samenwerking in Europa</i> Organisation for Security and Cooperation in Europe
PA	Parliamentary Assembly
PaG	<i>Parket-Generaal</i> National Public Prosecutor's Office

PbEG	<i>Publicatieblad van de Europese Gemeenschappen</i> Official Journal of the European Community
PC-ES	Committee of Experts on the Protection of Children against Sexual Exploitation and Abuse
PG	<i>Procureur-Generaal</i> Procurator General
PLEXA	<i>Project beëindiging leefgeldten van ex-ama's</i> Project on the termination of allowances for former unaccompanied underage asylum seekers
PPM/dNP	<i>Project Prostitutie Mensenhandel/de Nederlandse Politie</i> National Police Project on Prostitution and Trafficking in Human Beings
PPS	Public Prosecution Service
PMW	<i>Prostitutie Maatschappelijk Werk</i> Prostitution Social Work
REAN	Return and Emigration of Aliens from the Netherlands
RIAGG	<i>Regionale Instellingen voor Ambulante Geestelijke Gezondheidszorg</i> Regional Institute for Community Mental Healthcare
RRI	Randstad Return Initiative
RvE	<i>Raad van Europa</i> Council of Europe
RvdK	<i>Raad voor de Kinderbescherming</i> Child Protection Board
SAMAH	<i>Stichting Alleenstaande Minderjarige Asielzoekers Humanitas</i> Foundation for Unaccompanied Minor Asylum Seekers, Humanitas
SGBO	<i>Onderzoeks- en Adviesbureau van de Vereniging van Nederlandse Gemeenten</i> Research and Advice Bureau of the Association of Dutch Municipalities
SiBa	<i>Statistische informatievoorziening en Beleidsanalyse</i> Statistical Data and Policy Analysis Unit
SIOD	<i>Sociale Inlichtingen- en Opsporingsdienst</i> Social Information and Investigation Service
SK	<i>Scharlaken Koord</i> The Scarlet Cord
Sr	<i>Strafrecht</i> Criminal Law
Stb	<i>Staatsblad</i> State Bulletin of Acts and Decrees
SRTV	<i>Stichting Religieuzen Tegen Vrouwenhandel</i> Dutch Foundation of the Religious against Trafficking in Women
Stcrt	<i>Staatscourant</i> Government Gazette

STV	<i>Stichting Tegen Vrouwenhandel</i> Dutch Foundation against Trafficking in Women
Sv	<i>Strafvordering</i> Criminal Procedure
SZW	<i>Ministerie van Sociale Zaken en Werkgelegenheid</i> Social Affairs and Employment
TA	Tax Authority
TIP rapport	Trafficking in Persons Report
THB	Trafficking in Human Beings
TK	<i>Tweede Kamer</i> Lower House (of the Dutch parliament)
TNV	<i>Tijdelijke Noodvoorziening Vreemdelingen</i> Temporary Aliens Emergency Facilities
Trb	<i>Tractatenblad</i> Treaty Series
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNTS	United Nations Treaty Series
UK	United Kingdom
UWV	<i>Uitvoering Werknemersverzekeringen</i> Social Security Agency
Vb	<i>Vreemdelingenbesluit</i> Aliens Decree
Vc	<i>Vreemdelingencirculaire</i> Aliens Act Implementation Guidelines
V & I	<i>Vreemdelingenzaken en Integratie</i> Immigration and Integration
VN	<i>Verenigde Naties</i> United Nations
VNG	<i>Vereniging Nederlandse Gemeenten</i> Association of Netherlands Municipalities
VROM	<i>Ministerie van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer</i> Ministry of Housing, Spatial Planning and Environmental Management
VROM/IOD	<i>Inlichtingen- en Opsporingsdienst van het ministerie van VROM</i> Information and Investigation Service of the Ministry of VROM
VWS	<i>Volksgezondheid, Welzijn en Sport</i> Public Health, Welfare and Sport
WAADI	<i>Wet allocatie arbeidskrachten door intermediairs</i> Act on Allocation of Manpower by Intermediaries
WAV	<i>Wet arbeid vreemdelingen</i> Aliens Employment Act
Wet BIBOB	<i>Wet bevordering integriteitsbeoordeling door het openbaar bestuur</i> Public Administration (Probity Screening) Act

WODC	<i>Wetenschappelijk Onderzoek- en Documentatiecentrum</i> Scientific Research and Documentation Centre
WOD	<i>Wet op de orgaandonatie</i> Organ Donation Act
WSG	<i>Wet Schadefonds Geweldsmisdrijven</i> Violent Offences Compensation Fund Act
WVS	<i>Wet voorkoming schijnhuwelijken</i> Marriages of Convenience (Prevention) Act
WvSr	<i>Wetboek van Strafrecht</i> Dutch Criminal Code
WvSv	<i>Wetboek van Strafvordering</i> Dutch Code of Criminal Procedure
ZM	<i>Zittende Magistratuur</i> Judiciary

Foreword

On 15 June 2007 I presented the fifth Report of the National Rapporteur to the Dutch government. This is a slightly modified and abridged version of the Report. In this Report you will find that, apart from the usual topics, attention has been especially devoted to the three following subjects: financial investigations, human trafficking with a view to organ removal and labour exploitation outside the sex industry.

Labour exploitation outside the sex industry has become a criminal offence in the Netherlands as of 1 January 2005. The legislation does not provide a clear dividing line between bad employment and slavery like situations. It is entrusted to the judiciary to further define the concept of labour exploitation.

An important leading decision in this area is the judgment of the European Court of Human rights of 26 July 2005, in the case of *Siliadin v France*. I hope that the descriptions of cases in Chapter 8 of my Report will also form a source of reference.

Recently three judgments at first instance have been rendered in the Netherlands. These cases involved the harvesting of hemp plants, a Chinese restaurant and cleaning. All three cases resulted in an acquittal on human trafficking charges, with convictions for offences related to human trafficking. Two of these are still under appeal. Clearly, the definition of labour exploitation outside the sex industry requires further research. I intend to keep a close watch on the development of case law in this area.

The position of the victim remains a matter of continuing concern. Some improvements have been made in the sphere of residency status; however, many improvements related to the victim's position in the framework of criminal law and procedure still need to be undertaken. It remains for example perpetually difficult for victims to obtain redress and compensation for tangible and intangible losses. I propose to undertake further research into the victim's position, particularly regarding criminal law and procedure and compensation.

The topic of human trafficking is high on the agenda in the Netherlands and people are working hard to put policy into practice. But it is not yet sufficient. During a recent major police investigation, many victims of human trafficking were identified in the licensed prostitution industry. More than six years after lifting the general ban on brothels, it appears that not enough measures have as yet been taken – or perhaps not enforced adequately enough – to free the sex industry from forced prostitution. This has prompted me into recommending the development of a stronger national legislative framework for prostitution policy.

This shows that there is still quite enough work to be done.

While it is obviously important to keep human trafficking high on the various agendas, this will only have a real impact if policy is put (even) more into practice. I hope that my recommendations will assist in these objectives.

My report covers the situation in the Netherlands and my recommendations are aimed at the Dutch government. Human trafficking is, however, a world wide problem, frequently involving cross-border organised crime, and flagrant breaches of human rights of those individuals who are merely looking for a better life. There must be – and must continue to be – international attention to the macro-factors, which constitute the source and breeding ground for cross-border human trafficking.

The research for the fifth report was set up and initiated before I took office. I therefore owe a large measure of thanks to my predecessor, and the founder of the BNRM, A.G. Korvinus.

Various individuals have contributed to this report. Many co-operating organisations, including the police, STV and the IND, have provided information, and BNRM owes them a debt of gratitude. A special word of thanks is due to Peter Paul Groen of the Statistical Information Supply & Policy Analysis Department (SiBa) at WODC, who again undertook the analysis of the data provided from the Public Prosecution Service for this fifth report on trafficking in human beings.

C.E. Dettmeijer-Vermeulen

National Rapporteur on Trafficking in Human Beings

1.1 Introduction

An important recent development was the entering into force of the new human trafficking article 273f in the Dutch Criminal Code. This legislative amendment brought new activities – in addition to those matters rendered criminal in the former article 250a of the Criminal Code – within the scope of criminal provision on trafficking in human beings (THB), including exploitation in employment or services in sectors other than the sex industry and certain activities aimed at organ removal. This expansion has implications for many of the organisations that have joined the fight against THB: they must now also become involved in detecting and/or prosecuting these ‘new’ forms of THB and identifying and assisting the victims in question. Furthermore, as a result of this expansion, there are some new chain partners involved in these endeavours. In this context, it is beneficial that there is an increasingly clear effort to collaborate among all of the partners in the chain. This multi-agency approach is frequently described in the Netherlands as a ‘systematic approach’. A great deal of significance is attached to this by the police, the Public Prosecution Service (PPS) and the social assistance services.

One consequence of the legislative changes is an expansion of operational scope for BNRM: the reports and recommendations have to cover a broader range of topics. This is partly why BNRM has come to devote more resources to studying specific themes instead of annually collecting quantitative data applying the same method, though this is also due to the fact that in the field of human trafficking (and how it is combated) new developments are continually occurring, and new questions are arising, which demand and justify topical research. In concrete terms, this means that the present report devotes less attention to detection and investigation of THB in a general sense, focusing rather on three specific topics, namely financial investigations, exploitation in sectors other than the sex industry, and human trafficking with the intention of removing organs.

1.2 The National Action Plan on (Combating) Human Trafficking

The National Action Plan on (Combating) Human Trafficking [*Nationaal Actieplan Mensenhandel* (NAM)] was submitted by the Cabinet to the Lower House on 20 December 2004. The plan, which also formed the Cabinet’s reaction to the recommendations in the third Report of the National Rapporteur, was presented as a dynamic document. On 17 February 2006, the Minister of Justice submitted the Additional Measures to the Action Plan to the Lower House. These measures related primarily to victims who are minors, and to child prostitution, but, in addition, covered the topics of prevention, reporting and registration as

well as investigation and prosecution, also for exploitation in other sectors than in the sex industry. In a response to the NAM, BNRM welcomed the fact that an Action Plan had been prepared.

Much has happened since the third Report and the NAM. There are also, however, issues on which no significant progress has yet been made. Three comments on the NAM have not yet lost anything of their topicality:

- the provision of reception and assistance in certain cases to victims who are unwilling to cooperate in police investigations and prosecution, or who dare not do so, is primarily viewed from the perspective of asking what the benefit is for the police and justice systems, rather than, as it should be, from the perspective of the victim;
- adequate protection of victims should also, but not exclusively, be considered in the context of their return to their countries of origin;
- national overviews of the results of administrative checks and interventions in the prostitution industry (insofar as relevant in relation to THB) are useful for criminal law enforcement in the context of combating THB. These overviews should be prepared on an ongoing basis and not just at a single point in time in the context of ‘monitoring’ the abolition of the general ban on brothels.

In relation to these sorts of issues, improved direction, for instance from a multidisciplinary Human Trafficking Task Force, might very well play a stimulating and facilitating role.

1.3 Prevention

Prevention is better than cure. The same applies to human trafficking. Prevention is therefore an important topic,¹ yet there is no separate chapter devoted to it in this Report. This is not because nothing is being done about prevention in the Netherlands. In fact a lot is being done, including:

- the production of information films (such as the film *Anna*, commissioned by the Dutch Foundation of the Religious against Trafficking in Women);
- explanation of the dangers of loverboys, at schools and elsewhere;
- the explanation that is to be provided by the Ministry of Social Affairs and Employment to employers and, by means of leaflets, to migrant workers, covering the statutory minimum provisions on employment conditions;
- a range of actions aimed at identifying potential victims within risk groups as early as possible;
- the covenant between the Ministry of Justice and the Dutch daily press, which includes the stipulation that daily newspapers request those who place erotic advertisements to state a licence or VAT number in the adverts. This will make it clear to

¹ Prevention is also a significant element in the NAM.

customers whether or not they are dealing with a licensed business, reducing the chance that a victim of human trafficking will be encountered in this way.² One of the aims is to increase awareness on the demand side;

- attention currently being paid in training and education of defence staff to matters such as the protection of women and girls against sexual violence, prostitution, abuse and indecent assault as well as human trafficking (Taskforce Women, Safety and Conflict [*Vrouwen, Veiligheid en Conflict*] Final Report, 2006);
- the financing of various projects by the Netherlands (via Dutch embassies) aimed at combating human trafficking and supporting victims.

Because preventive activities are so wide-ranging in nature³ and because so many interventions also incorporate a preventive element – thus, for example, investigation and prosecution can have a preventive effect – they will be dealt with in the various chapters. Little is known about the effectiveness of interventions, and this applies to preventive as well as the more ‘curative’ measures; so far there has been little by way of impact evaluation.

1.4 Dealing with the demand side

The demand for cheap labour is regarded as an important ‘root cause’ of THB. Rightly, therefore, a good deal of attention is paid to addressing the demand side, which can also be regarded as a form of (primary) prevention. International documents, such as the Palermo Protocol, the Brussels Declaration, the Convention of the Council of Europe, the EU Action Plan, the OCSE Action Plan, a resolution by the European Parliament and a resolution by the Parliamentary Assembly of the Council of Europe,⁴ all urge states to address the demand side of human trafficking. Discussions on addressing demand, however, are often confined to addressing the demand for sexual services – see, for example the report by Hughes (2004) on ‘best practices to address the demand side of trafficking’ – and are often of an ideological nature. O’Connell Davidson (2006) points out that abolitionist feminist groups have lobbied for a very specific approach to the demand side, namely countering demand for sexual services in general by criminalising the clients. This is also the conclusion of the report by the *UN Special Rapporteur on trafficking* from February 2006,⁵ which in fact invoked several critical responses, to the effect that the report had not come about in an objective or sound manner.⁶

² The covenant also sets out that clients will be informed, in between the adverts, that they are likely to be less at risk dealing with a licensed company.

³ This is also evident from the summary of ‘best and promising practices’ from the United Nations, national governments and non-governmental organisations in the field of prevention, prepared on the instructions of the Canadian National Crime Prevention Centre (Gervais, 2005).

⁴ These institutions and documents are discussed in more detail in Chapter 2.

⁵ Integration of the human rights of women and the gender perspective; Report of the Special Rapporteur on trafficking in human beings, especially women and children (E/CN.4/2006/62, dated 20 February 2006).

⁶ Thus, in a response in August 2006, *La Strada International* pointed out that the rapporteur had based her views to a significant extent on opinions rather than facts, and wrongly reported that the Palermo Protocol indicates

There are, however, various options in relation to dealing with the demand for THB for the purpose of exploitation in the sex industry. The choice made by a country depends partly on the culture of that country and how prostitution is regarded there. The Swedish government, for example, which regards all prostitution as constituting violence against women, made the purchase of sexual services a criminal offence. In the Netherlands, where a distinction is drawn between (commercial) sex by consenting adults and forced prostitution, attempts are made to influence the demand side in other ways, such as via the campaign ‘Appearances are deceptive’ [*Schijn bedriegt*], which is aimed at making clients more conscious of their responsibilities.

There is debate in the Netherlands about criminalising the conscious purchase of sexual services from individuals who are clearly acting under coercion.⁷ In a recommendation in the third Report, BNRM pressed for *discussion* on this point, in which not only the desirability but also the practical feasibility of any such criminalisation would be considered. Some of the chain partners read this recommendation – wrongly – as a plea for criminalisation. It did seem (and still seems) of importance to BNRM, partly in light of international pressure, to undertake a thorough consideration and a proper debate of a decision for or against. The recommendation found its way into the NAM. In its response to the NAM, the Dutch Foundation against Trafficking in Women [*Stichting Tegen Vrouwenhandel* (STV)] asked for consideration of the undesirable side-effects of any such measure. ‘It is likely that human traffickers, prostitutes and clients will withdraw further into the invisible and often illegal circuit in order to avoid arrest. This means that victims will be removed from the purview of police, field workers and health care services, with all the risks this entails, and will be deprived of assistance and protection. Human traffickers will become more difficult to detect, which will hamper the chances of arrests and a repressive approach. Clients will be less inclined to report any signs of human trafficking and victimisation if they run the risk of being punished”, according to the STV. The discussion has not yet been completed.

There is, however, not only a demand for (cheap) sexual services, but also for cheap labour in, for example, construction, agriculture and private households, and there is also a demand for human organs. The demand side thus is a multi-faceted concept, and discussions concerning the demand side and measures to discourage it must not be limited to addressing the demand for sexual services (see also the statement of the *Alliance Expert Coordination Team*⁸ concerning the demand side).⁹ The ILO (2005) argues for the criminalisation of ex-

that all prostitution implies THB. The *Global Alliance Against Trafficking in Women* (GAATW) concluded, in its reaction to the report: ‘While fully acknowledging that the Special Rapporteur is an independent expert [...] she is at the same time bound by certain principles which govern her mandate; these include strict impartiality and objectivity [...]. These principles in our view have not been fully respected in this particular exercise. This neglect raises questions about the utility of the report.’

⁷ The purchase of sexual services from a minor between the ages of 16 and 18 is already a criminal offence (Art. 248b, Dutch Criminal Code) as is attending a sex show involving the performance of a minor (Art. 248c Dutch Criminal Code). Sex with minors below the age of 16 is also a criminal offence (Art. 244, 245 and 247, Dutch Criminal Code).

⁸ In which the following are represented, in addition to La Strada: OSCE, various UN divisions, IOM, ICMPD,

ploitation, but also for reducing the risk of exploitation through migration and labour market policies. In the Additional Measures to the NAM, the Ministry of Justice together with the Ministry of Social Affairs and Employment expressed the intention to formulate, in 2006, initiatives designed to reduce the demand that results – or can result – in labour exploitation, and to collaborate with employers’ associations and trade unions in this effort. One initiative taken is the flanking policy designed to restrict any possibly detrimental consequences of the free movement of employees from the EU member states in Central and Eastern Europe.

1.5 Collecting information on human trafficking

It is widely recognised that knowledge about THB is of major importance for addressing the phenomenon in an adequate manner. We need to know more about human traffickers and how they work, but also about victims: how do they cope when they are being victimised, and in the period following this? If they are brave enough to tell their story, to what extent are they offered the necessary assistance and support, and which interventions in the battle against human trafficking and in relation to victim support are effective? At the same time, it is clear that it is very difficult to collect reliable information. There are various reasons for this:

- exploitation partly occurs in hidden sectors such as the (unlicensed) sex industry, the informal economy and behind closed doors in private households, making it difficult to detect;
- victims, including victims of exploitation in other sectors than the sex industry, are reluctant to tell of their experiences;
- for these reasons, and also because exploitation does not, generally speaking, cause any visible disturbance of public order, cases remain undiscovered. It is unknown how large this ‘dark number’ is.

Another significant question is what type of research is needed. It is often said that studies in relation to a single country provide too limited a picture. This is true in relation to specific aspects of what is frequently a cross-border offence, such as human trafficking routes or obtaining a picture of the situation for victims who have returned to their countries of origin. However, for (national) policy purposes, it is valuable and even essential to collect information specific to a particular country. This type of information is also indispensable for clarifying the meaning of the results from large-scale international comparative studies. All the more so, because this type of studies, generally speaking and quite apart from human trafficking, already has to deal with additional problems.

Europol, Interpol, Nexus Institute, Acta, Anti-Slavery International, ECPAT, Terre des Hommes, Save the Children, Amnesty International and BNRM. There is further discussion of the AECT in Chapter 2.

⁹ Dated 3 October 2006 (during the special day on trafficking at the Human Dimension Implementation meeting of the OSCE).

An additional problem is that there is no unanimous international definition of THB. While the definition of human trafficking in the UN Palermo Protocol on THB is applied broadly (see for example Gallagher, 2006), there still are differences between different countries in the way they interpret this definition and in how THB is defined in national legislation.¹⁰ This in turn has consequences for any data that may (potentially) be available. In some countries, the data only covers cross-border human trafficking, whereas others also include internal (domestic) trafficking. In some countries, the law and the data cover exploitation not only in the sex industry but also in other sectors, while in other countries this is not (yet) the case. Also, the extent to which combating THB is prioritised in a particular country will influence the availability and amount of data on the phenomenon. The United States Government Accountability Office (GAO) discusses this type of problems at length and states that country-specific information on THB is not available, not reliable or not comparable (GAO, 2006).¹¹

The question arises as to whether studies into THB on a large scale, occasionally even on the global scale take adequate account of the distinctions mentioned above. Do they reflect a balanced picture of reality, or do they simply reflect figures without paying much attention to the context from which these are drawn? It seems that the fact that some countries, such as the Netherlands, collect and publish information on THB and trafficking victims¹², has a negative influence on the image of these countries portrayed in large-scale reports.

UNODC Global Report

‘The Netherlands in the top 10 destinations for victims of human trafficking’, is apparently one of the results of a worldwide investigation by the United Nations Office on Drugs and Crime (UNODC, 2006). The Netherlands is indeed a destination country for victims of THB, which has to be countered in every way possible, but there is a question as to whether the problem is so much greater in the Netherlands than in many other Western and non-Western countries. There is not, in fact, any allegation to this effect in the UNODC report.

The overviews in the UNODC report are based on the number of times a particular country is mentioned as a country of origin, transit or destination for victims in a range of sources. This means that the part played by a country in the report is determined to a significant extent by the amount of attention paid to THB in that particular country (see also GAO, 2006). The Dutch approach to combating human trafficking is certainly susceptible to improvement, but at least attention is paid to the problem. This, along with the fact that in the Netherlands information is registered concerning victims, suspects

¹⁰ The UN Protocol allows such scope for countries (see also Otten, 2005; Munro, 2006).

¹¹ GAO (2006) makes recommendations for increasing the credibility of the global ‘Trafficking in Persons’ (TIP) reports produced each year by the American government. The most important of these recommendations is that the rationale behind the allocation to ‘tiers’ (categories indicating whether or not a government is doing enough to combat human trafficking) must be clear.

¹² And there are not many countries that do so. Vermeulen et al., (2006) conclude on the basis of a ‘state-of-the-art’ research of the (then) 25 member states of the EU, that only Belgium and the Netherlands, - in the whole of Europe - have proper data sets in relation to THB. The authors propose the development of a gigantic international database for the collection and analysis of data concerning missing and sexually exploited children as well as THB, and have produced a blueprint for this with variables concerning the victim, the event and the perpetrator.

and their prosecution, and the fact that there is a National Rapporteur whose reports are referred to in many international publications on THB, adds up quickly in overviews such as those of UNODC.

Many countries voiced fierce criticism of a draft version of the report at the end of 2005. Apart from the points mentioned above, BNRM also pointed out the geographical bias (it is, for example, highly incredible that not a single African country is classified as 'very high' among destination countries) as well as problems of methodology, such as the absence of information concerning the validity and reliability of the base material.

UNODC asked a panel of independent experts to evaluate the research methods and results. The panel had comparable objections.¹³ The most significant conclusion was that the UNODC report analysed the level of reporting and not the incidence of THB itself. UNODC took the remarks of the panel to heart, adopted most of the recommendations from the evaluation, adjusted the terminology to some extent and set out the limitations of the research in the report. Unfortunately, but as might have been expected, this nuance was missed by the press and is often overlooked when the report is used.

There is a great need for numbers and a better understanding of them. It should be clear from what has already been said that it is difficult to obtain reliable figures on THB, if only because of the nature of the phenomenon. Researchers in the area of THB therefore have to wrestle with the question whether it is possible to estimate the size of, for example, populations of the victims of THB. The results have not hitherto been encouraging. In the United States, the GAO, for example, confirms that the US government, which publishes the global 'Trafficking in Persons' (TIP) report each year, has still not developed any effective mechanism for assessing numbers of victims (GAO, 2006). The study by Sikkel et al. (2006) into methods for assessing the size of hidden populations in the Netherlands, particularly undocumented migrants, does not give much cause for hope either. This is regrettable, but we should also appreciate that, although knowing the numbers might say something about the scale of the measures needed to be able to deal with THB, this would not clarify *what* has to be done. For this, we (also) need more in the way of qualitative information. In this respect it is regrettable that, while many countries are showing interest in the phenomenon of the 'NRM' and international bodies are urging the appointment of rapporteurs,¹⁴ very few national rapporteurs have yet been appointed. Not much has changed on this point since the third Report.¹⁵

¹³ Report of Meeting of Experts on UNODC Report on Trafficking in Human Beings, Vienna, 24-25 January 2006.

¹⁴ Thus the General Assembly of United Nations recommended the appointment of national rapporteurs (in Resolution A/RES/59/166, dated 10 February 2005), as did the European Commission (EC) (in the *Communication Fighting trafficking in human beings – an integrated approach and proposals for an action plan* (Notice COM(2005) 514 dated 18 October 2005) and the European Parliament (in the Resolution *Strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation* (A6-0400/2005 dated 14 December 2005)). A UK country report by *Anti-Slavery International* states that 'An independent National Rapporteur on Trafficking in Human Beings should be established in the UK, along the lines of the role of the Dutch National Rapporteur' (Anti-Slavery International, 2006).

¹⁵ It can be stated, however, that Romania is working on the establishment of a *National Agency Against Trafficking in Persons*, which will also have reporting duties. An increasing number of countries has a taskforce, national coordinator and/or national action plan on THB.

Working methods of BNRM

BNRM collects both quantitative and qualitative information. This is done using among other methods:

- in-house research;
- secondary analysis of existing data files;
- the organisation of meetings;
- attendance at consultative structures;
- participation in advisory committees;
- participation in working groups;
- attending conferences and workshops both in the Netherlands and abroad;
- occasional attendance at meetings, and also being kept up-to-date by means of minutes of such meetings, held by local (support) networks on THB;
- many bilateral contacts (in person, by telephone or email) with a wide range of individuals and bodies.

1.6 This report

Where possible, each chapter follows a similar pattern: policy-oriented information is dealt with first, followed by the figures, then any international developments, and lastly relevant points of interest and bottlenecks.

A lot has happened in relation to combating THB in the Netherlands since the publication of the third Report, the last report which contained an extensive description of the developments in this area. Still, many points remain on which progress can and should be made. These are dealt with in Chapter 10 in the form of recommendations. These recommendations cover a wide range of issues, including legislation and regulations, victims of THB, assistance and the protection of interests, law enforcement, police and investigation, and the PPS and prosecution.

Legislation and Regulations

2.1 Introduction

A number of changes have been introduced into legislation and regulations in the field of trafficking in human beings (THB) since the previous reports were issued. The principal amendment to Dutch legislation was the finalisation and entering into force of the new THB provision in the Dutch Criminal Code [*Wetboek van Strafrecht*].

2.2 National legislation and regulations

2.2.1 The new THB provision

Procedural

The previous THB Article 250a Dutch Criminal Code was replaced by a new and extended Article 273a on 1 January 2005.¹ The purpose of this new Article was to implement UN² and EU³ legislation, in anticipation of the (proposed) ratification and implementation of these documents in Dutch legislation.

On 1 September 2006, Article 273a Criminal Code was renumbered, without any substantive alteration to the text, to Article 273f.

Ratification of UN instruments

The Netherlands ratified the UN Convention against Transnational Organised Crime (New York, 15 November 2000, hereafter 'the UN Convention') on 26 May 2004. Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, annex to the UN

¹ State Bulletin of Acts and Decrees 2004, 690.

² The Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, signed on 25 May 2000 in New York (Treaties Series 2001, 63); the Convention against Transnational Organised Crime, signed in New York on 15 November 2000 (Treaty Series 2001, 68); the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, Supplementing the Convention against Transnational Organised Crime, signed in New York on 15 November 2000 (T.S. 2001, 69); and the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention against Transnational Organised Crime, signed in New York on 15 November 2000 (T.S. 2001, 70).

³ The Framework Decision by the Council on combating trafficking in human beings, Brussels, 19 July 2002 (Official Journal of the EU 2002, L 203); the Council Directive defining the facilitation of unauthorised entry, transit and residence, Brussels, 28 November 2002 (OJ 2002, L 328); the Framework Decision by the Council on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, Brussels, 28 November 2002 (OJ 2002, L 328); and the Framework Decision by the Council on combating the sexual exploitation of children and child pornography, Brussels, 22 December 2003 (OJ 2004, L 13).

Convention (New York, 15 November 2000, hereafter ‘the Palermo Protocol’) followed on 27 July 2005.⁴ The Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, (New York, 25 May 2000) was ratified by the Netherlands on 23 August 2005).

31 July 2004, which was the final date for implementation of the EU Council’s Framework Decision on combating trafficking in human beings (hereafter ‘the Framework Decision on THB’), was not achieved since Article 273a Criminal Code entered into force on 1 January 2005.⁵ The Council Framework Decision on combating the sexual exploitation of children and child pornography was implemented in time (final date 20 January 2006).

The new THB provision entails a significant extension of the conduct criminalised as THB: in addition to sexual exploitation, other forms of exploitation in the area of employment and services, as well as forced or induced removal of organs. Forcing or inducing another person to surrender the proceeds from sex work or from organ removal has also been criminalised.⁶ The classification of THB was (again) introduced to cover all of these types of conduct.

What is not covered by the THB provision?

The legislator has indicated a number of activities that it does not classify as THB.

The first of these is illegal adoption,⁷ which happens when a child is adopted, or offered for adoption, outside official channels (for example without the permission of the parents and/or the competent authorities in the country of origin). The rules on international adoption are included in the Act on the Placement in the Netherlands of Foreign Children with a View to Adoption [*Wet openeming buitenlandse kinderen ter adoptie*].⁸ This Act criminalises any adoption that is not in accordance with the current rules and procedures. It only constitutes THB if a child is adopted with the intent of exploiting that child.

The sale and purchase of children – in isolation and therefore not associated with adoption – which has to be rendered a criminal offence on the basis of the *Convention of the Rights of the Child* and its annex, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, is only punishable as THB if there is exploitation, or an intention to exploit. It is not, in fact, clear whether and if so where the sale and purchase of children in other situations is rendered punishable. The case of the Somali children who were brought to the Netherlands and who, after some years, were returned to (and

⁴ On the same date, the Netherlands also ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention against Transnational Organised Crime, Treaties Series 2001, 70.

⁵ The same applies to implementation of the Council’s Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, and for fulfilling the Council Directive defining the facilitation of unauthorised entry, transit and residence, both of which documents should have been implemented by 4 December 2004.

⁶ Forcing or inducing the surrender of income from other forms of work or services was not included in the relevant sub-section (9).

⁷ According to the Minister of Justice in the Additional Measures for the National Action Plan on THB [*Nationaal Actieplan Mensenhandel (Parliamentary Papers II 2005/06, 28 638, no. 19)*].

⁸ The Dutch Criminal Code also contains a number of penal provisions where specific activities in relation to giving up children are rendered criminal: Articles 151a, b and c and Art. 253, as well as - less directly - Articles 236, 279 and 442a, Dutch Criminal Code.

abandoned in) Somalia does not fall within the definition of THB either. According to the Cabinet⁹ it is even questionable whether it could be classified as THB if the children were brought to the Netherlands under false pretences and in an illegal manner, to live here with someone who wanted to earn money from their residence here by giving them less money than the amount of child benefit, because it is not clear whether such cases would involve the element of exploitation required for THB. If the children go to school and if they are fed and clothed, the Cabinet considers that the aspect of exploitation is not immediately clear. However, it does state in the letter that, for example, if (heavy) household work was to be combined with a failure to attend school, this might amount to exploitation. Such practices might well fall under the criminal provisions in relation to fraud, people smuggling, et cetera. The principal reason why these activities are not classified as THB is the fact that there is, in principle, no exploitation (or intention to exploit) as regards work or services.

While a forced marriage may not necessarily be concluded with a view to exploitation, it is described as a practice akin to slavery, provided that there is payment of a consideration in money or in kind; in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*;¹⁰ this is one of the forms of exploitation specified in Article 273f, paragraph 2. Schmidt and Rijken (2005), however, argue that this might be better to prosecute under the general provision on coercion (Art. 284, Dutch Criminal Code) or as abuse, rather than as THB.¹¹ This would in any event appear to be more appropriate if there is no exploitation (or intention to exploit).

In addition to an extension of the scope of the THB Article, a number of new aggravating circumstances were added, with appropriate penalties. The existing aggravating circumstances, namely ‘committed in association’, ‘committed in relation to a victim below the age of 16’ or a combination of the two,¹² continue to be enforced with the same maximum penalty, but now apply to all forms of exploitation. The aggravating circumstance of ‘resulting in serious bodily harm’ no longer applies as an element to be combined with one of the previously mentioned aggravating circumstances,¹³ but is added as a separate element with a substantially higher maximum penalty of 12 years.¹⁴ This sentence also applies to the newly added aggravating circumstance of ‘threatening the life of another person’.¹⁵ Another aggravating circumstance that has been added is ‘resulting in death’, with a possible maximum of 15 years’ imprisonment.¹⁶

Sentences for non-aggravated THB

The legislative amendment left the penalty for THB without aggravating circumstances at a maximum of 6 years. The Minister of Justice indicated that the gravity and seriousness of the offence were reflected in the proposed maximum penalties, which the government considered were quite proportion-

⁹ In their letter to the Lower House (*Parliamentary Papers II* 2005/06, 28 638, no. 22).

¹⁰ 7 September 1956, 266 UNTS 3.

¹¹ The differences in maximum penalties are of significant importance, for example a maximum of nine months imprisonment or a monetary fine in category three for coercion. Moreover, coercion by threats of slander or libel is an offence prosecutable only in case of complaint.

¹² Art. 250a (2)(1), (2)(2) and (3) Criminal Code (old), now Art. 273f (3) and (4) Criminal Code.

¹³ Art. 250a (2)(3) (old).

¹⁴ Art. 273f (5) Criminal Code.

¹⁵ Art. 273f (5) Criminal Code.

¹⁶ Art. 273f (6) Criminal Code.

ate to the nature and gravity of the offence. But we should establish that the sentence for the basic offence of THB could be described as light when compared with offences of a similar nature. The level of the maximum penalty also has consequences for the possibility of pre-trial detention.¹⁷

The content of Article 250a Criminal Code (old) was transferred (albeit not literally) into Article 273f Criminal Code. The legislator intended to avoid introducing any amendment to what was already a punishable offence under Article 250a Criminal Code (old) so that the detailed interpretation of that offence in terms of case law would also retain its significance under the new provision. Article 273f Criminal Code became a very extensive and complex provision, because it incorporated, in a single provision on THB, so many courses of conduct of disparate natures. The distinctions between various types of work, and the fact that other elements of crime constitute THB when individuals below the age of 18 fall victim, resulted in a large number of sub-paragraphs to describe all of the courses of conduct being criminalised. The result is the longest article in the Criminal Code, and not the easiest to understand. This is partly due to the use of a number of expressions which are not explained in greater detail. These expressions are drawn from the international documents underlying the new THB provision. In order to interpret Article 273f Criminal Code, one therefore requires not only the Explanatory Memorandum, but also the underlying international legislation, which classifies THB as a (serious) form of organised crime and violation of human rights.

At its core, Article 273f Criminal Code contemplates the criminalisation of *excessive* abuse of individuals in an employment or service provision relationship, along with all conduct amounting to putting anyone into such a position.¹⁸ The offence of THB also encompasses profiting from such circumstances and forcing someone to surrender income from sex work and from the removal of organs. The Article does not cover *all* wrongs in an employment or service provision relationship; insofar as there is no excessive abuse, the matter will have to be dealt with by means other than the THB provision. When assessing whether or not there has been excessive abuse, the determining factors are the circumstances in which the victim finds himself or herself, and under which he or she is put to work. The nature of the forced work is also relevant. In light of international legislation, it is important whether the fundamental human rights of the victim have been violated (or are under threat of violation) by the conduct in question. If that is the case, then there is excessive abuse which can be classified as exploitation within the meaning of THB.

¹⁷ Art. 67a (2)(1) Code of Criminal Procedure: if there is a suspicion of an offence where the statutory description applies a prison sentence of twelve years or more and public order is seriously compromised by the offence.

¹⁸ In addition to exploitation, Art. 273f Criminal Code, makes separate mention of the removal of organs in certain circumstances.

*The key term 'exploitation'*¹⁹

Exploitation is the central expression within the offence of THB.²⁰ In fact, according to the Explanatory Memorandum, 'THB is (aimed at) exploitation'.²¹

Within the meaning of the THB Article, exploitation must be linked with a situation of labour or services. There must also be an excess (i.e. a breach of fundamental human rights). Article 273f (2) Criminal Code provides a non-exhaustive list of what exploitation in this sense comprises: exploitation of someone else in prostitution, other forms of sexual exploitation, forced or compulsory work or services, slavery and practices similar to slavery or servitude. This enumeration of situations which the legislator regards as exploitation does not, however, provide any clearly delimited criterion. A more detailed definition is therefore required. As regards the sex industry, the legislator and the Dutch Supreme Court recognise a circumstance as a case of exploitation if the party concerned ends up in a situation that is not equivalent to the situation in which an articulate prostitute tends to find herself in the Netherlands.²² The nature of the work to be done is of major importance in this interpretation as it was formulated well before the abolition of the general ban on brothels. This is precisely why, in other sectors, not every situation worse than that likely to be encountered by an articulate worker will amount to exploitation. The nature of forced work in the sex industry means that exploitation comes about readily, since physical integrity is at stake by definition. The same applies to forced organ removal. As far as exploitation in other sectors is concerned, it seems that the situation likely to be encountered by an articulate worker can be used as a point of reference, but a more serious criterion seems appropriate. In these cases, the issue of whether or not there is exploitation is to be determined principally by the gravity of the sub-standard conditions, the course leading there and the impact on the fundamental human rights of those involved.

The precise threshold for non-sexual exploitation is still vague. It is impossible to provide a simple description of an excess in an employment or service context, as this needs to be assessed on a case-by-case basis, but one of the defining factors in any event will be the (inherent) violation of fundamental human rights. To describe a situation as excessive, there has to be at least one obvious excess or an accumulation of lesser wrongs.²³ Factors such as gravity, duration, scope and the economic benefit obtained also play a part here. The single or cumulative excess should, in principle, be considered objectively; according to the current standards of Dutch society and the Dutch legal system. Fundamental human rights again play a central part here. To be classified as exploitation, the determining factor is not therefore whether the victim regards himself or herself as having been exploited; though the victim's subjective experience may play a part in assessing whether he or she could have escaped from the exploitative situation.

¹⁹ See also Korvinus et al., (2006).

²⁰ The central expression in the Belgian and French criminalisation of THB is (putting someone to work in circumstances incompatible with) human dignity. There is also debate on this concept (Bontinck, 2006).

²¹ *Parliamentary Papers II* 2002/03, 29 291, no. 3.

²² E.g., Supreme Court, 5 February 2002, where there was a reference to the Explanatory Memorandum accompanying the introduction of Art. 250ter Criminal Code. In relation to the sex industry, the legislator and the Supreme Court identify a situation of exploitation when the person involved is in a situation inferior to the circumstances in which an articulate prostitute would normally operate in the Netherlands.

²³ This might, for example, involve underpayment, irregular payment, long working hours, being forced to work under a different identity, confiscation of a passport, or threats of dismissal if the person fails to do what he/she is told to do.

Trafficking in human beings as defined in Article 273f Criminal Code occurs if the exploitation (or the intent to exploit) is accompanied by the application of some element of coercion.²⁴ Coercion is not, however, a precondition for the existence of an exploitative situation. This follows from the fact that no coercion is required with respect to the definition of trafficking in minors, while (the intent for) exploitation is required.

Exploitation nonetheless implies a certain degree of involuntariness on the part of those being exploited. The involuntary nature of the exploitative situation lurks in the impossibility of getting out of it.²⁵ This is impossible in cases where measures are used which directly restrict physical freedom (for example being locked up or watched). If the victim is controlled by his or her exploiter(s) by means other than physical restraint, escape might be possible in practical terms, but the victim's subjective assessment of the situation may impede him or her from escaping. The facts and circumstances should then confirm that it was reasonable for the victim to assume that he or she could not escape from the situation by his or her own efforts, for example because of the (perceived) consequences for the victim of escaping. A lack of freedom then can also result from a relationship of debt with the employer or a third party, the cultural context, being a child or a combination of these factors. It is important in such an assessment to consider all facets of the situation and how these interrelate.

Exploitation in the sense of THB thus involves serious abuses, with the victim's fundamental human rights being violated and where his or her freedom is restricted – or he or she reasonably feels this to be the case – to such an extent that there is no escape from the situation. Exploitation is the key term in Article 273f Criminal Code. It is the final aim of the actions criminalised in Article 273f (1)(1) and (1)(2).²⁶ The legislator clearly left the more detailed definition of the limits of exploitation outside the sex industry to the courts. At the time of writing, BNRM is aware of three court verdicts at first instance in relation to this type of exploitation.²⁷ This means that there is not yet much clarification on which abuses in relation to labour and services qualify as exploitation in the sense of THB.

Application of Article 251 Criminal Code

Article 273f Criminal Code specifies that Article 251 Criminal Code is to apply *mutatis mutandis*. Article 251 allows the courts to deprive individuals of certain rights and to stop them from exercising certain

²⁴ Elements of coercion are understood to include those summarised at Art. 273f (1)(1) Dutch Criminal Code: coercion, violence or some other circumstance, or threats of violence or other circumstances, extortion, fraud, deception or misuse of an imbalance of power arising from the actual situation, misuse of a vulnerable position, or the giving or receiving of payment or benefits to obtain the agreement of someone who exercises control over someone else.

²⁵ There is also the use of an element of coercion to get the individual into the exploitative situation. The same element of coercion may also ensure that the person is hindered from getting out of the situation.

²⁶ The coerced removal of organs, which also qualifies as THB, is not described as exploitation, but as a separate final aim of the actions described in the Article.

²⁷ These cases involved the illegal employment of Bulgarians as hemp pickers, Chinese in a restaurant, and cleaners. In all cases, the accused were exonerated at first instance on the THB charges (see LJN AZ2707, LJN BA0145 and LJN BB5303).

professions, in case of conviction for specific offences, including the right to hold certain offices or to serve in the armed forces.

2.2.2 Amendments to the B-9 regulation

The B-9 regulation (Chapter B-9 of the Aliens Act Implementation Guidelines) allows foreign nationals who are (or might be) victims of or witnesses to THB to reside legally in the Netherlands on a temporary basis during the investigation and prosecution, so as to be available to the police and the Public Prosecution Service (PPS). The police ought to inform any foreign national who might be a victim of THB, when there is a slight indication of THB, of the rights described in the B-9 regulation, and offer him or her a period for reflection. The reflection period gives victims time to decide whether or not they want to report the criminal offence. For a period of maximum three months the expulsion of the victim from the Netherlands is suspended.

The B-9 regulation has undergone a range of amendments since the new THB provision came into effect.

- The regulation has been made compatible with Article 273f Criminal Code, largely with retrospective effect to 1 January 2005²⁸, so that it also applies to victims and witnesses who have reported the crime (reporting witnesses) of exploitation in other sectors than the sex industry. Unlike victims of sexual exploitation, however, they were not offered any period for reflection. This amendment also introduced the possibility for victims and reporting witnesses of all forms of THB to work from the time when they receive a residence permit, but not before that during the reflection period. The possibility for working came into operation on 13 April 2005. A section on family reunification was also added, making it possible for underage children of victims and reporting witnesses to obtain a residence permit with the same duration as that of the principal applicant. The requirement of sufficient means does not apply in such cases.²⁹
- With effect from 1 July 2005, victims of THB and others were exempted from the fees for applications for provisional residence permits (authorisation for temporary stay) and regular residence permits. This exemption also extends to their underage children coming to the Netherlands in the context of family reunification.³⁰
- In November 2005, the opportunity to have a reflection period was extended to victims of all forms of exploitation.³¹ The regulation was also extended to a number of categories which had not previously been (fully) entitled to its benefits:

²⁸ Dutch Government Gazette 2005, 53.

²⁹ This requirement implies that a residence permit will only be granted if the principal applicant has sufficient independent and permanent means of existence.

³⁰ Dutch Government Gazette 2005, 124.

³¹ Dutch Government Gazette 2005, 220.

- the reflection period was opened up to foreign nationals already in the Netherlands who might have been victims of THB outside the Netherlands but have not yet been exploited in the Netherlands;³²
- foreign nationals who did not yet have access to the Netherlands, but who might be victims of THB, were afforded the opportunity of reporting the crime. They are not, however, entitled to the reflection period either; and
- reporting witnesses of all forms of THB were entitled to rights under the B-9 regulation.³³
- The criteria for continued residence after expiry of a residence permit on the basis of the B-9 regulation were amended with effect from 14 August 2006.³⁴ If information on THB provided by a victim ultimately results in conviction of the suspect in relation to that THB, the Minister will henceforth assume that this implies, in law, that returning the victim to his or her country of origin involves risks. If the victim makes an application for continued residence in these circumstances, it can³⁵ be approved on these grounds. If the prosecution does not lead to a conviction but three years have passed since the B-9 residence permit was awarded and no further appeal is possible against the verdict, then the most significant humanitarian factor to be considered by the Minister will be the length of the victim's residence. These amendments only apply to victims of THB who have reported the offence and have submitted an application for continued residence. The regulation does not apply to reporting witnesses. Applications for continued residence by victims and witnesses, to which these criteria do not apply, will be dealt with in accordance with the pre-existing criteria in the B-9 regulation.³⁶

Comments on the amendments mentioned above

The amendments are certainly a step forward, but also merit some comment. Thus the former policy applies when a criminal case is dismissed by the PPS, but there is something to be said for applying the new and more generous policy in such cases. This will, of course, depend on the basis of the dismissal, as dismissals based on 'suspect deceased' or 'suspect untraceable' deserve different consideration than dismissals for 'no valid proof' or 'wrongly reported as a suspect'.

Another point is that Article 273f Criminal Code has a broad scope, which encompasses cases with varying degrees of gravity. The amended B-9 regulation makes no provision for this point. In more practical terms, a foreign national who wishes to rely on one of the added categories must personally

³² The previous position was that this only applied to prostitution, and also the reflection period did not apply to this category of foreign nationals.

³³ And not, as previously, just (reporting) witnesses of THB for the purpose of sexual exploitation.

³⁴ Letter dated 14 August 2006 (Parliamentary Papers II 2005/06, 28 638, no. 26), resulting in an Amendment to the Aliens Act Implementation Guidelines [*Vreemdelingencirculaire*] (2006/36A) dated 8 November 2006 (State Bulletin of Acts and Decrees. 2006, 225).

³⁵ The Minister here uses an elective term.

³⁶ These are the following factors, which play a significant part in connection with the application: 1. the risk of reprisals against the party concerned or his/her family and the extent of protection against these reprisals that the authorities in the country of origin are willing and able to be provide; 2. risk of prosecution in the country of origin, for example for prostitution; and 3. the possibilities for social reintegration in the country of origin, bearing in mind the specific cultural background and history of the party concerned in prostitution, permanent disruption of family relationships, social attitudes to prostitution and the relevant government policy.

lodge a copy of the court verdict as evidence. The problem, however, is that the victim is not a party to the proceedings and will not therefore (automatically) have a copy of the verdict, and may not even be aware of it. This particular issue might in any event be partially ameliorated by ensuring that the victim is always assisted by a specialist legal adviser.

The regulation also only mentions victims, and not witnesses or reporting witnesses. A witness cooperating with investigation and prosecution can also run the risk of reprisals if his or her co-operation contributes towards a conviction of the trafficker. In this respect, the premise applicable to victims would also seem to be appropriate for witnesses.

If the criminal case does not result in a prosecution, then there is a condition that the victim must have resided in the Netherlands on the basis of a B-9 permit for three years at the date of the verdict. The Minister will then 'regard the duration of the victim's residence as the most important humanitarian factor'. If this ground depends on the fact that the victim has been contributing to the investigation and prosecution for three years or more, the condition that there must have been a verdict in the criminal case is hard to understand. As the regulation is currently formulated, it would be possible for a victim to spend more than three years facing uncertainty about his or her (continued) residence, while cooperating in a lengthy criminal case.

The amendments to the B-9 regulation that have been implemented and announced are to a significant extent connected with shortcomings in the regulation previously established, and also with the wish to introduce improvements and flexibility. Not all of the shortcomings stem from the regulation itself, though: they are often connected with an incorrect application of the regulation in practice.

One proposed amendment relates to a category of victims who cooperate in investigation and prosecution in some way other than reporting the offence, if the PPS considers their residence to be necessary. When this Chapter was being written, the details of this proposal had not yet been elaborated.

The distinction between reporting a crime and a statement is primarily of relevance in the context of criminal legislation. In order to circumvent the somewhat artificial distinction in the context of migration law, it is recommended that a provision should be included in the B-9 regulation to the effect that a statement from a witness will be the equivalent of a report of a crime for the purposes of applying the regulation.

2.2.3 Aliens Employment Act

The Minister of Social Affairs and Employment stated back in 2000, in response to Parliamentary questions, that the general prohibition on issuing employment permits for prostitutes from outside the EU, as formulated in the Implementation Order for the Aliens Employment Act [*Wet arbeid vreemdelingen* (WAV)] would be abolished in the foreseeable future.^{NRM1} This has not yet happened, however.

Tax Administration, the prostitution sector and the Aliens Employment Act

Ever since the general ban on brothels was abolished, there has been a difference of understanding between operators, prostitutes and the Tax Administration (TA) about how to consider prostitution work in sex businesses from the technical tax perspective. The operators would ideally want to be regarded as offering facilities rather than as employers, and the women would prefer to be independent entrepreneurs. Based on the factual circumstances, however, the TA has held time and time again that the operator/prostitute relationship is to be classified as an employer/employee one, with the result that the operator has to withhold national insurance contributions and income tax, and that social security legislation is also applicable. Operators object to this and are always trying to introduce changes to prevent the TA from finding any relationship of authority. This has resulted in many legal proceedings.³⁷

An amendment to the Implementation Order for the Aliens Employment Act provides for the possibility that has already been mentioned for victims of THB to earn income from work during their temporary residence under the B-9 regulation. It is therefore possible for these foreign nationals to work starting from the time at which this temporary residence permit is issued. What is notable here is that a victim or witness may also work in prostitution, even if she is not allowed to do so as an independent entrepreneur or an employee without a permit under the B-9 regulation.

2.2.4 Other (imminent) legislation and regulations

Prevention of Marriages of Convenience Act

The Prevention of Marriages of Convenience Act [*Wet voorkoming schijnhuwelijken*] came into effect on 1 November 1994, with the aim of checking – either before the marriage was concluded or before a marriage concluded abroad was registered in the (Dutch) Municipal Administration – on whether the marriage was not being entered into purely with a view to acquiring residence rights in the Netherlands. In response to Parliamentary questions, the Minister indicated that, while he felt it possible that foreign nationals from outside the EU might apply for a residence permit to stay with a (marriage) partner so as to obtain access to prostitution work, the standard checks on marriages of convenience would apply to such situations. In order to identify victims of THB, the police use a list of indicators to help with identifying victims who also have residence entitlements. A marriage of convenience would therefore not, according to the Minister, obstruct identification as a victim of THB. Even when a victim of THB obtains a residence permit in the Netherlands through marriage, following residence based on the B-9 regulation, the checks on the prostitution sector and the THB legislation offer sufficient facilities, according to the Minister, for identifying any victims or perpetrators of THB, so that there is no need for any extra measures to allow for application of the Prevention of Marriages of Convenience Act in relation to the fight against THB.

³⁷ Where the TA is often held to be correct.

Review of Maximum Penalties Act

The Review of Maximum Penalties Act [*Wet herijking strafmaxima*] came into effect on 1 February 2006.³⁸ The Act includes adjustment of the categories of monetary fines, increasing the monetary fine in category five – which can be imposed for THB – from €45,000 to €67,000.

Bill to Strengthen the Position of the Victim in Criminal Proceedings

In a letter of 20 March 2002³⁹ the government of the Netherlands informed the Council of the EU about the adoption into its national law of the obligations in the Framework Decision on the status of the victim in criminal proceedings (hereafter the ‘EU Framework Decision on Victim Care’).⁴⁰ In this letter, the government informed the Council: ‘Generally speaking, we can say that the Netherlands has implemented all provisions of the said Framework Decision.’ In the National Action Plan on THB [*Nationaal Actieplan Mensenhandel* (NAM)], the government also indicated, when responding to a recommendation from the NRM,⁴¹ that ‘The EU Framework Decision on the status of victims in criminal proceedings has not resulted in any amendment of Dutch legislation or regulations. There was no need for this, because a high level of victim care is already offered in the Netherlands.’

The aim of the proposed Bill to Strengthen the Position of Victims in Criminal Proceedings is to provide clarity for victims of a crime on their rights and possible role during the prior investigation and at trial, based on the principle that a victim’s position in criminal proceedings should be more clearly described than is currently the case under the Dutch Code of Criminal Procedure. The Bill defines the victim’s rights in the criminal proceedings in terms of how he or she is treated, information, compensation and the right to speak at the hearing. It should be pointed out that the victim’s interest needs to be balanced against the justified – but possibly contrary – interests of other parties to the proceedings, such as the accused. Only a victim who ‘has suffered a proprietary loss or other disadvantage as a direct consequence of the crime’ can rely on the provisions. This general scheme for victims is relevant to victims of THB, because these rights are not conditioned on any cooperation in the investigation and prosecution phases. The victim must, of course, be known to the judicial system. The Explanatory Memorandum indicates: ‘Anyone who reports to the police as a victim is in principle entitled to be treated correctly. There may, however, be a limited number of cases where a false statement or false report is made. But this is no reason for assuming that a victim is not acting in good faith (...).’ The Explanatory Memorandum continues that ‘victims remain victims until the contrary is established’ and ‘the degree of police and Ministry of Justice involvement will depend in the first instance on the gravity of the offence. The more serious the offence, the greater the effort that can be expected from the judicial system, certainly if the case involves a serious infringement of the victim’s physical integrity. These

³⁸ Act of 22 December 2005, *State Bulletin of Acts and Decrees*, 2006, no. 11.

³⁹ Letter on the Evaluation of the Framework Decision on Victim Care, from the Minister of Justice to the Secretary-General of the Council of the EU.

⁴⁰ Framework Decision of 15 March 2001, OJ 2001, L 082.

⁴¹ NRM3, recommendation 5.

cases require extra care on the part of the police and the Ministry of Justice, whether or not the crime is subsequently solved.’ Because the nature of the offence of THB involves, by definition, a violation of fundamental human rights – one of these being the right to physical integrity – this increased effort on the part of the police and the Ministry of Justice will always apply to victims of THB.

Secure Juvenile Care Bill [Wetsvoorstel gesloten jeugdzorg]

The Lower House has been dealing with the Secure Juvenile Care Bill since the summer of 2006.⁴² The Bill’s aim is to create a facility for compulsory reception, secure residence and the application of measures such as mandatory treatment for juveniles with serious behavioural problems, within the framework of the Juvenile Care Act [*Wet op de jeugdzorg*]. This is only possible within the current statutory system if the minor is placed in a judicial juvenile institution under civil law proceedings. As far as THB is concerned, the existing system results in (minor) victims (such as loverboy victims) sometimes being placed in the same institution as the perpetrators. At the moment placement (compulsory or otherwise) in a judicial juvenile institution is also only possible for those below the age of majority; the possibility of mandatory assistance comes to an end as soon as the juvenile reaches the age of majority. In practice, the result is that 16- and 17-year-old juveniles – an age category which is a preferred focus for loverboys^{NRM3} – are no longer being taken into reception compulsorily because the assistance will have little impact in the available remaining time. The Bill also contemplates a widening of the circle – to include juveniles up to the age of 21 – of individuals who will be covered by the amended Juvenile Care Act. The condition will be that there is already a court order in place on the date they reach the age of majority.

Orders from the courts will be required for reception and residence in a mandatory setting, according to the Bill. Juveniles up to the age of 21, with serious (family) problems, will potentially be subject to such an order. There must also be a need for reception into a secure setting, so as to prevent the youngster from evading the requisite care or from being withdrawn from such care by others. Examples quoted in the Explanatory Memorandum in this context include girls ending up facing problems under the influence of a loverboy. Loverboys often wait until the girl in question has reached the age of 18, thus falling outside the scope of the statutory facilities for mandatory assistance. The proposal to extend the scope of application of the Juvenile Care Act to 21-year-olds will offer greater elbowroom here, provided that the juvenile care has been embarked upon before they turn 18.

The Bill as it proposed would also allow for the placement of victims of loverboys outside judicial juvenile institutions, so that they would no longer be locked up in institutions where the perpetrators of this type of activity might also be sent.

⁴² *Parliamentary Papers II 2005/6, 30 644, no. 2.*

Memorandum on Illegal Aliens

The Minister for Immigration and Integration submitted the Memorandum on Illegal Aliens [*Illegalennota*] to the Lower House on 23 April 2004.⁴³ This document presented measures to address the problem of foreign nationals residing illegally in the Netherlands. On the one hand, these measures are intended to combat illegal residence in the Netherlands more forcefully, while on the other hand they are designed to address abuse of the vulnerable position in which such illegals⁴⁴ may find themselves. Human trafficking is a topic in the document because exploiters are prominent where illegal residence is involved. In addition to fighting these profiteers, one of the underlying principles in the battle against illegal residence is that illegals are entitled to be treated humanely.

The Memo states that if THB is opposed effectively, it will make a significant contribution to the battle against illegal residence. 'After all, the parasitical (infra)structures behind illegal immigration will also be impacted by the fight against THB under criminal law.' It goes on to present a number of concrete measures to counteract THB. These fall within the areas of access for the police to systems in the immigration process, investment in information-led investigation of THB, recognition of signs of THB in the context of the supervision of foreign nationals and the standard inclusion in campaign plans – in the context of the supervision of foreign nationals – that the police will offer possible victims of THB an opportunity to report the crime.

In the written consultation between the Minister and the Lower House Standing Justice Committee,⁴⁵ the Minister indicated that 'the first interest to be served in THB cases is that of the victim.'

Minimum Wage and Minimum Holiday Allowance Act

The Lower House has repeatedly indicated that the introduction of the free movement of workers from the new member states in the EU⁴⁶ can only count on support from the House once a flanking policy in connection with the enforcement of employment conditions has been introduced. This desire on the part of the House was partly the reason behind the Bill Amending the Minimum Wage and Minimum Holiday Allowance Act in connection with the introduction of administrative enforcement. This Act converts what is at the moment purely civil law enforcement of compliance with the Minimum Wage and Minimum Holiday Allowance Act into administrative enforcement, in the form of an ability to impose administrative penalties.⁴⁷ Whereas an employee receiving less than the statutory minimum wage currently has to embark on a civil law action against his employer, the

⁴³ Memo on Illegals. Additional Measures for the fight against illegality and dealing with those who exploit illegals in the Netherlands (Parliamentary Papers II, 2003/4, 28 537, no. 2).

⁴⁴ Many people regard the use of the term 'illegals' as offensive. In this context it means those who are residing in the Netherlands illegally.

⁴⁵ *Parliamentary Papers II* 2005/06, 29 537, no. 29.

⁴⁶ With the exception of Cyprus and Malta.

⁴⁷ Act of 5 March 2007 to Amend the Minimum Wages and Minimum Holiday Bonus Act in connection with the introduction of administrative enforcement, State Bulletin of Acts and Decrees 2007, 98.

Health and Safety Inspectorate [*Arbeidsinspectie (AI)*] will be able to impose an administrative penalty on the employer, up to a maximum of €6,700 for each employee affected. The actual level of this penalty will depend on the extent of underpayment. If the employer should re-offend within 24 months, the penalty will be increased by 50%. After first allowing the employer one month within which to pay the employees the arrears of their wages, a time limit may be imposed, under threat of a daily penalty payment, within which the employer must pay the employees the wages due to them. If the employer fails to comply, then the daily penalty charge becomes due.

This fortifies the position of employees and may counter individual abuse within employment relationships. The reason for introducing this administrative enforcement is that employees who are underpaid seldom file a complaint with the AI or commence legal action against their employers, as well as an expectation that workers from the new EU member states will be less inclined to do so than their native Dutch counterparts.⁴⁸ This amendment might be used as a tool in the battle against THB.

2.3 International

2.3.1 Introduction

Many agreements have been made within the major international organisations in recent years, binding and otherwise, about how to combat THB, and these have served as the driving force for national endeavours. The focus now lies on a project-oriented approach in the sphere of implementation. This section outlines the developments relevant to the Netherlands in the area of international legislation and regulations since the appearance of the third Report.

2.3.2 United Nations

– The UN has organised three meetings in relation to the *United Nations Convention against Transnational Organised Crime* and the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (hereafter the ‘Palermo Protocol’), which supplements that Convention, since these documents came into effect. The purpose of the meetings was to discuss the state of affairs in relation to the implementation of these documents by the Convention member states. The first meeting dealt principally with adapting national legislation to the requirements of the Convention and the Protocol, and covered penal legislation and the problems experienced by member states in its implementation, as well as the stimulation of international cooperation. The second meeting focussed primarily on protecting and assisting victims, as well as repatriating victims and developing indicators for forced labour.⁴⁹ The third meeting⁵⁰ again focussed on the protec-

⁴⁸ According to the Explanatory Memorandum accompanying the Bill.

⁴⁹ From 28 June to 6 July 2004 and from 10 to 21 October 2005. The meetings also related to the implementation

tion and repatriation of victims, but also covered prevention, exchange of information and training.

- In January 2005, the Dutch Government published the *Fourth Dutch Implementation Report on the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW - UN Women's Convention) 2000-2004*. The Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee)⁵¹ discussed this at its 37th meeting.⁵² In the report, the Dutch government explored the recommendations from the CEDAW Committee on the second and third Dutch implementation reports to CEDAW. Human trafficking was dealt with in the report, partly because the UN Convention contains a provision (Article 6) on trafficking in women.⁵³ Information about the NRM, the investigation and prosecution of THB, the B-9 regulation, victim support and the Dutch contribution to the international podium was supplied in the context of the state of affairs as regards Article 6. The abolition of the general ban on brothels was also explained, and an indication was provided of developments in policy and practice in that area. There was however a sizeable gap between the period covered by the report and the moment at which the CEDAW Committee dealt with it. The information in the report dated from 2003, while there have been several developments in the battle against THB and in relation to prostitution since then.
- As usual, NGOs prepared a shadow report, commenting on the government report, for the CEDAW Committee. The shadow report in response to the Fourth Implementation Report came out on 15 June 2006 and was entitled *Taking Women's Rights Seriously?* The NGOs confirmed in the shadow report that there had been improvements in 2005 as regards the B-9 regulation, but that there were still major problems in relation to how the regulation is applied and structural shortcomings in the regulation itself. The NGOs concluded that the current regulation is inadequate for meeting the needs and interests of victims.
- The conclusions of the CEDAW Committee appeared in February 2007.⁵⁴
- In April 2006, de *UN High Commissioner for Refugees*⁵⁵ issued interpretative guidelines for judicial appeal bodies and governments⁵⁶ on the application of the *UN Convention relating*

of the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, which we are not considering here.

⁵⁰ Conference of the Parties to the United Nations Convention against Transnational Organised Crime, Third Session, Vienna, 9-19 October 2006.

⁵¹ UN CEDAW/C/NLD/4, 10 February 2005.

⁵² The 37th meeting was held in New York from 15 January to 2 February 2007.

⁵³ Comments were also made on the traffic in women in the context of other Articles in the Convention, for instance Art. 1 (violence against women).

⁵⁴ The Netherlands was called on 'to provide for the extension of temporary protection visa, reintegration and support services to all victims of trafficking', including those who are not able or willing to cooperate in the investigation and prosecution of human traffickers: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Netherlands*, CEDAW/C/NLD/CO/4, 2 February 2007.

⁵⁵ Its involvement in this subject area stems partly from its responsibility to guarantee that refugees, asylum seekers and similar categories of individuals do not fall victim to THB and partly from its responsibility to guarantee that (possible) victims are identified as victims, also when they return to their countries of origin, and receive the international protection prescribed in these circumstances.

⁵⁶ *Guidelines on International Protection* (UNHCR, 7 April 2006 - HCR/GIP/06/07).

to the Status of Refugees (hereafter ‘the Refugee Convention’) to victims of THB and individuals running the risk of becoming subject to trafficking. The crux of these guidelines is that the Refugee Convention can apply to (potential) victims of THB. For this to be the case, all of the requirements of the definition of refugee must be met. There must accordingly be a reasonable fear of prosecution on one of the grounds of prosecution mentioned in the Convention.⁵⁷ If this is the case, the (potential) victim can receive protection under the Refugee Convention. This protection is in addition to the protection contemplated under the Palermo Protocol.

- The UNHCR guidelines draw no distinction between the various manifestations of THB, nor in relation to the age or sex of the (potential) victim. When interpreting the Refugee Convention in actual cases, however, being underage and being a woman seem to afford a greater likelihood of being covered by the scope of the Convention.
- The aim of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, abbreviated to the Migrant Workers’ Convention, is to promote equal treatment of migrants, including employment opportunities equivalent to those of state subjects. Since it came into effect on 1 July 2003, the number of states acceding to the Convention has grown from 20 to 34. These do not, however, include any destination nations for migrants. The Convention may have an important part to play in addressing the exploitation of migrants, as it also contemplates the battle against inhumane living and working conditions, physical and sexual abuse and degrading treatment, including slavery, servitude and forced or compulsory labour. The Netherlands does not intend to sign the Convention, however, because the absence of any distinction between legal and illegal migrant workers as regards the granting of rights, is incompatible with the underlying principle of the Benefit Entitlement (Residential Status) Act [*Koppelingswet*].
- The United Nations Human Rights Commission decided at its 60th meeting, under the topic ‘human rights of women’, to appoint a *Special rapporteur on trafficking in persons, especially in women and children*.⁵⁸ The job of this rapporteur is to focus on the human rights of victims of THB, and to report each year to the Commission, including any recommendations on measures that might be required to protect victims’ human rights. The Commission specifically asked the rapporteur to respond to reliable information on (possible) violations of human rights from actual or possible victims of THB, and to collaborate with other relevant rapporteurs, such as the *Special Rapporteur on violence against women*.⁵⁹ The rapporteur was also asked to collaborate with relevant UN bodies, regional organisations and victims and their representatives. The rapporteur receives individual complaints of violations of human rights and undertakes working visits to countries in order to make recommendations, based on these visits, for improvements to the prevention of THB and

⁵⁷ These are race, religion, nationality and belonging to a particular social group or political conviction.

⁵⁸ E/CN.4/2004/L.62. The 60th meeting took place between 15 March and 23 April 2004, and the rapporteur was appointed on 8 October 2004 for a period of three years.

⁵⁹ The Special Rapporteur on violence against women visited the Netherlands in July 2006. The findings and recommendations can be found in the Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to the Netherlands, A/HRC/4/34/Add.4, 7 February 2007.

how to deal with the problem, and for the improvement of the protection of victims' human rights.

Reports by the Special Rapporteur on trafficking in persons, especially in women and children

The rapporteur has prepared three reports to date. A report appeared in 2004, in which she set out her mandate, operating methods, strategy and priorities.⁶⁰ Her report of 2006 covered the relationship between THB and the demand for commercial sex.⁶¹ This report was criticised in many quarters.⁶² At the start of 2007, the rapporteur issued a report on forced marriages.⁶³

- Also under the heading of 'human rights of women', the Human Rights Commission at its 60th meeting adopted a resolution on trafficking in women and children.⁶⁴ This Resolution urged governments to deal with any factors that might encourage THB, to criminalise THB and to combat the use of the Internet as a facilitative tool for THB.
- The General Assembly of the United Nations has also in numerous resolutions, reports and other documents commented on the subject of THB, frequently in the context of other topics such as the protection of migrants,⁶⁵ transnational organised crime⁶⁶ and the role of women in development.⁶⁷ Specific to the subject of trafficking in women and girls, the General Assembly prepared a resolution emphasising, in addition to a summary of earlier documents concerning the fight against THB, the importance of data collection, international cooperation, education, prevention and awareness campaigns.⁶⁸ States were also called on to appoint, for example, a national rapporteur.
- The Third Committee (social, humanitarian and cultural affairs) called for a more gender-specific approach to THB in October 2006, by way of the *Draft Resolution on Trafficking of Women and Girls*.⁶⁹ The Draft Resolution was designed to encourage the General Assembly towards an approach more strongly oriented towards gender and age, on the assumption that women and girls are more vulnerable to THB. It also encouraged international collaborative links. Governments were called on to counteract the demand for trafficked

⁶⁰ *Integration of the human rights of women and the gender perspective*; report of the Special Rapporteur on trafficking in persons, especially women and children (E/CN.4/2005/71, 22 December 2004).

⁶¹ *Integration of the human rights of women and the gender perspective*; report of the Special Rapporteur on trafficking in persons, especially women and children (E/CN.4/2006/62, 20 February 2006).

⁶² See, for example: Statement on the 2nd annual report of the special rapporteur on the human rights aspects of victims of trafficking in persons, especially women and children, Sigma Huda 'Integration on the human rights of women and a gender perspective,' Human Rights Council, United Nations, Geneva, September 2006 (various authors, 2006, http://action.web.ca/home/catw/readingroom.shtml?x=92105&AA_EX_Session=5eaba40ee4341b3a016bee4f867c897d&sfgdata=4).

⁶³ Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled 'Human Rights Council'; Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children (A/HRC/4/23, 24 January 2007).

⁶⁴ Resolution on trafficking in women and girls, E/CN.4/2004/L.60.

⁶⁵ For example GA Resolution A/RES/59/194, 18 March 2005.

⁶⁶ For example GA Resolution A/RES/59/157, 3 February 2005.

⁶⁷ For example GA Resolution A/59/287, 20 August 2004.

⁶⁸ GA Resolution A/RES/59/166, 10 February 2005.

⁶⁹ See GA/SHC/3870, 9 November 2006.

women and girls and to make a greater investment in age – and gender – specific measures in the fight against THB. Governments were also to use prevention to stop the demand for sex tourism and to provide resources for victim rehabilitation programmes. In December 2006, the General Assembly then adopted a resolution on *Trafficking in women and girls*.⁷⁰

2.3.3 European Union

- The *Directive on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities* (hereafter ‘the Temporary Residence Permit Directive’) was adopted on 29 April 2004.⁷¹ This Directive is compulsorily applicable in EU member states to victims of THB and optional for ‘victims’ of people smuggling, and it offers these categories of individuals a period for reflection (of undefined duration) and a temporary residence permit insofar as the victim’s presence is required for investigation and prosecution, the victim clearly intends to cooperate in this and he or she has also broken all ties with the person(s) suspected of the crime. During the period of residence, the victim must be offered certain facilities in the areas of accommodation, protection, financial resources, language and translation help, medical assistance and training and employment, and the member state can offer free legal assistance.

Implementation in the Netherlands

The member states ought to have brought their primary and/or subordinate legislation in line with this Directive not later than 5 August 2006. In the spring of 2006, the Netherlands notified the EC of the completion of the implementation path for the Temporary Residence Permit Directive. The regime set out there does not extend to people smuggling.

The present B-9 regulation is formulated in broader terms than the requirements under the Directive. Unlike the Directive, the B-9 regulation applies not only to third-country nationals,⁷² but also to citizens of the EU,⁷³ and it contains a separate regime for witnesses of THB; also, the period for reflection that has been chosen is not just an extremely minimal one. The B-9 regulation also provides opportunities for continued residence, something not called for in the Directive and free legal assistance is also (potentially) available in the Netherlands.

⁷⁰ Resolution adopted by the General Assembly on the report of the Third Committee (A/61/438), *Trafficking in women and girls*, A/RES/61/144 (1 February 2007), 19 December 2006. The Secretary-General was also asked in this resolution to report to the General Assembly, during the 63rd session, on successful interventions and strategies for a gender-specific approach to THB.

⁷¹ Directive 2004/81/EC, 29 April 2004 (OJ 2004, L 261, 6.8.2004).

⁷² These are non-EEA citizens.

⁷³ With the exception of Dutch nationals.

- The EU Council of Ministers approved the *Hague Programme* at its meeting on 4 and 5 November 2004.⁷⁴ This is a medium-term programme for EU policy, containing ten priority areas for strengthening the scope of freedom, security and justice within the EU. One of these is the development of a balanced migration policy. This includes the implementation of measures against illegal migration and THB on the one hand and the preparation of a plan concerning legal migration on the other hand. The Hague Programme invited the Council and the EC to prepare a plan in 2005 for developing community standards, best practices and mechanisms to prevent and fight against THB. An *Action Plan* was prepared with a view to realising the priorities within the Programme.⁷⁵ This Action Plan states that a Communication on THB will be prepared and that there will be an evaluation and, where necessary, further development of legislation on THB and of the legal framework for preventing and combating the practice of trafficking in human organs, tissue and cells.
- An *EC Experts Group on Trafficking in Human Beings* started up in 2003.⁷⁶ The 25 members take part in the Group in their individual capacity. The Group has advisory functions for the EC in connection with THB, and issues reports and opinions for that purpose. The Dutch member was elected to the chair. The first and most important task of the Experts Group was to prepare a report based on the Brussels Declaration,^{NRM⁵} in order to advise the EC on new initiatives in the fight against THB at the EU level. This report,⁷⁷ which was submitted to the Commissioner for Justice, Freedom and Security, contained concrete proposals for implementation of the recommendations in the Brussels Declaration. The proposals cover issues as defining THB, victim support and assistance, law enforcement and topics that are constants in the fight against THB, such as the importance of human rights, migration, children, and the collection and exchange of data. Based partly on these recommendations, the EC prepared the *Communication on the Fight against Trafficking in Human Beings*.
- The *Communication on Fighting Trafficking in Human Beings - an integrated approach and proposals for an action plan*⁷⁸ was the long-awaited response by the EC to the report of the EU Experts Group and is also the formal implementation of the request under the Hague Programme to the Council and EC to prepare a plan for common standards and tried and tested methods for preventing and fighting THB and intensifying in the fight against illegal immigration. The Communication covers a number of actions to be undertaken by the EU and/or the member states.
- The underlying principle is that THB can only be tackled through an integrated approach based on respect for human rights, and by taking account of the fact that THB is a worldwide phenomenon. The Communication makes the protection of human rights the key is-

⁷⁴ EU Council, D/04/5, 5 November 2004.

⁷⁵ Action Plan to implement the Hague Programme for strengthening the scope of freedom, security and law in the European Union (OJ 2005, C 198, 12 August 2005).

⁷⁶ Decision of 25 March 2003, (OJ 2003, L 79, 26 March 2003).

⁷⁷ Report of the Experts Group on Trafficking in Human Beings (Brussels, 22 December 2004).

⁷⁸ Notice COM(2005) 514, 18 October 2005.

sue in the EU policy on THB. This covers not only the human rights of (possible) victims but also those of the suspects and perpetrators in THB cases. The Communication explicitly states that, under international law and international obligations, states which tolerate THB, or who do nothing about it, are violating human rights. Preventing and combating THB is described as a powerful driving force for the EU in its efforts to fight against illegal immigration. From this perspective, the Communication also contains measures in connection with border checks and migration management. Eurojust and Europol have important parts to play in the fight against THB; member states are therefore urged to make (more) use of both bodies in their fight against THB. The promotion of equality is a central issue in the fight against THB, because many of the (possible) victims are women, children of people from ethnic or other minority groups. Specifically with regard to children, the Convention on the Rights of the Child must be a key element, and account must also be taken of other international mechanisms aimed specifically at the protection of children's rights. The Communication also contains a plea for basing policies against THB on a clear picture of the scale of the problem. The importance of data collection at the national level, which can then be compared at the EU and global levels, is underlined. The EC will be investigating the options here. The member states are (once again) called on to appoint independent institutions, such a national rapporteur, who can collect information systematically and maintain an overview of national action plans. Finally, the Communication indicates how to organise coordination and collaboration in each country, between member states and the EU and between the EU and other countries, in order to achieve the aims of the policy directed against THB. It is worth pointing out that the EU looks beyond its own regional context here; it encourages worldwide collaboration with other countries and other international organisations.

- In response to the invitation in the Hague Programme to put together a plan for developing community standards, best practices and mechanisms for preventing and fighting against THB, the Council prepared the *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (hereafter 'the Human Trafficking Action Plan').⁷⁹ The Action Plan included core recommendations and action points from the Communication.⁸⁰ The Action Plan was also partially based on the Expert Group's report, and consists of an overview of actions in the area of co-ordinating EU efforts, mapping the problem, prevention, repression of demand, investigation and prosecution, protection of and assistance for victims, repatriation and reintegration, and external relations. It contemplates the involvement of the EU and its member states in the prevention of and fight against all forms of THB, as well as devoting attention to protecting, assisting and rehabilitating victims. The Action Plan states that an integral approach, based on respect for human rights and taking account of the global nature of the problem, is important for dealing effectively with the situation. The Council also regards a fact-based ap-

⁷⁹ OJ 2005, C 311, 9 December 2005.

⁸⁰ The same applies to the recommendations stemming from a conference on THB organised by the EU presidency along with Sweden on 19 and 20 October 2005 in Brussels.

proach as being important, and emphasises the use of data collection in order to map out the nature and scale of the problem. A victim-oriented approach must be championed, with full protection of the victim's human rights at every phase. In cases involving under-age victims, this relates, in particular to the UN Convention on the Rights of the Child.

The actions in the Action Plan

For each action, the Action Plan cites the aim, the body responsible for implementation, the date by which the action should be completed and the indicators for assessment. Concrete actions include the organisation of a political debate on EU THB policy, the development of common guidelines for the collection of data and comparable indicators, the preparation of EU campaign material on prevention, and the improvement of information exchange with and via Europol and Interpol. Meetings should be organised on a range of subjects. While the introduction to the Action Plan indicates that it will be regularly updated, and while it sets definite deadlines, the coordination of the Plan's implementation is not progressing in an optimal manner. The reason is that the responsibility for this coordination has not yet been specifically allocated to anyone, so that it depends on the President of the EU whether and to what extent there is any (further) implementation of the Action Plan. On the initiative of Finland, when holding the EU presidency, there was a discussion on the follow-up to the Action Plan in November 2006 within the Multidisciplinary Group on Organised Crime.⁸¹ The member states were called on to give their views on the desirability of a single point of contact in each member state for implementation of the Action Plan, the desirability and methodology for monitoring and evaluating the Plan, and the setting of priority areas for attention in the battle against THB. In December 2006, the Justice and Home Affairs Council noted the current state of affairs as regards the EU Human Trafficking Action Plan and called for continued supervision and evaluation of the measures it contained during 2007 and 2008.

- On 27 May 2005, seven member states of the EU, including the Netherlands,⁸² concluded a Convention to intensify cross-border cooperation in the fight against crime. This '*Convention of Prüm*' specifically deals with the battle against terrorism, cross-border crime and illegal migration,⁸³ which includes THB. The most important element of the Convention is the improvement of information exchange among the states party to this Convention. This involves, for instance, setting up and mutually opening up national DNA registers, making facilities available for computerised fingerprint identification, the provision of non-personal data and also personal data in certain circumstances. Provision has also been made for the secondment of document advisors in the member countries, who can advise and provide training on passport and visa related matters. Subject to strict conditions, the Convention also forms the basis for joint patrols and other joint actions on the territories of the states party to the Convention. There is also the option for mutual assistance, on request, in matters such as inquiring as to the residential address of an individual or – significant in the context of the battle against THB – establishing whether an individual is pre-

⁸¹ Brussels, 15 November 2006 (15321/06 Limite).

⁸² Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria.

⁸³ Convention on the stepping-up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (EC, Brussels, 7 July 2005 (28.07) 10900/05).

pared to make a statement. The Convention contains extensive provisions on data protection. A check will be made within three years after it entered into force as to whether the provisions in the Convention can be brought within the legal framework of the EU. Finland is considering accession to the Convention⁸⁴ and Italy, Portugal and Slovenia have also expressed their interest.

- Prompted by a report from one of its members,⁸⁵ the European Parliament (EP) adopted the resolution entitled *Strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation*.⁸⁶ In this resolution, the EP states that, despite many treaties, declarations, laws and rules, no truly tangible improvements have been achieved in the fight against THB, particularly as regards trafficking in women and children. The EP calls for a ‘holistic and integral multi-disciplinary approach to the problem at EU and international levels’ and underlines the importance of an approach based on human rights. The resolution goes on to summarise a large number of issues considered important by the EP in the battle against THB. These include matters such as the establishing of clear targets, such as a 50% reduction in the number of victims over the next 10 years,⁸⁷ a more coherent policy acknowledging the relationship between THB and migration, improvement of operational collaboration, more research into the underlying causes of THB, discouragement of the demand side, the launching of an EU awareness campaign and the appointment of national rapporteurs by the member states. The European Council is called on to make an annual assessment of steps taken in the member states to counter THB, and the member states are asked to criminalise clients who knowingly and willingly use the services of coerced prostitutes. The resolution is not a binding one.
- Migration is an important topic for the EU. Because of its relatively high levels of welfare, the EU has a great power of attraction for (labour) migrants, who try to enter the EU both legally and illegally. On the instructions of the EC, research was carried out as to whether opportunities for entering the EU legally had a discouraging effect on illegal immigration, and the extent to which legal immigration policy influenced cooperation with third countries in the battle against illegal migration. The EC presented the results of this research in the *Communication on the study on the links between legal and illegal migration*.⁸⁸ One of the conclusions was that there may well be a link between legal and illegal migration, but that it is a complex one and definitely not a direct link. With specific reference to THB, the Communication only states that the power of attraction of the ‘black’ labour circuits is a significant factor in the continuing illegal migration, and that many workers in the informal economy are denied the rights enjoyed and exercised by other workers.

⁸⁴ According to a press release from the Finnish government dated 5 December 2006 (Finland’s accession to the Convention of Prüm under discussion in Parliament).

⁸⁵ Report on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation (A6-0400/2005), 14 December 2005.

⁸⁶ EP Resolution P6_TA-PROV(20060005), 17 January 2006.

⁸⁷ This wrongly assumes that the number of victims of THB is a known figure. It is quite possible that the extra attention being sought in relation to the subject will have precisely the effect of increasing the number of victims who are identified.

⁸⁸ Communication COM(2004) 412, 4 June 2004.

- In 2005, the EC followed up with a *Communication (containing a) Policy Plan on Legal Migration* (hereafter the ‘Legal Migration Communication’).⁸⁹ This Communication, prepared in response to a call in the *Hague Programme* and following on the *Green Paper on an EU Approach to Managing Economic Migration*,⁹⁰ describes the proposed actions and legislative initiatives of the EC towards a coherent policy in relation to legal immigration into the EU, taking into account the impact of this for third countries. The only comment in this Communication in relation to THB is that admission of economic migrants is inextricably linked with integration measures on the one hand and the battle against illegal immigration and illegal employment, including THB, on the other hand. The EU must intensify its efforts towards reducing the informal economy, since this economy is an obvious factor attracting illegal immigration, and a catalyst for exploitation. The subject of THB received more attention in the *Communication on policy priorities in the fight against illegal immigration by third country nationals*.⁹¹ This Communication refers to the EU Human Trafficking Action Plan, and comments that the latter sets out the agenda for the fight against THB in the medium term. It adds that the EU will continue to provide finance, primarily via its policy development measures, to abolish the factors that render people vulnerable to THB, such as poverty, discrimination and inadequate access to educational opportunities. A basic principle in targeting illegal immigration is the removal of attractive factors; illegal employment is one of the most important of these. It undermines the credibility of legal opportunities for immigration, and can result in serious exploitation which cannot be tolerated within the EU, according to the Communication. It also states the priorities of the EC for implementation of the Action Plan on THB: the development of coordination and cooperation mechanisms at the EU level, the promotion of best practices in detection and victim support, the formation of networks involving international and non-governmental organisations, and the development of guidelines for data collection. The Communication has been submitted to the Council of the European Parliament for a response.
- The draft *Directive on common standards and procedures in Member States for returning illegally staying third-country nationals*⁹² contains general standards for the (compulsory) return of third-country nationals who reside in EU illegally, respecting their human rights. The draft specifies that the Directive will apply except insofar as more favourable provisions apply, including those formulated in the *Temporary Residence Permit Directive*. Since the latter applies to victims of THB, the draft Directive will (often) not apply to them.
- In the run-up to the 2006 Football World Cup, the EP presented the *Resolution on forced prostitution in the context of world sports events*.⁹³ In this, the EP called on the Council and

⁸⁹ Communication COM(2005) 669, 21 December 2005.

⁹⁰ COM(2004) 811, 11 January 2005.

⁹¹ COM(2006) 402, 19 July 2006. This Communication is a supplement to the Legal Migration Communication and states that many phenomena can be understood to fall within the expression ‘illegal immigration’, including illegal entry as a result of THB.

⁹² Directive of the European Parliament and Council COM(2005) 391, 1 September 2005.

⁹³ P6_TA-PROV(2006)0086, 15 March 2006.

the member states to embark on an EU-wide campaign to inform and instruct the general public, but principally sportsmen and their fans, about the problem of forced prostitution during major sporting events. This resolution was undoubtedly prompted by the widely expressed opinion that the Football World Cup would result in a huge (temporary) increase in demand for sexual services, and therefore also possibly for THB. The German government, NGOs and the World Cup organisers took various steps to counteract forced prostitution. There was, however, no evidence of the feared increase in forced prostitution; preliminary data from the German Ministry for Families, Parents, Women & Children shows that there was actually a decrease in the number of (reported) cases of THB around the time of the World Cup. An investigation by IOM/SIDA led to the same conclusion.⁹⁴

- In this Resolution, the EP repeated its request to set up a Day against Trafficking in Human Beings. This proposal has been accepted by the EC.
- The Palermo Protocol, signed by the EU on 12 December 2000, was approved on behalf of the Community on 14 July 2006.⁹⁵ The scope of the EC powers to accede to the Protocol, and thus the extent to which the Community is bound to it, is limited to the areas in which it has exclusive external powers: development cooperation (Article 179 EU Treaty); economic, financial and technical cooperation with third countries (Article 181A EU Treaty); and visa, asylum, immigration and other policy areas associated with the free movement of individuals (Title IV, EU Treaty).

2.3.4 Council of Europe

- The *Recommendation Domestic slavery: servitude, au pairs and ‘mail-order brides’* was added to the long list of recommendations from the Parliamentary Assembly of the Council of Europe in 2004.⁹⁶ The Assembly confirmed that thousands of people are being held as slaves in Europe despite the abolition of slavery. These are mainly women working in private households, as migrant domestic workers, au pairs or mail-order brides. Many of them arrived voluntarily but some were misled, bound by debt contracts and trafficked. The Council of Europe (CoE) has to be in the forefront of the battle against all forms of slavery, according to the Assembly, which makes recommendations to the Committee of Ministers to undertake the fight against THB. These are subdivided into general recommendations and recommendations relating to domestic slavery, au pairs and mail-order brides. Apart from calling for the preparation of a charter of rights for domestic staff and guidelines for the recognition and protection of the status of au pairs, the recommendations relate principally to matters covered in the CoE Convention to combat trafficking in persons.

⁹⁴ See www.sida.se/shared/jsp/download.jsp?f=World+Cup+Study+Final+Report.pdf&a=25626.

⁹⁵ Appendix C to Council decision 11384/06, 14 July 2006. The same decision also approved the UN Protocol on People Smuggling on behalf of the EC.

⁹⁶ PA Recommendation 1663 (2004).

- The *Council of Europe Convention on Action against Trafficking in Human Beings* (hereafter the CoE Human Trafficking Convention)⁹⁷ is the result of the discussions in the *Comité Ad Hoc sur la lutte contre la Traite des Êtres Humains* (CAHTEH).^{NRM3} The Convention was accepted by the Committee of Ministers on 3 May 2005 and opened up for signature on 16 May 2005. The Convention has been signed by 33 states – including the Netherlands⁹⁸ – seven of which had also ratified it when writing this report.⁹⁹ It enters into force when 10 states have ratified it, of which at least eight are CoE member states.
- The Convention takes as its starting point the Palermo Protocol, but applies to all forms of THB, both national and international, and whether or not associated with organised crime (Article 2).¹⁰⁰ The human rights approach is one of the Convention’s important angles; according to the preamble, THB is a violation of human rights and an offence to the dignity and the integrity of the human being.¹⁰¹ The purposes of the Convention (Article 1) are threefold: 1. preventing and combating THB, 2. protecting the human rights of victims and ensuring effective investigation and prosecution, and 3. promoting international cooperation on action against THB. The Convention then continues with a large number of provisions in which the Convention’s member states are urged to adopt measures, to a considerable extent in mandatory language. While the original notion of the CAHTEH – that this should be a mandatory Convention on all fronts – has not been entirely achieved, the Convention goes further than other existing (international) documents as regards the extent of its compulsory character.

Policy and other changes

Based on the text of the Convention, BNRM has looked into which issues in the Convention necessitate the amendment of Dutch policy and practice. The findings were communicated to the Ministry of Justice, and included the following observations.

- In the Convention, the status of being a victim, and not the victim’s residential status, determines whether or not certain rights and facilities will be granted. Residential status is the predominant factor in the present B-9 regulation, however. The government could therefore consider producing a general regulation for all victims of THB, which would include a residence permit if necessary, rather than maintaining a specific regulation only for those victims who are foreign nationals.
- The Convention urges that an indication be given of the precise limits of the expression ‘exploitation’ in the context of THB.
- The Convention expects coordination at the national level among the various partners in the chain, which can be either public or private organisations or agencies. This sort of umbrella coordination in

⁹⁷ Warsaw, 16 May 2005 (Council of Europe Series of Treaties, no. 197).

⁹⁸ The Netherlands signed on 17 November 2005.

⁹⁹ The position at 17 April 2007: the ratifying countries are Moldavia (19 May 2006), Romania (21 August 2006), Austria (12 October 2006), Albania (7 February 2007), Georgia (14 March 2007), Slovakia (27 March 2007) and Bulgaria (17 April 2007).

¹⁰⁰ On the last 2 points in particular, there is still discussion on the scope of application of the UN Protocol. By including Article 2, any such discussion is avoided for this Convention.

¹⁰¹ A proposition to which the Dutch government has never yet subscribed in as many words, but which now appears to have been accepted with the proposed ratification.

- action against THB does not exist at the moment, and this might be regarded as a call to set up a Task Force on THB.
- The adoption of a range of measures, in various areas, to discourage the demand that leads to THB requires an impetus, for example taking the form of a broad public campaign.
 - The Netherlands must strengthen its alert systems and approach to THB by means of training and public-private cooperation.
 - The obligation to adopt measures in order to identify foreign nationals who are victims of THB before they are expelled from the country means that the Memorandum on Illegal Aliens [*Illegalennota*] has to be adjusted to the extended definition of THB.
 - When there are signs of THB, and any uncertainty about the age of a juvenile, the presumption must be that he or she is a minor. This makes it extra important that, if there is any doubt about age during the (first) interview under asylum procedures, there should also be extra watchfulness for any signs of THB.
 - A victim's right to assistance should be disconnected from his or her cooperation as a witness. Because this right is not connected to any specific point of time in the proceedings, it should also apply after the reflection period. As a consequence, the crucial requirement in the B-9 regulation for a victim reporting the crime should be deleted. The term 'cooperation' as used in the Convention has also a wider meaning than the obligation to report the crime in order to be eligible for a renewable residence permit.
 - The Convention cites the competent authority's opinion that residence is deemed necessary owing to the victim's personal situation as being grounds for the (obligatory) issue of a renewable residence permit.
 - Compensation for the victim is formulated in terms of a right, which raises the question of how such a right can be put into practice if a perpetrator cannot be found or has no detectable assets.
 - In the event of repatriation and return of victims, there seems to be an assumption that an analysis of the individual victim's security situation will be carried out by the country initiating the return.
 - The current B-9 regulation does not include any obligation to take steps to protect the family members of victims and witnesses of THB. There is a question as to how such a far-reaching obligation could be implemented in practical terms.
- The Convention provides for the setting up of a group of independent experts (GRETA) which will monitor the implementation of the Convention. For an international document in the field of THB, this is a unique instrument. The intention is that GRETA, based on information which the member states to the Convention are obliged to supply, will prepare an analysis of the Convention's implementation by the member states, supplemented by recommendations on how to address any identified bottlenecks. Its report will be published after an opportunity has been given to make and receive comments on it, thus including the right to hear and be heard. Because the Convention does not provide any procedure for enforcing the implementation of recommendations, the main impetus providing this monitoring mechanism with persuasive force will be the 'public pillory effect'. The election procedure for the election of the experts (between 10 and 15 in number)

- who will sit on GRETA has to be determined within one year after the Convention enters into force.¹⁰²
- The *Action Plan* was also adopted at the meeting in 2005 of heads of state and government leaders of the member states of the Council of Europe, during which the CoE Human Trafficking Convention was accepted.¹⁰³ This Action Plan sets out the principle tasks of the CoE over the next few years. The battle against THB is mentioned under the heading ‘Strengthening the Security of European Subjects’, and is determined by the CoE Human Trafficking Convention. Under the heading ‘Building a Europe for Children’, it was announced that a children’s rights perspective will be implemented throughout the activities of the CoE. In this context, the three-year programme *Building a Europe for and with Children* was launched, which is designed to deal with protecting children against all forms of violence, with attention to social, legal, health and educational dimensions. One form of violence is trafficking in, and abuse of, children. A new committee was set up to deal with implementation of this point: the *Committee of Experts on the Protection of Children against Sexual Exploitation and Abuse* (PC-ES). This committee comes under the *European Committee on Crime Problems* (CDPC), which specified the committee’s tasks.¹⁰⁴ One of these tasks is the drafting of a new legal (and partly binding) instrument to protect children against sexual exploitation and abuse. This instrument must be compatible with existing international instruments, and may not include issues relating to compensation for victims. It must include matters such as a monitoring mechanism, aspects of criminal procedure (for example how children are interviewed) and the exchange of information.
 - In 2005, for the first time in its existence, the European Court of Human Rights established the existence of a violation of Article 4 of the European Convention on Human Rights (ECHR), which sets out the prohibition against slavery, servitude and forced or compulsory labour. In the case of *Siliadin v. France*¹⁰⁵ the Court held that French criminal law¹⁰⁶ offered inadequate protection to a girl from Togo, working in a French household in very poor circumstances, against the servitude to which she was subjected by private individuals (see also Chapter 8). This case raised the question as to whether a member state can be held responsible by the European Court of Human Rights for a violation of this right, protected by the ECHR, by a private individual. The Court answered this question in the affirmative.

¹⁰² This is one of the reasons why the NRM has urged the Minister of Justice to proceed with ratification of the Convention as soon as possible.

¹⁰³ CM(2005)80 final, 17 May 2005.

¹⁰⁴ Decision of the CDPC on future work of the Committee of Experts on the protection of children against sexual exploitation and abuse (CDPC-BU (2006) 14 final, 21 July 2006.

¹⁰⁵ ECHR 26 July 2005, application no. 73316/01.

¹⁰⁶ The Court stated that only penal legislation could offer the intended effective and necessary protection against breaches of Art. 4 ECHR.

State responsibility for violations of human rights

Once the Court had established that the girl was in a situation of servitude, as defined in Article 4 ECHR, in the *private household* of a family, it saw itself as being faced with the question of whether this finding might lead to a conclusion that the French *state* had breached the European Convention on Human Rights. The prohibitions included in ECHR are aimed in the first instance at the parties to the Convention and not at private individuals. However, as Lawson (2005) argues in his case-note to the judgment, a line has developed in the case law of the European Court of Human Rights in the past 20 years to effect that the rights incorporated in ECHR have a horizontal effect (i.e. they also apply among and between private individuals).¹⁰⁷ This conclusion is (partly) based on the fact that the ECHR assumes a positive obligation on states to adopt such measures as are necessary to ensure the effective enjoyment of human rights. As a result of the conclusion in *Siliadin* 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, ECHR, it is now established that the horizontal effect also applies in relation to this Article. ECHR also imposes not only an obligation to penalise this conduct but adds that these penal provisions must also be applied in practice.¹⁰⁸

The logical corollary to an obligation is a responsibility if that obligation is not fulfilled. In the ECHR context, what this means is that failure to (adequately) comply with the obligation to implement and enforce legislation and regulations results in a violation by the state of its obligations under the ECHR. The violation results in responsibility, which will usually take the form of an obligation to pay costs and damages. Thus, in the *Siliadin* case, the European Court of Human Rights ordered France to pay the costs for legal assistance that had been incurred by *Siliadin*. The Court did not deal substantively with the question of whether and if so how much compensation would have to be paid, as the plaintiff had not asked for any compensation.

- The CoE embarked on the *Campaign to combat trafficking in human beings* in the spring of 2006.¹⁰⁹ The aim of the campaign, which runs until 2008 and uses the slogan ‘Human being – not for sale!’, is twofold. On the one hand it involves raising general awareness among governments, NGOs and society regarding the scale of THB in Europe. On the other hand, the campaign is designed to promote signature and ratification of the CoE Human Trafficking Convention by as many states as possible. The mayors and representatives of municipalities and local authorities from the CoE member states underlined their involvement in the campaign via the *Congress of Local and Regional Authorities*.¹¹⁰

¹⁰⁷ Bos-Ollerman (2006) makes a more detailed analysis of the doctrine of the horizontal effect of human rights in her study of literature on the implications of a human rights based approach to THB. She approaches this from a philosophical-historical perspective of human rights, in which she refers to ECHR case law, including the judgment in the case of *Siliadin*.

¹⁰⁸ The Court only mentioned repression here, not prevention, as was also confirmed by Lawson (2005) in his note on the judgment. Bos-Ollerman (2006) investigates the issue of state responsibility in cases of THB, from the perspectives of both repression and prevention, coinciding here with the CoE Human Trafficking Convention.

¹⁰⁹ Resolution 210 (2006) on the Council of Europe campaign to combat trafficking in human beings.

¹¹⁰ The *Congress of Local and Regional Authorities* is an advisory body of the CoE, and with 315 members represents more than 200,000 European local and regional authorities, thereby giving expression to the views of local democracy.

They prepared a Declaration¹¹¹ in which they pledged to disseminate the campaign message as widely as possible and to make the subject a top priority of their administrations. In this, they referred to their earlier *Resolution on the fight against trafficking in human beings and their sexual exploitation: the role of cities and regions*.¹¹²

2.3.5 Organisation for Security and Co-operation in Europe (OSCE)

- The appointment in May 2004 of the OSCE *Special Representative on Combating Trafficking in Human Beings*, and the appointment of a special unit within the OSCE Secretariat – which, in conjunction with the Special Representative, form the *Anti-Traffic Assistance Unit* (ATAU) to assist member states in the battle against THB – were important events. The Special Representative presented a working plan in October 2004, to implement her task of translating the *OSCE Action Plan on Trafficking in Human Beings* into practice. In this, she explained how, first and foremost, she wanted to assist governments in the implementation of their obligations under the Action Plan¹¹³ by visiting the countries,¹¹⁴ attending and contributing to national and international conferences on THB, seeking media attention for the subject, keeping information on THB on the OSCE website up-to-date and presenting an annual report regarding progress in the fight against THB.¹¹⁵ From the very start, the Special Representative devoted her attention primarily to combating trafficking in children and labour exploitation, paying particular attention to victims. The Special Representative's position meant that she could make a direct approach at government level, but she had contacts with all possible partners in the chain. This occurred under the motto 'Alliance against Trafficking in Persons'. She obtained information on shortcomings, pitfalls and best practices directly in the field from the chain partners. The *Alliance Expert Coordination Team* (AECT) was created on her initiative, partly with this in mind. This involves participation by experts in the field of combating THB from international organisations (such as ILO, IOM, CoE and UNODC), international NGOs (such as La Strada International, International Federation of Red Cross and Red Crescent Societies and Anti-Slavery International) and national experts (such as BNRM). The AECT operates as an independent platform where discussion can take place across the broad spectrum of THB, and where the aims are the streamlining of, and collaboration in, measures to deal with the problem. It also serves as a matrix, information source and advisory body for the Special Representative. In mid-2006, the Special Representative indicated that she

¹¹¹ Declaration on the fight against trafficking in human beings, Appendix to Resolution 210 (2006).

¹¹² Resolution 196 (2005).

¹¹³ Workplan 2004-2005, Special Representative on Combating Trafficking in Human Beings (SEC.GAL/245/04, 25 October 2004). An explanation of the Action Plan can be found in NRM3.

¹¹⁴ Resulting in a report on the current situation in the fight against THB in the country in question, with information concerning prevention, detection and prosecution as well as victim support. A report of this type has appeared for most of the OSCE member states, including the Netherlands. The Dutch government has released this report for publication (see www.osce.org/documents/cthb/2005/12/18763_en.pdf), in contrast to (almost) all other countries.

¹¹⁵ *Review of 2005 and Outlook for 2006* (http://www.osce.org/documents/cthb/2005/12/17170_en.pdf).

- would not be available for reappointment, and her successor was appointed on 19 October 2006.
- The OSCE Parliamentary Assembly (PA) adopted a *Resolution on combating trafficking in human beings* at its 13th annual meeting.¹¹⁶ This resolution reaffirmed all of the previous opinions of the PA and called on the member states to implement earlier agreements, including those set out in the OSCE Action Plan, the Palermo Protocol and the *Optional Protocol on the sale of children, child prostitution and child pornography* to the UN Convention on the Rights of the Child.¹¹⁷ The member states and the Council of Ministers of the OSCE were asked to devote specific attention to the role of the armed forces or peace missions based abroad in connection with the demand side for THB.¹¹⁸
 - At its 14th annual meeting,¹¹⁹ the PA reverted to this topic in a *Resolution on combating involvement in trafficking in human beings and sexual exploitation and abuse by international peacekeeping forces*.¹²⁰ Proceeding on the assumption that the demand for commercial sexual services forms a breeding ground for THB, the PA considered that measures were required to prevent and counter armed forces and civilian support staff involved in international peace missions, as well as employees of international organisations, from making any contribution to the demand side of THB. The member states were called on to take measures for this purpose, in the form of primary and subordinate legislation, codes of conduct, and awareness campaigns,
 - The Permanent Council of the OSCE decided, during its 562nd plenary meeting, to add an *Addendum to the OSCE Action Plan to combat trafficking in human beings: addressing the special needs of child victims of trafficking for protection and assistance*.¹²¹ This contains recommendations to the member states as to how to deal with trafficking in children. The recommendations include criminalising trafficking in children, prevention, and assistance and protection focusing specifically on children. Also, research should be facilitated and training should be provided on how to recognise underage victims of THB.

2.4 Points of attention and bottlenecks

This chapter describes developments in the area of legislation and regulations since the appearance of the previous comprehensive Report (NRM3). What follow here are points of attention and bottlenecks that merit (repeated) mention.

¹¹⁶ Edinburgh, from 5 to 9 July 2004.

¹¹⁷ Descriptions of these documents are contained in NRM3, Chapter 2.

¹¹⁸ The Council of Ministers was however unable to reach agreement, during its 12th meeting in Sofia on 6-7 December 2004, on a resolution 'Ensuring that International Forces and Missions Contribute to Preventing and Combating Trafficking in Human Beings' proposed in pursuance of this call from the PA.

¹¹⁹ Washington DC, 1-5 July 2005.

¹²⁰ OSCE PA, SC (05/2) 1 É.

¹²¹ PC.DEC/685, 7 July 2005 (*PC Journal* No. 562).

Human trafficking provision

- Article 273f Criminal Code is a very extensive and complex provision, because the choice was made to have a single provision on THB, criminalising a large number of courses of conduct of disparate natures. The complicated wording leads to problems of interpretation. This is partly because of the use of a number of expressions from international legislation, which are not explained by the Dutch legislator in detail. The exact definition of the key expression ‘exploitation’, as regards labour and services outside the sex industry, has been left to the courts.
- It is remarkable that the THB Article does not criminalise the act of forcing someone to hand over income from (non-sexual) labour or services, although forcing someone to provide proceeds derived from (voluntary) sexual transactions or organ removal is criminalised under Article 273f Criminal Code.
- The maximum sentence of six years for THB without aggravating circumstances is relatively low. The level of the potential sentence has consequences for the possibility of pre-trial detention, which may be undesirable, bearing in mind that THB is so obviously a shocking breach of public order.

Other national primary and subordinate legislation

- While there was a promise, as far back as 2000, that the general prohibition on issuing work permits for prostitutes from outside the EU would be abolished within the foreseeable future, this prohibition is still in force.
- The distinction between a report of an offence and a statement, relevant under the criminal law, is impractical in the context of the rules under migration law as far as victims of THB are involved.
- In accordance with the new rules for continued residence after the expiry of the B-9, contained in chapter B16/7 of the Aliens Act Implementation Guidelines, a victim has to apply for a continued residence permit and is required to demonstrate his or her eligibility for it by handing over a copy of the court verdict in the criminal case as evidence. The victim, however, is not a party to that case and will not therefore (automatically) have a copy of the verdict.
- The new rules on continued residence only mentions victims who have reported the offence, while witnesses (or victim-witnesses) who cooperate in the investigation and prosecution also run the risk of reprisals if their cooperation has contributed towards the conviction of the trafficker.
- In accordance with the amended criteria, it is important for continued residence after the B-9 regulation whether or not a conviction resulted from the THB prosecution. The amended criteria appear to imply that a conviction for THB is required. There are, however, other situations where the results of the criminal proceedings must lead to the assumption that the law has established that repatriating the victim would involve risks.
- While the second ground in the new rules for continued residence is intended to make the length of the victim’s residence the most important humanitarian factor to be considered,

the fact that the wording proceeds on the basis of the date of conviction in the criminal case, does not prevent victims who have cooperated in the investigation and prosecution, depending on the length of the criminal proceedings, from being kept in uncertainty about their (continued) resident status in the Netherlands for more than three years.

International

- Despite medium-term policy documents, such as the *EU Action Plan on Human Trafficking*, EU Presidencies dealing with THB are not (adequately) building on the work of their predecessors.
- The *EU Action Plan on Human Trafficking* excels principally in its many proposals for international conferences on the subject. These do not, however, contribute towards a more effective approach to combat THB.
- While the same terminological framework is increasingly being used at an international level, the terms ‘THB’ and ‘exploitation’ are still interpreted in various ways.
- In light of the judgment of the European Court of Human Rights in the case of *Siliadin v. France* and numerous international documents, it has been established (internationally) that THB constitutes a violation of human rights.
- At the European level, the campaign against THB is placed to a significant extent within the context of combating illegal immigration. It is possible, however, (in practice) for there to be a degree of tension between these two aims.

3.1 Introduction

This Chapter contains information about victims of trafficking in human beings ('THB') and the support available for them.

3.2 Victims

3.2.1 Some specific (risk) groups

Minors (children)

The third BNRM report devoted considerable attention to minors as a specific group of victims of THB. It indicated that the traffic in children was not just a remote phenomenon, and also that it was not easy to obtain reliable information on the subject.

A joint study by ECPAT-Netherlands, Defence for Children International (DCI) and UNICEF Netherlands into the exploitation of children in the Netherlands provided greater clarification on who the (possible) victims of exploitation were and where and how they were exploited. Using file research, interviews with workers at 221 institutions and 'peer research',¹ a database containing information on 230 victims² was set up. While exploitation as defined in Article 273f of the Dutch Criminal Code was not established in all of the documented cases, and while many of the cases lacked relevant information, the research provides an alarming picture of what can happen to underage children in the Netherlands.

Some results from An Insight into Exploitation

- 169 of the cases (73%) involved exploitation in prostitution, with 40 cases (17%) involving other forms of exploitation and 21 cases (9%) involving a combination of the two.

Exploitation in prostitution

- most underage victims of exploitation in prostitution were between the ages of 13 and 17;³
- they came from 31 countries;
- more than 40% of these victims were of native or non-native Dutch origin,⁴ 36% were Dutch nationals and 13% resided illegally in the Netherlands;
- by far the majority of victims were girls (93%);
- factors rendering underage children vulnerable to exploitation in prostitution: emotional dependence (45%) and (each of these applicable in more than 20% of the cases) lack of papers and family cir-

¹ Former victims interviewed other victims and (former) victims.

² These were minor children who suffered exploitation between 2003-2005.

³ Age was not known for 40% of the victims.

⁴ The country of origin was not known for 22% of the victims.

cumstances (e.g. broken families, deceased parents, domestic rows). Also (each applying to between 10% and 20% of the cases): threats (by loverboys/pimps or family members) and financial reasons. Other factors increasing vulnerability (applicable in less than 10% of the cases): drug addiction, sexual abuse and homelessness.

Other forms of exploitation

- the other forms of exploitation related principally to illegal adoption (27%) and domestic work (17%), but also included the transportation of drugs, cleaning work, deception by offering a 'football contract',⁵ and exploitation in the catering sector (each applicable in 5%-10% of the cases), and exploitation in crime, in small businesses, and taking the form of arranged marriages (each applicable in 2% of the cases);
- there was a relatively high proportion of young children (25% below the age of 8) among underage victims of other forms of exploitation: the illegally adopted children. For 9- to 12-year-olds (10%), the exploitation centred around domestic work, cleaning work and the catering sector;
- the proportion of young males affected by this form of exploitation was larger than for exploitation in prostitution, at 27%. 42% of the victims were girls;⁶
- the victims came from 17 countries;⁷
- only 5% were Dutch nationals and a large proportion (37%) resided in the Netherlands illegally;
- factors rendering underage children vulnerable to other forms of exploitation: family circumstances (55%), lack of papers (27%) and emotional dependence (27%). In addition (with each applicable to between 10%-15% of the cases) financial reasons, homelessness and threats (from family members or through blackmail with pornographic pictures of the minors) and (in 2% of the cases) sexual abuse. Other factors that increased vulnerability, such as age (in cases involving illegal adoption and smuggling drugs in babies' nappies), were involved in 45% of the cases.

(Source: Van den Borne & Kloosterboer, 2005).

What the researchers said was that the legislature should clarify which forms of exploitation of underage children were contemplated by the THB Article. In order to obtain a national picture of the nature and scale of the problem, information should be recorded in a uniform, clear and complete manner, and should be distributed among all of the partners in the chain. Information and training should result in improved prevention, identification, reception and support for victims as well as better detection and prosecution of suspects. Victims who are minors should obtain a residence permit on humanitarian grounds and the international co-operation between the various institutions should be improved, according to the researchers.

Underage children who have a slight intellectual impairment are particularly vulnerable to exploitation. There are indications that the recruitment activities of loverboys (see 3.4) include girls with a slight intellectual impairment. Individuals who have any such impairment are not only vulnerable to exploitation in the sex industry but also to exploitation in other sectors.

⁵ The African youngsters in question had paid for their trip and were then left to their own fate at Schiphol airport.

⁶ Gender was unknown for 30% of the victims.

⁷ The country of origin was not known for 32% of the victims.

(Former) unaccompanied underage asylum seekers (AMAs)

In the third Report, attention was paid to the following topics: the fact that some unaccompanied underage asylum seekers (AMAs) are brought to the Netherlands with a view to exploitation (in prostitution); the situation in the reception centres, which is not a safe one in every respect (e.g. Brouns et al., 2003); and the risks associated with the policy on AMAs. This policy means that anyone arriving in the Netherlands at the age of 15 or above, and who has not been acknowledged as a refugee, must leave the country when they turn 18. When this policy was finalised, there were comments from various quarters that there was a significant likelihood that many of the youngsters concerned would prefer illegal residence over repatriation to their country of origin, with all of the consequences this entailed, including exploitation (e.g. Alien Affairs Advisory Committee, 2003; ECPAT, 2003; Council for the Application of Criminal Law, 2004).⁸ These concerns appear to have been well-founded. The purpose of the AMA campus in Vught, focusing on repatriation, was not achieved. Of the 436 AMAs placed there, only six returned to their countries of origin, with most leaving for destinations unknown (Klaassen and de Prez, 2004). The campus was closed and the reception houses for repatriated AMAs in Angola (opened in 2003) and the Democratic Republic of Congo (opened in 2005) scarcely received any youngsters from this target group. The Youth Care Inspectorate (2006) also confirmed that not many AMAs were working towards repatriation and that some were ending up becoming illegals. According to the evaluation by Klaassen and de Prez, one important learning point is that a more individualistic approach to AMAs offers a better basis for increasing their motivation to return than the group-oriented approach taken at the campus. An experiment was undertaken at one of the AMA sites in 2006 in the context of the project *The Fight against Human Trafficking*, with very intensive support for AMAs at risk, which took the form of constantly following the AMAs in question. This went well in the sense that the AMAs concerned did not disappear, but it was extremely time-consuming and probably only temporarily effective, so that Hiemstra and Hurkens (2006b) did not recommend it as a national approach.

In 2005, the policy rules on terminating the provision of living allowances came into effect: the project for terminating allowances for former AMAs (PLEXA).

PLEXA had a major influence on the situation of former AMAs. According to SAMAH, the national interest organisation for young asylum seekers, some of the youngsters left for their country of origin, often with support from the International Organisation for Migration (IOM), but most opted, at least in the first instance, to stay here illegally (Annual Report, 2005). The response from the LOGO⁹ to PLEXA and letters from municipal authorities

⁸ In an opinion dated 24 March 2004 on progress with and implementation of the policy note *Unaccompanied Minor Asylum Seekers*.

⁹ National Consultative Body for Municipal Administrations on reception and return policy [*Landelijke Overleg Gemeentebesturen Opvang*].

also referred to the approach developed in Utrecht, offering (greater) prospects, and which has since been followed up in many municipalities.

There has been a great deal of commotion during the past two years concerning the disappearance of AMAs for unknown destinations and the fact that they might be ending up as victims of exploitation.¹⁰ These are mostly AMAs who are being obliged to leave, often after a few years of legal residence, but also include some who had only been in the Netherlands for a short period. The problem concerning AMAs leaving for unknown destinations had been known about for some time (see, e.g., Rijken, 2000) and led the organisations in the immigration chain¹¹ to set up the *Protocol Vermissing Ama* [Protocol on Missing AMAs] in 2003.

The Protocol on Missing AMAs

The Protocol contains guidelines to prevent AMAs from going missing and to deal with any missing persons situation involving AMAs that still occur. With respect to the process of dealing with missing persons, the Protocol involved arrangements about which chain partner should undertake which action during a particular timescale. It quickly became clear, however, that the Protocol was not being used by the chain partners and sometimes was not even known. Nor was it clear who was in charge of the Protocol, which was also felt to be very complex and extensive (see also Kromhout and Leijstra, 2006). There was confusion about who should report missing persons, missing AMAs were not always reported¹² and the police were not always prepared to record reports of a criminal offence. The Protocol is being adjusted.¹³

The frequency of departure for unknown destinations from reception facilities gave rise to a study by the Scientific Research and Documentation Centre (WODC) into repatriation and departure for unknown destinations among 15 to 17-year-old AMAs who had not (yet) obtained a residence permit. The research showed that the numbers of AMAs in the Netherlands leaving for unknown destinations amounted to 499 in 2004 and 322 in 2005, representing 79% and 84% respectively of all departing AMAs (Kromhout and Leijstra, 2006). Kromhout and Leijstra interviewed 21 AMAs in relation to their views on repatriation and illegal residence. Most of the interviewees were negative about repatriation. Eleven of the youngsters disapproved of the idea of living as an illegal, and six of them felt that living as an illegal was in any event better than repatriation. The position was not clear for three of the youngsters.

The *Additional Measures to the NAM* include a proposal for raising awareness among organisations working with youngsters about indications of THB, so that they can recognise ex-

¹⁰ Dozens of Chinese and Indian AMAs disappeared from reception. There are signs that some are being exploited. Nigerian girls also disappear.

¹¹ The police, the People Smuggling Information and Analysis Centre (IAM), KMar, IND, COA and the De Opbouw Foundation (now NIDOS). The former Reception Centre Valentijn and the Beatrixoord Reception Centre were also involved in its preparation (CD-ROM Protocol Vermissing Ama).

¹² Departure for an unknown destination is not always a source of concern: support staff are sometimes aware that an AMA has gone to family abroad, and sometimes there has even been contact after the AMA has left.

¹³ Letter from the Minister for Immigration and Integration to the Lower House dated 5 December 2006.

ploitation of minors at an early stage. Another development in this context is that the Expertise Centre on THB and People Smuggling (EMM) is attempting to record indications of AMAs who might be victims of exploitation or who might be at risk of becoming victims. EMM is collaborating on this with IND, COA, BLinN, Foundation against Trafficking in Women [*Stichting Tegen Vrouwenhandel* (STV)] and the Dutch Council for Refugees [*Vluchtelingenwerk Nederland*]. Further measures being taken to improve the safety of this group of minors include 24-hour supervision and support at the reception sites and the taking of fingerprints at the start of the procedure. It should also soon be possible to arrange the custody for these minors within 24 hours (Letter from the Minister for Immigration & Integration to the Lower House dated 5 December 2006). In the same letter, the Minister announced a pilot study on secure reception¹⁴ and possibly also electronic supervision for AMAs who are subject to a significant risk of disappearing (at that point, AMAs from India and Nigeria).¹⁵

In the loverboy project in Zwolle, there were actually few questions about prevention in relation to AMAs (Kool, 2005),¹⁶ but 6% of the victims of exploitation in prostitution in the research carried out by Van den Borne and Kloosterboer were AMAs. While no cases of exploitation in sectors other than the sex industry were found either in this research or the BNRM research into exploitation in sectors other than the sex industry (see Chapter 8),¹⁷ it is nonetheless important for organisations to remain alert to the possibility of male and female AMAs being vulnerable to exploitation, in the sex industry or elsewhere.

Asylum seekers

The research by Brouns et al. (2003) into the safety of women and girls in central asylum reception (Central Agency for the Reception of Asylum Seekers, COA) resulted in a range of measures, such as adaptations to the physical environment, policy measures designed to increase manageability in the sites (adjustment of house rules, development of a protocol for dealing with discrimination, intimidation and violence), training in order to increase women's powers of resistance and training of the staff aimed at identifying unsafe situations. The *Combating Trafficking in Human Beings project* started in 2006 with the aim of investigating whether and how the Central Agency for the Reception of Asylum Seekers (COA) might prevent trafficking in human beings and prostitution, and also develop and implement policy.

¹⁴ Secure reception actually started at the end of 2006 in the form of the 24-hour supervision and support mentioned earlier.

¹⁵ The IND is working on the development of risk profiles, to allow earlier and more systematic recognition of risk groups.

¹⁶ AMAs were classified as a risk group at the start of the project.

¹⁷ Van den Borne and Kloosterboer (2005) do in fact point out that the status of many victims (43%) is unknown.

*The COA project ‘Combating THB’**Some conclusions:*

- residents can live fairly anonymously in the reception centres and visitors have fairly easy access. Once in a while residents undertake prostitution activities on site;
- the current registration system for reporting incidents is not suited for registering ‘soft’ information (suspicions and signs). There is no link between information from the Temporary Aliens Emergency Facilities [*Tijdelijke Noodvoorziening Vreemdelingen (TNV)*]¹⁸ and regular reception facilities. Any potentially relevant information at the earliest stages of reception (concerning prostitution, anxious behaviour, crime) is therefore lost;
- the COA’s internal facilities for enforcing the regime are confined to retention of spending money and (temporary) removal from the centre. These facilities will have no effect in relation to any signs of THB;
- unaccompanied underage asylum seekers who leave for an unknown destination are reported as missing. The same does not apply to adults;
- the contacts between the COA and local police and Aliens Police are generally good, although feedback from the police could be improved;

Recommendations for increasing safety at reception centres:

- increase the knowledge and skills of COA staff in relation to THB;
- develop a vision on combating THB and prostitution and translate this into practical implementation;
- strengthen the process of identifying, registering and reporting; report any signs to the correct investigation services and to a central reporting point within the COA;
- develop an approach for identifying potential victims of THB (using risk profiles) and follow and support them from the time of their arrival;
- improve the cooperative approach and information exchange, particularly cooperation with the police, the Public Prosecution Service, the Royal Netherlands Marechaussee (KMar) and the IND.

The COA has decided to extend the ‘*Combating Trafficking in Human Beings*’ Project and to regard it as the foundation for the *Safety Reporting Point* within the Reception Directorate of the COA, which is to be set up in 2007.

Victims of exploitation in sectors other than the sex industry

It is widely known that victims of exploitation in the sex industry are reluctant to come forward with their experiences. This also applies, however, to victims of exploitation in sectors other than the sex industry. They do not always view themselves as victims, but the problem can also relate to the fact that their residence or employment status might be illegal, they might fear being deported or fear that their statements might have adverse consequences for their colleagues (who might also be working illegally), the fact that the situation in their country of origin might be even worse, or the build-up of debts. Threats can also play their

¹⁸ These COA facilities are occupied by asylum seekers who cannot immediately be interviewed by the IND after they report to the Application Centre.

part in some situations of exploitation in sectors other than the sex industry, and the victims of this type of exploitation may also be ashamed of the situation in which they have landed.

3.2.2 Victims ‘in numbers’

STV victim registration

One of the tasks of the Foundation against Trafficking in Women [*Stichting Tegen Vrouwenhandel* (STV)] is to register (suspected) victims of THB. This means that all bodies who are (or think they might be) dealing with a victim – for example the police or social services, but also concerned citizens – can report this to the STV, where this is recorded.^{NRM3} The police are obliged to report any cases they encounter. Others will often submit reports because the STV is able to do something for them, such as the (indirect) organisation of reception or other facilities for the victim or the provision of expert advice. Not every victim is reported, and the STV does not know everything about every victim who is reported. For instance, more is often known about victims placed in reception facilities than about victims reported by concerned citizens, with whom the STV has no further involvement. It also happens that, after they are reported, clients disappear from view and files become spread out across a range of organisations (STV Annual Report, 2005). The STV does not have the capacity to retrieve this information.¹⁹ It is also impossible to exclude the possibility of duplication, certainly where information is limited.

This section contains information on the victims registered by the STV; following a dip in 2003, the numbers have been increasing in recent years. In 2004 there were 403, and in 2005 424.²⁰ The information covers some basic background factors for the victims, such as country of origin, age and gender. We go on to present, so far as possible and relevant, more detailed background information for 2005.²¹ The information in this section is based partly on the STV Annual Reports and partly on the files provided by the STV.²² This has (minor) consequences for the number of registered (possible) victims we present for 2004.²³

¹⁹ An attempt is made to collect any missing information – as far as possible – for the *THB Victim Monitor* (see later in this Chapter).

²⁰ According to provisional STV data for 2006, there were 579 in that year.

²¹ More of this information was available for 2005 than previously, for the first time.

²² There is an indication below the tables as to whether they are based on secondary analyses of the data (‘files’) or the STV’s Annual Reports.

²³ The STV Annual Reports contain figures of 405 reports for 2003, and the secondary file analyses by BNRM (on a file updated by the STV) disclose a figure of 403 for the same year. In this section, the figure of 403 will be shown for the results of the secondary analyses and the figure of 405 where we fall back on the STV Annual Reports.

Table 3.1 shows the annual ranking order for the five most common countries of origin for victims.²⁴

Table 3.1 Major countries of origin of victims showing annual rankings²⁵

Country	2001	2002	2003	2004	2005	Total
Brazil			5			
Bulgaria	1	1	1	2	2	1
Czech Republic					5	
Netherlands	5	4		1	1	2
Nigeria	4	2	3	4	3	3
Romania		3	2	3	4	4
Russian Federation	2	5		5		5
Ukraine	3		4			

Source: STV (files).

In 2004 and 2005, the Netherlands was the most common country of origin for victims of THB. Bulgaria fell to second place, with Nigeria and Romania changing places in positions three and four.²⁶

Table 3.2 shows the most common nationalities of the victims who were reported to the STV.²⁷ Appendix 4 (Table B3.2) contains a full overview of all nationalities, in alphabetical order.

Table 3.2 Most important countries of origin of (possible) victims registered with the STV, per annum

Country	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Angola	1	0%	3	1%	2	1%	2	0%	8	2%	16	1%
Brazil	1	0%	-	-	12	5%	5	1%	8	2%	26	2%
Bulgaria	40	14%	59	17%	48	19%	55	14%	52	12%	254	15%
Cameroon	2	1%	10	3%	5	2%	11	3%	4	1%	32	2%
China	10	4%	8	2%	8	3%	9	2%	5	1%	40	2%
Czech Republic	8	3%	6	2%	3	1%	2	0%	18	4%	37	2%
Hungary	4	1%	1	0%	-	-	3	1%	9	2%	17	1%
Lithuania	10	4%	13	4%	9	4%	3	1%	3	1%	38	2%
Moldova	9	3%	14	4%	1	0%	6	1%	2	0%	32	2%
Morocco	1	0%	4	1%	2	1%	11	3%	11	3%	29	2%

²⁴ The most recent year determines the sequence in which the countries are mentioned in the table.

²⁵ Based on the nationality of (possible) victims.

²⁶ Provisional figures from the STV (up to August 2006) show that China is in the ascendant as a significant country of origin (*STV Nieuws*, 1, 2007)

²⁷ A nationality is included if at least 25 victims were of that nationality in the period from 2001 to 2005, or at least 5 victims in 2005.

Country	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Netherlands	11	4%	18	5%	11	4%	59	15%	98	23%	197	12%
Nigeria	15	5%	45	13%	21	8%	39	10%	28	7%	148	9%
Poland	4	1%	9	3%	3	1%	8	2%	13	3%	37	2%
Romania	4	1%	22	6%	31	12%	45	11%	23	5%	125	7%
Russian Federation	27	10%	16	5%	11	4%	14	3%	13	3%	81	5%
Sierra Leone	6	2%	12	3%	11	4%	6	1%	14	3%	49	3%
Slovakia	1	0%	2	1%	2	1%	3	1%	10	2%	18	1%
Ukraine	18	6%	5	1%	14	5%	8	2%	10	2%	55	3%
(former) Yugoslavia	3	1%	-	-	1	0%	2	0%	5	1%	11	1%
Other	37	13%	75	22%	43	17%	96	24%	63	15%	314	18%
Unknown	72	25%	21	6%	19	7%	16	4%	27	6%	155	9%
Total	284	100%	343	100%	257	100%	403	100%	424	100%	1711	100%

Source: STV (files).

There was a marked increase in the number and proportion of Dutch national victims in 2004 and 2005. The number and proportion of Bulgarian, Nigerian and Romanian victims was high, as in previous years. The number of Moroccan and Turkish victims increased.

Table 3.3 shows the age allocation of the victims reported to the STV in the period from 2001 to 2005.

Table 3.3 Age distribution of victims reported to the STV, per annum

Age category	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
10 - 14 years	2	1%	-	-	2	1%	3	1%	1	0%	8	0%
15 - 17 years	25	9%	41	12%	18	7%	23	6%	23	5%	130	8%
18 - 23 years	86	30%	130	38%	112	44%	165	41%	167	39%	660	39%
24 - 30 years	39	14%	56	16%	54	21%	141	35%	150	35%	440	26%
31 - 40 years	12	4%	19	6%	25	10%	61	15%	50	12%	167	10%
41 years and older	1	0%	5	1%	5	2%	-	-	15	4%	26	2%
Unknown	119	42%	92	27%	41	16%	12	3%	18	4%	282	16%
Total	284	100%	343	100%	257	100%	405	100%	424	100%	1713	100%

Source: STV (annual reports).

As in previous years, most of the victims in 2004 and 2005 were in the age bracket from 18 to 30.

The 424 new victims reported in 2005 included two men. They were both being exploited in prostitution. One man or boy was reported in 2004,²⁸ and none in 2003.

More detailed background information on victims

Out of the 424 clients who were registered in 2005, it is known that at least:

- 50 (12%) had children;²⁹
- 8 (2%) had a mental healthcare issue, 170 (40%) had none (unknown 246 - 58%);
- 13 (3%) used drugs, 118 (28%) did not (unknown 293 - 69%);
- 13 (3%) were pregnant, 80 (19%) were not (unknown 331 - 78%);
- 8 (2%) were also victims of exploitation in sectors other than that of prostitution,³⁰ 167 (39%) were not (unknown 249 - 59%);
- 8 (2%) were also working in prostitution from home, 167 (39%) were not (unknown 249 - 59%) (Source: STV files).

The figures mentioned above must be considered to be a minimum, because of the significant gaps in information.

43 of the victims registered with the STV in 2005 took advantage of the period for reflection. The figure was also 43 in 2004. For both years, this represents about 13% of the foreign victims.³¹

As in previous years, the police were by far the most significant reporters of victims in 2005, followed at some distance by the reception facilities.

IND registration of victims on the B-9 regulation

BNRM asks the IND each year how many (possible) victims and witnesses of THB are relying on the B-9 regulation and obtain a temporary residence permit on this basis. It has been decided to report on this issue, in the current report, from 2005 onwards. Where relevant, comparisons are drawn with the period for which reliable B-9 information is available: 1998 to 2002.^{NRM3}

It is important to state that:

- the information relates to victims of THB illegally residing in the Netherlands and who are cooperating or want to cooperate with the police and Public Prosecution Service;
- occasionally, children of victims and children of witnesses are erroneously registered as B-9 applicants;
- not every B-9 application is dealt with in the year of application.

²⁸ Source: verbal information from the STV.

²⁹ Thirty clients had their children with them in the Netherlands; the children of 17 clients stayed in the country of origin; and for the others it was not known where their children were (Source: STV Annual Report 2005).

³⁰ In catering, housekeeping or as au pairs.

³¹ 326 of the victims in 2005 were not Dutch nationals, and the corresponding figure for 2004 was 344.

Reference is made to Appendix 2 for the research details and some additional comments.

In 2005, the IND received 77 applications under the B-9 regulation.³² This figure was much lower than in 2001 and 2002, when there were 145 and 160 applications respectively. The figures in those years were admittedly much higher than in previous years.

The IND issued 61 B-9 permits in 2005. The corresponding number for 2001 and 2002 was again higher, and in the years before that, lower.

STV registration of B-9 applications

The STV registered 60 B-9 applications for 2005, therefore fewer than the IND. Apparently not everyone who makes a B-9 application also reports to the STV, or perhaps the STV registration is incomplete on this point.

STV does distinguish between victim applicants and witness applicants: 54 out of 60 applicants registered by the STV were victims (90%) and 6 were witnesses (10%). These proportions were almost identical in the previous year.³³

Information from the IND, which has not been analysed in any greater detail, indicates that the number of B-9 applications and awards was much higher in 2006. The figures for 2006 were 180 B-9 applications and 150 permits.

Table 3.4 shows the age allocation of victims/witnesses applying for/obtaining a B-9 permit in 2005.

Table 3.4 Age distribution of persons with a B-9 permit (application), 2005

Age category	Application		Permit granted	
	N	%	N	%
0 - 10 years	2	3%	0	-
11 - 17 years	5	7%	5	8%
18 - 25 years	36	47%	29	48%
26 - 30 years	22	29%	18	30%
31 - 40 years	10	13%	8	13%
41 years and older	2	3%	1	2%
Total	77	100%	61	100%

Almost half of the individuals who applied for or were granted a B-9 permit were between the ages of 18 and 26. Nearly one third of them were in the age range between 26 and 30. The applicants included seven minors. The two youngest children were probably the children of victims. This was not the case, however, for the five children in the age bracket between 12 and 18. They had their own files and were not associated with other individuals.

³² Of the 77 applicants, 22 had already made contact with the IND, for example in relation to an asylum application.

³³ The STV records indicate that 89% of applicants were victims and 11% were witnesses in 2004.

Virtually all of the B-9 applicants in 2005 were female. The 77 applicants included 3 males (4%). One of these ‘males’ was 7 years old and probably the child of a victim (see above). The percentage of male applicants was also low in 2002 and earlier years.³⁴

98% of those who actually attained a B-9 residence permit were female and 2% were male.³⁵

Table 3.5 contains an overview of the most common nationalities of victims and witnesses holding (or applying for) a B-9 permit.³⁶ A table specifying all nationalities is included in Appendix 4 (Table B3.5).

Table 3.5 Nationality of persons with a B-9 permit (application), 2005

Nationality	Application		Permit granted	
	N	%	N	%
Bulgarian	12	16%	11	18%
Sierra Leone	7	9%	8 ³⁷	13%
Romanian	6	8%	6	10%
Nigerian	6	8%	4	7%
Russian	5	7%	5	8%
Other	39	51%	26	43%
Unknown ³⁸	2	3%	1	2%
Total	77	100%	61	100%

In 2005, one in six of the victims/witnesses of THB applying for a B-9 residence permit were Bulgarian nationals. This means that – just as in 2002 and earlier years – Bulgaria topped the list of countries of origin for victims and witnesses ‘in the B-9’. Sierra Leone took second place in 2005, followed by Romania, Nigeria and the Russian Federation.

Table 3.6 shows an allocation of the victims/witnesses applying for or holding a B-9 according to region of origin. It also draws a distinction within Europe – where many victims come from – between those countries who were members of the EU in 1995,³⁹ countries that became members of the EU in 2004 or who were candidate members at that point and became members in 2007,⁴⁰ non-EU countries in Eastern Europe⁴¹ and non-EU countries in Western Europe.⁴² Continents are also distinguished.⁴³

³⁴ Percentage of males each year: 8% (1998), 16% (1999), 1% (2000), 4% (2001) and 7% (2002).

³⁵ 61 women and one man. Percentage of males in earlier years: 2% (1998), 6% (1999), 2% (2000), 3% (2001) and 3% (2002).

³⁶ A nationality is included in the table if 5 or more of the victims/witnesses have the nationality in question.

³⁷ It may appear strange that more B-9 permits were granted to than applied for by victims/witnesses of Sierra Leonean nationality. However, this is possible because not all applications are dealt with within the same year.

³⁸ It probably concerns persons who arrived in the Netherlands as undocumented asylum seekers and whose nationality was later established.

³⁹ Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Denmark, the Republic of Ireland, the United Kingdom, Greece, Portugal, Spain, Finland, Austria, Sweden.

⁴⁰ Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia, the Czech Republic, Bulgaria and Romania.

Table 3.6 *Region of origin of persons with a B-9 permit (application), 2005*

Region of origin	Application		Permit granted	
	N	%	N	%
EU: 1995	2	3%	2	3%
EU: new member/accession states 2004	26	34%	26	43%
Eastern Europe, non-EU member states	15	20%	10	16%
Western Europe, non-EU member states	1	1%	1	2%
Africa	19	25%	17	28%
Latin America / Caribbean	4	5%	1	2%
Asia	8	10%	3	5%
Unknown	2	3%	1	2%
Total	77	100%	61	100%

The majority of the victims and witnesses who applied for a B-9 residence permit or were issued with one, came from countries that had joined the EU in 2004 and 2007, Africa and non-EU countries in Eastern Europe.

The police report victims and witnesses of THB, who are eligible for a temporary residence permit based on the B-9 regulation, to the IND. The IND issues the residence permits.

Many victims and witnesses wish to stay in the Netherlands after the B-9 permit has expired.^{NRM3} The IND has manually recorded for just over a year, how many victims/witnesses submitted an application for continued residence, and how many of these applications are granted. In 2006, the IND noted 34 applications for continued residence, with equal numbers being approved and rejected (17 and 17) at first instance.⁴⁴

3.3 Facilities available to victims

3.3.1 General developments and facilities

Reporting a criminal offence

The third BNRM Report commented that it was not always easy for victims of trafficking to report the criminal offence. One of the recommendations in that report, therefore, was that victims of THB should be offered a clear opportunity to do so as quickly as possible. The National Ombudsman has now confirmed that investigation officials are obliged in principle to

⁴¹ The Russian Federation, Moldavia, Ukraine, Belarus, Albania, Bosnia-Herzegovina, Serbia, Macedonia, Croatia, Montenegro, Kazakhstan, Turkey, Kyrgyzstan.

⁴² Switzerland, Norway, Iceland, the Isle of Man, the Faroe Islands, Andorra, Gibraltar, the Vatican City, San Marino, Lichtenstein, Monaco.

⁴³ Only included in the table if individuals applying for or holding a B-9 come from there.

⁴⁴ Source: verbal information from the IND. We do not know how many victims made an objection, or the results of any such objections.

register any reports of a criminal offence in terms of Article 163 of the Code of Criminal Procedure. Only one exception to this general rule is available, according to the Ombudsman, namely if it can be established in advance, without any further investigation and without a shadow of doubt, that the conduct which is the subject of the report does not amount to an offence. The general rule that a report of a criminal offence must be registered even applies in cases where there might then be a suspicion that the person wanting to report the crime is primarily concerned with the consequences of the report in terms of residency status. The National Ombudsman has indicated that neither investigation into the reliability of the individual wishing to report the crime, nor any assessment of whether sufficient evidence can be gathered, should play any part at that stage.⁴⁵

Improvements in the application of the B-9 regulation

We indicated, in Chapter 2, that improvements were required not only in the B-9 regulation but also in its application. This requires input from all parties involved in the implementation of the B-9 regulation and constant attention to the dissemination of knowledge about the regulation.

B-9 conference and adjustments to application of the B-9 regulation

Following up on a promise during the general consultation on THB on 18 January 2003, the Minister for Immigration & Integration, in conjunction with the IND, STV and BNRM, organised the working conference entitled *Uitvoering B9-regeling* [B-9 regulation Implementation].⁴⁶ The aim of this conference was to achieve improved implementation of the regulation, without the need for any adjustment to the regulation itself. The meeting resulted in a range of concrete actions:

- a broadly-composed editorial board was set up to arrange for the dissemination of current and clear information on the regulation;
- the foundations were laid for the ‘*Safety File*’, an initiative to assist victims of THB to collect facts and circumstances that might be relevant in connection with the assessment of their applications for continued residence after the B-9;
- in response to the conference, the Legal Aid Board [*Raad voor de Rechtsbijstand*] extended the number of hours of legal assistance that could be obtained by a victim of THB for assistance in the proceedings;
- the Ministry of Foreign Affairs prepared thematic official notices on THB for a number of countries;⁴⁷
- the conference resulted in a structural consultation between the chain partners on the implementation of the B-9 regulation and associated matters – the *STV Platform*.

⁴⁵ Report 2006/0279 dated 10 August 2006.

⁴⁶ Conference held on 17-18 June 2004 in The Hague.

⁴⁷ These official notices, currently available for Romania, the Russian Federation, Bulgaria and the Ukraine, contain a description of the approach to THB, reception of and support for victims and the way in which prostitution is regarded in the countries in question. The general official notice for Nigeria also dealt with these subjects.

In the *STV Platform*, a large number of chain partners exchange information on bottlenecks in the implementation of the B-9 regulation on a regular basis. The broad composition of this consultative body generally allows for a solution to be achieved smoothly, even though some of the bottlenecks are obstinate ones. For example, in certain regions it still happens that victims (and their lawyers) are not informed by the Public Prosecution Service about the progress of ‘their’ criminal case,⁴⁸ it often takes a long time for B-9 passes to be issued, and municipalities have adopted divergent policies in relation to victims being allowed to work.⁴⁹ The moment when the B-9 regulation is offered remains another obstinate bottleneck.

The moment when the B-9 regulation is offered

In current practice it is unclear exactly when a (possible) victim should be made aware of the existence of the B-9 regulation. This is of primary significance when detention of a foreign national is being considered because of illegal residence. According to the regulation, the police ought to inform the foreign national about the possibility of reporting the crime of THB as soon as there is the *slightest indication* of this crime. This wording leaves little scope for interpretation about the time when the B-9 should be offered to a possible victim (or witness) of THB. The Council of State held that the fact ‘that it was known at the time of taking into (aliens’) detention [...] that the appellant was encountered in the context of an investigation into THB and people smuggling [...] does not detract from the legitimacy of the measure [aliens’ detention] since a foreign national may also be detained in such circumstances.’ The Council of State held that, because the conditions for taking the individual into aliens’ detention for the purpose of deportation were met, this was enough to render such a detention legitimate, whether the foreign national was a (possible) victim of THB or not.⁵⁰

This opinion from the Council of State is difficult to reconcile with the text – and even more so with the spirit – of the B-9 regulation. Through the B-9 regulation, the Dutch government is in part implementing the provisions for the benefit of victims of THB as contained in the Palermo Protocol (Article 6). There is no doubt in the B-9 regulation about the point when the reflection period should be offered. Nor does the regulation leave much scope on the way in which this reflection period should be used: ‘the reflection period is intended for reflecting on a decision to report the crime in complete peace’. Staying in a detention facility is not particularly conducive to this. The prime consideration is that victims of THB need protection by the government, and this should not be limited to just being a paper exercise.

Victims of THB in aliens’ detention

In 2003, BLinN initiated a study into (female) victims of THB in aliens’ detention. Victims of THB who do not leave the Netherlands voluntarily, sometimes end up in aliens’ detention. It is not known exactly how often this happens, but STV and BLinN were aware of 16 cases of (suspected) victims of THB in aliens’ detention in 2003 and 2004. These cases were studied

⁴⁸ This is in conflict with the Victim Care Instruction [*Aanwijzing Slachtofferzorg*] (dated 1 June 2004).

⁴⁹ It is a pity that the Association of Dutch Municipalities (VNG) does not take part in the consultation.

⁵⁰ Council of State, Administrative Judiciary Division, 30 June 2006.

in the context of the BLinN research. There was also a study of the literature, 26 interviews were held⁵¹ and a round-table meeting was organised in relation to the results.

Findings of the investigation into female victims of THB in aliens' detention

Bottlenecks that were identified:

- failure to recognise victims of THB in the phase prior to aliens' detention;
- victims in the asylum procedure run the risk of not being believed if they do not quickly tell their tale about being victims of THB;
- failure to recognise victims of THB during aliens' detention; knowledge and experience are lost because of the frequent changes of location and staff. The employees of the private security companies used for supervision are not aware of the position of foreign nationals in detention and are unable to identify THB;
- problems with legal assistance from duty lawyers. Action has since been taken towards improving this area;
- voluntary repatriation is difficult from aliens' detention, making it difficult to return via IOM and to obtain the IOM living allowance;
- communication between the Aliens Police, IND and the detention centre officials dealing with repatriation⁵² is not always what it should be. Sometimes the wheels can be set in motion for returning someone in conjunction with an outside organisation and the possible victims are unexpectedly released, and then they disappear from the view of the social services;
- the recording of victims of THB is only sporadic, and the various (recording) systems are incompatible;
- the organisations involved are not sufficiently aware of the existing support that is available.

Recommendations:

- in a broad sense, priority and attention for identifying victims of THB;
- training and additional education of duty lawyers as regards identification of THB, and knowledge of the B-9 regulation;
- concentrate the expertise by bringing female foreign nationals together at a set location with expert staff, rather than having them mixed in with other detainees under the criminal law;⁵³
- voluntary repatriation, including support from IOM, has to be possible;
- institutions should have a duty to report on the presence of victims of THB, and on what has happened to them.

There have now been improvements in identifying victims of THB in aliens' detention, and more attention is being paid to this group. In 2006, the Ministry of Justice initiated several consultations with representatives from the police, IND, STV, IOM and BLinN, looking for

⁵¹ With the police, IND, the Judicial Institutions Policy Service, Legal Aid, outside organisations and a single THB victim.

⁵² The officials dealing with returns explain the procedures, provide information, make practical arrangements, act as conduits for the IND and the Aliens Police and try to persuade foreign nationals to return to their countries of origin.

⁵³ A very limited initial straw poll among penal institutions clearly showed that their populations were actually quite likely to include victims of THB, albeit not regularly.

solutions to bottlenecks in the area of identifying and supporting these (possible) victims.⁵⁴ BLinN had contacts with 43 victims (or possible victims) – 40 females and 3 males – in aliens' detention in 2006, of whom 14 officially reported the offence to the police and ended up on the B-9 regulation.

Quality of legal aid given to foreign nationals in aliens' detention facilities

Complaints about the quality of legal aid given to foreign nationals in aliens' detention led to the Legal Aid Boards setting up a national investigation into the subject.

Quality of legal aid given to foreign nationals in aliens' detention facilities, an investigation

The researchers Jacobs, Bruinsma and Van Haaf (2006), reported that by no means all of the foreign nationals appeared to have had a visit from a lawyer at the first stage. During the detention phase communication between the foreign national and the lawyer is generally in writing; it seems that providers of legal aid seldom visit detention facilities. It is not at all unusual for there to be no lawyer present at hearings, certainly if there are continued pleas. Those who actually do attend are not always expert. Estimates from the Aliens Courts indicate that the number of 'poor performers' ranges between 0-25%, with a core at around 10%-20%. The group of outstanding lawyers (with sound knowledge of relevant and recent case law) is about the same size. While the research was not dealing with victims of THB, these were among the foreign nationals in aliens' detention, and the recommendations also apply to legal aid for them. The researchers recommend that the Legal Aid Board should take a more proactive and stricter stance on these points. The remuneration of legal aid providers should depend on their appearance at the hearing and their visits to the client, and they should undertake follow-up courses on the law relating to aliens' detention every so often. In light of the possibility of encountering victims of THB, this should also include training and instruction in the areas of identifying THB and knowledge of the B-9 regulation (see the above-mentioned recommendations from BLinN). The researchers concluded with a recommendation to introduce consultation facilities for foreign nationals in aliens' detention.

Proposed measures

- with effect from 2007, the Boards will be imposing higher and uniform expertise requirements to lawyers, for example as regards periodical follow-up courses;
- the question of whether it is possible to develop internal monitoring and intra-professional testing will be looked into;
- work will be undertaken on consultation facilities and a complaints scheme;
- the Boards will investigate how to introduce better incentives into the payment structure for appearances at the first plea hearing.

Legal Aid for victims of THB

Social workers and lawyers have an important part to play in providing legal assistance for (possible) victims of THB, irrespective of the sector in which the exploitation took place. They must be in a position to explain to the possible victims their rights and possibilities and

⁵⁴ Thus arrangements were made to train the Return Organisation [*Terugkeerorganisatie*], the division of the Ministry of Justice responsible for immigrants in aliens' detention.

to ensure that those individuals who are eligible actually end up on the B-9 path and can make use of the associated facilities.

During 2005 and 2006, the STV was active in training care coordinators and staff in reception centres on the B-9 regulation and on the legal process applicable to victims. Information on the B-9 can be found on the STV website⁵⁵ and on a site specific to the B-9 regulation.⁵⁶ The regional support networks use the Victim Support Bureau [*Bureau Slachtofferhulp*] or specialist lawyers to provide legal support for (foreign) victims. This works well, but there are not many specialist lawyers, and one of the problems is that they are generally under considerable time pressure. Attempts are being made to circumvent this in Utrecht, Amsterdam, The Hague and occasionally elsewhere by working (in collaboration with BLinN) with voluntary legal support.

The post-graduate legal studies Institute OSR arranged courses on legal assistance for victims of THB in 2005, 2006 and 2007. The care coordinators were made aware of which lawyers in their region had taken the course (STV Annual Report, 2005; STV Working Plan, 2006).

Compensation possibilities for victims

There are various ways in which victims of THB can obtain compensation. This may involve tangible losses – for example property, medical costs or loss of income – and intangible losses, for example damages for pain and suffering.

– *victims can join a claim for civil damages, as adversely affected parties, in the criminal procedure*

The victim's civil claim is then dealt with at the same time as the criminal case. The benefit of this, as opposed to proceedings before the civil court, is that it is easier to submit the claim.

Procedure to join the criminal proceedings as an adversely affected party

A summons must have been issued to a suspect before a motion for joinder of a party can be submitted in the proceedings. The public prosecutor then asks the court, during the criminal proceedings, to decide on the award of compensation. The victim does not therefore need to initiate any separate proceedings, and there are no costs for the victim in relation to this joinder procedure. The claim, which is based on civil law, can be lodged by anyone who has directly sustained loss as a result of a criminal offence. When awarding compensation, the court must bear in mind whatever facts have been found proven in the case.

In order to join the criminal proceedings, the victim must provide details, on a 'motion for joinder of parties' form, concerning the loss that has been sustained and – with some substantiation – the amount that is involved.⁵⁸ The victim has to establish the likelihood of loss rather than prove it. The victim does not need to turn up at the hearing, although this can be

⁵⁵ www.fo-stvkennisnet.nl.

⁵⁶ www.B9-regeling.nl.

⁵⁷ The other conditions are: the victim has sustained loss as a result of a criminal offence; the loss or part of it has not been compensated in any other way; and the suspect must be summoned for the offence from which the loss arose. The loss need not be specified in the criminal charge.

⁵⁸ The victim can also submit his or her claim verbally at the hearing, right up until the prosecutor holds his or her closing speech.

desirable, for example to provide an explanation if the claim is unclear. If the suspect is acquitted then the claim is rejected. The claim will also be rejected if it is clearly unfounded. If the claim is 'apparently not straightforward', then the claim may be declared inadmissible, with a rider that the victim can lodge the claim with the civil courts. The criminal court can also award part of the claim and declare the balance to be inadmissible. If either the accused or the public prosecutor submits an appeal, then, by law, the addition of the disadvantaged party continues through the appeal. If the suspect is convicted but the claim is rejected, then the disadvantaged party cannot subsequently resort to the civil courts with the same claim. An independent appeal against rejection of the claim is, however, possible.

If the criminal court has awarded part or all of the disadvantaged party's claim, then that party acquires a title for execution once the options for appealing the judgment have been exhausted. The disadvantaged party can approach the convicted party directly for payment. Forcible execution occurs in the same way as for judgments from the civil courts: the creditor passes the judgment to a bailiff who serves the judgment on the convicted party and issues a demand for payment. If payment is not made, then the bailiff can impose an attachment on property belonging to the convicted party, which is then liquidated. The execution of the judgment requires no personal contact between the victim and perpetrator. The bailiff's costs can be recovered from the perpetrator.

– *the compensation order*

In addition to awarding the civil claim, the court can (also) impose an order for compensation.⁵⁹ The victim can ask for such a sanction, but it can also be imposed *ex proprio motu*. The most important distinction between this and a claim as a disadvantaged party is that collecting the claim is taken out of the victim's hands and passed to the Central Judicial Collection Agency. As with a civil claim, the amount involved must be established as a loss in terms of civil law. When imposing a sanction of compensation, the court specifies an alternative period of detention in the event that the claim is not paid and recovered in full, which puts extra pressure on the convicted party to pay up. The convicted party is not, however, relieved of his obligation to pay the victim just because he sits out the alternative period of detention. These are the reasons why victims may prefer compensation sanctions. In fact, usually when a civil claim is awarded, an order for restitution is imposed for the same amount of loss, even if it is not asked for by the disadvantaged party and is not demanded by the public prosecutor.

– *when passing a suspended sentence, a court can impose a special condition to the effect that the accused should pay a specific amount to the victim*

Not much use has been made of this facility since the compensation sanction was introduced. There is no need for the victim to have joined the criminal proceedings as a disadvantaged party before any such special condition can be imposed.

When passing sentence, the court can impose a special condition of payment of a sum to the Violent Offences Compensation Fund [*Schadefonds Geweldsmisdrijven*] or some other insti-

⁵⁹ The procedure of joining a claim is a civil procedure embedded in the criminal proceedings, while the compensation order is a sanction.

tution protecting the interests of victims of criminal offences. This condition is primarily of interest if there is no demonstrable victim, or if a victim does not wish to obtain compensation.

– *victims can obtain a benefit payment from the Violent Offences Compensation Fund*

The Fund can pay out benefits to anyone who has sustained serious physical or mental injury as a result of an intentional violent offence committed in the Netherlands. This fund cannot reimburse losses resulting from lost income. In order to obtain a payment, it is necessary to lodge an application for a benefit payment with the Fund. The committee deciding on applications can call for further information and can also interview witnesses and experts. A claim can be awarded or rejected either in whole or in part. If it is rejected, then the disadvantaged party can lodge an appeal to the Court of Appeal in The Hague. The Compensation Fund has maximum benefit payment amounts, and can make supplementary payments. It makes no difference to the Compensation Fund whether the victim is a Dutch national. The offence must have been committed on Dutch territory, however. Very few foreign victims actually find their way to the Fund each year. The European Commission wants it to be possible for victims to submit a claim from their own EU country to the compensation fund in another country, if the losses were sustained in that other country. A Directive to this effect came into operation on 1 January 2006.⁶⁰ Most foreign victims of THB come from countries outside the EU, however.

– *loss mediation*

Loss mediators have been appointed within the police and all of the local public prosecutors' offices, who can try to organise a compensation arrangement between the victim and the suspect. In light of the nature of the offence, however, a scheme such as this does not appear to be entirely appropriate in the case of THB.

– *victims can resort to the civil courts*

A conviction in a criminal case provides important evidence at the civil court: the victim can exhibit the criminal conviction. If the conviction has not yet become irrevocable, or if it ended in acquittal or dismissal, it still does not prevent a claim for compensation being lodged with the civil court. The court may, nevertheless, decide to await the criminal verdict. One disadvantage is that this civil law route is complicated and can take longer. Victims of cross-border THB, in particular, may already have left for their countries of origin.

How is a victim made aware of the facilities for compensation?

When victims of THB encounter the police, then, in accordance with the *Framework Decision on the status of the victim in criminal proceedings* (OJ 2001, L 82/1⁶¹), the police must, amongst other matters, inform the victim of the opportunities for legal advice, compensation from the perpetrator or any government indemnity payment. The police usually refer victims to the Victim Support Bureau [*Bureau Slachtofferhulp*] for practical help, where victims can obtain assistance free of charge. Legal advice is

⁶⁰ Directive on compensation in connection with the victims of crime, 29 April 2004 (2004/80/EC), OJ 2004, L 261/15

⁶¹ EU Framework Decision on the status of the victim in criminal proceedings, 15 March 2001 (2001/220/JBZ), OJ 2001, L 82/1.

provided via the Legal Counters [*Juridische Loketten*] (the former Legal Aid Bureaus). The Victim Care Instruction [*Aanwijzing Slachtofferzorg*] prescribes that, when noting a report of a crime, the police should find out whether the victim has suffered any losses as a result of the offence, and if so what these losses are. The victim's report is noted in an appendix to the official report.

The integral approach to THB by the chain partners

Many parties are involved in combating THB. Cooperation is increasingly viewed as indispensable for dealing with the phenomenon effectively. This applies to repressive measures but also to victim support. This was what led the STV to initiate the regional assistance networks.^{NRM1/NRM3} These (15) networks are supervised by a care coordinator or by the STV, and operate with collaborative agreements. These are protocols spelling out the purpose of the network and the contributions made by the various parties, and they are also signed by the different partners. Inspired by positive experiences in the context of juvenile prostitution policy, the STV has started a project for a 'chain partners approach to THB'. The aim is to make cooperation more formal, more transparent and more focused on results.

STV invited municipalities and the networks to make the necessary quality improvements themselves and for this purpose provided a helping hand in the form of a report entitled 'Chain partners approach to Trafficking in Human Beings' [*Ketenaanpak tegen mensenhandel*]. The report is based on the results of national meetings with support staff, care coordinators and chain partners, during which bottlenecks and solutions were explored, and also on a pilot study which took place in Amsterdam.

Chain partners approach to Trafficking in Human Beings

The STV report contains practical points for attention, such as:

- the importance of a shared perception on bottlenecks, and how this can be achieved;
- the different target groups the partners may have in mind. It is important to be clear about what the target group is and what aims are being sought;
- the different methods for making collaborative agreements within a chain of cooperating partner organisations;
- a summary of points for attention in the context of proper assistance for victims, including simple explanations, satisfactory signalling, a single coordinator for each victim, a single client file, one physical 'office window' for clients and chain partners, and an adequate number of reception places;
- the importance of satisfactory allocation of tasks, and a clear understanding of how everyone contributes added value.

(Source: STV, 2006).

Reception facilities

In its 2005 Annual Report, STV stated that it would always succeed in finding a place for a victim in a shelter within 24 hours, albeit sometimes with difficulty. The problems were principally the conditions and limitations imposed by the shelter or accommodation centre, and also the preference of the police for finding a place not too far from the police district in question. STV experienced an increase in the number of requests for shelter in the first half of 2006, however, and it became more difficult to find suitable accommodation in such shel-

ters. In practice, when they are looking for accommodation, victims often have to tell their story over the phone, sometimes several times; a practice that is in fact also normal in relation to sheltering victims of domestic violence, for example.

The B-9 regulation, including the right to housing and assistance, also now applies to victims of exploitation in sectors other than the sex industry. There is not much experience yet with this, and there are few places available for male victims.

Reception and safety

Victims of THB form an awkward target group.⁶² At the shelter facilities there is often, for instance, a fear of the criminal networks behind the victims.^{NRM3} With respect to sheltering women, a research into safety risks and possibilities for safe houses for seriously threatened women revealed that woman involved in prostitution and THB are considered to be among those most seriously threatened. When these women are taken into shelter, it is crucially important to assess the safety risks to themselves, any children they may have and also the shelter workers. Lünemann et al. (2006) observed that this is not easy, and that there is no suitable form of shelter in existence for women who need not only safety but also a lot of assistance.

The newest facilities for women's shelter are the safe houses.⁶³ They are only available on a temporary basis, however, and only for a very limited group of women, namely those with a certain degree of independence who can cope with an isolated existence.

In fact, safety is an important topic in connection with shelter for women in general,⁶⁴ as well as in connection with shelter for male victims, whose numbers are growing,⁶⁵ and for whom there is no secure shelter available (STV Annual Report 2005).

Category-based or integral shelter?

BNRM recommended obtaining an analysis from the shelter centres of the advantages and disadvantages of category-based as opposed to integral shelter for victims of THB, and for them to make a proposal on this matter.^{NRM3} Opinions are divided on the question of whether specific expertise is necessary to work with this target group. There is ongoing consultation between the Ministry of Justice, the Ministry of Public Health, Welfare & Sport

⁶² As examples of bottlenecks in helping victims of THB, Knaapen (2006) mentions language obstacles, cultural differences, absence of any future prospects and a lack of confidence in those providing assistance. Victims disappear from shelter quite frequently, and then return to the traffickers. Knaapen points out that many victims of THB are seriously traumatised, requiring specialist care. See also Zimmerman et al. (2006) on this.

⁶³ These are addresses where women can stay if the police feel that they are in a life-threatening situation. The police offer protection via an alarm system and extra, strictly enforced measures are in place to ensure anonymity. Three women's shelter institutions in the Netherlands have been administering (since 2003 or 2004) – a total of eight houses with places for 11 women and their children. These had been occupied by about 42 women up to the summer of 2005; Lünemann et al (2006) do not state whether these included victims of THB, or how many.

⁶⁴ A research into supply and demand within women's shelter, for which 218 female clients were interviewed, including just 6 victims of THB, showed that 70% of the women wanted help with their safety and 88% obtained assistance in this area (Wolf et al., 2006).

⁶⁵ 22 male victims of THB were reported to the STV in 2006 (STV Nieuws, 1, 2007).

and other chain partners concerning shelter for victims of THB. One of the options being discussed is a (category-based) reception path before the actual B-9 regulation. This would make it possible to establish the type of care and support required by the victim, and also which type of reception⁶⁶ he or she needs, and it would also be possible to work on 'cutting the victim loose' from the exploiter, where necessary.

The Safety File and continued residence

Even after the most recent amendment to the B-9 regulation, there are still foreign national victims of THB who do not obtain a permit for continued residence based on the results of the criminal proceedings (see Chapter 2), but who do not want to go back to their countries of origin. After the B-9 regulation expires, they can submit an application for continued residence on humanitarian grounds. The IND assesses the application, taking account of the risk of reprisals and opportunities for reintegration. It is not easy to substantiate this type of application, because in practice the burden of proof is largely imposed on the victim. The various institutions (often many of them) that the victim will have been involved with during his or her stay in the Netherlands may have all sorts of relevant information in this context. The victim and his or her lawyer must be able to get hold of this information for the application for continued residence. In 2005, the STV and a range of cooperating partners developed a *Checklist for Continued Residence in Human Trafficking Cases*.

Points for attention in the Checklist for Continued Residence

The *Checklist for Continued Residence* contains items on:

- the criminal procedure (covering reporting a criminal offence, investigation, prosecution and sentencing of the accused(s), financial compensation and missing passports);
- health care and medical treatment (for injuries etc);
- reception and assistance;
- safety measures;
- the position of any children;
- the situation in the country of origin.

The Monitor Trafficking in Human Beings on the position of victims

It continues to be difficult to obtain a clear picture of the position of victims of THB. A victim monitor has been developed on the instructions of the WODC in order to enable a periodical assessment of the position of victims of exploitation in the sex industry in the Netherlands. The monitor is measuring the position of victims from 7 angles, namely: 1. identifying them; 2. access to and use of the B-9 regulation; 3. legal aid/criminal proceedings; 4. reception/accommodation; 5. healthcare; 6. income, employment and education; and 7. repatriation and continued residence. The monitor consists of a total of 33 indicators.

⁶⁶ Temporary category-based shelter might also be able to prevent stagnation in reception throughput (Knaapen, 2006).

Three sources of information are being used to collect information, namely existing record systems, questionnaires addressed to key figures and victims, and an analysis of case law (Van Vianen et al., 2006). The collection of data was ongoing at the time when this report was being written.

3.3.2 Specific assistance bodies and initiatives

BLinN

BLinN has set up or continued a range of projects for victims of THB in the recent past.

- ‘Buddy’ projects have been set up in various cities and towns. These are aimed at friendly contact between a volunteer and a victim of THB. BLinN can also mediate for individual women elsewhere than in these cities, or set up this type of project in a new area. A national information and cultural festival is organised each year for the women and their buddies.
- BLinN assists support groups for victims of THB. The aim is to create a safe environment (with professional psycho-social support) where people who share similar experiences can discuss relevant topics. The groups focus on empowerment of the participants. Individual support is provided in specific cases.
- Training courses are also developed in the area of social and communicative skills, as well as outdoor training courses designed to apply the experience gained in the support groups in a different environment.
- BLinN also has an emergency fund, whereby victims of human trafficking can, in specific cases and subject to certain conditions, apply for support in the form of a loan or a gift. In 2006 a total of 75 clients received financial support, with almost three quarters of these receiving help in the form of a loan. Only 36% of them paid the loan back, which gave BLinN reason to redefine its policy on allocating such loans.
- BLinN is also actively involved in (improving) the provision of information to victims, partly by developing bilingual folders, and in organising thematic courses on subjects such as rights in the Netherlands, bringing up families, budgeting, sexuality, Dutch culture and society, health and repatriation.
- BLinN can act as a mediator for finding courses, education or (voluntary) work.
- BLinN, along with IOM, La Strada, STV and SRTV, is a member of the *Repatriation & Re-integration Covenant* (see later in this Chapter).
- BLinN is actively involved with (female) victims of THB in aliens’ detention (see 3.3.1).

BLinN supported a total of 172 victims in 2005 and 223 in 2006. The figures for 2005 included 1 man and those for 2006 included 9 men.

The International Organisation for Migration (IOM)

Under the *REAN programme*⁶⁷ IOM offers support to victims of THB who want to return to their country of origin. The programme applies to individuals who are not nationals of EU countries. An exception is made, however, for victims of THB, so that even victims from the countries that joined the EU on 1 May 2004 can benefit from the programme.⁶⁸ The support may consist of a flight ticket and a subsistence allowance. IOM can also offer individual mediation, depending on the actual demand for assistance and the provisions in the country of origin, for example for temporary reception and assistance towards reintegration in the country of origin.^{NRM3}

Within the framework of the *Randstad Return Initiative II* (RRI II), IOM has appointed native counsellors in the four major cities in the Netherlands to assist with the voluntary repatriation of undocumented migrants and asylum seekers who have exhausted all available legal remedies. Organisations who assist the client during his or her repatriation project can obtain a contribution towards their costs for doing so (Infosheet RRI II, IOM).

IOM has been implementing the *Assisted Voluntary Return and Reintegration Programme for Irregular Vulnerable Nigerian Nationals in Ireland and The Netherlands* since 1 September 2006. The aim of this *Nigeria Project for Return of Vulnerable Migrants* is to facilitate the voluntary return and reintegration of vulnerable Nigerians (such as unaccompanied underage asylum seekers, or former ones, people with medical problems, single parents and victims of THB) from the Netherlands and Ireland. It is possible to offer customised advice in the context of this project for social reintegration and economic independence. Another key point is the setting up of a permanent structure to keep track of the individuals who have returned (through local non-governmental organisations in Ireland, the Netherlands and Nigeria) and also capacity building within the Nigerian NGOs.

La Strada International

More than a hundred people work in the nine current La Strada partner countries.⁶⁹ The Annual Report 2005⁷⁰ contains detailed information on the activities of La Strada, which are embedded in three campaigns under the umbrella heading of 'Prevention of trafficking in human beings in Central and Eastern Europe'; these are Information & Lobby, Prevention and Education and Social Assistance ('safe return and social inclusion'). The figures shown in the Annual Report give some idea of the considerable impact made by La Strada.

Repatriation and Reintegration Covenant

IOM, BLinN, SRTV^{NRM3}, La Strada and the STV have made arrangements, set out in a Covenant, to optimise assistance for victims of THB who are returning to their countries of origin. The partners in the Covenant consult regularly on help and support for returning

⁶⁷ REAN stands for Return and Emigration of Aliens from the Netherlands.

⁶⁸ It may be assumed that the same applies to victims from countries that joined at a later date.

⁶⁹ These are Poland, the Czech Republic, Ukraine, Bulgaria, Belarus, Bosnia-Herzegovina, Moldova, Macedonia and the Netherlands, where the head office of La Strada International is based.

⁷⁰ See www.lastradainternational.org.

people to their countries of origin. This can involve consideration of matters such as reception, accommodation, education, social services and finding employment.

The partners in the Covenant also apply themselves to the opportunities for supplying the information needed for the Safety File.

The Integral Chain Partners Approach to Prostitution and Trafficking in Human Beings in Amsterdam

In order to improve information, advice and assistance for prostitutes, and to redress the shortage of care, reception and support facilities for victims of THB,⁷¹ as well as improve co-operation in these areas, all of the relevant chain partners in Amsterdam are working on the introduction of an integral, chain partners approach to prostitution and THB. A system-oriented approach has been chosen, along with an outreaching working method. As far as prostitutes are concerned, the central issue is strengthening their position (empowerment), whereas with victims of THB the key point is protection (against coercion and exploitation). The elements within this approach are:

- a *Prostitution Help, Advice and Health Centre*; and
- a *THB Coordination Point*.

The chain partners in Amsterdam are also working on a licensing system for escorts, new policy in relation to prostitution involving young men, prevention of the loverboy problem, reception and support for addicted prostitutes and an approach focusing on perpetrators.

Rotterdam, where there is already experience with a chain partners approach to juvenile prostitution and the loverboy problem, is working on an approach along similar lines.

The Scarlet Cord [Het Scharlaken Koord]

The *Scarlet Cord*^{NRM3} (SK) is one of the participants in the integral system-based approach to prostitution and THB, as mentioned above, in Amsterdam. SK works on the streets with prostitutes, and this involves prevention, information and social assistance. One of the assistance activities is the Exit programme [*Uitstapprogramma*], for women who want to stop prostitution work. They are offered:

- an individual phased plan, dealing at the very least with their financial situation, housing, education or re-education and employment;
- psycho-social help, aimed at dealing with any (sexual) traumas, building up a social network and how to deal with their feelings and a different lifestyle;
- a case manager as a point of contact.

The Exit programme focuses in particular on window prostitutes, who are visited by SK during its work on the streets (and some of whom are victims of THB). Some elements in this approach can also be used with women who have not yet done any work behind a window, but who are, for example, already involved in the loverboy circuit.

⁷¹ The focus is initially on victims of exploitation in the sex industry, but in the longer term the approach and collaborative effort will be extended to all victims of THB.

Unaccompanied underage asylum seekers (AMAs) and former ones; the Utrecht approach and SAMAH

Earlier in this Chapter, we referred to the approach taken with former AMAs in Utrecht. The reception project run by the *Stichting Vluchtelingenwerk* in Utrecht – in a relaxed setting with computers, an Internet café and information on countries of origin – offers assistance to former AMAs when they are deciding about their future. The project workers have helped 350 AMAs and their 75 children since 2003. They endeavour to offer legal assistance, provide practical help (for instance with finding sports clubs), provide group information, organise country-specific evenings and try to help former AMAs to find out more about their countries of origin. The subject of repatriation will often arise spontaneously once a relationship of trust has been built up. Some of these former AMAs will still get a residence permit and some will return to their countries of origin. One benefit of the project is that contact is maintained with the former AMAs, rather than letting them disappear into the realms of illegal residence. The effort is towards engendering *pull* factors from the countries of origin rather than persuading the former AMAs to repatriate by using a policy of pushing them into that decision (Oepkes et al., 2004). This approach is very popular, and is being followed up in many municipalities.

3.4 Dealing with juvenile prostitution and the loverboy problem

Juvenile prostitution is not the same as THB, but developments in this area are certainly relevant in the context of this report. After all, if someone introduces a minor to prostitution, this certainly constitutes THB, even if no coercion is involved. The involvement of a pimp or trafficker in human beings is not always immediately obvious, and juvenile prostitution is a phenomenon that has to be combated in itself, deserving attention from both the police and the social services.⁷²

When pimps use seduction techniques to draw girls into prostitution, they are what we describe as loverboys using loverboy techniques (see NRM₃ for an extensive description of this operating method). But they are pimps nonetheless and, if they use coercion as part of their technique – or draw minors into prostitution – they are also human traffickers. As confirmed by Bovenkerk et al. (2006), there is actually no difference between the today's loverboy and yesterday's pimp. Pimps have always used seduction techniques to get women into prostitution, and the same methods are applied in cross-border THB.^{NRM₃} The loverboys of today are, however, probably more mobile (Bovenkerk et al. 2006).

⁷² Research by the Rutgers Nisso Groep/SOA Aids Nederland into sex before the age of 25 showed that 18% of the girls and 4% of the boys had been forced into sex at least once, and that 2% of the boys and 1% of the girls had at some point received money or some other reward for sex (De Graaff et al., 2005).

3.4.1 Local initiatives

The *Association of Dutch Municipalities* (VNG) took stock of the loverboy problem in Dutch municipalities in 2004. The problem appeared to be present in 14 of the 25 municipalities who returned the questionnaire,⁷³ and some of the municipalities had taken considerable strides towards developing an approach to the issue. Many of the municipalities indicated that they wanted information on the approach taken by other municipalities. The VNG collated this information into a *Loverboys Information Directory*.⁷⁴

Various municipal authorities now have juvenile prostitution projects and plans of approach to address the loverboy problem. Generally speaking these sorts of projects combine a reporting centre for loverboy problems with arrangements for an integrated and systematic approach, with the aim of preventing minors from being drawn into prostitution (e.g. as loverboy victims), preventing boys from becoming loverboys, providing adequate reception and assistance for victims and investigating and prosecuting suspects. In addition to local authorities, the participating organisations usually include Juvenile Care Bureaus, the police, the public prosecution service, the Child Protection Agency and local projects, including those for sheltering victims. The approach in Zwolle is described in detail here as an example.

The loverboy project in Zwolle

There has been a Loverboy Project in Zwolle since 2000.^{NRM3} It has five aims and was evaluated in 2005. Here are the aims (*in italics*), the working methods and some of the evaluation results (Kool, 2005):

- *preventing girls from falling victim to loverboys*

The preventative activities consisted of passing on information, resilience training and providing information at school, using a theatrical production and through development of a game. Awareness of the loverboy issue has now increased substantially in Zwolle.⁷⁵

- *preventing boys from becoming loverboys*

This involved the use of street workers who concentrated on meeting places, made contacts with the target group, took stock of the problems and encouraged boys towards courses or facilities in the fields of education, income, accommodation, care and/or leisure time.⁷⁶ It turned out to be easiest to forge contacts with young adult men and with women than with the target group of 14- to 17-year-old youths. An attempt was made to contact this latter group via those who were over 18 and via the women.

- *getting victims out of the circuit*

There is a *Loverboys Reporting Centre* where victims and their friends can go on a 24-hour basis. A *Working Group for Assisting Victims of Loverboys* meets every four weeks to discuss reports. About half of the reports come in via the Reporting Centre. This is where the assistance is allocated, and also where progress is monitored.⁷⁷ A total of 193 reports were received between 2003 and 2005 concern-

⁷³ 44 municipalities were approached.

⁷⁴ See www.vng.nl.

⁷⁵ 90% of girls between the ages of 12 and 15 know what a loverboy is, as do 97% of those between 16 and 24.

⁷⁶ The *On Track Again* working method.

⁷⁷ So as to be able to exchange information within the Working Group, a Covenant on Information Exchange

ing possible victims; 83 assistance projects were completed and 27 temporary reception places provided (Municipality of Zwolle website).

- *investigation of suspects*

In the period between 2003 and 2005, the police received 101 reports about men who might possibly be involved in loverboy activity. These resulted in 10 suspects in legal terms.

- *prosecution of suspects*

Between 2003 and 2005, 1 suspect died and 5 were convicted (Municipality of Zwolle website).

Some developments indicated since the start of the loverboy project:

- girls are increasingly being approached via chat rooms;
- girls undergoing special education and teenage mothers appear to be risk groups;
- the ethnic diversity of males at risk of becoming involved in loverboy activities seems to be greater than had originally been assumed;
- a distinction was observed between men who were at risk of sinking into crime because of a lack of prospects and men who want to earn a lot of money quickly. Prevention can only have an impact on the first group;
- there were increases in the number of notifications of potential victims and the percentage of notifications resulting in some assistance being offered. Greater awareness of the phenomenon probably means that fewer false notifications are received, with a corresponding increase in the effectiveness of reaching victims;
- loverboys now seem to be approaching the victims 'only' when they turn 17 (it used to be between 12 and 17), so that they run a lower risk and so that the social services have less time to deploy any sanctions (supervision orders or compulsory education).⁷⁸

(Source: Kool, 2005).

The evaluation results were satisfactory, but the problem still persists. For this reason, the project is to be continued.

Success factors include an administrator giving impetus to the project, a limited number of cooperating agencies, monitoring of activities and (as regards implementation) continuity, involvement, intrinsic motivation, collaboration and a focus on prevention. Despite these important local initiatives, there is still no national picture of the exact nature and scale of juvenile prostitution and the loverboy problem. The projects have different target groups and approaches, and there is no national feedback or record-keeping. Work is currently underway on a national register for juvenile prostitution.

3.4.2 National institutions, projects and initiatives

National register for juvenile prostitution

The STV is setting up a national register for juvenile prostitution. This involves firstly noting which organisations are involved with this phenomenon. These vary from local institutions whose primary aim is the prevention of juvenile prostitution or the loverboy problem, to national institutions with a different or wider remit, but who nonetheless encounter juvenile prostitution. The proposed national register is designed not only to provide a national pic-

regarding Loverboys was drafted and approved by the Dutch Data Protection Authority.

⁷⁸ The proposal to extend the scope of application of the Juvenile Care Act [*Wet op de Jeugdzorg*] to 21-year-olds will offer a little more elbowroom here, provided that the programme has been embarked upon before the victim turns 18.

ture of the problem but also to benefit working processes within the organisations concerned. It has been decided that the register will cover minors and young adults (up to the age of 24) who have ended up in prostitution, or run the risk of ending up in prostitution.⁷⁹ Client information will be recorded in relation to them along with information concerning the type of assistance or service provided.

ECPAT-Netherlands

ECPAT campaigns against the commercial sexual exploitation of children.^{NRM₃} ECPAT lobbies the government, political parties and social organisations for adequate primary and subordinate legislation aimed at preventing sexual exploitation of children and also at providing proper assistance to victims. It also addresses the business world, including Internet service providers and the travel industry, on their responsibilities to protect children against sexual exploitation. A Code of Conduct has been developed for the travel industry, in collaboration with other ECPAT departments. This offers the travel industry (tour operators, airlines, hotels, travel agencies, etc.) concrete pointers for counteracting prostitution by minors. ECPAT also undertakes research. The results of research into exploitation of minors (Van de Borne & Kloosterboer, 2005) were dealt with earlier in this Chapter when we described minors as a risk group. The *Law Enforcement Group* of ECPAT-Europe has developed a multidisciplinary training programme for professionals working with children who are victims of trafficking for sexual purposes and children who run an increased risk of becoming such victims. Earlier research by this Law Enforcement Group (O'Briain, 2004)^{NRM₃} showed that many professionals (police, social workers) had too little understanding of these children and paid too little attention to them. An attempt is being made to raise awareness among these professionals of the consequences of child trafficking for those children who are involved, and also to improve the protection of these children, using a training guide and a question and answer booklet (O'Briain et al., 2006a and b). The guide and the booklet contain a wealth of guidelines on how to deal with victims who are minors. Here is a selection of them.

Guidelines for dealing with victims who are minors, a selection

- act in the interests of the minor, and act as if you are dealing with your own child;
- get a child to safety;
- avoid having to repeat interviews, note down the information;
- arrange for a risk assessment and a psychological assessment;
- do not pressurise them as witnesses;
- arrange for a guardian/case manager;
- carry out a needs assessment;
- give appropriate help, especially if there are special needs;
- arrange educational facilities as quickly as possible;
- accompany minors during medical examinations;

⁷⁹ The data set will allow distinctions between those who have actually ended up in prostitution and the risk group, and also between minors and young adults.

- only return them to their countries of origin if there is a suitable carer available there;
- take account of the minor's views as regards family reunification;
- make sure that family reunification is assisted by professionals protecting the child's interests;
- prepare any repatriation in advance and arrange for it to be in the company of a guardian or social worker.

For more on this, see O'Briain et al. (2006a and b).

Residential care

Minors who are victims of loverboys, and also girls who are at risk of ending up in prostitution and who are not susceptible to help or prevention, for instance because of devotion to their loverboy, are difficult to help if they are on the streets or in open accommodation. They will often walk out within a few days (Van Dijke et al., 2006). This is why, for their own protection, they are taken off the circuit by means of a child protection sanction and placed in a judicial juvenile institution. This is a placement under civil law in a closed (reception) institution. While it is important to detach these girls from the loverboys, locking them up does not sit easily with the child's interests, certainly if treatment is not offered, perhaps for some time. Occasionally victims come into contact with suspects of loverboy offences inside the judicial institutions, and parents who opt for closed placement risk a breach of trust with their children, according to the Amsterdam Sexual Violence Support Centre (2005). This is where it is important to look for alternatives.

One example is the 24-hour shelter at Asja,^{NRM3} part of Fryslân Women's Reception. This shelter facility operates on a voluntary basis. The support aims at building up a new future. The residents are assisted in making choices in areas such as school, employment, finances, relationships, going out and risky behaviour. Asja offers a structured daily programme focusing on coping, learning and developing. Asja tries to establish a dialogue with parents and the residents' social network, because restoring or improving relationships with them is crucial to successfully helping the residents. The transition to an independent existence involves a risk of falling back into the old familiar situation. The 'Learning House' – which is a stage between reception and an independent existence – is where residents gradually develop their own independence. They learn how to get a grip on their own situation and learn to be responsible in how they deal with freedoms and risks, primarily those to do with relationships, sexuality, alcohol, drugs and money.

Other National institutions, projects and initiatives

- The National Juvenile Prostitution Platform [*Landelijk Platform Jeugdprostitutie*] was established in 2003. The participants, who include local and regional organisations and also national institutions, exchange information a few times each year on recent developments in the area of juvenile prostitution and ongoing projects. The aim is to promote continued collaboration.
- In the first half of 2005, Transact set up the Juvenile Prostitution Information Centre [*Informatiepunt Jeugdprostitutie*], which operates as a national information resource. It also

sets up the meetings of the Juvenile Prostitution Platform and plays its part by collating good practices on how to deal with juvenile prostitution (2006 Working Plan: Transact, 2005). At the end of 2006, the Ministry of Justice and the Ministry of Public Health, Welfare and Sport gave the green light (and finance) for a three-year follow-up in the form of the Juvenile Prostitution Expertise Centre [*Expertisepunt Jeugdprostitutie*]. This has now been subsumed within the new ‘Movisie’ knowledge base.

- Information is also being provided through *School and Safety* about what schools can do as regards safety at school, covering matters such as loverboys in relation to the school environment.

3.5 Points of attention and bottlenecks

Asylum seekers

- AMAs still disappear for unknown destinations.
- The *Protocol on Missing AMAs* is complex and not sufficiently familiar to many of the co-operating partners. This means that it does not work.
- The termination of allowances for former AMAs has led in some cases to a marginal existence as an illegal resident with all of the associated risks, including becoming a victim of exploitation.
- There is no register for missing adult asylum seekers.

The position of victims

- Tensions sometimes arise in practice between the strong policy on immigration and the provisions established for (possible) victims of THB (such as the possibility to report the crime to the police, being informed about the B-9 regulation, being offered time for reflection).
- Progress has been recorded in the field of legal aid for victims of THB.
- While it is quite clear that the B-9 regulation should be offered if there is the slightest indication of THB, there is uncertainty surrounding this in practice, and it does not always happen.
- Contrary to the terms of the *Victim Care Instruction*, not every victim who has reported the crime of THB and who has indicated a desire to be kept informed of the progress of ‘his’ or ‘her’ criminal case is actually kept informed by the Public Prosecution Service.
- Identification of possible victims of THB has improved in aliens’ detention; attention paid to this group and opportunities for supporting them have increased, but this remains a matter for concern, including situations involving male (potential) victims.
- It is not easy to substantiate an application for continued residence, because in practice, the burden of proof is largely imposed on the victim. This problem no longer applies to some of the victims, since the most recent amendment to the B-9 regulation, but other victims may still encounter this problem.

Reception and assistance

- The identification of and support for juvenile prostitutes and victims of THB (and of loverboys) are now largely – and increasingly – dealt with under a system-oriented chain partners approach.
- Because of the increasing number of applications, it is difficult to find suitable accommodation for victims of THB, or to do so quickly.
- There are still very few places for male victims in shelter facilities, and none at all for them in safe houses. There is a question as to whether shelter facilities and social services are adequately geared to - and equipped for – assistance for male victims. Little is yet known about their needs. Nor is care coordination – often dealt with by coordinators working in the women's reception – yet universally available for this group.
- Various Dutch municipalities have developed projects for addressing juvenile prostitution and the loverboy problem. Many of these projects cover how to deal with perpetrators (preventively and repressively). This does not seem to be easy, and is still in its infancy.

Registration system

- The STV victim registration system is missing a lot of information it could include. It is regrettable that this potentially very valuable source of information on victims of THB is not providing adequate results as regards anything more than basic background information, such as nationality, age, gender and the type of person making the notification.

Administrative Enforcement in the Prostitution Sector

4.1 Introduction

The general ban on brothels was lifted and the commercial operation of prostitution was legalised in 2000 (see NRM3). Municipalities obtained the power to regulate the prostitution sector via a licensing system.

More than five years after the ban on brothels was lifted, a decision was taken to evaluate the situation for a second time. In this context, a tripartite research was launched into municipal policy, the nature and scale of illegal prostitution, and the social position of prostitutes. The results were published in 2007. A new *Police Force Monitor* on trafficking in human beings (THB) was published in the same year. These publications, which cast more light on the state of affairs in relation to (law enforcement in) the sex industry, were not yet available at the time when this Report was written, though. This Chapter will briefly – and only insofar as relevant to the fight against THB – outline some significant developments in the sex industry and administrative enforcement in the sex industry.

4.2 Developments in the sex industry

Fewer licensed sex businesses

The number of licensed sex businesses is decreasing. The number of clients is also diminishing (Altink & Bokelman, 2006).

New forms of prostitution

In recent years, sexual services have also been on offer (clandestinely) outside the traditional sex establishments, for example in Turkish coffee houses, (Chinese and Thai) massage salons, (gay) saunas, couples' clubs, (Chinese) hairdressers, nail studios and tanning studios. A 'hustler' circuit has also come into existence, where clients are actively approached by middle-men or the prostitutes themselves, for example in hotels, night clubs and so on. Sexual services are also offered for payment via the Internet. Internet prostitution appears to be on the increase (Goderie et al., 2002), although there is no real view on the total scale of that market (KLPD, 2005). There are, however, signs that escorts and escort services are using the Internet for advertising purposes and to mediate between client and prostitute, and that in some cases dating sites are used as fronts for prostitution (De Blank in KLPD, 2005). It also seems that many young male prostitutes work via the Internet (Altink & Bokelman, 2006), and that clients are also resorting to webcam sex.

Sex businesses along the lines of the German ‘FKK model’ have been set up in some police districts. These are ‘houses of recreation’ with a range of facilities (swimming pool, sauna, restaurant) and prostitutes wandering around, with whom clients can make their own arrangements. The clients pay an entrance fee and negotiate separately with the prostitutes, who can come and go as they please. Prostitutes working on this basis in such establishments meet the criteria for self-employment, a factor which makes this particular type of operation attractive to sex entrepreneurs, who generally do not want to take prostitutes on as salaried employees (see §2.2.3). The police also finds that German operators are now recruiting clients in the Netherlands more often than was previously the case.

Thai massage salons

De Rode Draad confirms a remarkable increase in the number of Thai massage salons in the Netherlands (Altink & Bokelman, 2006). They visited 27 salons in the context of their field work. Knotter (2003) carried out ethnographic research into Thai massage salons and visited seven of them. Both studies share a number of observations: not all Thai massage salons offer sex; the sex that is on offer varies (from a hand job after a massage to regular sex); the atmosphere varies accordingly (from Thai hospitality with clients hanging around and joining in for meals, to commercial and business-like); some salons (including those offering sex) are licensed; the masseuses enter into marriages of convenience to be able to work legally in the Netherlands, speak little Dutch and seem poorly integrated into Dutch society. Both studies report Thai massage salons refusing access to the researchers, not wanting to cooperate in any way and showing this in quite a blunt manner. It is unclear how often this happened. It seems likely that at these salons abuse may have been going on, but this could not be confirmed in any way. Both *De Rode Draad* and Knotter asked about and were on the lookout for signs of abuse at the salons they visited. *De Rode Draad* reports the imposition of debts, deception during recruitment and dependency on the operators. Knotter indicates the activity of criminal organisations bringing women to the Netherlands and putting them to work in prostitution: ‘It was often difficult to discuss this subject and it only came to light once we had gained their full trust. This was not just because the masseuses had experienced terrible things (forced prostitution, exploitation, violence and intimidation) but also because the organisations are very powerful and dangerous.’

The illegal sex industry

A proportion of the sex businesses mentioned earlier are unlicensed or illegal. An unlicensed sex business can only be qualified as illegal if it is required to have a licence in the municipality where it is based.

The unlicensed and illegal circuit is associated with THB. The fact is that no administrative checks are made there, which makes it a suitable refuge for human traffickers. *De Rode Draad* visited 370 licensed and unlicensed sex businesses across the Netherlands and discovered abuses such as extremely long working hours, living at the workplace, dependence on the operator and poor payment (Altink & Bokelman, 2006). These abuses may indicate THB.

Escorts

Escort businesses based in municipalities where there is no licensing requirement for escorts can actually operate without restriction in every municipality in the Netherlands.

Streetwalkers' zones and street prostitution

Streetwalkers' zones were closed in a number of municipalities – Rotterdam, The Hague and Amsterdam – partly because the municipalities were increasingly coming under fire for facilitating THB there. The closures in Rotterdam and The Hague were accompanied by reception facilities and an offer of assistance for Dutch (addicted) prostitutes. Streetwalkers' zones were maintained or even opened in other municipalities. The proponents of streetwalkers' zones point out that the social services and police can keep an eye on a group of prostitutes there, who would otherwise disappear from view. It is not clear whether the prostitutes who used to work in the streetwalkers' zones that have been closed are still working, and if so where (Korf et al., 2005). In some municipalities, not only the prostitutes but also their pimps and clients are addressed in terms of the General Municipal Ordinance prohibiting street prostitution [*Algemene Plaatselijke Verordening (APV)*].

Accession of new EU member states

Romania and Bulgaria joined the EU on 1 January 2007. When other countries in Central and Eastern Europe joined the EU in 2004, there was speculation that the number of prostitutes and/or victims of THB from these countries would increase. No such increase has been established, probably for two reasons. First of all, the accession was preceded by abolition of the visa requirement, so that residents of the acceding countries could already come to the Netherlands and stay there (for three months) without visas. Secondly, restrictions on the free movement of labour from those countries were imposed when they joined the EU, making it difficult to work in the prostitution sector.¹ There was in fact little change for prostitutes from these countries when they joined the EU. Since Bulgaria and Romania are in a similar position, an increase of prostitutes from these countries, upon their accession to the EU, is not anticipated either. Furthermore, all indications point to the fact that prostitutes from these countries who want to – or have to – work in the Netherlands are already here.

Nor is the termination of the temporary restrictions on the free movement of workers from the new EU member states expected to have an impact on the number of prostitutes from these countries. Operators of sex establishments do not take on any salaried employees, but rather look for structures in terms of which the prostitutes are self-employed (see §2.2.3); and residents of the new member states are already allowed to work on a self-employed basis in the Netherlands.

¹ No employment permits for the prostitution sector are issued in the Netherlands. Independent self-employment from the new member states is permitted, but subject to certain rules. See also Chapter 2.

4.3 Administrative enforcement

Since the general ban on brothels was lifted, the municipalities are to pursue a local policy on prostitution, based on a licensing system for the operation of sex businesses. This section discusses how enforcement takes place, primarily as it relates to the rules on THB.

4.3.1 Preventive enforcement

Preventive enforcement is aimed at preventing offences and abuses. In the regulation of the prostitution industry, preventive enforcement is primarily undertaken through the issue of licences. This job is done by the municipalities.

The General Municipal Ordinance (APV)

Municipalities can set out rules in the APV on the establishment, set-up and operation of sex establishments within their area limits. As far as we are aware, all municipalities that have adopted a prostitution policy use the APV to impose, as a condition of granting a licence, a prohibition against putting minor or undocumented prostitutes or victims of THB to work. These municipalities have made different choices as to which forms of prostitution are covered by the licensing system. As far as we are aware, virtually all of the municipalities have included brothels and window prostitution in the licensing system. This does not apply in relation to escort services, home workers or street prostitution.

The 'BIBOB' Act [Public Administration Probity Screening Act]

The BIBOB Act² can play an important part in the granting of licences to operators or aspiring operators in the prostitution sector. This Act allows for a licence not to be issued or not to be extended if there is a serious risk that it is likely also to be used for the commission of criminal offences or the enjoyment of the proceeds of such offences.

In 2005, 11% of the requests for advice to the BIBOB Bureau related to operating licences for sex businesses.³

A public prosecutor who has information indicating that a party involved is connected with an offence can point out to an administrative body the desirability of asking for a BIBOB advice. Pilots were undertaken between the end of 2004 and the start of 2006 in three regions, in order to gain experience in this area. These resulted in twelve tip-offs from the Public Prosecution Service (PPS) to various municipalities and five requests by municipalities for advice from the BIBOB Bureau.

When this Chapter was being written, an evaluation of the BIBOB Act was about to be completed. One question the evaluation looks at is whether the implementation of the Act

² Act of 18 October 2001, *Parliamentary Papers II*, 2001.02, 26 883, no. 73, which entered into force on 1 June 2003.

³ This means that advice on this subject was requested in 9 cases. Provisional information from the BIBOB Bureau of 2 April 2007 showed that 24 requests for advice were submitted in 2006 in connection with licences for sex businesses.

has led to any shift of crime towards the unlicensed sector (in terms of the sex industry) or to different municipalities.

The municipality of Amsterdam was the first administrative body in the Netherlands to try and formulate an administrative approach to organised crime on the larger scale, under the ‘Van Traa’ project (Huisman et al., 2005). This project involved the collection and analysis of relevant information (also from partners such as the police, the PPS and the Tax Administration) and on the basis of this information the adoption of administrative measures in the prostitution sector. The evaluation (Huisman et al., 2005) shows that it is impossible to compel cooperation from the partners, and that informational housekeeping on the part of city district authorities and municipal services is inadequate. The researchers also indicate that there seems to be some sort of mutual dependence between sex club owners and the municipality: the operators need the municipality to obtain licences, for example, but they also have a means of exerting pressure through their ownership of real estate.⁴ Nevertheless some results were achieved, such as the introduction of screening procedures for the issue of licences. The approach in Amsterdam is in line with the concept of ‘obstruction’⁵ introduced by the police and, according to the Minister of Justice, it offers important pointers for further development of an approach where criminal law enforcement coexists and cooperates with administrative enforcement.

Amsterdam is one of the cities with a high concentration of prostitution using the BIBOB Act for administrative enforcement in the sex industry. Having obtained advice from the BIBOB Bureau, the municipality of Amsterdam made known its intention in 2006 not to issue or extend 37 licences for the operation of sex businesses in the Red Light District.⁶ The parties concerned lodged formal objections and, at the time of writing this Report, the case is still before the courts. In the meantime, by a provisional relief the businesses are allowed to remain open.

⁴ They can threaten to ‘sell up’ everything, or rent it out to people they know the municipality would prefer to keep out of the area. Or perhaps the operator owns property which the municipality would like to use in a particular way. This sometimes led to a trade-off, for example with the municipality allowing a certain activity at site X in exchange for a concession from the other party at site Y.

⁵ This concept, introduced by the Investigation Project Group under the chairmanship of the Chief Constable of the Amsterdam Police, is based on the idea that a criminal law approach alone is not enough, and that barriers must be erected by every imaginable partner – for example central government, municipalities, the business community, and citizens – in order to prevent crime or put an early stop to it.

⁶ A press release from the municipality of Amsterdam dated 30 November 2006 mentioned 33 licences in the prostitution sector, 3 in the catering business and one building permit for a sex business. Two of the licences related to sex businesses in a different part of the city.

4.3.2 Supervision

In most Dutch municipalities, (administrative) checks on compliance with licence conditions for running a sex establishments are undertaken by the police.⁷ From the perspective of this ‘supervisory duty’, a distinction can be made in the sex industry between:⁸

1. licensed and site-specific sex businesses (e.g. licensed clubs, window prostitution and home workers);
2. licensed non site-specific sex businesses (e.g. licensed escort bureaus); and
3. unlicensed sex businesses that actually are required to have a licence (site-specific or not) (e.g. businesses where the commercial sex is clandestine (see §4.2)).

Supervision of the first category is relatively speaking the most straightforward and is also the most systematic. But the checks still leave something to be desired in some police districts. Sex establishments are not, for example, visited often enough. Abuses – including victims of THB – are still found in the licensed circuit.⁹

The supervision over the second category, or escort sector, needs further explanation. Initially there were no mechanisms available for supervising the escort sector, but these have now been developed. One example is the ‘hotel procedure’ where a police officer pretends to be a client and orders an escort, whereupon he will check whether the prostitute is of age, the legality of her residential status and whether she is working of her own free will. One disadvantage of the ‘hotel procedure’ is that it takes up a lot of capacity. A mechanism taking up less capacity is the so-called ‘fax bombardment’. Untraceable mobile numbers found in escort adverts are deluged with fax or text messages every 2 minutes. The message is to the effect that the recipient is operating an unlicensed escort business and must contact the municipality. The aim here is to make it impossible for the business to operate by ensuring that it can no longer be reached.

The ‘Plan of Approach, Regulation and Protection in the Prostitution Sector’ [*Plan van Aanpak, Ordening en Bescherming Prostitutiesector*]¹⁰ proposes measures for improving administrative enforcement in the prostitution sector in general, and the escort sector in particular. One of these measures is a national registration system for escort licences. At the time when this Report was being written, the Ministry of Justice had instructed that research be carried out into how such a system could be set up.

⁷ The police are then acting as a mandated supervisory body.

⁸ The unlicensed operation of sex businesses (which are not covered by the licensing system) is permitted in those municipal areas where no licensing system has been introduced or where certain forms of prostitution have been excluded from it (such as escorts and working from home), so that these sex businesses are not supervised either. Prostitutes working on a self-employed basis are classified with the sex businesses for this overview.

⁹ This is assumed in police circles, but also indicated in a study by *De Rode Draad* (Altink & Bokelman, 2006) and the STV 2005 Annual Report.

¹⁰ Submitted to the Lower House by the Minister of Justice on behalf of the Cabinet in July 2004.

Checks on the unlicensed (illegal) sex industry (the third category) happen significantly less often than checks on the licensed sex industry. In most municipalities, it is prohibited to run an unlicensed sex establishment. This means that supervising agencies must first check whether or not there is a sex business, which is not always easy.

Illegality and THB

Under the transitional arrangements for the free movement of workers within the EU, citizens of the member states which joined the EU in 2004 and 2007 may work in the Netherlands as prostitutes on a self-employed basis, but not as employees. In other words, a Bulgarian prostitute, for example, would be legal in the Netherlands if she was working as a self-employed individual in the sex industry, but illegal if she was in paid employment here. It is therefore necessary for those supervising the prostitution sector to check on the employment status, in order to establish whether or not someone is legally residing in the Netherlands. This is not simple, however – especially when sex work is taking place in the club circuit. Hitherto, operators and prostitutes in this sector claim that the work is on a self-employed basis, while the Tax Administration concluded, in all of the cases it has investigated, that prostitutes were working as paid employees at clubs. The question is how a (municipal) supervisor can check on this employment status (Brugman, 2005). The National Expert Group on THB [*Landelijke Expertgroep Mensenhandel (LEM)*] has accordingly observed that the police have no possibilities for checking whether or not someone is working in paid employment, and that the police can thus only check on illegal residence. It is left to the Tax Administration and the Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst (IND)*] to check the employment situation and its implications for residential status. However, this also has consequences for administrative checks on THB. Previously, prostitutes residing in the Netherlands illegally could be stopped and taken to the police station, where they would also be interviewed about possibly being a victim of THB. In these circumstances, the police claim, victims were more inclined to talk about this than when at their places of work. Now that prostitutes from the new EU countries can reside legally in the Netherlands, and their employment situation is not being (or cannot be) checked, the opportunity to ‘pry them loose’ from their situation no longer exists, which means that it is more difficult to detect victims of THB and to obtain reports of the offence from them. Checking up on employment situations has the disadvantage that it is confrontational for prostitutes, whether or not they are victims of THB. The police come to be regarded as the long arm of the Tax Administration, which can be obstructive to building up any relationship of trust with prostitutes. This factor can also hinder the detection of victims.

Duty and role of the police and the municipality

As it became clear that there was uncertainty about the duty and role of the police in relation to enforcement in the prostitution sector, the steering group of the Quality Enforcement Project [*Handhaven op Niveau*] determined that the administrative authority should fully carry the strategic responsibility for the implementation of enforcement duties, and that

with the police input should be complementary to the administrative input. The police nevertheless indicate that there is a lack of initiative on this within many municipalities. This coincides with the findings of Bressers et al. (2006).

If during administrative checks the police come across on any criminal offences, then they may proceed with a criminal investigation as a continuation of this exercise. If, however, when exercising their duties under criminal law, the police happen on breaches of licensing conditions, they are not in a position to take any administrative steps themselves. Such steps are only possible if the administrative authority is informed. For that reason, the instrument of the administrative report was introduced. This is a written notification of the police to the administrative authority of a municipality, stating that – in the course of their duties under criminal law – they have encountered facts and circumstances that are being brought to the attention of the administrative authority. The administration can then take appropriate administrative measures if it wishes, separate from any possible measures under criminal law. In practice, written reports by the police – as the administrative supervisor – to the municipalities are also called ‘administrative reports’.

Erotic Advertising Covenant

Since October 2005, sex businesses that place erotic adverts in (priced as opposed to free) daily newspapers are required to include their licence number in their adverts.¹¹ This makes supervision easier.¹² The Covenant also establishes that text will be interspersed among the erotic adverts drawing customers’ attention to the fact that they will run less risk of, for instance, encountering a victim of THB, if they deal with a licensed business. This allows the customer to make a well-considered choice.

4.3.3 Repressive enforcement

Preventive enforcement – taking the form of granting licences on certain conditions – has the greatest impact if it is coupled with consistent and visible repressive enforcement. In other words, sanctions must be imposed on licence holders who do not observe the conditions. These may vary from a warning, a restriction in opening hours or imposition of an administrative penalty, to the temporary or permanent closure of the sex establishment and revocation of the licence.

Administrative activity not up to scratch

There is criticism on the administrative enforcement by municipalities. Police forces charged with supervising the prostitution sector regularly mention municipalities failing to address cases (abuses) or failing to respond to administrative reports by the police.

¹¹ This is set out in an agreement between the Ministry of Justice and the Dutch Daily Press Group [*Groep Nederlandse Dagbladpers*].

¹² Publishers of daily papers were already obliged under administrative law to provide information on advertisers if asked to do so.

4.3.4 Amendment of legislation and regulations

Various parties argue that there are shortcomings in the current enforcement policy and legislation. For example, they feel that the present statutory framework is inadequate to make non site-specific prostitution manageable, and that there is no uniform policy. These are some of the reasons why Asante and Schaapman (2005) and Altink and Bokelman (2006) argue for amendments to laws and regulations.

Decentralised prostitution policy, which was opted for when the general ban on brothels was lifted, has resulted in local differences as regards the substance of licence conditions as well as the scope of General Municipal Ordinances. The differences between the various municipal licensing systems result in disparate opportunities for supervision and enforcement, which exploitative operators and human traffickers can take advantage of.

The ‘water bed’ effect can be counteracted by providing a stricter national framework for decentralised prostitution policy through additional formal legislation. This can be done in various ways, also in such a way that municipalities maintain scope to pursue a prostitution policy attuned to local preferences and needs. Municipal authorities should be *obliged* to regulate certain matters in their local prostitution policy, which at the moment is only *optional*.

This might involve amendment of the Municipalities Act [*Gemeentewet*] in such a way that municipalities would have to develop a licensing system for every establishment where commercial sexual transactions are provided, or where facilities are provided for such transactions to be undertaken with or for a third party. In other words, a compulsory local prostitution policy in relation to all forms of prostitution including escort, home work and anything that might be developed in future in terms of creative business formats in this area. In this scenario, the responsibility for developing the substantive licence conditions and enforcement of the policy would remain with the municipalities themselves.

There are, however, other options, for example more far-reaching legislation, including a prescription of substantive (minimum) standards to be imposed and enforced at the local level.¹³ These and other possible forms of further formalisation of a decentralised prostitution policy require further scrutiny by legislative jurists and interested parties.

The fact that shortcomings of legislation and enforcement at the local level impact on the occurrence of THB does not alter the fact that central government remains responsible for combating THB. Improving the fight against involuntary prostitution was one of the targets of the abolition of the general ban on brothels, and the responsibility for achieving this target still lies with central government.

¹³ Greater uniformity in municipal policies regarding substantive licensing conditions could also be promoted via the Netherlands Association of Municipalities [*Vereniging Nederlandse Gemeenten* (VNG)].

4.4 Points of attention and bottlenecks

- A part of the sex industry is illegal, or not subject to licensing requirements. There are inadequate checks in this part of the industry for abuses, so that it amounts to a refuge for human traffickers. This category includes, for example, businesses clandestinely offering sexual services, such as Turkish coffee houses, massage salons, saunas, hairdressing salons, nail studios and tanning studios, along with – in some municipalities – prostitutes who work from home.
- Non site-specific prostitution businesses (such as escort services) do not require a licence in every municipality, and where they do, the administrative checks are not easy and labour-intensive.
- It is hard to supervise businesses (whether they operate illegally or not) where both paid and unpaid sex takes place, such as couples clubs. When prostitutes, who might be victims of THB, pose as unpaid participants, the supervisory agencies are powerless.
- Abuses, including (indicators pointing towards) THB, are also found in the licensed sex industry. The fact that it is still possible to put victims of THB to work in the licensed sex industry is not always the fault of the operator or the supervising agency. Victims are sometimes very adept at concealing the fact that they are victims of THB, aided by the fact that human traffickers are often very expert in fabricating false identity documents. If victims are working legally, the supervising agencies have few tools to investigate the situation. This applies, for instance, to victims coming from the new EU member states of Bulgaria and Romania, who because of their self-employed status work legally in prostitution in the Netherlands. These countries have long been among the significant countries of origin for victims.
- The municipalities are charged with taking the initiative and responsibility for administrative enforcement of the prostitution sector. A number of municipalities are failing in this area. For example, measures are not always adopted in response to administrative reports of confirmed abuses. This obstructs the aim of achieving a ‘clean’ licensed sex industry (and the smallest possible illegal sex industry). Because not every abuse can be detected with (administrative) checks, even in the licensed sex industry, other parties do also carry responsibility, including clients, operators, social workers, neighbours, passers-by and others who are involved in the field, professionally or otherwise.
- A number of municipalities have closed down streetwalkers’ zones. The impact of this is not yet clear. We do not know, for instance, where the (illegal) prostitutes who worked there, and who might be victims of THB, have gone.
- The results of administrative checks and enforcement are not sufficiently transparent, so there is a lack of knowledge concerning abuses found in the licensed sex industry. This also makes it difficult to verify allegations of such abuses.
- Maintaining administrative supervision on the escort sector takes up police capacity, and some municipalities do not make any compensation for this, although this has been agreed.

- It is evident that collaboration and exchange of information among the chain partners, such as the police, PPS, Tax Administration and others, can lead to positive results in both preventive and repressive enforcement in the prostitution sector.

5.1 Introduction

This chapter deals with the investigation of trafficking in human beings (THB) and the way this has been affected by the expansion of the article on THB in the Dutch Criminal Code. One of its results is an increase in the number of parties involved in the investigation of THB.

5.2 National developments (including policy developments) and initiatives

5.2.1 Police

Management of the police

The State has assumed greater control over the management of the police, partly through the establishment of national priorities in investigation, setting up a National Crime Squad [*Nationale Recherche*^{NRM3} (NR)] and concluding performance contracts with all of the regional police forces.¹

Focus on Trafficking in Human Beings

The Ministers of Justice and of the Interior and Kingdom Relations, the Public Prosecution Service (PPS) and the police have repeatedly highlighted the priority of combating THB, albeit sometimes under the heading of migration crime and/or in the context of people smuggling. The Ministers of Justice and of the Interior and Kingdom Relations have formulated six priorities for the National Crime Squad and the National Public Prosecutor in the years ahead. THB is one of them.²

National THB Expert Group

The Prostitution & THB Project of the Dutch police [*Project Prostitutie Mensenhandel van de Nederlandse politie* (PPM/dNP)^{NRM3}] came to an end as a project on 1 January 2004, but continued under the name of the National THB Expert Group [*Landelijke Expertgroep Mensenhandel* (LEM)].

¹ Various publications have warned about the negative effects of this system, such as the (un)intentional selection of more straightforward cases, manipulation of data and a reduced orientation towards the local environment (Vlek et al., 2004; Jochoms et al., 2006).

² The other areas are people smuggling, trafficking in cocaine or heroin, synthetic drugs; illegal trafficking in firearms and explosives; terrorism and other extreme forms of ideologically motivated crime and money laundering.

LEM is scheduled to publish a new THB Police Force Monitor [*Korpsmonitor*] in 2007, describing the actual state of affairs in relation to the fight against THB. It was clear from the last THB Police Force Monitor (Coster, 2004) that not every regional police force was yet meeting the standards set at the time.

Other relevant LEM products and activities will be discussed elsewhere in this Chapter.

Expertise Centre on THB & People Smuggling

The Expertise Centre on THB & People Smuggling [*Expertisecentrum Mensenhandel en Mensensmokkel* (EMM)] was set up at the National Crime Squad on 18 May 2005 and is a collaborative venture between KLPD, (National Crime Squad and dNRI [National Crime Intelligence Service]), the Royal Netherlands Marechaussee (Koninklijke Marechaussee), Social Investigation and Information Service [*Sociale Inlichtingen en Opsporingsdienst* (SIOD)] and Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst* (IND)]. EMM operates as a collection point for information on, among other things, (indications of) THB (both within and outside the sex industry). The information is supplied by institutions dealing with THB, from the perspectives of investigation, supervision, checks or assistance.³ At EMM, this information is processed, analysed and made available for tactical and strategic purposes.

The EMM is directed by the National Public Prosecutor, who coordinates the campaign against THB and people smuggling at the National Public Prosecutor's office.

Operational Consultation Group on Trafficking in Human Beings

The Operational Consultation Group on Trafficking in Human Beings [*Operationeel Overleg Mensenhandel* (OOM)], in which all regional police forces exchange operational information on THB, still meets every two months.^{NRM3}

Aliens Police

Some of the tasks of the Aliens Police were taken over by the IND and the municipalities in 2003 and 2004,⁴ so more investigative capacity within the Aliens Police became available. This capacity is also being deployed in various regional police forces to help combat THB.

5.2.2 Royal Netherlands Marechaussee

Since 1993, the Royal Netherlands Marechaussee had been supplying staffing capacity to police forces to support actions against cross-border crime. This capacity, in the form of cross-border crime squads [*GOC teams*], was also deployed to combat THB. These cross-border crime squads were disbanded with effect from 1 January 2006. Collaboration with the Royal Netherlands Marechaussee does continue to take place in expertise centres, with

³ The importance of reporting indications of THB by the various institutions to EMM is described in the *THB Guidelines (Aanwijzing mensenhandel)* issued by the Board of Procurators General (entered into force on 1 April 2006).

⁴ These included aliens' administration (by the IND) and front office duties (by the municipalities).

regard to specific areas of attention, including that of dealing with ‘cross-border trafficking in human beings’.

5.2.3 Special Investigation Services and Inspection Services

The number of organisations involved in detecting and investigating THB has grown, because the criminalisation of THB with effect from 1 January 2005 also covers exploitation outside the sex industry and coerced organ removal. The *THB Guidelines* issued by the Board of Procurators General mentions several organisations that might encounter forced labour or services in the context of their supervision and enforcement. Apart from the police, the Royal Netherlands Marechaussee, municipalities and the Harbour Police, these include – among others – the Health and Safety Inspectorate [*Arbeidsinspectie (AI)*], the SIOD, and the Fiscal Information and Investigation Service/Economic Audit Service [*Fiscale Inlichtingen- en Opsporingsdienst/Economische Controledienst (FIOD/ECD)*].⁵

5.3 Identifying (possible) THB situations

This section will explore the way in which indications of THB are identified and how they actually or potentially reach the investigation agencies.

Identifying (possible) THB situations by the police

The police have an important part to play in identifying cases of THB. This is partly a result of their supervisory duties in the prostitution industry (see Chapter 4) and partly based on their role in criminal law enforcement. The police have deployed a range of activities in recent years in order to improve on the identification, and registration of indications of THB.

A list of indications that might point towards exploitation in the sex industry was developed some time ago.^{NRM3} This list of indications has been adjusted so that it can now be used for the investigation of exploitation in other employment sectors, apart from the sex industry, as well, and also for investigation of coerced organ removal. Another new feature is the recording of indications that might point towards an increased risk for certain individuals of becoming a victim of THB, such as sudden behavioural changes, running away or poor contacts with home. The list of indications can also be used by bodies other than the police.

A booklet on THB has been developed in order to increase awareness of the phenomenon of THB in employment sectors other than the sex industry and to bring about a general improvement in the identification of THB. This booklet has been distributed both within the police and elsewhere. This sort of activity is important, because THB – within the sex industry and elsewhere – is not always recognised as such by police officers and signs of it are not

⁵ The services mentioned here, with the exception of the Health and Safety Inspectorate (AI), are special investigation services [*bijzondere opsporingsdiensten (BODs)*]. The AI is an inspection service with officials appointed as special detective officers authorised to investigate particular criminal offences, which do not include THB.

always recorded as such in police systems. For this reason, some regional police forces use special search questions to filter out any indications of THB from the police systems. Generally this operates very successfully, particularly as regards indications of ‘loverboy’ situations.

In its 2007 Annual Plan, LEM indicates that the information campaign on THB entitled ‘Appearances are deceptive’ [*Schijn bedriegt*] must be continued, at a national level, in light of its success so far. It should also be expanded to cover other forms of exploitation.

Attention has also been focussed on THB in the national training for ‘runners’ in the Criminal Intelligence Units (CIEs) since 2005. We are not aware, at the present time, of exactly how much information on THB the CIEs are actively acquiring. Projects however have been started up in some regional police forces with a view to improving the information position for the CIEs as regards THB. There are regular comments on the difficulty of initiating criminal investigations on the basis of CIE information. Various criminal investigations have, however, been instigated in recent years, based (partly) on CIE information.^{NRM₃}

In some regional police forces, cards – whether obviously issued by the police or otherwise – have been passed out to prostitutes, containing information about where they can report any abuse. They sometimes include both the telephone number of the police force and the number of *Meld Misdaad Anoniem* [Report Crime Anonymously (= Crimestoppers)].⁶

The intention is that any serious indications of THB will be passed on to EMM. These indications – possibly taken in aggregate – may result in new cases or may be relevant to ongoing ones.

Despite these various initiatives, the identification of signs of THB is not yet as satisfactory as it could be. There are a number of reasons for this, some of which are beyond the control of the police. For example, victims of THB do not always want to be recognised as such, and sometimes do everything in their power to avoid being spotted. This may be due to fear of the traffickers or the fact that they are actually earning some income, however little, so that they have an interest in trying to ensure that their situation does not change. This does not alter the fact that victims who do wish to break free from their situation are not always recognised or helped by the police. For example, a group of victims may never come in contact with the police, because there are insufficient police checks in the illegal sex industry, even though it might be assumed that this sector would include more victims of THB than the licensed sector. The same applies to victims of exploitation in sectors other than the sex industry, although there are also other bodies, apart from the police, who can pick up signs of THB here. The Aliens Police have a specific role in identifying signs of THB, both within the sex industry and elsewhere. Because of their potential involvement with (illegally resident and/or working) victims when dealing with illegal immigration, an awareness of the signs of THB is very important for this service. Awareness in this area on the part of the Aliens Police leaves something to be desired, however. This is partly a result of their focus on the re-

⁶ M. is the contact line for the foundation ‘Report Crime Anonymously’ (also known as ‘Crimestoppers’), where information on criminal offences can be reported anonymously by telephone.

moval of illegal immigrants, which conflicts with the necessary attention to detect and protect (possible) victims of THB. In practice, BLinN for example has noted that staff at the Aliens Police – and at centres for detention of aliens – are in fact prepared to cooperate with improvements in connection with the identification of THB (Boermans, 2006).

Victims who are prepared to report the offence are not always offered the opportunity, and/or they are not offered the facilities to which they are entitled, for example in the context of the B-9 regulation. In certain cases it appears that the period for reflection, in particular, is either not offered or is offered for less than three months.

It also appears that – contrary to the *THB Guidelines* – the police do not always pass on reports of offences involving THB to the PPS, but either drop them or dispose of them in-house, for example if they think the case is not interesting from the perspective of criminal law.⁷ In fact, police officers have indicated that if they invest time with possible victims (i.e. if they build up some degree of confidence and provide accurate information), the victims will – relatively often – be actually prepared to report the offence after all.

EMM operates as a collection point for information on (indications of) THB, both for the police and for other bodies (see §5.2.1). However, not every regional police force currently provides information to EMM on a systematic basis or on its own initiative. Reporting by other bodies which might provide indications of THB also requires improvement. At EMM itself, there were actually unfilled vacancies for about a year and a half after it was set up, so that it was battling against a backlog of information processing.

Identifying (possible) THB situations by the Royal Netherlands Marechaussee

The Royal Netherlands Marechaussee views its role in identifying indications of THB as a major one. One team of the Royal Netherlands Marechaussee [*Sluisteam*] operating at Schiphol airport also keeps its eyes open for THB, in addition to being alert for possible cases of people smuggling. Frequently encountered indications of THB include multiple sponsorship arrangements, suitcases full of lingerie and fake or forged identity documents. According to the Royal Netherlands Marechaussee, maintaining a keen observation of people in transit areas (which account for 70% of the passengers visiting Schiphol) is particularly fruitful in supplying indications of possible cases of THB. These transit areas are the places where, for example, passports are exchanged or new tickets are supplied. There are instances of individuals who only buy a flight ticket so as to be able to enter the transit area; they have no intention of flying.

Identifying (possible) THB situations by other (investigation) services and bodies

Other organisations also encounter indications and/or victims of THB, such as the SIOD, the AI, the FIOD/ECD, the IND and certain assistance organisations and interest groups.

⁷ See, for example, *The Monitor Trafficking in Human Beings* on the position of victims (Van Vianen et al., 2006).

The SIOD deals with fraud in the areas of employment and income. Many of the SIOD investigations relate primarily to organised illegal employment.⁸ These investigations, which often concern (possible cases of) people smuggling, regularly disclose that migrant workers are dependent on those who provide the work, for instance with regard to forged identity documents and/or accommodation. This multiple dependency is a sign of possible exploitation. The SIOD focuses on specific risk categories, for example certain business sectors. In 2005, these included horticulture, fruit growing and the food industry. These are economic activities that have come up as risk sectors for THB in the BNRM research of exploitation in sectors other than the sex industry (see Chapter 8). If the SIOD has indications of THB that go beyond the service's own duties and powers, then the National Office of the Public Prosecutor or the competent local Public Prosecutor's office will be informed. Indications of cases that do fall within its own ambit are dealt with by the National Public Prosecutor's Office for Economic and Environmental Offences [*Functioneel Parket* (FP)]. In this context, the SIOD undertakes its own investigations into THB (see §5.4 on this).

BNRM research has shown that the Labour Market Fraud Teams of the AI are in a good position to spot exploitation in other sectors than the sex industry (see Chapter 8). These teams visit the shop floor in many of the economic sectors where there is an increased risk of exploitation, in order to monitor compliance with the Aliens Employment Act [*Wet arbeid vreemdelingen* (WAV)]. Domestic work forms an important exception, because stricter conditions apply to inspection in private households. The BNRM study on exploitation outside the sex industry also shows that when the inspectors from these teams recognise signs of serious abuse, they generally pass the information on to colleagues within the AI responsible for enforcing regulations on working conditions. Nearly half of the 14 labour market fraud teams indicated that they also drew the attention of other bodies – such as municipalities, SIOD or the police or Aliens Police – to possible exploitative situations.

Since 2005, the AI can dispose of cases of illegal employment by imposing an administrative fine. As far as identifying possible THB is concerned, this has the disadvantage that no (further) investigation is made and no official report is made out, beyond a report for the fine, so that there is a chance that less information on abuse is being documented and passed to other bodies. Following the amendment of the Minimum Wage and Minimum Holiday Allowance Act (in connection with the introduction of administrative enforcement), the AI will in future also be responsible for the administrative enforcement of this Act. This may contribute towards the further identification and combating of exploitation

The primary area of investigation for the FIOD/ECD, the investigation service of the Tax Administration, is fiscal fraud. According to the Tax Administration *Annual Report 2005*, FIOD/ECD employees are sometimes confronted with signs of exploitative practices during their investigations at businesses.

⁸ In 2005, this was the case in 36 out of a total of 76 investigations (SIOD, 2006).

As regards the information base of the services mentioned above, it may be instructive for the Netherlands to look at the Belgian experience in dealing with THB for exploitation in sectors other than the sex industry.

*The Belgian approach to exploitation outside the sex industry*⁹

Exploitation outside the sex industry has been punishable in Belgium for longer than in the Netherlands.¹⁰ The Belgian experience shows that it is not easy to secure an effective contribution from inspection services and special investigation services in the fight against THB. Although the Belgian Social Inspectorate and the Inspectorate of Social Laws have been involved in this since 2001, no joint checks are made in some districts, or there is no contact between the Social Inspectorate and the THB contact officers. The inspection services also make little use of their powers to prepare official reports in relation to THB. This may be the result of a lack of experience and the fact that their principal duty is to investigate labour law infringements, and they view THB as being a job for the police. Other problems in Belgium include the fact that the inspection and investigation services do not always recognise victims of exploitation in sectors other than the sex industry as such and that, eschewing any uniform policy, not all of the partners deal with victims in the same way. According to the Belgian Centre for Equal Opportunities and Opposition to Racism, there is a need to train all of the partners involved in finding, identifying and making referrals for victims of exploitation in other sectors than the sex industry.

THB for labour exploitation may also be detected in the context of dealing with illegality, involving a large number of authorities with various specific aims and powers. This means that the multidisciplinary intervention teams¹¹ dealing with, for example, illegal employment may also spot indications of THB. Many of their checks, after all, are carried out in sectors that are sensitive to exploitation.

IND staff may also provide information on indications of THB.¹² The IND does not have any internal instructions on this, however. Because people involved in asylum proceedings can be victims of THB, and because the IND increasingly has to deal with foreign nationals who first of all apply for asylum and then indicate that they are victims of THB, the IND is now paying greater attention to THB in the asylum procedure.

Assistance bodies and interest organisations can also help identify cases of THB. Some non-governmental organisations (NGOs) pass on signs of possible THB to the police (anonymously). Also in relation to exploitation outside the sex industry, NGOs – particularly those in contact with people who are vulnerable in employment situations – can contribute to

⁹ This information is drawn from de Baets, 2002 and the Centre for Equal Opportunities and Opposition to Racism, 2005.

¹⁰ Article 433, *quinquies*, of the Belgian Criminal Code, on putting someone to work in degrading circumstances.

¹¹ Intervention teams involve collaboration between the Tax Administration, the Social Insurance Bank, AI, the Social Security Agency (UWV), municipal authorities, the police and the P PS. The SIOD offers analytical support to the intervention teams.

¹² The information included here in relation to indications from the IND is based on a letter from the IND to BNRM dated 19 March 2007.

wards identifying cases of THB. One problem, however, is that fear of being deported from the country will often deter the undocumented clients of these NGOs from reporting exploitative practices to the authorities. Putting the individual client's interests first, NGOs will usually also not be inclined to pass information to, for example, the police or the AI about an illegal client who is a (possible) victim of exploitation. This attitude on the part of many NGOs can only be expected to change if the organisations are – and can be – confident that reporting exploitation is in the interests of the individual concerned.

(Some) trade unions may also contribute towards identifying cases of this form of THB,¹³ albeit that the unions seldom actually reach employees who fall victim to violence or physical deprivation of freedom through criminals. No trade union work can be undertaken in these circuits, because of safety issues. Trade unions may well pick up on signs of these types of excesses, which can then be reported to the police, the SIOD or the AI. Employee organisations therefore need to become involved, as new partners in the chain, in the efforts to provide early signs of exploitation in sectors other than the sex industry.

Identifying (possible) THB situations by private citizens

The campaign entitled 'Schijn bedriegt' [*Appearances are deceptive*] was initiated throughout part of the Netherlands on 12 January 2006 by the foundation 'Report Crime Anonymously' [*Stichting Meld Misdadaad Anoniem (M.)*]¹⁴ The campaign's aim was to help clients of prostitutes, and others directly or indirectly involved, to recognise signs of coerced prostitution and to report these to the police or, anonymously, to M. An animation film on THB was shown on the Internet and regional television in the context of this campaign. Articles were also published in the daily papers and in weekly and freely circulating papers. Leaflets and posters were also distributed in the participating regional police forces through, for example, local authority offices, schools and municipal health services.

In the first half of 2006, the campaign produced 78 usable reports of THB (by way of comparison, there were 42 in the whole of 2005).¹⁵ Eleven of the reports related to underage victims. Three of the other reports related to men and 64 to women. Investigations were initiated in a number of police forces as a result of these reports. At various locations, these led to the discovery of (possible) victims and the arrest of suspects. An illegal brothel was also closed. A number of the ensuing investigations are still ongoing, so there may be even more results.

As planned, the campaign was drawn to a close at the end of June 2006. At the time of writing this report, a possible follow-up is still under discussion.

¹³ This has become apparent in the BNRM research into exploitation in sectors other than the sex industry, from interviews with directors of FNV Bondgenoten (trade union federation) and information from the CNV Vakcentrale (trade union federation).

¹⁴ Commissioned and financed by the Ministry of Justice.

¹⁵ 63 reports contained enough concrete information to be usable and 56 reports resulted in follow-up action on the part of the police.

Since exploitation outside the sex industry is also now punishable as THB, more individuals may encounter indications of the offence. Thus people working with asylum seekers or illegal immigrants, front-line doctors, teachers, market operators, lawyers, neighbours and others may notice and report signs of exploitation in sectors other than the sex industry. This does require a raising of awareness.

5.4 Investigation of THB

Organisation of police investigation

The organisation of investigative work varies markedly from one police force to another. This is not surprising, as the forces are autonomous in this area. There are, however, teams specialising in THB (and prostitution) in many regional police forces, which undertake (smaller-scale) THB investigations in addition to their checks on the prostitution industry.¹⁶ If a THB investigation is taking place on a larger scale, or appears likely, it is delegated to regional investigation teams. The National and Supra-Regional Crime Squads can also undertake investigations involving cases of THB.

Police investigation in practice

Various police officers indicate that the approach to THB leaves something to be desired. Not every case with 'suitable grounds for investigation' – or what police officers describe as 'sufficient evidence' – is pursued. Police try to pass cases on to other regional police forces or the National Crime Squad without taking any action in the meantime – even though this is not permissible.¹⁷ There is not generally a great deal of willingness on the part of other police forces to take over cases. There is also uncertainty about which cases can be regarded as the responsibility of the National Crime Squad or not, so that cases are 'sent' to the National Crime Squad, whereupon some time may elapse before it is noticed that the National Crime Squad has not taken up the case – perhaps because of a lack of capacity.¹⁸ Cases are also passed from one department to another within the same police force, kept 'pending' in this way, with no action being taken. There may well be a THB team in a police force, but it may have been allocated to so many THB investigations that the team's available investigative capacity is exceeded. This all results in stagnation, backlogs, and dismissal (by the police) in some cases. Potentially important cases are also reduced, more often than would be desirable, to 'quick hit' cases. It has been indicated, within LEM, that this is partly the result of the

¹⁶ They go under different names. There are, for example, 'THB Intervention Teams', 'Prostitution Control Teams' and 'Commercial Practices' teams.

¹⁷ The Board of Procurators General has clearly indicated that, as long as no decision has been taken to transfer a case, or as long as there is still not enough information available to make a decision on the matter, the responsibility for dealing with any observed manifestation of (organised) crime remains with whoever (first) observes it. This is designed to avoid a failure to act because a case 'actually belongs somewhere else' (Public Prosecutions Service, 2004, p.24).

¹⁸ The fact that THB is often a national phenomenon (victims put to work throughout the whole country) or an international one (victims coming from abroad) may well lead to greater uncertainty on this point than with some other offences.

performance contracts that have been concluded, which contain agreements on the number of cases to be tendered to the Public Prosecutions Service. This results in a preference for quick-hit cases instead of taking on longer-lasting (complete) THB cases. It has also been indicated that the disbanding of the Royal Netherlands Marechaussee ‘GOC teams’ means that fewer THB cases can be addressed by the police than was previously the case.

According to the police, public prosecutors are also sometimes too reticent about THB cases. The police officers are also often disappointed at the penalties that are demanded. The PPS is undertaking research on the penalties imposed for THB.¹⁹

By contrast, there are some police forces that invest a great deal in the fight against THB. According to the THB experts in these police forces, the following factors have a positive impact and result in adequate identification of THB, as well as the successful selection and completion of cases:

- an agreement that THB can be dealt with immediately – because of the gravity of the case – and need not await the decision of a ‘selection team’;
- an agreement that ‘selection teams’ should always make positive decisions on THB cases;
- an agreement that any signs of THB will always lead to the start of a police investigation even if there is no report of the crime for the time being;
- an agreement that individuals arrested by the Aliens Police in connection with illegal work or residence will always be interviewed, at which point attention will (also) be paid to any signs of THB;
- an agreement that there will be ‘an investment’ in possible victims of THB, meaning that there will be proper assistance, adequate reception and accurate information;
- an agreement that women in aliens’ detention, who might be (possible) victims,²⁰ will be visited by certificated vice investigators, who will undertake a more detailed investigation;
- good contacts with the victim assistance services;
- a system-wide approach (see box, below)

Investigation of THB: Sneep

The police initiated an investigation in 2006 into a large group of suspects involved in major-league THB. Two of the main suspects, who are of Turkish origin, and their henchmen put many (at least 90) victims to work as prostitutes in various towns in the Netherlands and in Germany, using excessive amounts of violence in the process.²¹ The investigation into this group – codenamed ‘Sneep’ – includes some progressive elements and is an example of the programmatic approach to organised crime contemplated by the Public Prosecutions Service (see also Chapter 7 on this). The work is based on a ‘barrier model’, in terms of which the various barriers are distinguished that have to be overcome by

¹⁹ Indicated by the Chairman of the Board of Procurators General in an interview with *De Volkskrant*, 28 February 2007.

²⁰ Visiting all women appeared to take up too much capacity.

²¹ According to R. Hopkins (interview with *De Volkskrant*, 17 February 2007) this was the group of perpetrators described at length in her book *Ik laat je nooit meer gaan* [I’ll never let you go again] (2006). She alleged that the police had already investigated this group back in 2003, but that the investigation was closed.

criminals in order to introduce victims to prostitution (see Chapter 8). The investigation involves collaboration between various bodies, with each investigating the appropriate barrier. In addition to the various police forces, there is thus also involvement on the part of the Royal Netherlands Marechaussee, SIOD, IND, Customs and the municipalities. The Public Prosecutions Service is coordinating the investigation and directing the various services. The investigation is being assisted and evaluated scientifically. A lot of information is collected through tapping and observation ('Article 27 aggregation', described later in this section), because many of the victims dare not provide official statements. Financial investigation is also undertaken, with facilitators – witting or unwitting accomplices – being included in the investigation. Because the victims were also put to work in the licensed sex industry, the intention is also to tackle the operators in question in terms of administrative law. At the time of writing this report, the investigation is still in full swing.

Investigation of exploitation in sectors other than the sex industry

The investigation of THB with a view to labour exploitation is still in its infancy. There are, however, investigations going on in various regional police forces. In 2006, one investigation into exploitation in another sector than the sex industry' in a prosecution and conviction at first instance.²² In this investigation the police collaborated with the SIOD.

The SIOD (co-)initiated seven investigations into THB for exploitation in other sectors than the sex industry in 2005, one of which was successfully²³ concluded in 2005.²⁴ The other six investigations were either completed successfully (4) or discontinued (2) in 2006. In that year, the SIOD commenced five investigations into exploitation in sectors other than the sex industry. These investigations were still in the operational stages at the time of writing this report.

The National Public Prosecutor's Office for Economic and Environmental Offences (FP) is charged with directing special investigation services, such as the SIOD, in THB cases. It is also this office which determines whether a case should be taken up and whether it should be taken up as a THB case. The comments from the police, that public prosecutors are sometimes too reticent in relation to THB cases, were echoed by the SIOD in relation to the FP.

Investigation using Article 27 aggregation²⁵

It often happens that THB victims do not dare to report the crime, or are unwilling to do so.^{NRM3} If they do, it often comes down to the word of the suspects against the word of the victims. This can complicate THB cases. Using a working method in terms of which all of the established facts – from the police and also from third parties – are 'aggregated', it is sometimes still possible to obtain sufficient proof of the crime in these cases. Three suspects were brought before the District Court of 's-Hertogenbosch by applying this 'aggregation

²² This was an investigation into illegal employment of Bulgarians in hemp picking, in very poor conditions and circumstances. The District Court in The Hague held that exploitation had not been proved (see also Chapters 2 and 8).

²³ An investigation by SIOD is successfully completed if it results in an official report.

²⁴ The SIOD completed a total of 76 investigations in 2005, with 36 of these relating principally to organised illegal employment (SIOD, 2006, p. 7).

²⁵ Sources: Van der Wegen (2005), LEM, EMM. The term refers to Article 27 of the Dutch Criminal Code.

method' – and without the victims having reported the offence or made an incriminating statement. All three cases related to 'loverboys', with victims who did not feel as if they were victims and who were too fond of their 'pimp' to want to make incriminating statements. In two of the three cases, the suspects were nonetheless convicted of THB. The evidence that was led focused on witness statements by third parties and tapped telephone conversations. This type of investigation requires an investment from police and the PPS. The police for instance indicated that a case without a report of the crime takes more time than a case with such a report. It involves, for example, dealing with an 'unwilling' victim in order to find out which witnesses should be approached or tapped and to collect sufficient (supporting) evidence. EMM is making efforts to bring this method to the attention of police forces and to train police officers in its application.

5.5 Investigations: the data (BNRM police study)

This section contains some of the core data in relation to all of the THB investigations successfully completed in 2004 and the number of victims who reported an offence of THB registered in 2005.

Up to 2005, BNRM annually listed the number of successfully concluded investigations and reported on the characteristics of these cases. Two developments involving the police provided reason for discontinuing this practice. First of all, the police have to prepare, twice a year, a crime projection analysis [*criminaliteitsbeeldanalyse* (CBA)] for each of the six priority points in the fight against organised crime (including THB).²⁶ The first full CBAs are expected to appear in 2007.

Secondly, LEM is producing a 'THB Police Force Monitor' in 2007. As with the earlier police force monitor^{NMR3}, this will provide an overview of the state of affairs in relation to the fight against THB and the bottlenecks arising as a result.

The existence of the CBAs for THB and the Police Force Monitor has eliminated the need to continue the BNRM police research in its old format. It has been decided, for this and other reasons, that the BNRM will only undertake (additional) research into topics that are of current interest. Because the publication of the CBAs and the Police Force Monitor is planned for 2007, the information they contain cannot yet be processed in this report. EMM has however provided a list of the number of submitted reports of THB (by victims and witnesses) at the request of BNRM. The results are presented in this section.

²⁶ As instructed by the Board of Procurators General.

5.5.1 Investigations into THB

Table 5.1 contains an overview of the number of THB investigations, concluded and submitted to the PPS each year,²⁷ categorised according to cross-border or domestic THB or a combination of the two.

For cross-border THB, victims are recruited abroad,²⁸ and for domestic THB they are recruited in the Netherlands. In all the cases, they are exploited for (among other things) prostitution purposes in the Netherlands. The number of cases involving a combination of these forms of THB, and involving recruitment of victims both in the Netherlands and abroad, increased in 2004. Table 5.1 accordingly includes (for the first time) a separate category for this.

Table 5.1 *Investigations into THB completed each year according to THB type*

Year	Cross-border THB		Domestic THB		Combined		Total	
	N	Index	N	Index	N	Index	N	Index
2001	36	100	11	100	1	100	48	100
2002	42	117	13	118	-	-	55	115
2003	31	86	10	91	1	100	42	88
2004	33	92	24	218	3	300	60	125
Total	142	-	58	-	5	-	205	-

The number of successfully concluded investigations into THB achieved an all-time high in 2004, following a relative slump in 2003. The number of investigations into domestic THB, in particular, showed a marked increase, both in absolute and relative terms.²⁹ Three of the investigations (5%) related to a combination of domestic and cross-border THB.

Type of sex work

The research also covered the type of sex work undertaken by victims of THB. In all of the investigations that were concluded in 2004, this concerned prostitution.³⁰ This was sometimes combined with (other) work in sex entertainment, such as pole dancing or striptease, but none of the investigated cases were confined to this type of sex entertainment. The victims were 'used' to produce pornography in three cases, but again this was combined with working in the prostitution sector.³¹

²⁷ The investigations were carried out by the police and the Royal Netherlands Marechaussee. A single investigation may relate to several suspects.

²⁸ Cross-border THB may also relate to the recruitment of individuals in the Netherlands for exploitation abroad.

²⁹ Percentage of investigations into domestic THB per annum (relative to the total number of investigations into THB in that year): 23% (2001), 24% (2002), 24% (2003) and 40% (2004).

³⁰ This was also the case in 2003.

³¹ This fact is relevant because the punishable nature of THB was extended by the legislative amendment in 2002 to cover exploitation for a third party, for example exploitation in the sex entertainment and pornography industries. It now seems that, in practice, no THB cases have been completed where the victims were *exclusively* exploited in those sectors.

Specific characteristics of the completed THB cases

While there was no systematic inquiry about this, specific characteristics of the cases that had been listed sometimes cropped up in the interviews. For example, it transpired that one case had been reported by a client and one by an operator of a sex business.

Various victims (as it transpired in three of the investigations) not only had to undertake sex work but also had to conclude loans or undertake debts, with only the suspects deriving any profit from this.

5.5.2 Victims*Reports by victims in 2004*

Table 5.2 reflects the number of victims who reported an offence or provided a statement in the investigations that were submitted to the PPS. Victims who reported an offence, but whose cases were not dealt with or completed, are therefore not reflected here. Cases combining domestic and cross-border THB are – by analogy with the methodology used in previous years^{NRM4} – allocated according to the predominant type of THB that had been committed.³²

Table 5.2 Reports and witness statements made by victims (in THB investigations sent to the PPS), per annum and type of THB

Year	Cross-border THB		Domestic THB		Total	
	N	Average ³³	N	Average ³⁴	N	Average ³⁵
2001	156	4,3	30	2,5	186	3,9
2002	226	5,4	32	2,5	258	4,7
2003	130	4,1	25	2,5	155	3,7
2004	135	4,1	62	2,3	197	3,3
Total	647	4,5	149	2,4	796	3,9

Substantially more investigations were concluded successfully in 2004 than in previous years, but there was a decline in the average number of victims reporting an offence or a

³² The underlying principle here was where most victims were recruited. In the ‘combination cases’ from 2001 and 2004 (see Table 5.1) this occurred in the Netherlands, whereas the (combination cases) from 2003 involved mainly recruitment abroad. This therefore makes the numbers of investigations into domestic THB, for each year: 12 (2001), 13 (2002), 10 (2003), 27 (2004) and 62 (total). The numbers of investigations into cross-border THB, for each year, are: 36 (2001), 42 (2002), 32 (2003), 33 (2004) and 143 (total).

³³ Standard deviation and N 3,79 and 36 (2001); 5,78 and 42 (2002); 4,70 and 32 (2003); 1,84 and 33 (2004); 4,61 and 143 (total) respectively.

³⁴ Standard deviation and N 1,57 and 12 (2001); 2,44 and 13 (2002); 2,51 and 10 (2003); 3,68 and 27 (2004); 2,00 and 62 (total) respectively.

³⁵ Standard deviation and N 3,45 and 48 (2001); 5,32 and 55 (2002); 4,30 and 42 (2003); 3,10 and 60 (2004); 4,12 and 205 (total) respectively.

witness statement for each investigation. This decline can largely be attributed to the increase in the number of investigations into domestic THB during that year. Generally speaking, fewer victims were involved in these cases (Van Dijk, 2002).

Underage victims

Table 5.3 reflects the number of underage victims detected in concluded investigations, divided according to the year when the investigations were concluded and the type of THB.³⁶

Table 5.3 Underage victims (in THB investigations sent to the PPS), per annum and type of THB

Year ³⁷	Cross-border THB		Domestic THB		Total	
	N	Average ³⁸	N	Average ³⁹	N	Average ⁴⁰
2003	13	0,41	7	0,70	20	0,48
2004	18	0,55	16	0,59	34	0,57
Total	31	0,48	23	0,62	54	0,53

In the investigations in 2004 34 minors were found, 24 of whom (71%) reported the offence. The figures for 2003 were 20 victims, of whom 19 (95%) reported an offence. This increase for 2004 can be explained partly by the increase in the number of investigations in that year, but the average number of underage children per investigation also increased in 2004, at least in those investigations involving cross-border THB. For investigations into domestic THB, the average number of minor victims identified was slightly less than in the previous year. This may be because – as is often suggested – ‘loverboys’ wait until girls are 18 before introducing them to the (licensed) sex industry.^{NRM3}

Reports of THB in 2005

At the request of BNRM, EMM prepared a listing of the number of reports of THB submitted to the police in 2005. Where this was not possible, information on this issue was obtained from the STV. This has allowed us to confirm the minimum number of reports of THB submitted to the police. The total in 2005 was 184. Not all of these reports were made by victims, with at least nine of them being submitted by witnesses.⁴¹

³⁶ They did not necessarily reported a crime or provide a witness statement.

³⁷ This information was only gathered from the year 2003 onwards.

³⁸ Standard deviation and N 0.84 and 32 (2003); 1.62 and 33 (2004); 1.29 en 65 (total) respectively.

³⁹ Standard deviation and N 0.68 and 10 (2003); 0.93 and 27 (2004); 0.86 and 37 (total) respectively.

⁴⁰ Standard deviation and N 0.80 en 42 (2003); 1.35 and 60 (2004); 1.15 and 102 (total) respectively.

⁴¹ The listing does not include statements by the (victim)-witnesses.

5.6 International developments

Both the police and the PPS are involved in international cooperation to combat cross-border crime.⁴² This is of particular relevance in the fight against *cross-border* THB.

International Police Cooperation Service

The International Police Cooperation Service [*Dienst Internationale Politiesamenwerking* (DINPOL)] becomes involved as soon as an investigation includes collaboration with a foreign investigation service. It becomes the hub for the exchange of information on the investigation between domestic and foreign-based investigation bodies. The aim of the DINPOL brokerage function is to ease, as far as possible, the exchange of police information (via requests for mutual legal assistance).⁴³

International legal assistance centres

There are six International Legal Assistance Centres [*Internationale Rechtsbulpcentra* (IRC)] in the Netherlands. They play a supportive role for incoming and outgoing requests for legal assistance, and also provide qualitative support and expertise in the field of international legal assistance, including police cooperation and cooperation between judicial authorities. Because the IRCs are obliged to record every request for legal assistance, this also means that applications have to pass through the IRCs, even if the police or public prosecutor already has his or her own network (which is mainly the case with police, certainly in border areas).

National Crime Squad

The National Crime Squad [*Nationale Recherche* (NR)] has an important duty in dealing with complicated international requests for legal assistance, and provides capacity for international collaborative ventures, such as joint investigation teams.

Joint Investigation Team⁴⁴

In its efforts aimed at an international approach to organised trans-national crime, the European Council created a facility for setting up a Joint Investigation Team (JIT).^{NRM3} Preparations were put in hand in 2003 for setting up a JIT to investigate THB from Bulgaria.⁴⁵ This JIT project was halted in 2005, before an operational JIT could even be set up.

⁴² Sources include: *Perspectief op 2010* (OM, 2006), *Politie in ontwikkeling. Visie op de politiefunctie*, [Prospects for 2010 (OM, 2006), Police under development. Views on the function of the police] (Views on the function of the police Project Group and Council of Chief Police Officers, 2005) and the Policy Agenda 2007 (www.regering.nl).

⁴³ The service corresponds through five communication channels: the Netherlands branch of Interpol, Europol, Bureau Sirene, the Dutch liaison officers abroad and the foreign liaison officers in the Netherlands. Liaison officers provide support for investigations undertaken by the Dutch police and PPS on foreign soil. The Dutch liaison officers based abroad have counterparts in the Netherlands.

⁴⁴ Source: Rijken (2006), LEM.

⁴⁵ Participating countries apart from the Netherlands include Belgium, Germany, the United Kingdom and (at a later stage) Bulgaria.

The most significant reasons for its termination were gaps in the legislation in the participating countries and the absence of a suitable THB case for the JIT to focus on. The organisational structure was also too complex. Experience gained during this JIT project will be available to use if a choice is made to pursue investigation via a JIT at some point in future. Another JIT (into drug smuggling) was continued, however, and resulted in the conviction of a suspect in the Netherlands.⁴⁶ The defence argued in this case that the public prosecutor's case was not admissible for prosecution, because the JIT itself and the information obtained from it were both unlawful. The court did not agree.⁴⁷

Europol

Europol has prepared an analysis of frequently occurring organised crime and current criminal networks in Europe. The results are set out in the report entitled *EU Organised Crime Threat Assessment 2006* (OCTA).⁴⁸ The OCTA is designed to provide a basis for establishing strategic EU priorities, and forms an important step towards an information-driven approach to organised crime at the European level. Priorities have been set within the Council of the European Union in relation to the OCTA. THB is one of them.⁴⁹ The Netherlands has also proposed in this context to start targeting THB more emphatically in its international collaborative endeavours with other Member States.

THB in the OCTA

In addition to ethnic Albanian organisations, the OCTA mainly identifies Romanian and Bulgarian organisations as being involved with THB. It also reports that Chinese criminal organisations are facilitating illegal immigration and are involved in the systematic exploitation of individuals for employment and sexual purposes. THB, principally concentrating on sexual exploitation, is said to be the second most frequently occurring activity for criminal organisations, and second only to drugs. THB requires a complex organisation and is associated with facilitative offences such as document forgery. Criminal organisations specialising in the forgery of documents are sometimes deeply involved in people smuggling and THB. The OCTA has established that criminal organisations are often active not only in the criminal underworld but also set up legal businesses to use for the (partial) deployment of their criminal activities. For example, criminal organisations involved in THB operate travel agencies, temporary employment agencies or theatre agencies. Violence is an intrinsic feature of THB, al-

⁴⁶ The participating countries were the Netherlands and the United Kingdom.

⁴⁷ Rotterdam District Court, verdict of 11 August 2006 (LJN: AY6629).

⁴⁸ This is the first report based on a new operating method, in terms of which the emphasis is on a future-oriented (qualitative) assessment of organised crime in Europe. Earlier Europol reports mainly described the existing situation (in quantitative terms). This working method results from agreements reached within the Hague Programme.

⁴⁹ The six priorities in organised crime are: 1. drug trading, specifically synthetic drugs; 2. THB and illegal immigration (meaning people smuggling); 3. fraud; 4. forgery of euros; 5. product counterfeit and theft of intellectual property; and 6. money laundering. A number of points for attention have also been formulated for four geographical areas. These include THB and people smuggling for South-east Europe. The Netherlands, in the Atlantic region, is associated in particular with the battle against synthetic drugs. A final and general point for attention relates to transportation centres, such as seaports and airports, which act as conduits into and out of Europe for the trade in goods, principally drugs.

beit that THB can also occur without the use of extreme violence. Reputation or appearances may mean that threats of violence are enough.

International collaboration between border areas

Police districts on the border also collaborate directly with the neighbouring countries of Germany, Belgium and Luxembourg.⁵⁰ The aim is to tackle crime manifesting itself in these border areas on a joint basis. For the first time in history, THB and people smuggling have been prioritised in one of these collaborative ventures (NeBeDeAgPol). The opportunities for forming this type of collaboration were expanded in 2005 and 2006 respectively with the ratification of the Benelux Convention on cross-border police activity⁵¹ and the Convention between the Netherlands and Germany on cross-border police cooperation and cooperation in criminal matters⁵². Further improvements to the collaborative effort can be anticipated when the Convention of Prüm⁵³ is ratified.

5.7 Points of attention and bottlenecks

This section contains an overview of points for attention and bottlenecks in the field of detecting THB which have been mentioned previously, and those arising from information already presented.

Policy and organisation

- In practice – unlike at the policy level – THB is not a matter of priority for every police force.
- The Public Prosecutions Service sometimes appears to be too reticent in relation to THB cases.
- LEM is proceeding with a new organisational structure. One element of this is that – unlike the previous situation – not every police force will be represented at *all* of the meetings, but most of the meetings will be attended only by those forces who are playing a pioneering part. Because this implies that police forces who are tackling THB less intensively

⁵⁰ In 'Arbeitsgesellschaft NeBeDeAgPol' (with Germany and Belgium) and in 'Kodag-Nort' and 'Kodag-Mitte' (with Germany).

⁵¹ Convention between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grand Duchy of Luxembourg on cross-border police activity; Luxembourg, 8 June 2004, 21 (2004) no. 1, effective from 01.06.06, Treaties Series. 2005, 35.

⁵² Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on cross-border police cooperation and cooperation in criminal matters, Enschede, 2 March 2005. 4 (2004) no. 2, Treaties Series. 2005, 86, ratified on 07.06.06, but not yet in force.

⁵³ The Convention between certain states on the stepping up of cross-border collaboration, particularly in combating terrorism, cross-border crime and illegal migration (Convention of Prüm) (T.S. 2005, 197) offers opportunities in particular for an intensified approach to cross-border crime. This convention will, for example, allow for the immediate comparison of an individual DNA profile with DNA profiles from the computer databases of the other associated member states with a view to assisting in identification and investigation. The same facility will be available for fingerprints and vehicle registers. The convention was signed by the Netherlands in May 2005.

- will be less likely to encounter this topic as often (except when actively involved in investigations), there is a danger of them falling further behind.
- EMM is dependent for its operation on information provided by the police forces and third parties. This information is not supplied effectively enough by all of the parties concerned. On the other hand, EMM is not yet successfully fulfilling its allocated duties.
 - Police forces must continually make choices as to how capacity is allocated. Such choices do not always favour the fight against THB. Administrative enforcement of the prostitution sector also uses up capacity, and this is not universally supported by the municipalities, as has been agreed. The result is that indications of THB are not investigated in certain cases, and investigations are limited to ‘quick-hit’ cases.
 - Police housekeeping in relation to information is a recognised point of concern. Tackling THB also suffers because of the (technical) obstacles to an exchange of information. This accordingly costs needlessly high capacity – because of the multiplicity of systems used – occasionally resulting in the matter being abandoned. However, technically perfect informational housekeeping is exactly what is needed to tackle the offence of THB, which is often cross-regional.
 - Despite all of the foundations being in place, international cooperation in the investigation of these offences has, as yet, scarcely got off the ground.
 - Despite proposals to this effect in the *Additional measures for the NAM*, there has not as yet been any check on what activities might be useful – in the field of THB for exploitation in sectors other than the sex industry – to ensure an increase in the number of people reporting indications of this type of exploitation, while contacts have only been sought with a limited number of new chain partners who can identify signs of this type of THB (see also §8.7.2).

Identification and investigation

- In order to adequately identify indications of THB, it is important for both citizens and employees, in all branches of those organisations that might have to deal with THB, to know what THB is and to be able to recognise victims. There is still a long way to go before this goal is achieved (see also §8.7.2).
- The police do not always submit reports of THB to the PPS – contrary to the terms of the *THB Guidelines*.
- When disposing of illegal employment cases by means of an administrative penalty, there is a hidden risk, as far as tackling THB is concerned, that no (more detailed) investigation will be undertaken apart from a penalty report, with an associated chance that the AI might be receiving and passing on limited amounts of information about abuse in illegal employment situations.

6.1 Introduction

One of the subject areas to which BNRM has applied its available research capacity is that of ‘financial investigations’. Human traffickers can earn substantial amounts of money from their criminal activities. Information is necessary in order to be able to confiscate these amounts, and this can be obtained by ensuring that investigations are not only tactical but also financial. In addition, financial investigations can provide (additional) evidence and a more detailed understanding of criminal organisations. Financial information can also contribute to obtaining compensation for victims. At the same time, BNRM established that the police and the Public Prosecution Service (PPS) devote (too) little attention to financial investigations and confiscation.^{NRM3}

This chapter contains the research results in relation to financial investigations in cases of trafficking in human beings (THB), confiscation, and compensation payable to victims. The explanation of the research methods used can be found in Appendix 2. The research only covers information in relation to exploitation in the sex industry.

Subjects dealt with include the concepts financial investigations, illegally obtained profits and confiscation, a number of developments (in terms of policy) relating to financial investigations and confiscation, and the research findings on financial investigations, illegally obtained profits and confiscation. Attention is also paid to the issue of compensation for victims.

6.2 Financial investigations, illegally obtained profits and confiscation

6.2.1 What is financial investigation?

While there is a range of definitions of financial investigation, there is also a reasonable degree of consensus about its main characteristics and usefulness.

– *Financial investigation relates to the deployment of financial expertise in a criminal investigation in order to collect and analyse (financial) information.*

Certain information becomes (more) significant if looked at from the perspective of financial expertise. In practice, financial investigations involve being alert during an investigation to information concerning cash and cash flows, goods and services supplied, and collecting this information actively, preferably from the start of the investigation.

- *Financial investigation is not a new investigative method, but a different way of looking at and thinking about information.*
- *The usefulness of financial investigation goes beyond the (enabling of an easier) confiscation of any illegally obtained profits.*

Financial investigation can also provide (additional) evidence of criminal activities, and can therefore be of use in prosecution of suspects. Carrying out financial investigations also potentially offers a greater understanding of the size of a criminal network, the (new) suspects who may be involved, the legal sectors involved, the hierarchy of a criminal network, criminal operating methods and particular types of crime (Hoogenboom et al., 1995; Van Koppen, 1996; Nelen & Sabee, 1996; Secherling & Nelen, 1997; Pheijffer et al, 1997).

- *Financial investigation is not confined to financial-economic offences, but can be applied to many areas of crime.*

Financial investigations are often associated with the battle against financial-economic crime, such as fraud and money laundering (Hoogenboom et al., 1995; Faber & Van Nunen, 2002). They can also be applied, however, when combating other offences.

6.2.2 What are illegally obtained profits?

Illegally obtained profits represent the amount by which an individual's assets are increased as a result of a criminal offence.¹ This can be calculated in two different ways: either on a transactional basis or via a cash position/asset comparison. The transactional basis involves establishing what financial returns for the suspect(s) each (criminal) activity has produced. In a cash position/asset comparison – to put it briefly – opening assets and lawful income are compared with expenses and closing assets on the date of arrest, whereby unaccountable expenditures and assets may be established and possibly classified as illegally obtained profits. In matters involving THB calculation on a transactional basis is frequently used. In such cases, it is calculated how much a victim paid to the human trafficker(s), and this information can also be used by the victim when she claims compensation. The cash position/asset comparison, however, also has advantages, for example in cases where the police can only confirm some of the victims or some of the THB activities that have been committed.² In such cases, calculation on a transactional basis might provide a (serious) under-estimate of the actual criminal profits.

In confiscation cases, there is no need for any precise knowledge of what the perpetrators have earned from their criminal activities. The illegally obtained profits can be estimated. Such estimates have to be substantiated, of course, and must be prepared as carefully as possible. If a reasoned calculation of the enrichment has been made, based on lawful evidence, it

¹ Along with any interest received on such an increase in assets (consequential profit). The illegally obtained profits can also represent the amount by which assets are not diminished, arising from cost savings.

² This is the case, for example, when victims are unwilling or unable to provide a statement, or cannot be found; this happens relatively frequently.

is up to the party concerned to refute the calculation. The court can reallocate the burden of proof between the public prosecutor and the party concerned.

Establishing or estimating illegally obtained profits is not always straightforward. There frequently is a lack of information. It is apparent from case law that data covering a limited part of the period when the crimes were committed can be extrapolated to the entire period. In THB cases, this means that if it is known what a victim earned in one month, this amount can be multiplied by the total number of months during which she was exploited.

6.2.3 What is confiscation?³

Confiscation is the deprivation of illegally obtained profits. A public prosecutor must indicate during the trial whether or not a claim for confiscation is being lodged. The confiscation claim itself must be made within two years after the verdict at first instance in the underlying criminal case.⁴ The confiscation claim is dealt with in separate proceedings (so not within the original criminal proceedings).⁵ The court can impose a confiscation order on the convicted party, obliging him or her to pay the illegally obtained profits to the State. The confiscation is based on Article 36e Dutch Criminal Code.

The following decisions are made at the confiscation hearing:

- establishing which offences have resulted in illegally obtained profits;
- estimating the amount of the enrichment (calculation of the illegally obtained profits);
- determining the size of the obligation for payment.

The court may order a more detailed financial investigation. Appeal and cassation can be intimated against the verdict on confiscation itself.

When establishing the illegally obtained profits, the court must take into account any judicially established claim by a disadvantaged third party.⁶

Various studies show a significant discrepancy between the amount of illegally obtained profits claimed and the amount actually imposed by the courts (Meloan et al., 2003; SVB forensic business experts & investigators, 2004). One possible factor here is that the courts not only have to estimate the illegally obtained profits, but also have to establish the amount that the party concerned must pay to the State, and this latter amount is partly determined by his ability to pay. It also appears that the courts find it difficult to pass sentence on the accused in both the criminal prosecution and the confiscation

³ Information in this section is based on the Confiscation Practice Book [*Praktijkboek Ontneming* (Punt, 2003)] and the Confiscation Manual [*Leerboek Ontneming* (Police Academy, 2004)], unless otherwise stated.

⁴ The obligation to pay a sum of money to the State, representing confiscation of illegally obtained profits, can even be imposed if the party concerned was not convicted for the offence giving rise to the enrichment. In such cases there have to be enough indications that he did commit the offence. In practice, however, confiscation generally follows a conviction. Confiscation is only possible if the estimated illegally obtained profit amounts to €500 or more.

⁵ But it is possible to deal with the confiscation case immediately after the prosecution.

⁶ The disadvantaged third party is someone who has suffered direct disadvantage, i.e. a victim. As it happens, this cannot always be implemented in practice because of problems of sequencing.

proceedings, because imposing a confiscation sanction is viewed as an accumulation of punishments (SVB forensic business experts & investigators, 2004). Veldhuijzen (2003) points out that the public prosecutor frequently reduces the claim at the hearing.

The amount ultimately confiscated is often lower still, primarily because only a small percentage of the claims are secured by a pre-judgment seizure of property (Verrest & Buruma, 2006). Van de Bunt (2004) points out that problems surrounding confiscation are not unique to the Netherlands.

Execution of a confiscation sanction commences once it has become irrevocable, and is delegated to the Central Judicial Collection Bureau [*Centraal Justitieel Incasso Bureau (CJIB)*]. If there are concurrent claims, the sequence of execution gives preference to the claim by the victim (Article 36f Dutch Criminal Code), followed by the monetary fine and then any confiscation sanction that may have been imposed. It is not unusual for a few years to pass between the start of the police investigation and an initial letter from the CJIB to the accused. This is because confiscation can only take place once the verdicts in both the confiscation case and the underlying criminal prosecution have become irrevocable.

A criminal's assets may be affected in ways other than a confiscation sanction. The ones of relevance to THB are:

– *Monetary fine.*

A monetary fine of the fifth category can be imposed for committing THB (the maximum here is €67,000 since the start of 2006). There is not necessary that the crime has resulted in any enrichment.

– *Settlement.*

Without the involvement of the court, the Public Prosecution Service can enter into a settlement with the accused for payment of a sum of money (or transfer of property) to the State, representing (full or partial) confiscation of the estimated illegally obtained profits. This would be followed by a prosecution, but not by a confiscation case. This can be of interest to the public prosecutor if, for example, it proves impossible to establish the whereabouts of the suspect's assets.

– *Declaration of forfeiture.*

Property can be declared forfeit if it is directly related to the offence that has been committed. This would, for example, include property acquired as a result of the criminal offence. *Financial benefits* from criminal offences are *not* available for forfeiture declarations. They are supposed to be appropriated through confiscation. Forfeiture declarations are applied relatively infrequently (Nelen & Sabee, 1998).

– *Obligation for payment to the victim (compensation order).*

The court can oblige the convicted party to pay the State a certain sum for the benefit of the victim (Article 36f Dutch Criminal Code). The compensation sanction is explained in greater detail in Chapter 3 (Victims).

Targeting criminals via the Tax Administration is an alternative to confiscation. The advantages and disadvantages of this are discussed in §6.4.3.

6.3 National (policy) developments in the area of financial investigations and confiscation

6.3.1 Developments in the area of financial investigations

Increasing interest in confiscation and financial investigations

Interest in confiscating the proceeds of crime showed a marked increase from the end of the 1980s, early 1990s. The statutory support for this was refined and extended. The Financial Investigations Project – directed by the Financial Investigations Steering Group – was set up in 1996 with the remit of making financial investigations an integral element of the enforcement system. The project ended after five years, with the results being described as ‘disappointing’ (Faber & Van Nunen, 2002, p.476).

Respondents from the police and the PPS, in particular, felt that in practice financial investigation is equated too much with the battle against financial-economic crime. While it is clear that financial investigations form a valuable addition to the existing set of instruments, this has not yet ‘permeated to the police shop floor’ according to Faber and Van Nunen (2002, p. 477).

Financial Investigation Expert Group

The Dutch Police initiated the *Financial Investigation Expert Group* in 2005. The Expert Group also aims to make financial investigations an integral element of the enforcement system and the ‘standard’ investigation process. Financial investigations have to become a standard component of every police investigation.

Reporting of Unusual Transactions⁷

Since the introduction of the Reporting of Unusual Transactions Act [*Wet melding ongebruikelijke transacties* (Wet MOT)] in 1994, institutions are obliged to report unusual transactions to the Centre for Reporting Unusual Transactions [*Meldpunt Ongebruikelijke Transacties*].⁸ Those obliged to submit reports include financial service providers (such as banks, insurance companies and financial transaction offices, as well as casinos), traders in high-value property and certain professional bodies (such as lawyers and estate agents). A transaction is ‘unusual’ if it fulfils one or more of the criteria on an official list of criteria. The number of unusual transactions classified as suspicious and referred to the police in 2005 amounted to 38,000 (21% of the total number of reports). These transactions involved 1.1 billion euros.

Financial investigations in THB cases

The *Human Trafficking Instruction* indicates that financial investigation should be a standard element of investigations into THB. The National Expert Group on Trafficking in Human Beings [*Landelijke Expertgroep Mensenhandel* (LEM)] also wants to encourage financial in-

⁷ Source: Ministry of Finance website (www.minfin.nl).

⁸ The MOT office was subsumed within the Financial Intelligence Unit (FIU-NL) on 1 January 2006; this is part of the KLPD.

vestigation in THB cases. A manual on financial investigations in THB cases was developed for this purpose in 2005, containing standard questions and forms, focusing specifically on the offence of THB.

6.3.2 Developments in the area of confiscation

The PPS has applied a proactive policy on confiscation since 1993. The possibilities for recovering criminal assets were substantially extended in 1993 with the introduction of the Liberalisation of Asset Transactions Act [*Wet verruiming vermogenstransacties*] (Article 36e Dutch Criminal Code).

In the long-range plan entitled ‘Prospects for 2010’, the PPS indicates that the legislation on confiscation has not yet proved to be an outright success, and it announces some improvement measures.

SVB forensic business experts & investigators (2004) looked into how the confiscation legislation works in practice.⁹ The result was a summary of factors of success and failure, coincided with the factors mentioned in earlier publications.^{NRM3} One factor was that the police and Public Prosecution Service prioritise the underlying offence. Confiscation does not yet have a clear position in the investigation and prosecution processes. The focus on confiscation also diminishes as soon as the investigation of the underlying offence has been completed. The result is that financial investigators are brought in too late, or are not involved in tactical consultations. It also implies that often too little attention is paid, at the planning stages for investigations, to what is required for confiscation. Furthermore, it appears that investigations for confiscation without any realistic chance of success are prolonged for too long a time period. The claims submitted to the courts are sometimes not sufficiently clear. There is a lack of expertise and capacity among all of the parties concerned. It also happens that financial investigators are instructed to do work that could be done just as well by tactical investigators, and they are not always well managed.

The confiscation standard

In February 2002, the Chairman of the Board of Procurators-General informed the chief public prosecutors that a claim for confiscation should in principle be lodged in any case worthy of confiscation involving the more serious offences – which include THB cases.

More recent plans propose efforts to limit confiscation to major cases that are dealt with by confiscation prosecutors, with higher monetary fines in the more minor cases. This latter solution is more straightforward and imposes less of a burden on the financial investigation capacity of the police and the special investigation services.

New Confiscation Instruction

The Board of Procurators-General issued a new *Confiscation Instruction*, effective from 1 March 2005. This Instructions also considers the position of disadvantaged third parties: if

⁹ This was based on four major and four lesser confiscation cases.

there are illegally obtained profits and there is a disadvantaged third party, the PPS should in principle always lodge a claim for confiscation.¹⁰

BOOM

The PPS Criminal Assets Confiscation Bureau [*Bureau Ontnemingswetgeving Openbaar Ministerie* (BOOM)] was founded in 1996. The duties of BOOM include the development of expertise for the PPS, the provision of advice and support to individual public prosecutors in relation to confiscation cases and policy-oriented support for the Board of Procurators-General.

International confiscation

Criminals also conceal their assets abroad, for example in countries where legislation and organisation in relation to confiscation is not yet particularly advanced. Seizing these assets is patently important in the battle against crime, but it is not straightforward. Though there is adequate political support for this topic at both national and international level, few positive developments can yet be seen in terms of implementation (Moors & Borgers, 2006). BOOM has indicated that it wants to focus more on international confiscation and, with this in mind, has jointly set up the Camden Asset Recovery Inter-Agency Network (CARIN), an informal network of experts on confiscation from 34 countries, who can be consulted in cases where foreign assets have to be recovered.

6.4 Results of BNRM police study: financial investigations

6.4.1 Financial detection methods

Table 6.1 provides an overview of (financial) detection methods used – so far as known among the respondents – in the 60 successfully completed police investigations into THB in 2004.

Table 6.1 (Financial) detection methods in THB police investigations

Detection methods	N1	Financial detection methods	N2	% (van N1)	% (of all 60 investigations)
Interview suspect(s)	60	Interview suspects about income, expenses, possessions	55	92%	92%
Interview victim(s)	59	Interview victims about income/proceeds?	54	92%	90%
Search (of premises)	42	Pay attention to financial information	34	81%	57%

¹⁰ If the disadvantaged third party lodges a personal civil claim with the civil court, and this is at least equivalent to the calculated illegally obtained profits, then a confiscation claim is not submitted. In the event that the disadvantaged third party proceeds with a civil claim then, as far as possible, information should be provided to the disadvantaged third party to support his or her civil claim. If the illegally obtained profits are larger than the disadvantage suffered by the third party, the balance is claimed by way of confiscation.

Telephone tap	37	Focus on financial information in tapped conversations	32	87%	53%
Interview witness(es)	60	Interview witnesses about financial information	27	45%	45%
		Continuously pay attention to cash flows	46		77%
		Audit of suspects' payment transactions	30		50%
		Collect financial information abroad	7		12%

In the majority of the cases (see the final column) the suspects and victims were asked financial questions and there was a continuing watchfulness for cash flows. It is also clear that a search or telephone tap was not always used, but when it was, a large majority of these cases also involved scrutiny of financial information (see second last column). Interviews of witnesses on financial aspects as well as checking on suspects' payment transactions occurred in (almost) half of the cases. Collecting financial information from abroad occurred relatively infrequently.

The investigative methods mentioned above will be discussed in greater detail below.

Interviews of suspects

Those suspected of THB generally either insist on their right to remain silent or deny that they have committed the offence, thus giving nothing away about the relevant financial aspects. If they admit having received money, they generally claim that the victims gave them the money voluntarily. Still, there are good reasons for putting financial questions to suspects. In some investigations the suspects did provide statements.¹¹ Sometimes this did not happen until the suspect was confronted with unexplained assets or other evidence of the alleged offence, such as duplicate financial records.

Interviews with victims

Interviewing the victim is often one of the first elements in a THB investigation. It provides an initial picture of how the offence was committed and who the (possible) perpetrators might be. Questions on financial aspects can also be posed. A number of questions are included for this purpose in the Manual on Financial Investigations in Human Trafficking Cases [*Handleiding financieel rechercheren in mensenhandelzaken*] issued by the National Human Trafficking Expert Group (LEM) (2005).

Financial questions to victims of THB to assist in calculating the financial profit

- How many women are working or have worked for the suspect?
- Who are these women, what are their names, where do they live, etc?

¹¹ So far as we are aware, 'financial questions' were put to suspects in 55 investigations. In 24 of these cases, the suspect denied involvement or failed to cooperate, and in 14 of them the suspect provided a statement (albeit sometimes brief). In 17 of the investigations, information was no longer available on what had been disclosed in the 'financial interview' of the suspect.

Timeline

- How long has the situation been going on? (Preferably as accurate as possible, with definite dates)
- Until when did the situation continue?
- How many days a week did the woman work?
- Did the woman also work during her monthly periods?
- Did she work throughout the entire period, or was there a holiday/break?
- How many days did the woman work in total?

Earnings

- How many hours on average did the woman work each day?
- How many clients on average did the woman have each day?
- Were any records kept (for example notes or text messages) on how many clients she had each day?
- What were the average earnings per client?
- What were the average earnings per day? Is this figure net (excluding the costs of rooms, condoms, lingerie, etc) or gross (with these costs still to be deducted)?
- What proportion did she have to hand over, or did she have to hand over the whole amount?
- When and how did she have to make these payments?
- Could she use the remaining money herself (was it kept by someone or somewhere)?
- What did she do with it/how did she spend it (bank deposits; which bank)?
- How much in total did the victim earn for the suspect or pay to him?

Costs

- What did the costs amount to each day? (room rental... per day (or part), condoms... per day, etc)
- Who paid these costs?
- Did the suspect incur any other costs, for example hiring someone for protection/to pass on messages/to supervise matters?

Other

- Does the suspect have income apart from his prostitution income, such as social benefits/drug dealing income, etc?
- Is it known what the suspect did or bought with the earnings he received?
- Does the suspect have any assets (house, car, bank balance, cash) and where are they?

Source: the National Human Trafficking Expert Group *Manual for Financial Investigations in Human Trafficking Cases* (2005). The questions are aimed at calculating the illegally obtained profits. Some of them can also be put to suspects.

The BNRM study seems to show that it is extremely important to ask these questions. In 25 investigations the statement of the victim(s) – sometimes in combination with other information – allowed for a calculation of the illegally obtained profits. In nine investigations, where there was a financial gain and the victims were also questioned extensively on the subject, this was not the case.¹² Sometimes the victims were unable to provide a statement (they

¹² As far as the other 26 cases are concerned, no illegally obtained profits was disclosed (4), no or insufficient questions were asked about illegally obtained profits (16), it could not be established what questions, if any, were asked or what victims said about the matter (5), or the victims did not want to make a statement or an official report (1).

no longer remembered the information or could not reproduce it, occasionally because of addiction), and sometimes they did not want to do so, for example from fear of the consequences or because of a special attachment to the trafficker-‘loverboy’. In a few cases interviewing victims on the financial aspects of the case was also important for evidential purposes and for assessing the suspect’s asset position.

Search (of premises)

When a search took place this quite often led to assets or information about them and/or other valuable financial information.¹³ These assets included money, valuables or other pointers towards assets such as bank account numbers, bank statements and evidence of money transfers. The discovery of assets is also important because a pre-trial seizure can also be imposed on them as a precursor to confiscation (see §6.5.2).

In six investigations (duplicate) financial records were found during searches, showing amongst other matters which women or victims had worked at which times and the profit derived from them. Such a discovery is of major significance: it provides considerable insight, the illegally obtained profits can be deduced from it, and it can be used as ‘hard’ evidence in a prosecution and/or confiscation case.

Taps

In most investigations technical considerations regarding evidence play a part in the decision to tap telephone conversations: the intention is to demonstrate THB (for example through coercion). At the same time, financial information is picked up, certainly if a financial expert is involved in the investigation. Tapping brought to the surface useful financial information, generally on the suspect’s assets, in a range of investigations. Telephone conversations between suspects and victims sometimes dealt with profits and costs incurred.

It is through tapping that the ban on tolerating the transit of persons in cases that have been identified as THB makes itself felt: if the taps show that THB is going on, immediate intervention is necessary in order to remove the victims from the situation. This is sometimes a factor in deciding whether or not – and how – to deploy this method when THB is suspected.

Witness interviews

Witness interviews normally play a prominent part in investigations. Witnesses of THB are rather difficult to find, however, partly because victims are often kept in social isolation and also conceal their suffering. In cases where information was indeed successfully collected from witnesses or informants, this concerned, for example, information required to calculate the illegally obtained profits or the (involuntary) payment of money.

¹³ In nine out of the 34 investigations in which a search took place during which attention was paid to financial information, the results are not known. Searches produced valuable financial pointers in 18 of the investigations (72%), but not in 7 others.

Auditing payment transactions

The auditing of suspects' payment transactions generally occurs in cases involving a more intensive financial investigation. In these investigations, information is requested from financial institutions, particularly banks, in relation to the products and services purchased by the suspect.

Two (possible) aims of auditing payment transactions are to gain an understanding of (a) the cash flows and (b) the asset position of the suspect(s). The suspect's payment transactions were audited in 20 investigations, and the results are known.¹⁴ In nine of these cases there was nothing to show: no suspicious cash flows were found and the suspects appeared not to have any significant assets in a (Dutch) bank account. Various respondents indicated that in the prostitution industry funds tend to be cash and never end up being held by financial institutions. In six of the investigations, however, this investigative work revealed that money had been transferred abroad (see more on this at §6.4.2).

Reasons for *not* auditing payment transactions were that it takes long and it is time-consuming. It was frequently said that this would only be worthwhile if the anticipated profits were substantial. This was not often the situation in the investigated cases.

Collecting financial information from abroad

Financial information was collected abroad in seven of the investigations. In many more investigations, however, indications of cash flows going abroad, or assets held abroad, were found. This means that not in all cases appropriate investigative methods were applied. This point will be explored in the following section.

6.4.2 Collaboration and information exchange

The PPS is in charge of the investigation, including the financial element. The leaders of investigation teams were asked how collaboration in this area actually worked. Inquiries were also made about potential other collaborating agencies, including the Tax Administration and the Social Information and Investigation Service [*Sociale Inlichtingen- en Opsporingsdienst* (SIOD)]. The matters explored include the experience of collaborating with these bodies as well as the cases in which collaboration with foreign partners was sought.

Public Prosecution Service

The respondents were divided about the directive role of and collaboration with the PPS in the financial field. Thus, in addition to some positive points, it was indicated that the PPS wants to achieve targets and is therefore unwilling to invest in (lengthy) financial investiga-

¹⁴ In a relatively large proportion of investigations (10), it was not possible – within the available time frame – to find out what the results of the audit had been.

tions, or does not act according to the principle (set out in the *Confiscation Instructions*) that a claim for confiscation should be lodged if the minimum estimate of the enrichment is €500.

Tax Administration

The 14 investigations where contact was made with the Tax Administration involved asking for information or providing information so that the suspect(s) could be made subject to an assessment by the Tax Administration. The latter usually happens if the financial investigation could not be completed successfully, but it is considered undesirable that the accused can simply walk away (in financial terms). When imposing assessments on criminals, the Tax Administration regularly uses financial information from police investigations (Van der Wegen, 2005).

The benefit of ‘confiscation’ by fiscal means is its speed. A tax assessment prepared on the basis of police information can in principle be imposed immediately and collected within two or three days. This is possible for up to five years after the end of the relevant fiscal year (even up to 12 years for income from abroad), whereas in the case of confiscation *proceedings*, this only has to be instigated within two years after a conviction has been pronounced. Also, because of its permanent relationship with citizens, the Tax Administration has a wider overview of the financial wheelings and dealings of suspects. And it is possible to charge tax on activities for which a suspect was acquitted in a criminal case. The Tax Administration also has greater powers to compel suspects to provide information on their income and assets. It can also reverse the burden of proof in relation to a suspect, meaning that the suspect has to account for the sources of his income/assets. A tax assessment can therefore be more effective than a confiscation. But there are also some objections (in principle) to this option. The Tax Administration does not give a detailed account of the illegally obtained profits, certain countries refuse to supply information to the Tax Administration¹⁵ and it is not the purpose of the Tax Administration to compensate victims of a criminal offence (Van der Wegen, 2004).

Interlude: the ‘Big Spender’ projects

‘Big Spender’ projects were started in a number of regional police forces. They aimed at criminals and troublemakers who are manifestly living above their station. Enquiries are made as to how these – often young – men get hold of the wealth they flaunt so openly. The intention is to confiscate undeclared assets and, by doing so, to bring their allure for youngsters to a halt and discourage criminal conduct. Several regional police forces have signed agreements to this effect with other bodies, such as municipalities, the PPS, the Tax Administration and the Social Security Agency.

SIOD

One investigation involved collaboration with the Social Information and Investigation Service [*Sociale Inlichtingen- en Opsporingsdienst (SIOD)*]. The police investigated the THB and the SIOD looked into whether the operators of the sex businesses where the victims had

¹⁵ For this reason, these are the countries where criminals prefer to put away their assets.

been put to work had fulfilled their obligations as employers. This turned out not to be the case and they were therefore prosecuted for employer fraud. The SIOD investigation also resulted in a confiscation case. Both the police and the SIOD were pleased with regard to their collaboration on the investigation. Both parties achieved better results by sharing their knowledge and understanding. Also, if the suspects are exonerated from THB, they might still be convicted for employer fraud. Hence, a confiscation claim remains possible, so that the operators can be targeted financially. An additional advantage was that if in a court proceeding it is established that the victims of THB had been in paid employment, they can lodge a claim for (unpaid) wages. None of the victims in this case submitted a compensation or wages claim, however.

Case study: SIOD collaboration

Four human traffickers recruited women in various Eastern European countries, brought them to the Netherlands and put them to work in several sex clubs. The clubs were run by three owners, who were in league with the human traffickers. The sex club owners registered the victims with the Aliens Police and arranged an application for independent entrepreneur status (with the help of a lawyer). The victims were told that they could legally work in the Netherlands during the procedure, which was not the case. They were also told that the operator would deal with the payment of taxes and suchlike.

The sex club owners and the traffickers were convicted of human trafficking and other matters. The idea arose to also prosecute the owners for failing to fulfil their obligations as employers, and it was decided that the SIOD would investigate this. In consultation with the police, questions about the employment relationship were included in the interviews of witnesses and victims. This provided a lot of information that the SIOD could use. For this reason, permission was sought and obtained for active participation in the investigation.

First of all, the SIOD collected information showing that the sex club owners could indeed be categorised as employers, despite their steadfast defence that the victims were working in their clubs on a self-employed basis. The SIOD succeeded in refuting this by demonstrating that there were elements of control, employment and wages. To do this, it used statements from the victims and the sex club owners themselves. The control element was apparent from the fact that the victims did their work on instructions and that they could not personally determine when they could stop work. The employment relationship was established partly by the fact that the victims were only allowed to work in the owners' clubs (whereas, as self-employed, they would have to have at least two separate principals). The wages element was apparent from the fact that the client did not pay the victims, but instead paid the barman in advance, and that arrangements were made about the work and payments (so that the victims could not themselves determine the prices). Nor were the victims registered as self-employed with the Tax Administration, they did not keep their own books of account and most were not registered as self-employed entrepreneurs with the Chamber of Commerce.

Once it had been shown that the owners of the sex clubs were in fact employers, it was a simple matter to establish that they had not fulfilled their obligations as employers. Thus, for example, no employment agreements were reported, and no social insurance premiums were paid to the Social Security Agency.

The illegally obtained profits were established, for two of the three club-owners, at €600,000 and €900,000 respectively, based on the SIOD investigation. A confiscation claim for these amounts was lodged.

International collaboration

Indications of cash flows going abroad or possessions held abroad were found in 15 of the 60 THB investigations.¹⁶

The countries where the property was situated coincided with the victims' country of origin (countries in Central and Eastern Europe, Brazil, Thailand and Nigeria), countries of origin of the suspects (Turkey, Germany), or countries with banking secrecy protected by statute (Luxembourg).

Indications of cash flows to repositories abroad or possessions held abroad did not always result in an effort to follow the cash flows or confiscate the assets.

No detective work on the foreign element was undertaken in eight of the investigations. The reasons suggested for this (sometimes in combination) were:

- the indications were not sufficiently concrete (4 times);¹⁷
- the illegally obtained profits were too low to justify this sort of effort (3 times);
- there already was enough lawful and convincing evidence (3 times);
- bad experiences with the country in question (2 times);
- it takes up too much time (with uncertain results) (2 times).

Seven of the investigations did involve efforts with regard to other countries than the Netherlands. In six of these investigations, requests for legal assistance were issued to Turkey, Brazil, Bulgaria, Romania, Thailand and Germany respectively.¹⁸ The results varied. The financial investigation in Turkey got bogged down very quickly. One of the factors contributing to this was that the indications (relating to bank accounts and real estate) appeared to be inaccurate and incomplete. The other five countries collaborated well and provided the requested financial information. A pre-trial judgment seizure was imposed in one country (Romania), on one of the suspect's cars. This car – confiscated by Romanian local authorities – disappeared without a trace.

6.4.3 Dilemmas in financial investigation

In the book *Rechercheportret. Over dilemma's in de opsporing* [Investigation portrait. Dilemmas in Investigation], De Poot et al. (2004) provide an insight into the tactical investigation process and include an outline of the dilemmas which arise in these situations. Comparable dilemmas arise in connection with the financial investigation process. The first is the choice of whether or not to start a financial investigation. Then there are assessments, at set points, about whether or not it is justified to continue the investigation. Choices also have to be made as regards which financial detection methods should be deployed. These choices are

¹⁶ This reflects a minimum, because in other investigations assets may also have been siphoned abroad. This was not always investigated by the police.

¹⁷ This is often the case when only proof of money transfers is found.

¹⁸ In one case no request for legal assistance was made, but police specialists investigated money transfers. The results are not known.

influenced by a number of factors, some of which are specific to THB. A summary and explanation of these factors is presented here.

Setting targets

In this study, financial investigation resources were generally deployed with a view to confiscation. No financial investigation was started if there seemed to be few prospects of a successful confiscation effort. But financial investigation can still be worthwhile even in these cases, for example for collecting evidence. If it can be shown that victims have passed their money on to pimps, this can be used as evidence of THB. Intentionally or otherwise, financial investigation (also) provided evidence of the offence of THB in a relatively large proportion of the investigations covered by the BNRM research. In addition, suspects' assets (available for confiscation) could sometimes be traced, or financial investigation provided information relating to the structure of the criminal organisation or the suspects involved.

Absence of concrete indications of financial evidence

The absence of (concrete) indications concerning cash flows or assets is an accepted reason for calling a halt to a financial investigation. This is the case, for example, if victims and suspects fail to provide adequate statements on the finances, if money only changes hands via cash or money transfers, or if for some other reason the information is limited, inaccurate or incomplete. In fact, in these cases the illegally obtained profits can sometimes be calculated, but no more detailed investigation is made of the suspect's assets. According to financial investigators, this latter aspect is also more difficult than establishing the illegally obtained profits.

Nothing can be recovered from the suspect

It is said relatively often that (more detailed) financial investigation is only undertaken if the suspect appears to have financial assets and if there have been provable illegally obtained profits. If this is not the case,¹⁹ the investigation is broken off or not started at all. However, it is not always thoroughly investigated whether or not the suspect has assets. It is sometimes assumed that he does not because he lives in poor circumstances. The question is whether this is correct: according to Meloen et al. (2003), criminals sometimes live on benefit payments and lead a frugal and unobtrusive existence, while they have siphoned off a great amount of money abroad. On the other hand Van Koppen (1996), for example, indicates that criminals are quick to spend money, so that they may not have assets per se, even if they surround themselves with luxury.

¹⁹ This seems to happen relatively frequently: The suspect did not appear to have any assets in 32 (53%) of the 60 investigations covered by this research. A number of these investigations did include financial investigation, sometimes to reach this conclusion and sometimes to achieve other aims.

Available time/capacity

Sometimes a financial investigation is not initiated due to a lack of time or capacity. But even if the choice is made to undertake a financial investigation, the lack of time or capacity may mean that it is not actually carried out.

Cash flows to repositories abroad

Cash flows going abroad (or signs of them) are dealt with in a range of ways. Sometimes the financial investigation immediately ends there, and sometimes not, but then there usually is a critical consideration of the costs and benefits before a request for foreign legal assistance is made. Sometimes the country involved is a factor in this consideration. For example, it is known in advance that effort will be fruitless with some countries, whereas assistance can easily be asked for from countries within the EU. Expectations as regards the effectiveness of a request for foreign legal assistance do not, for that matter, always coincide with reality. One should not therefore be too ready to jump to the conclusion that it makes no sense to invest resources in relation to foreign countries. Indications of cash flows to repositories abroad can actually be used to calculate the illegally obtained profits. A plan aimed at confiscation can be embarked on without the suspect's (foreign) asset position being clear. If necessary, additional financial investigation can be ordered in a confiscation case.

Ban on tolerating cases of THB

The result of the ban on allowing cases of THB to continue is an occasional need for rapid intervention to remove trafficking victims from their situation. The suspects are generally also arrested immediately in these cases. The consequence is that the focus of the investigation team (necessarily) shifts towards proving the offence of THB, leaving no time for preparation and implementation of a financial investigation. When the suspects and victims are asked financial questions in these cases, the purpose is usually to gather additional evidence of the commission of THB. Only if the suspect is found to have substantial assets will it be possible, at times, to shift the focus back to the financial side of the question.²⁰

No illegally obtained profits

In some cases, the suspects will not have received any illegally obtained profits, or hardly any, generally because the victims have not worked in prostitution or only briefly.²¹ For this reason the decision is sometimes taken to forego any (further) financial investigation.

Financial investigations start too late

It is important that from the start of an investigation officers are alert to the financial aspect, for financial investigation is a process in which any financial information that is found can be used to determine new avenues for further investigation. A late decision to start financial in-

²⁰ In 5 of the 60 investigations studied, the respondents indicated that having to intervene rapidly because of the ban on tolerating cases of THB was detrimental to the financial investigation.

²¹ This was the case in 17 of the 60 investigations (28%) covered by this research, according to information from the respondents.

vestigation can therefore have a detrimental impact on the final result. It does happen that an investigation initially focuses on an offence other than THB (for example domestic violence), in which financial investigation appears to be irrelevant. As soon as it appears to be a THB case, the financial investigation gets underway, but this can already be too late.

Lack of (available) financial expertise

Financial investigation can be undertaken by financial investigators deployed by the tactical team. Financial investigation are also undertaken by tactical investigators, with financial investigators in an advisory role in the background (and, if necessary, to take over specific duties). This means that the experts are further removed from the investigative work. The way in which financial expertise is deployed varies from one police force to another and one investigation to another.²²

Both a lack of financial expertise among tactical investigators and an absence of available financial investigators can lead to no or poor financial investigations. As stated previously, the aim behind the Financial Investigation Project [*Project Financieel Rechercheren*] was to give tactical investigators enough background knowledge to undertake financial investigation as well. In the current research, however, it was heard regularly that the training course developed for this was inadequate, or the knowledge acquired had been forgotten. Many tactical investigators regard financial investigation as a specialism, and a job for financial investigators. Gaining some experience with financial investigation, preferably with positive results, can operate as a stimulus.

Time-consuming collaboration

Collaboration with (financial) bodies is cited in various publications as a bottleneck (for example in SVB forensic business experts & investigators, 2004). In the BNRM study it was also indicated that it is time-consuming to take on board information from (financial) bodies.

Priority/motivation

Various publications (including Faber & Van Nunen 2002; SVB forensic business experts & investigators, 2004) mention the lack of priority and motivation for financial investigation – with the police and the PPS – as a bottleneck. However, financial investigations were a standard element in many of the THB cases investigated for the current research, and there is a strong motivation to confiscate illegally obtained profits. In some regional police forces, it has even been agreed that financial investigation is to be a standard element in every THB case, whether or not it involves bringing in a financial investigator for the job. Interest in financial investigation appears to be on the increase, given the fact that many respondents mentioned that it has *now* or *recently* become much better organised in their police force. Yet, further improvements in this area are possible. For instance, it is still often too easily

²² In the BNRM research, financial investigators were brought into the team in 16 cases and the financial investigation was (largely) undertaken by the tactical investigators in 10 cases.

concluded that there is no sense in conducting any (further) financial investigation, meaning that it is not an obvious type of investigation in every case.

6.5 Results of BNRM police study: illegally obtained profits

6.5.1 Extent of illegally obtained profits

The police calculated the illegally obtained profits for 19 suspects in this research, amounting to a total of €2,332,421, or an average of €122,759 per suspect. The highest amount a suspect earned from THB, according to the calculations, was €500,000, and the lowest amount was €1,000. Table 6.2 comprises an overview of the illegally obtained profits as calculated for suspects in THB cases for each year.

Table 6.2 *Illegally obtained profits, per year*

Illegally obtained profits	2001		2002		2003		2004		Total	
	N	%	N	%	N	%	N	%	N	%
0 tot 25.000	8	53%	6	46%	1	20%	7	37%	22	42%
25.000 tot 100.000	2	13%	2	15%	1	20%	5	26%	10	19%
100.000 tot 500.000	2	13%	5	39%	3	60%	6	32%	16	31%
500.000 or more	3	20%	-	-	-	-	1	5%	4	8%
Total	15	100%	13	100%	5	100%	19	100%	52	100%

The amount of illegally obtained profits derived from THB varies, with some earning a lot and others less.

Profits from THB

Human trafficking can have substantial returns. How much depends partly on the ‘popularity’ of the victim-prostitutes with clients. Also, income from prostitution fluctuates. Evenings with football on the TV are notorious. A prostitute making good earnings will make between €255 and €450 per night, according to Mens (undated). Majoor (2001) suggests that earnings can run to €11,350 per month. Belsler (2005) estimates that a victim exploited in an industrialised nation earns \$5,600 per month.²³ It should be pointed out here that human traffickers can increase their earnings by selecting their victims and, for example, forcing them to work without condoms, to work many and long working days and never to refuse clients.

6.5.2 Prejudgment seizure

The PPS can arrange for prejudgment seizure or attachment of a suspect’s property even before there is a conviction (Article 94a Code of Criminal Procedure). This way the PPS wants to prevent suspects from removing their assets out of the State’s reach. If the court imposes

²³ This is about €4,730.

a confiscation order or the conviction results in a monetary fine, then these can be settled, partly or fully, from the attachment.²⁴

Prejudgment seizures were imposed in twelve of the investigations, according to the current available information. For nine of these, it was possible to establish what was seized. In eight instances, the attachment affected one or more cars. The (estimated) execution sale value of the cars ranged from €5,000 to €76,000. Money in cash was attached in five investigations. The total executorial value for those investigations in which the value of the attachment could be established was €209,150, or an average of €23,239 for each investigation.

6.5.3 Siphoning and money laundering

What do criminals do with the illegally obtained profits not spent (straight away) on luxury goods, vehicles, a luxury lifestyle, an addiction or something else? Meloen et al. (2003) investigated this and discovered that criminals have a preference for holding foreign assets rather than Dutch ones. In the current research BNRM also came across signs of cash flows to repositories abroad.

Another possibility is for criminal funds to be 'laundered', or provided with an ostensibly legal origin.

The current research only disclosed one case involving money laundering, so far as the information goes. A suspect bought a car paying in cash and arranged a loan on the same day, to give the transaction with an appearance of legality.

6.6 Results of BNRM police study: confiscation

The current research explored the extent to which claims for confiscation were lodged in THB cases, and what results these had.

6.6.1 Confiscation in THB cases completed in 2003

It was indicated at the time, for nine of the 42 successfully completed cases in 2003, that confiscation proceedings were to be initiated.^{NRM4} The current research shows that a confiscation claim was actually lodged in four THB cases.²⁵ These cases are described here.

Case 1: 'Loverboy'

The suspect (of Surinamese origins) convinced his victims that he loved them. Initially he made a big thing of giving presents, but he turned out to be a pimp who did not shy away from violence and who

²⁴ The PPS can only impose a prejudgment seizure if there is a suspicion of an offence for which a fifth category fine can be imposed. This is the case for THB.

²⁵ In a fifth case, the confiscation claim was not based on illegally obtained profits from THB, but on the profit derived from trading in narcotics (the convicted individuals were guilty of both offences in this case). Confiscation claims were renounced in the other cases.

took all the money earned by the victims. He also turned his victims into drug addicts dependant on him for their supplies. Three victims, one of whom was a minor, filed official reports against him. The victims worked in window brothels (the minor using fake documents). It is not known whether the victims lodged compensation claims.

The illegally obtained profits were calculated at €408,756. In the first instance the deprivation order was €171,322, and an appeal was lodged, at which stage the illegally obtained profits were established at €63,572 and – taking into account the suspect's ability to pay – the amount payable to the State was fixed at €30,000. The accused lodged a cassation appeal in June 2006. That proceeding had not been completed at the time of writing this Report.

Case 2: Romanian victims

Four illegal Romanian women, one of whom was a minor, were discovered during a regular police check at a legal brothel. They indicated they were victims of THB and filed official reports. The suspects were the couple running the brothel. The brothel was in the wife's name, because her husband had a criminal record involving THB and would therefore not be able to get a permit. The victims pointed to him as the principal perpetrator. The couple had not personally recruited the victims, who did not claim compensation.

The illegally obtained profits were calculated at €292,125 between the two suspects. The confiscation case had still to be dealt with at the time of writing this Report.

Case 3: Bulgarian victim

A Bulgarian man and his girlfriend recruited a victim in Bulgaria and brought her to the Netherlands, where they forced her into prostitution by the use of violence. They collected all of the money the victim earned. She was put to work as an escort. Administrative procedures were initiated against the operator of the (licensed) escort bureau. It is not known whether the victim lodged a compensation claim. The illegally obtained profits were calculated at €12,000. In the first instance €5,500 was allocated, and no appeal was lodged.

Case 4: The 'loverboy' case

M was 24 years old when the regional police started investigating him, for suspicion of involvement in THB as a 'loverboy'. At the same time a financial investigation was initiated by the Financial Investigation Bureau [*Bureau Financiële Recherche (BFR)*]. The aim of this investigation was to establish the illegally obtained profits with a view to confiscating them. The investigation focussed on charting out M's earnings and locating his assets.

Location of assets

Information from a range of sources, including municipal authorities, banks, the National Crime Investigation Agency and the Social Services, was collated via a criminal financial investigation. The suspect's telephone calls were also tapped, he was put under surveillance and a request for legal assistance was sent to Surinam. The suspect himself – who had by now been arrested – said nothing about his income and did not even want to listen to the questions. His ex-girlfriend, however, indicated that he had income from 'the work the girls do for him'. By 'girls', she meant the women he had forced into prostitution. These victims, seven in all, made formal statements confirming this. Assets were found following searches at various houses. These included three rings (estimated at €655, new value €2,325) and a

€5,000 claim against an insurance company (in connection with a car crash). A pre-trial attachment was imposed on these. It later turned out that the insurance company never planned to make a payment, because of payment arrears and information withheld by the suspect.

Request for legal assistance from Surinam

A suspicion arose, based partly on a tapped telephone conversation between the suspect and his mother, that M was keeping the money he had earned in Surinam. The reason was that M had said, during a call to his mother, that he was arranging for 'Grandpa' to go to Surinam in order to deposit it in a bank account. The Surinamese authorities were therefore asked for legal assistance in the form of interviewing M's grandparents and searching their house in Paramaribo. They were also asked to investigate any of M's assets or possessions. There were no concrete clues, such as a bank account number. The investigation by the Surinamese authorities did not lead to any of M's assets. The suspect's mother was interviewed by telephone. She stated that this was just M's 'big talk', and that not to be taken seriously at all.

Calculation of illegally obtained profits

Victim P stated that, in the period from 1 October 2002 to 28 November 2002 except for 2 or 3 days, she worked for M every day as a prostitute (a total of 58 days). Because P made contradictory statements about the amount of money she had earned, the calculation of the amount M received from P was largely based on an analysis of telephone calls. P, for example, had conversations with M and victim W about what she had earned each day. M personally told a friend on the phone that he was earning between €800 and €1,300 each day.²⁶ A total of 23 calls contained information about P's earnings. Based on these, it was estimated that she earned an average of €660 per day during the first period she worked for M, and thereafter €393 per day.²⁷ Multiplied by the number of working days (29 in the first period and 26 in the second) the total amount M obtained from P was estimated at €29,280. Victim A estimated her own earnings: 4 days each week at €227 per day and 3 days per week at €454 per day. This victim worked for M as a prostitute for 4 weeks and therefore earned €9,075 for him. The income from the seven victims jointly added up to €252,010.

To calculate the illegally obtained profits, the costs had to be deducted from the income. The costs included petrol and depreciation (estimated at €18 per day),²⁸ costs of a rental car (€26 per day), telephone costs (estimated by those reporting the crime at €30 per day), costs of food and drink (estimated by them at €20 per day), costs for hash (estimated by them at €35 per day), costs for equipment such as condoms and lubricants (estimated at €5 per day), costs of working clothes (estimated on the basis of the reports at €37.50 per day), costs for going out (estimated on the basis of the reports at €26 per day) and overnight costs (in hotels, etc, estimated on the basis of the reports at €63 per day). The costs were always calculated at the daily maximum, for the suspect's benefit. It was calculated that the daily total costs for one girl were €260.50. The illegally obtained profits obtained, for example, from victim P then worked out at €14,602.50. As regards three of the victims, including victim A, there were no illegally obtained profits, after deduction of the costs. In other words, M had more costs for these girls than he received by way of income. The illegally obtained profits (worked out on a transactional basis) for all seven victims together amounted initially to €62,994.50 (there was a subsequent correction).

²⁶ At that point he had two girls working for him.

²⁷ The calculation distinguished between two periods with different earnings, because the victim's official statement was quite clear on this.

²⁸ M took the girls to where they worked by car.

Disposal by the court

The confiscation case came up in December 2003. M had already been sentenced to 30 months imprisonment at that stage, but he had lodged an appeal. The Court of Appeal sentenced M to 18 months in prison. At the lawyer's request, the confiscation case was stayed and continued a few months later, in May. This was because the lawyer wanted to interview two of the informants. The lawyer also objected to the way in which the illegally obtained profits had been calculated. All of the money had allegedly disappeared in costs incurred for the girls. Certain costs had allegedly not been included in the calculation. In response, a supplementary official statement was prepared by the financial investigator. After a closer scrutiny of the documents, he actually reached a higher figure for the illegally obtained profits, namely €89,665.50 (instead of €62,994.50). This was primarily the result of a recalculation of the illegally obtained profits in relation to one of the victims (not included as an example in the previous paragraphs). Costs had been incurred for a holiday that M had taken with the victim to Surinam. Assuming that he used this holiday to continue exercising his influence over her, or to keep her attached to him, it was established that these costs had to be deducted from the illegally obtained profits that had been calculated. Nonetheless, M's illegally obtained profits from this victim were much higher than had been calculated initially. This amount was allocated at first instance and on appeal. M therefore had to pay the State €89,665.50. The victims made no claims for the money they had earned. It is not known whether they were informed about the possibility to lodge claims for compensation. The court did not avail itself of the opportunity to impose a compensation sanction (order for restitution).

6.6.2 Confiscation in THB cases completed in 2004

There are signs of the intimation of a confiscation sanction in 15 (25%) of the 60 investigations into THB successfully completed in 2004. The results for 2003, however, show that this does not always actually lead to a confiscation case. One possible explanation is that public prosecutors have to indicate, before their closing speeches, whether or not a claim for confiscation is being lodged. At that point, there is no need for a criminal profits report to have been prepared, or the illegally obtained profits to have been calculated, and the public prosecutor still has two years to decide on whether or not to lodge a confiscation claim.

In eight of the 15 cases mentioned above, we do not yet know whether this will be happening. A verdict has been pronounced in seven of the cases. In five of these, the claim was (largely) awarded, while the outcome is not yet known in the other two. Victims have either lodged a compensation claim or been awarded compensation in four of these seven cases.

One suspect had been the subject of a confiscation order for THB once before. He never paid up on the claim, however. In the new case against the suspect, the illegally obtained profits were calculated (€10,000) but no confiscation case was initiated, because he had no assets (just debts).

6.7 Results of BNRM police study: compensation to victims

This study included an enquiry as to whether the victims who had come in contact with the police during the THB investigations successfully completed in 2004 made any attempt to recover (part of) the money they had earned and turned over, or compensation for any in-

tangible losses, for example through civil proceedings or joining a claim for civil damages in the criminal proceedings. So far as we are aware, this happened in 13 cases (22%). This is more often than in previous years.²⁹

Many of the persons interviewed indicated that it grieved them that victims hardly ever get any of their money back from human traffickers. Legislation appears to offer sufficient opportunities here, but they are little used by victims. The possible reasons include:

- a lack of information on the possibilities for obtaining compensation;
- a lack of legal support for and assistance to victims;
- fear of the adverse consequences of a claim for compensation. Victims occasionally say as much to the police. A compensation claim can result in revenge, or in the money being claimed back by the perpetrators (once they are out of prison);
- some victims told the police that they were happy to be rid of the suspect, and wanted no more to do with him, even in the context of a compensation claim;
- victims (for example of ‘loverboys’) can still be so infatuated with the suspect that they do not want to lodge a compensation claim, to avoid losing his ‘love’ or because they feel that they are not victims and have handed over the money willingly. Victims who have given money to the suspect but were also allowed to keep some themselves, do not always regard themselves as victims. Lodging a claim for compensation then requires a reversal of their thinking;
- some victims may know that there is nothing to recover from the suspect (or assume this is the case).

Some victims cannot cooperate effectively with compensation claims lodged on their behalf, for example because of drug addiction problems.

6.8 Points of attention and bottlenecks

- There is no general consensus as to what financial investigation entails. This complicates discussion of the topic.
- With THB cases, the illegally obtained profits are often calculated on a transactional basis, possibly also in cases where a cash position/asset comparison would be more beneficial.
- The amounts awarded by courts in confiscation cases are often much lower than the amounts claimed. The amount ultimately confiscated is often lower still.
- In addition to confiscation, there are other facilities under criminal law for striking at a criminal’s assets. An assessment by the Tax Administration can also be considered.
- Indications of cash flows to repositories abroad or possessions held abroad do not always result in an effort to follow the cash flows or confiscate any assets held abroad. There is insufficient international cooperation in confiscation cases.

²⁹ The number of investigations where one or more of the victims lodged a claim for compensation each year: 2 (2000), 10 (2001), 4 (2002) and 3 (2003).

- In many THB investigations the illegally obtained profits can be calculated on the basis of statements made by the victims.
- On the one hand, it is being tried in THB investigations to avoid (too) early confrontations with victims, so that the investigation is not hampered by the ban on allowing the crime to continue. On the other hand, early intervention, because of this ban, can result in stagnation of the financial investigation.
- Obtaining information from (financial) institutions is time-consuming.
- The police indicate that, in certain cases, the PPS does not invest time in (lengthy) financial investigation and pays insufficient heed to the victims' (financial) interests.
- Financial investigation is often bypassed if there are no obvious prospects of confiscation. But financial investigation can be worthwhile even in these cases, for example for gathering evidence. Also, the fact that the suspect has no obvious assets does not mean that he has none at all. Assets may have been sent abroad.
- There is sometimes a lack of time, capacity or expertise for a financial investigation. Also, a late decision to undertake a financial investigation can have a detrimental impact on the final result.
- Victims appear to make little use of the possibilities offered by Dutch law in relation to compensation

The Public Prosecution Service and Prosecution

7.1 Introduction

This Chapter contains an overview of relevant policy developments with regard to the Public Prosecution Service (PPS) and the battle against trafficking in human beings (THB), as well as the results of (secondary) analyses of THB cases within PPS data for the period between 2001 and 2005.

7.2 Policy developments

The arrival of a new Procurator General (PG) holding the portfolio for organised crime has given new élan to the fight against THB within the PPS. The following section centres on the policy-oriented and organisational embedding of the approach to THB within the PPS, and describes some practical points of departures.

7.2.1 Policy-oriented and organisational embedding of the approach

In November 2004¹ the Minister of Justice and the Minister of the Interior and Kingdom Relations established six spearheads for the fight against organised crime over the next few years. Human trafficking is one of these spearheads. The Board of Procurators General endorsed the same spearheads. This choice was reaffirmed in the PPS policy plan ‘Prospects for 2010’ [*Perspectief op 2010*] (2006), in the context of the programmatic approach to organised crime. The key to this approach is collaboration, so that crime will not only be fought through the criminal law.²

Programmatic approach to THB

The programmatic approach was implemented for the first time in relation to THB.³ By combining administrative prevention with criminal law repression, the PPS intends to remove any scope for THB. Whereas the developments in the PPS’s battle against THB, as outlined in the third Report, were previously aimed at increasing the focus on immigration offences, the emphasis in the next few years will be on the joint responsibility of administrative bodies and criminal law enforcement agencies.

One of the agencies cooperating with the PPS in the battle against THB is the Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst* (IND)]. The IND implements

¹ *Parliamentary Papers II* 2004/05, 29 911, no. 1.

² The programmatic approach is also based on the SIOD barrier model. See also Chapter 8.

³ This became the case ‘Sneep’, which is discussed at greater length in Chapter 5.

the B-9 regulation, in terms of which victims of THB and witnesses who have reported this crime can remain available to cooperate in investigation and prosecution. A number of communication bottlenecks between the PPS and the IND as regards the application of the B-9 scheme were mentioned in the third Report. Recent consultations between the PPS and IND show that there are still bottlenecks: decisions not to prosecute are not reported to the IND; the PPS only provides the IND with the names of suspects and the PPS case number, whereas the IND works with the names of victims. The PPS and the IND are consulting about how to solve these problems.

‘Prospects for 2010’ proclaims that there will be an extra effort to tackle the facilitators of THB, and that international cooperation will be strengthened. Another proposal from the plan relates to further specialisation in how to deal with major confiscation cases.

The Board of Procurators General intends to reintroduce the subject of organised crime into the Planning and Control Cycles for the local prosecutors’ offices. This means that performance indicators will also be designated for/also be applied the field of THB, meaning in turn that THB will be a compulsory topic on the agendas of all local prosecutors’ offices, and the Board will be able to follow developments in the fight against THB more closely.

Participation in the periodic consultation among the public prosecutors (one from each district) holding the THB portfolio is made compulsory in terms of the improvement programme entitled ‘The Public Prosecution Service is changing’ [*Het OM Verandert*].⁴ Higher qualifications will also be imposed on these THB prosecutors and their support staff: a THB prosecutor will have to have had a number of years of experience, and (in-service) training and gaining in-depth knowledge will be made more mandatory in nature for both the prosecutor and the supporting officer. There will also be improved guarantees for continuity of THB prosecutors and support staff who have gained experience in the area of THB.

The National Public Prosecutor [*Landelijk Officier van Justitie (LOv)*] for people smuggling and THB coordinates the combating of (international) organised THB from the National Office of the PPS [*Landelijk Parket (LP)*]. The LOv directs the National Crime Squad for this purpose, and maintains close contact with its Expertise Centre on THB and People Smuggling [*Expertisecentrum Mensenhandel en Mensensmokkel (EMM)*], see Chapter 5].

7.2.2 Practical points of departure

Improvements to information gathering

The PPS focuses on improving the information gathering, in order to put the fight against THB on a higher plane through the programmatic approach. The aim is not so much to generate a larger number of THB investigations or prosecutions, but rather a more targeted ap-

⁴ Announced in a letter of 1 November 2006 from the PG, Organised Crime, to the principal public prosecutors.

plication of available knowledge and capacity based on a better understanding of the problem.⁵ Relevant information at the strategic level is assembled into crime scenarios and crime scenario analyses.

It is also worth mentioning in this context that the PG, Organised Crime, has indicated that he regards administrative reports (see also Chapter 5) as being important, so that relevant information is available for every agency involved in the fight against THB.

The Instruction on Trafficking in Human Beings

One important pillar for the practice of investigating and prosecuting THB is the Instruction on Trafficking in Human Beings [*Aanwijzing mensenhandel*], outlining the central points of the fight against THB. This Instruction replaced the previous *Instruction on Trafficking in Human Beings and other forms of Exploitation in Prostitution* with effect from 1 April 2006. The main reason for formulating the new Instruction was the entering into force the new THB provision in the Dutch Criminal Code on 1 January 2005. The previous Instruction only referred to sexual exploitation and was also out-of-date on several other points.

The Instruction outlines how the investigation and prosecution of THB should be approached, frequently using mandatory terms. Thus, every (serious) indication of THB has to be reported to the public prosecutor and to the EMM, and such indications have to lead to investigation and, if possible, prosecution. There must be an active attempt at international collaboration, in case of cross-border THB. Also, investigations into THB should include financial investigation and an investigation aimed at confiscation. The Instruction clearly shows the intention of the PPS to establish greater collaboration with other relevant agencies, and the importance attached to pre-investigation and law enforcement in sectors and situations where there is a significant risk of THB. For this reason an appendix is attached to the Instruction, containing a list of indicators of THB that can be used ‘in the field’ to identify possible trafficking situation.

The Instruction also gives guidance on how to deal with victims, witnesses and their reports or statements. Another appendix to the Instruction contains a section on the proper treatment of victims, with a further explanation of the offence of THB, both as regards its manifestations and its characteristic features.

7.3 Research results

This paragraph shows how many cases are registered with the PPS, how many are dealt with by the PPS and how many are settled by the courts, per year. So, no cohort was followed.⁶ The research methodology can be found in Appendix 2. As a result of the legislative amendment which took effect on 1 January 2005 – replacing Article 250a Dutch Criminal

⁵ Albeit improved information will probably also result in more cases.

⁶ This means that the figures do not always regard the exactly the same cases, as not all cases are registered, dealt with by the PPS and settled by the courts in the same year.

Code by the wider-ranging Article 273a Dutch Criminal Code⁷ – it is impossible to report in a uniform manner on the period before and after the date of its entry into force. This makes it difficult to draw comparisons between the years before and after 1 January 2005. It is known, however, that all the cases in 2005, as in previous years, relate to exploitation in the sex industry.

7.3.1 Cases of THB registered with the Public Prosecution Service

In the period from 2001 to 2005 841 criminal cases were registered with the PPS involving (among others or exclusively) a suspicion of THB (Articles 250ter, 250a and/or 273a, Dutch Criminal Code).⁸ A (criminal) case, in the context of prosecution, is the case against a single accused.

Table 7.1 shows how many cases there were each year and (so far as known) how many cases (also) involved underage victims.⁹

Table 7.1 Number of cases registered¹⁰ and cases (also) involving underage victims, per annum

Year	Cases registered	Cases (partly) relating to minor-aged victims	
2001	130	27	21%
2002	200	27	13%
2003	156	41	26%
2004	220	32	15%
2005	135	36	27%
Total	841	163	19%

The number of registered cases fluctuates: the low number of cases registered in 2003 was followed by a ‘peak year’, with 220 cases registered in 2004, but then a relative low point with only 135 cases in 2005. The standard report on THB by the National Public Prosecutor’s Office [*Parket-Generaal (PaG)*], dated 30 November 2006, shows that more THB cases were registered with the PPS in the period from January up to and including August 2006 than for the whole of 2005.¹¹ Nevertheless, it is worthwhile exploring the possible explanations for the low number of registrations in 2005, and mainly whether there are factors at play of a more structural nature. The PPS has convened a working group to look into possible reasons, consequences and solutions.

⁷ Renumbered as Art. 273f Dutch Criminal Code in mid 2006. For the sake of clarity, this Chapter refers to Articles 250ter, 250a and 273a respectively, meaning Articles 250ter (old), 250a (old) and 273a (old) respectively.

⁸ Including cases subsequently dismissed by the PPS or where the ultimate charges did not include THB.

⁹ Criterion used: registration under Article (sub)sections that indicate explicitly the minority age of the victims. Underage victims may also, however, be involved in cases charged under different Article (sub)sections, so that the figures here are almost certainly underestimates.

¹⁰ Including cases transferred (to a different court jurisdiction)

¹¹ 137 of them.

Possible causes of the low number of cases registered with the Public Prosecution Service in 2005

The possible causes, which partly only apply in certain districts, include (in no particular order): the fact that authorities are still getting used to the new THB Article 273a Dutch Criminal Code; a (temporary) lack of checks in the prostitution sector; prostitution police teams focussing on administrative checks (rather than criminal investigations); a lack of police capacity and competition from other offences; a lack of priority; authorities waiting for assistance from the EMM or passing the buck to EMM; a primarily reactive approach (acting only when the crime is reported); failure to record indications; reorganisations; frequently changing duty priorities for public prosecutors; the (temporary) lack of a THB public prosecutor; and the prosecution of THB suspects for offences other than THB.

The number of cases relating (also) to underage victims fell in 2004, in both absolute and relative terms, but rose again in 2005. For the entire period from 2001 to 2005 19% of the cases relates (also) to underage victims. This tells us nothing about the *number* of underage victims.

Table 7.2 reflects the results of differentiating the THB cases registered with the PPS according to the paragraphs within the THB provision(s) in the Dutch Criminal Code.

Table 7.2 *Type of THB, for each year of registration*¹²

Type of THB	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
250ter/a (1)	34	26%	52	26%	31	20%	60	27%	22	16%	199	24%
250ter/a (2)	96	74%	148	74%	125	80%	160	73%	39	29%	568	68%
273a (1)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	27	20%	27	3%
273a (3)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	43	32%	43	5%
273a (4)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	4	3%	4	0%
Total	130	100%	200	100%	156	100%	220	100%	135	100%	841	100%

The vast majority of THB cases in the period from 2001 to 2004 relates to Articles 250ter (2) or 250a (2), i.e. THB by two or more persons acting in concert, *or* involving a victim under the age of 16, *or* resulting in serious physical injury. In 2005 – after the new THB provision, Article 273a Criminal Code, came into effect on 1 January – many of the cases (nearly one third) relate to Article 273a (3), i.e. THB by two or more persons acting in concert, *or* involving a victim under the age of 16. There is also a fairly frequent occurrence of cases registered under Articles 250ter (1), 250a (1) or (in 2005) 273a (1) in the period from 2001 to 2005. In 2005 a few (4) cases were registered under Article 273a (4) (THB committed by two or more persons acting in concert, *and* involving a victim under the age of 16).

Exploitation in other sectors than the sex industry, and certain activities relating to organ removal were brought within the scope of ‘THB’ when Article 273a Criminal Code came into effect. Unfortunately, the way the Article is worded does not allow for differentiation

¹² Articles 250ter/a (3) and 273a (5) and (6) are not mentioned in the table because they were not in operation during the relevant period.

by the nature of the exploitation according to paragraphs and sub-paragraphs. It is known, though, that in 2005 the courts did not deal with any cases concerning exploitation outside the sex industry, or organ removal.

Human trafficking is often committed in combination with other offences, such as arranging entry into the country for undocumented migrants, (attempted) rape or complicity in rape, possession or use of weapons, (attempted) deliberate deprivation of liberty or being an accessory to this, or offences connected with drugs, making and using fake or forged travel documents, assault and threats.^{NRM3} Hence, a single case can cover several offences.

Table 7.3 provides an overview of the most severe offence registered for each (THB) case. Cases combining different offences with the same maximum penalty are classified under THB.¹³

Table 7.3 Most serious offence, per year of registration

Most severe offence	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Sexual violence	18	14%	14	7%	14	9%	26	12%	16	12%	88	10%
Other violence	3	2%	7	3%	2	1%	13	6%	7	5%	32	4%
Offence against property	2	1%	-	-	1	1%	-	-	-	-	3	0%
Vandalism/public order	-	-	-	-	-	-	2	1%	-	-	2	0%
THB: 250ter/a (1)	24	18%	43	21%	23	15%	43	19%	16	12%	149	18%
THB: 250ter/a (2)	81	62%	131	65%	109	70%	131	60%	35	26%	487	58%
THB: 273a (1)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	23	17%	23	3%
THB: 273a (3)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	32	24%	32	4%
THB: 273a (4)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	4	3%	4	0%
Other offences under Criminal Code ¹⁴	2	1%	5	2%	7	4%	5	2%	2	1%	21	2%
Total	130	100%	200	100%	156	100%	220	100%	135	100%	841	100%

In 2004, THB was the only or the most serious offence registered in 79% of cases, with the corresponding figure for 2005 being 82% of the cases. In the other cases there was an even more serious crime involved besides THB, usually a form of sexual violence such as indecent assault or rape.

¹³ If this still produces a combination of offences with the same maximum penalty, then the offence committed first takes precedence.

¹⁴ For example (THB in combination with) fraud, bribing an official, bigamy, inducing a minor to drunkenness or abducting a minor.^{NRM3}

Looking at the period from 2001 to 2005 as a whole, THB was the only or the most serious offence registered in 83% of the cases.

There are fewer registrations of THB in combination with ‘participation in a criminal organisation’ (Article 140 Dutch Criminal Code). Possible explanations include that the THB cases mainly relate to suspects operating on their own (such as loverboys) and/or that they are principally ‘quick hit’ cases.

7.3.2 The suspects

Age

In more than three quarters of the cases registered in 2004 and in 2005, the suspect’s age at the time of the first THB offence¹⁵ was between 18 and 41. The average age in 2004 was 32, and in 2005 it was 30,¹⁶ and in both these years there were four underage suspects (2% and 3% respectively).¹⁷

Country of origin

The suspects came from more than 50 different countries. Table 7.4 shows (in alphabetical order) the most important countries of origin.¹⁸ See Table B7.4 in Appendix 4 for a complete overview.

Table 7.4 Country of birth of suspects, per year of registration

Country of birth	2001	2002	2003	2004	2005	Total	
	N	N	N	N	N	N	%
Albania	4	26	5	-	-	35	4%
Bulgaria	12	27	19	14	4	76	9%
Czech Republic	5	2	-	2	5	14	2%
(Federal Republic of) Germany	1	-	1	5	1	8	1%
Hungary	1	1	-	-	6	8	1%
Iraq	1	6	-	2	-	9	1%
Morocco	5	3	3	9	17	37	4%
Netherlands	30	51	47	91	53	272	32%
Netherlands Antilles	1	1	2	7	3	14	2%
Nigeria	3	7	5	4	-	19	2%
Poland	-	4	-	3	3	10	1%
Romania	2	8	22	23	6	61	7%
(former) Soviet Union	6	7	11	8	1	33	4%

¹⁵ One individual can be suspected of several THB offences.

¹⁶ Standard deviation is 11 in both years. See Appendix 3 for a more detailed explanation.

¹⁷ There were 4 in 2001, 3 in 2002 and 7 in 2003.

¹⁸ The criterion for inclusion in this table is that at least five suspects came from the country concerned in one of the years, or at least ten over the entire period from 2001 to 2005.

Suriname	4	5	10	9	6	34	4%
(former) Yugoslavia	22	6	3	3	4	38	5%
Turkey	8	26	16	24	15	89	11%
Other	25	16	9	13	11	74	9%
Unknown	-	4	3	3	-	10	1%
Total	130	200	156	220	135	841	100%

The Netherlands was again the most frequently occurring country of birth¹⁹ in 2004 and 2005. Looking at the entire period from 2001 to 2005, the substantial proportion of suspects born in Turkey and Bulgaria (both around 10%) is worth mentioning. Proportionately, though, the number of suspects from Bulgaria diminished. Countries such as Albania and (the former) Yugoslavia seemed to peak incidentally as countries of birth (in 2002 and 2001 respectively).²⁰ Romania scored high in 2003 and 2004.

Table 7.5 shows the annual ranking order for the five most prevalent countries of birth for suspects.²¹

Table 7.5 Ranking of the most prevalent countries of birth of suspects, per year of registration

Land	2001	2002	2003	2004	2005	Total
	Rank	Rank	Rank	Rank	Rank	Rank
Albania		3'				
Bulgaria	3	2	3	4		3
Hungary					4'	
Morocco				5'	2	
Netherlands	1	1	1	1	1	1
Romania		4	2	3	4'	4
(former) Soviet Union	5		5			
Suriname				5'	4'	
Turkey	4	3'	4	2	3	2
(former) Yugoslavia	2					5

As in previous years, the overview shows a constant first place for the Netherlands as country of birth and also a reasonably stable position for Turkey in the top five. In the previous Report, Bulgaria and Yugoslavia were also mentioned as more or less steady 'top' countries, but these have become less significant as countries of birth for suspects. By contrast, Morocco's share has increased substantially.

¹⁹ Ethnic background is not registered.

²⁰ (The former) Yugoslavia also scored highly at the end of the 1990s: 19% in 1998 and 13% in 1999.

²¹ The year 2005 is taken as reference point for determining the order in which the countries are listed. An accent indicates a shared position.

Gender

Most suspects are male – in 81% of the cases in 2004 and 87% of the cases in 2005. There are, however, clear distinctions between countries of origin. If we confine ourselves to the most important countries of origin for suspects, as included in Table 7.5, it is noticeable that there are scarcely any women among the Turkish or Moroccan suspects (no more than 2% to 3%), whereas a substantial proportion of the Russian, the (few) Hungarian, the Romanian and the Bulgarian suspects were female (39%, 37%, 34% and 30% respectively). The other countries of origin occupy a position in between these extremes. For instance, 11% of Dutch suspects are female.²²

7.3.3 Cases dealt with by the Public Prosecution Service

Table 7.6 shows, for each year of registration, the number of THB cases in which the suspect was taken into pre-trial detention.

Table 7.6 Pre-trial detention, per year of registration

Preventive custody	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Yes	94	72%	154	77%	130	83%	161	73%	102	76%	641	76%
No	36	28%	46	23%	26	17%	59	27%	33	24%	200	24%
Total	130	100%	200	100%	156	100%	220	100%	135	100%	841	100%

In 2004 and 2005, about three quarters of the suspects were in pre-trial detention at the moment the case was brought before the court. This percentage rate is fairly stable over the years.

Table 7.7 shows how the PPS processes cases. While the above tables refer to the 841 criminal cases registered in the period from 2001 to 2005. Table 7.7 concerns the 896 cases the PPS dealt with in the same period.²³

Table 7.7 Cases dealt with by the PPS, per year in which the cases were dealt with

Dealt with	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
THB summons ²⁴	99	62%	111	68%	117	66%	177	70%	107	73%	611	68%
Unconditional decision not to prosecute	46	29%	40	25%	42	24%	63	25%	28	19%	219	24%

²² This also applies to suspects from Albania; 15% of the suspects from Suriname are female.

²³ The difference between the number of cases registered and the number disposed of by the Public Prosecutions Service results from the fact that the Public Prosecutions Service does not always take a decision on prosecution in the same year when the case is registered.

²⁴ It concerns a summons for THB, either solely or in addition to other offences.

Summons for others offences ²⁵	12	8%	10	6%	11	6%	6	2%	2	1%	41	5%
Transfer ²⁶	1	1%	-	-	2	1%	2	0%	1	1%	6	1%
Joinder (of cases)	-	-	1	1%	4	2%	1	0%	2	1%	8	1%
Conditional decision not to prosecute	1	1%	-	-	-	-	2	0%	4	3%	7	1%
Out-of-court settlement	-	-	1	1%	-	-	1	0%	2	1%	4	0%
Total	159	100%	163	100%	176	100%	252	100%	146	100%	896	100%

The number of cases dealt with shows a similar pattern to the number of cases registered with the PPS: 2004 was a peak year, with 252 cases, but was followed by a relative low point with only 164 cases processed in 2005.²⁷

The summons was by far the most common disposal in both these years (72% and 73% of the cases respectively). The summons are usually (also) for THB (more than 70% of all outcomes in both years), but sometimes only for other offences. A quarter of the cases was unconditionally dismissed in 2004, and 19% of the cases in 2005. The other forms of dealing with THB cases (joinder of cases, transfers, conditional dismissal and out-of-court settlement) were only used sporadically.

Unconditional dismissals happened more often for cases of non-aggravated THB than for those cases where there was an element of aggravation. A relatively high proportion of the THB cases registered under the new Article 273a ended with a summons (frequently for THB). This was the case for 84% of the cases registered under Article 273a (1), and virtually all of those registered under the (more serious) paragraphs 3 and 4.

7.3.4 Settlement by the court

To recapitulate: in the period from 2001 to 2005, 841 cases were registered with the PPS in which there was (also) a suspicion of THB. During the same period, 896 cases were dealt with by the PPS. Also in the same period, the courts (of the first instance) settled a total of 563 cases in which THB was (also) charged.²⁸ Table 7.8 provides a summary, for each year of settlement, of the judgments by the courts.

²⁵ It concerns cases in which, despite earlier suspicions of THB, ultimately no charge of THB was made.

²⁶ To another district or abroad.

²⁷ The number of cases dealt with by the PPS will be higher again for 2006 than for 2005. Up until August, the figure stood at 146 (National Public Prosecutor's Office *Standard Report on THB* of 30 November 2006).

²⁸ These are not the exact same cases as those registered with, or dealt with by the PPS in this period. The following information does not include the cases registered with the PPS as (also) involving THB, but in which the summons was issued only for other offences.

Table 7.8 Settlement in the first instance, per year of settlement

Settlement	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Sentenced	74	87%	84	87%	105	91%	135	89%	98	85%	496	88%
Acquittal	7	8%	10	10%	5	4%	11	7%	13	11%	46	8%
Discharge from prosecution	-	-	-	-	-	-	1	1%	-	-	1	0%
PPS inadmissible	3	4%	1	1%	1	1%	-	-	-	-	5	1%
Summons invalid	-	-	-	-	-	-	-	-	1	1%	1	0%
Joinder of cases	1	1%	1	1%	5	4%	4	3%	3	3%	14	3%
Total	85	100%	96	100%	116	100%	151	100%	115	100%	563	100%

A large majority of the cases brought to the courts in 2004 (89%) and 2005 (85%) ended with a guilty verdict. The accused was acquitted in 7% and 11% of the cases respectively. The other forms of settlement were used occasionally.

Table 7.9 provides an overview of the nature of the disposal at first instance, according to the most serious offence charged.

Table 7.9 Settlement for most serious crime, per year of settlement

Most serious crime	Judgment	2001	2002	2003	2004	2005	Total
THB: 250ter/a (1) CC	Sentence	3 (100%)	12 (92%)	10 (91%)	21 (87%)	19 (86%)	65 (89%)
	Acquittal	-	1	1	2	1	5
	Discharge from prosecution	-	-	-	1	-	1
	Joinder of cases	-	-	-	-	2	2
	Total	3	13	11	24	22	73
THB: 250ter/a (2) CC	Sentence	59 (86%)	61 (86%)	81 (89%)	95 (91%)	48 (81%)	344 (87%)
	Acquittal	6	9	4	6	10	35
	PPS n.a.*	3	-	1	-	-	4
	Joinder of cases	1	1	5	3	1	11
	Total	69	71	91	104	59	394
THB: 273a (1) CC	Sentence	n/a	n/a	n/a	n/a	3	3
	Acquittal	n/a	n/a	n/a	n/a	1	1
	Total	n/a	n/a	n/a	n/a	4	4
THB: 273a (3) CC	Sentence	n/a	n/a	n/a	n/a	5	5
	Acquittal	n/a	n/a	n/a	n/a	1	1
	Total	n/a	n/a	n/a	n/a	6	6
Sexual violence	Sentence	9	8	9	8	16	50
	Acquittal	-	-	-	2	-	2
	PPS n.a.	-	1	-	-	-	1
	Joinder of cases	-	-	-	1	-	1

Most serious crime	Judgment	2001	2002	2003	2004	2005	Total
	<i>Total</i>	9	9	9	11	16	54
Other violence	Sentence	1	1	2	3	6	13
	Acquittal	-	-	-	1	-	1
	<i>Total</i>	1	1	2	4	6	14
Offences against - property	Sentence	-	-	1	-	-	1
	<i>Total</i>	-	-	1	-	-	1
Vandalism/ public order	Sentence	1	-	-	2	-	3
	<i>Total</i>	1	-	-	2	-	3
Other offences under the Criminal Code	Sentence	1	2	2	6	1	12
	Acquittal	1	-	-	-	-	1
	Summons invalid	-	-	-	-	1	1
	<i>Total</i>	2	2	2	6	2	14
Total	Sentence	74 (87%)	84 (87%)	105 (91%)	135 (89%)	98 (85%)	496 (88%)
	Acquittal	7	10	5	11	13	46
	Discharge from prosecution	-	-	-	1	-	1
	PPS n.a	3	1	1	-	-	5
	Summons invalid	-	-	-	-	1	1
	Joinder of cases	1	1	5	4	3	14
	<i>Total</i>	85	96	116	151	115	563

* PPS inadmissible

The detailed subdivision means that some cells are so empty that percentage rates are fairly meaningless. Hence, these are only included in the fuller cells. Points worth noting:

- in 2004, the rate for guilty verdicts in cases where THB was the most serious charge was close to 90%, and this also applies to all cases together (see the bottom part of the table);
- in 2005, the rate of guilty verdicts was a little lower: 82% for charges under Article 250ter/a (paragraphs 1 and 2 together) and 80% for charges under the new Article 273a.

Sentences imposed

Until recently, PPS data only contained information on the nature of judicial decisions in relation to the *summons* and not in relation to the offences for which an accused is ultimately *convicted*. This has changed. From 2003 onwards, it is possible to disregard the cases where THB was charged but did not lead to a conviction for THB. However, in order to enable a comparison with previous years, the present Report includes an overview (Table 7.10) of the kinds of sentences imposed in all cases where the summons included THB charges,²⁹ by the most serious offence resulting in a conviction.

²⁹ So this includes the cases in which the court did not convict the accused for THB.

Table 7.10 Sentence imposed for most serious crime, per year of settlement

Most serious crime	Sentence imposed ³⁰	2001	2002	2003	2004	2005	Total
THB: 250ter/a (1) CC	No principal sentence ³¹	-	1	-	-	-	1
	Conditional principal sentence	-	1	1	-	2	4
	Custodial sentence	5	11	8	15	15	54
	CSO*	-	1	3	3	2	9
	Fine	-	-	2	-	-	2
	Custodial sentence + CSO	-	-	1	-	-	1
	<i>Total</i>	5	14	15	18	19	71
THB: 250ter/a (2) CC	No principal sentence	-	1	1	-	-	2
	Conditional principal sentence	-	2	2	3	-	7
	Conditional sentence	43 (78%)	41 (79%)	46 (77%)	72 (80%)	36 (82%)	238 (79%)
	Conditional sentence + fine	-	-	2	2	3	7
	CSO	9	4	4	4	2	23
	CSO + fine	2	3	-	1	-	6
	Fine	-	-	2	2	1	5
	Custodial sentence + CSO	1	1	3	6	2	13
	<i>Total</i>	55	52	60	90	44	301
THB: 250ter (3) CC	Conditional sentence	1	-	-	-	-	1
	<i>Total</i>	1	-	-	-	-	1
THB: 273a (1) CC	Conditional sentence	n/a	n/a	n/a	n/a	2	2
	<i>Total</i>	n/a	n/a	n/a	n/a	2	2
THB: 273a (3) CC	Conditional sentence	n/a	n/a	n/a	n/a	5	5
	<i>Total</i>	n/a	n/a	n/a	n/a	5	5
Sexual violence	Conditional sentence	7	4	7	7	12	37
	Custodial sentence + CSO	-	-	1	-	-	1
	<i>Total</i>	7	4	8	7	12	38
Other violence	No principal sentence	-	-	-	-	1	1
	Conditional sentence	3	2	1	6	7	19
	CSO	-	-	-	1	1	2
	Fine	1	-	-	-	-	1
	<i>Total</i>	4	2	1	7	9	23
Offences against - property	Conditional sentence	-	4	4	1	-	9
	<i>Total</i>	-	4	4	1	-	9

³⁰ It concerns unconditional sentences, unless indicated otherwise.

³¹ In cases in this category an additional sentence (e.g. confiscation) or a measure (e.g. detention under a hospital order) may have been imposed. The term 'additional sentence' is somewhat misleading, because the court may also impose only such a sentence.

Most serious crime	Sentence imposed ³⁰	2001	2002	2003	2004	2005	Total
Vandalism/ public order	Conditional principal sentence	-	1	-	-	-	1
	Conditional sentence	1	-	4	7	-	12
	CSO	-	-	1	-	-	1
	Fine	-	-	-	1	-	1
	Conditional sentence + CSO	-	-	3	-	-	3
	<i>Total</i>	<i>1</i>	<i>1</i>	<i>8</i>	<i>8</i>	<i>-</i>	<i>18</i>
Other offences under the Criminal Code	Conditional sentence	1	5	2	3	2	13
	<i>Total</i>	<i>1</i>	<i>5</i>	<i>2</i>	<i>3</i>	<i>2</i>	<i>13</i>
Other and unknown	No principal sentence	-	-	2	-	-	2
	Conditional sentence	-	1	3	1	5	10
	Fine	-	-	2	-	-	2
	Conditional sentence + fine	-	1	-	-	-	1
	<i>Total</i>	<i>-</i>	<i>2</i>	<i>7</i>	<i>1</i>	<i>5</i>	<i>15</i>
Total	No principal sentence	-	2	3	-	1	6
	Conditional principal sentence		4	3	3	2	12
	Conditional sentence	61 (82%)	68 (81%)	75 (71%)	112 (83%)	84 (86%)	400 (81%)
	Conditional sentence + fine		1	2	2	3	8
	CSO	9	5	8	8	5	35
	CSO + fine	2	3	-	1	-	6
	Fine	1	-	6	3	1	11
	Conditional sentence + CSO	1	1	8	6	2	18
	<i>Total</i>	<i>74</i>	<i>84</i>	<i>105</i>	<i>135</i>	<i>98</i>	<i>496</i>

* Community Service Order

This table also includes only few percentage rates, because of the large number of (almost) empty cells. The following points are worth noting:

- in 2004, a sentence of imprisonment was passed in 88% of all cases in which THB was charged (whether or not in combination with other offences) and where the court imposed a penalty. This was sometimes combined with a monetary fine or community service. The figure for 2005 was 91%.
- in the period from 2000 to 2003, this annual percentage rate was in the range between 81% and 86%.
- in 2004, in 88% of all cases where 250ter/a (2) was the most serious offence and a penalty was imposed, this was imprisonment. The figure for 2005 was 93%.³² This percentage also has grown in recent years (in 2003 it was 83%).

³² Either imprisonment only or imprisonment plus a community service order or a monetary fine.

Conviction for THB

A total of 288 accuseds were found guilty of THB in the period from 2003 to 2005.³³ Unconditional prison sentences were imposed in 252 of these 288 THB cases, of which 20 were combined with (unconditional) monetary fines or community service order. The average prison sentence was roughly 25 months (758 days, standard deviation 848). The highest average prison sentence was imposed in cases where violence was the most serious offence: 2086 days, or more than five and a half years, in cases of sexual violence (standard deviation 1487)³⁴ and 2485 days, or more than six and a half years, in cases of other violence (standard deviation 2293).³⁵

7.3.5 Appeal?

The PPS data is limited to the settlement of cases by courts of the first instance. In addition to this, it is known whether an appeal has been lodged in such a case, and by whom. Table 7.11 provides an overview.

Table 7.11 *Appeal lodged, per year of settlement (at the first instance)*

Appeal Lodged	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
None	44	52%	48	50%	69	59%	92	61%	58	50%	311	55%
By PPS	4	5%	10	10%	6	5%	6	4%	13	11%	39	7%
By the accused	22	26%	23	24%	28	24%	44	29%	25	22%	142	25%
By both parties	15	18%	15	16%	13	11%	9	6%	19	17%	71	13%
Total	85	100%	96	100%	116	100%	151	100%	115	100%	563	100%

The Table shows that an appeal was lodged in 39% of the cases in 2004 and 50% of the cases in 2005, most often (only or also) by the accused. The percentage varies slightly over the years.

7.4 International developments

7.4.1 International collaboration

The National Action Plan against THB indicated that the Cabinet would promote international collaboration where possible. The PPS was asked to indicate where it was encountering hindrances in practice. A working group from the THB prosecutors' consultation group has concluded that international cooperation is not always easy, albeit not impossible. It

³³ This means that in this period 50 cases resulted in a conviction for one or more offences other than THB: $105+135+98 = 338$ (see the totals for 2003 to 2005 included in Table 7.10) minus 288.

³⁴ 19 cases in total.

³⁵ Five cases in total.

does require extra input, and is therefore time-consuming. The pressure from the imposition of performance standards is diametrically opposed to this, and needs to be dealt with. A solution can usually be found for most (practical) hindrances. Europol and Eurojust can play their part by indicating any incompatibilities in definitions and legislation, while Dutch foreign liaison officers can be particularly useful in setting up contacts and acquiring information. Any unfamiliarity among public prosecutors with international collaboration can be obviated by training and education in this area.

7.4.2 Eurojust³⁶

The number of cases being referred to Eurojust from various countries has been climbing steadily for some years, increasing by 54% to 588 in 2005. The nature of Eurojust's mandate implies that these cases involve at least two (European) countries. Eurojust plays an active part in investigation and prosecution in these cases, in collaboration with the relevant national agencies. 33 cases³⁷ involving THB and people smuggling³⁸ were referred to Eurojust in 2005.

Nine of the total of 73 coordination meetings organised by Eurojust in 2005 related to THB. The aim of these meetings is to facilitate collaboration and coordinate action in specific cases. Eurojust also organises strategic meetings on important investigations into and prosecutions of serious organised crime. One of the topics in 2005 was THB. The aim of these strategic meetings is threefold: 1. to disseminate information on practical prosecution problems and on solutions and best practices in the area of THB, and to set up a forum where legal officials can discuss the subject with their colleagues from other countries; 2. to create networks of public prosecutors and detectives working in the field of THB, and to generate confidence in order to secure improved, faster and more direct collaboration and coordination within the European countries; and 3. to identify possible new cases for collaboration and coordination and to draw them to the attention of Eurojust. The Eurojust 2005 *Annual Report* contains an extensive report on the most important findings from the strategic meeting on THB (and people smuggling).

7.5 Points of attention and bottlenecks

Points of attention and bottlenecks in relation to the prosecution of THB.

(Increased) attention to the fight against THB

– Greater attention is being paid to the fight against THB at the policy level within the Public Prosecution Service. It is important that this should now be translated into the practice

³⁶ Information based on data from the Annual Report, 2005 (Eurojust, 2006).

³⁷ There were 19 in 2004. The 2005 *Annual Report* describes two THB cases.

³⁸ The text of the 2005 *Annual Report* only mentions THB cases; the tables containing numerical information appear to show that these include both THB and people smuggling cases. No further subdivision is made.

of investigation and prosecution. There are still variations in the degree of priority given to THB in the various districts.

- Performance indicators may well assist in placing the fight against THB on the agenda, but they can operate as a hindrance to important but time-consuming activities such as (for instance) international collaboration and confiscation. They can also result in (too much) investment being made in ‘quick hit’ cases, and not enough in investigation and prosecution of all suspects in a given case. The reduction in the number of combined registrations of ‘THB’ and ‘membership of a criminal organisation’ might be an indicator of this.
- Despite consultation between the PPS and the IND, the bottlenecks in the collaboration between these two chain partners have not yet been resolved.
- The plans to improve the Public Prosecution Service’s information position via the programmatic approach are not designed to increase the numbers of investigations and prosecutions for THB, but may well lead to this, and then (extra) capacity would be needed to cope.

Prosecution and trial

- In 2005, the number of cases of THB registered with and processed by the PPS and disposed of by the courts was low. (Provisional) figures for 2006 indicate that this was not the start of a downward trend: the numbers of THB cases were on the increase again in 2006.
- It is unfortunate that the shared perspective of the public prosecutors holding the THB portfolio (one from each district), are not always being applied by the case prosecutors in practice.
- The sentences imposed for THB are low. The question arises as to whether the courts are always sufficiently conscious of the nature and gravity of the offence of THB.
- Human trafficking is not a specialist area for the judiciary.

Points of attention in relation to (academic) research

- The wording of the THB Article is such that it is impossible to discern the type of exploitation involved (in the sex industry, in other sectors of the economy or in relation to organ removal) from registration under different paragraphs and sub-paragraphs. This is a problem from the perspective of research.
- From the researcher’s point of view, it is inconvenient that the information from Eurojust does not differentiate between THB and people smuggling.

Exploitation in Sectors other than the Sex Industry

8.1 Introduction

According to the Palermo Protocol and the EU Framework Decision, exploitation, which is a characteristic of THB,¹ can take the form of forced labour or services, slavery or practices similar to slavery. These elements have been incorporated into Article 273f Dutch Criminal Code. The description of the offence of THB now covers exploitation in every economic sector as well as the coerced removal of organs.

When the new clause on THB was introduced, neither researchers nor the investigative services had a good notion of exploitation in other sectors than the sex industry in the Netherlands. The exploratory literature search by Van der Leun and Vervoorn (2004) had indicated that an increased risk was present, with respect to these forms of exploitation. BNRM accordingly carried out an exploratory study aimed at collecting case studies of serious abuses in employment situations. Exploitation in other sectors than the sex industry does occur in the Netherlands, but it is impossible to determine the scale of the problem.

This chapter presents the results of the BNRM study into exploitation in sectors other than the sex industry. It deals with the term ‘exploitation’, the collected cases (and their categorisation), the relevant economic sectors, the groups at risk, and finally with points of attention and bottlenecks in the fight against this type of exploitation.

8.2 BNRM study into exploitation in sectors other than the sex industry

The preliminary BNRM study into exploitation² outside the sex industry covered the period from 2000 to 2005 and was not confined to specific economic sectors, regions or groups in society. The methodology applied was qualitative, making use of case descriptions in particular. This methodological approach stemmed in part from the absence of empirical research into this type of exploitation in the Netherlands or operational information from police investigations. Appendix 2 contains an explanation of the research methods used.

8.2.1 Definition of terms

Many people think of exploitation as a situation where someone makes someone else work in unfavourable conditions in order to earn as much money as possible. The definition of

¹ The description of the offence does not require that someone should actually have been exploited.

² The research did not encompass every element of the definition of THB as an offence. This is explained in §8.4.

‘exploitation’ as stipulated in the Criminal Code does not, however, coincide with the meaning of the term in common parlance. The legal expression only covers extremely unfavourable conditions. Article 273f Dutch Criminal Code deals with excesses where human rights are at stake. This is apparent from the Explanatory Memorandum,³ which indicates that exploitation as defined in the clause on THB relates to modern forms of slavery. The Minister of Justice, when submitting to the Lower House the Additional Measures for the National Human Trafficking Action Plan [*Aanvullende maatregelen bij het Nationaal Actieplan Mensenhandel*], emphasised that THB relates to excessively degrading circumstances in employment or service relationships involving fundamental breaches of human rights.⁴ This may include forcing someone to work or abusing someone’s dependent position if, in the given circumstances, that person reasonably has no other choice than to end up being exploited. The Explanatory Memorandum cites the example of an extremely long working week for disproportionately low wages in poor working conditions. The fact that the Article on THB is not intended to criminalise less serious abuses can also be inferred from the fact that it is included in the title ‘Crimes against Personal Freedom’ in the Dutch Criminal Code.

8.2.2 The reasons for the BNRM study

Information from surrounding countries

It is a known fact that in other western European countries serious abuses in employment situations take place. In Belgium, for example, for some years a quarter of the registered victims of THB have been exploited in other sectors than the sex industry (Centre for Equal Opportunities and Opposition to Racism, 1999; 2000; 2002), and a French Parliamentary investigating commission found exploitation in textile sweatshops, the catering industry and elsewhere (Lazerges, 2001). Exploitation outside the sex industry also occurs in the United Kingdom and Germany (e.g. Anderson, 2005; Cyrus, 2005). It is likely, therefore, that this type of exploitation is also going on in the Netherlands. At the same time, relevant distinctions that may be able to be drawn between the Netherlands and the surrounding countries. The fact that the Netherlands has a relatively small informal economy and domestic sector, for instance, could reduce the risk of labour exploitation. But the precise influence of these factors is unknown.

Conclusions from an earlier literature study

The exploratory literature study on slavery-like exploitation in the Netherlands by Van der Leun and Vervoorn appeared shortly before (the former) Article 273a Dutch Criminal Code⁵ came into effect. The authors conclude that there appears to be large-scale and increasing illegal employment in the Netherlands, and that illegal workers find it very difficult to insist on proper working conditions. It also appears that their working conditions and po-

³ *Parliamentary Papers II* 2003/4 29,291, no. 3.

⁴ *Parliamentary Papers II* 2005/6 28 638, no. 19, p.1.

⁵ With effect from 1 September 2006, the THB provision was renumbered as Art. 273f Dutch Criminal Code.

sition in the employment market have deteriorated in recent years, and that the increasingly underground nature of illegal employment is leading to situations that might readily turn into slavery-like practices (Van der Leun & Vervoorn, 2004). The authors also point out the increased risk of excesses resulting from the growing numbers of fraudulent labour subcontractors and undocumented migrants working in private households.

Discussion of the new Article on THB

With the introduction of the new Article on THB it has not become entirely clear when a situation of reprehensible working conditions is deemed to cross the line into exploitation as defined in Article 273f, paragraph 2, Dutch Criminal Code. The legislature has left it partly up to the courts to define the exact scope of the new provision. Until more case law than the current very few judgments is available, this will hamper investigation and prosecution of exploitation outside the sex industry.⁶ The input of case descriptions should facilitate the discussion on the scope of the Article, while knowledge of the various forms in which exploitation manifests itself is important for the fight against THB.

8.2.3 Response

Table 8.1 shows the categories of organisations and individuals who received a questionnaire about (possible) exploitation in sectors other than the sex industry, as well as the response rates. 35 key figures were approached directly. This allowed BNRM to record 119 case studies.⁷ The number of individuals concerned is higher, as some of the cases involve several people working in (very) poor circumstances and/or several profiteers. Not all of the 119 cases collected are cases of exploitation as defined in Article 273f Dutch Criminal Code, however. The respondents also described situations which were not so serious as to amount to exploitation in the sense of THB. Categorisation on the basis of Article 273f Dutch Criminal Code follows at §8.4.3.

Table 8.1 Response rate per category to BNRM questionnaires

Category	Approached	Replies	Response rate	Interviews	Cases
Social workers/social aid organisations	1373	283	21%	42	50
Lawyers	919	170	28%	27	33
Social Council members	48	19	40%	1	2
Reception centres for asylum seekers and illegals	81	22	27%	4	4
Labour market fraud teams	14	13	93%	n/a.	9 ⁸
Medical staff at the Johannes	31	0	0%	0	0

⁶ The Netherlands is not an exception here. As far as forced labour is concerned, the ILO has established that nearly all countries have made this a criminal offence, but that there are almost no detailed definitions of the expression. The result is that there are seldom any prosecutions, so that there is little (political) interest in the subject (ILO, 2005).

⁷ Two cases became known to BNRM from various sources. These are counted once.

⁸ The AMF described employment situations too briefly to be able to talk about specific individual cases.

Category	Approached	Replies	Response rate	Interviews	Cases
Wierstichting					
Migrant organisations	111	11	10%	3	2
Investigators at the Social Information and Investigation Service (SIOD)	220	51	23%	1 ⁹	7 ¹⁰
Total	2797	569	20%	78	107

Table 8.2 Key figures contacted directly

Category	Respondents ¹¹	Interviews ¹²	Cases
Social workers	6	2	5
Investigators	8	3	1
Trade unions	4	3	2
Industry/sector organisations	4	4	0
Government agencies	10	8	3
Other	3	3	1
Total	35	23	12

8.3 Exploitation in other sectors than the sex industry in the sense of THB

8.3.1 Legal perspective

During the first year after it entered into force, the new Article on THB raised many questions among the (special) investigation services, the Public Prosecution Service, lawyers and NGOs.¹³ In particular, the concept ‘exploitation’ requires more clarification. The legislature has intended that Article 273f Dutch Criminal Code should deal with situations involving excesses, but the wording provides a potentially wider scope. A literal interpretation would allow Article 273f Dutch Criminal Code to cover situations with varying degrees of gravity. However, not every abuse in an employment or service relationship should be regarded as THB. Exploitation outside the sex industry involves an excess, though there is no unambiguous description of this available. The issue must be determined on a case-by-case basis, with one of the determining factors being violation of fundamental human rights.

⁹ It had not been intended to interview SIOD investigators, but one investigator contacted BNRM in person.

¹⁰ The SIOD investigators described employment situations too briefly to be able to talk about specific individual cases.

¹¹ We also talked to key figures dealing with exploitation in sectors other than the sex industry in certain foreign countries. They are not included in this table.

¹² Only interviews concerning substantive information immediately irrelevant to the research, for example cases or risk sectors, are included.

¹³ Some of these issues were raised during the congress jointly organised by BNRM entitled ‘Forms of THB outside the sex industry’ in March 2005.

The link with human rights

From the point of view of legislative history, it makes sense to link the interpretation of Article 273f Dutch Criminal Code to the protection of human rights. The list of practices that exploitation at least comprises, in paragraph 2, is based on Article 3(a) of the Palermo Protocol and Article 1.I.c of the EU Framework Decision. Those provisions in turn derive definitions from Article 4 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). An interpretation based on these sources implies that a human rights approach should define the limits of the scope of Article 273f Dutch Criminal Code. Labour situations then only amount to exploitation in the sense of THB if they involve a violation of fundamental rights such as human dignity, physical integrity and personal freedom.

A situation can be deemed to be excessive if there is one manifest excess, such as having to rent a chair in the workplace as sleeping accommodation between shifts, or if there is an accumulation of less serious matters such as underpayment. In such cases, the excess is to be found in the buildup of abuses. The excess must in principle be measured according to the standards applicable in Dutch society and the Dutch legal system.¹⁴

The use of certain means of force is not a necessary element of exploitation. At the same time, it is hard to imagine someone volunteering to be exploited. The involuntary nature of the situation consists of the impossibility of getting out of it.¹⁵ Sometimes exploitation is the result of a physical restriction on freedom, such as confinement. But the exploiter can also keep the victim in his grasp in some other way and then the victim's perception of the situation may hinder escape, although possible in practical terms. The question is then whether (s)he can reasonably have been under the impression that there is no way to escape from the situation, given the complete set of circumstances, as well as how these circumstances interrelate.

8.3.2 Indicators of exploitation in other sectors than the sex industry

How to recognise an exploitative situation? In this study, BNRM used the following list of indicators which can help to identify a situation of exploitation.

List of important indicators of a possibly exploitative situation

Coercion/deception

- (threats of) physical violence against the employee
- (threats of) reporting the employee's illegal residence status
- putting unacceptable pressure on the employee in some other way
- putting the employee to work in a different sector or under different conditions to those agreed
- abusing the employee's ignorance of his rights

Bad working conditions

¹⁴ Whether the victim feels exploited is not a determining factor. Consent is irrelevant if certain elements of coercion have been used.

¹⁵ People may be recruited and subsequently coerced to continue working in deplorable circumstances (CGKR, 2005).

- compulsory dangerous work
- unreasonable working hours
- being paid less than the minimum wage or nothing at all
- having to work even when ill

Lack of freedom

- the employer/intermediary confiscates the employee's (travel) documents
- the employee is not allowed any, or hardly any, contact with the outside world

Multiple dependence

- the employee is bound to the employer/intermediary by debt
- the employee is dependent on the employer for, for example, accommodation, food or documents

It is possible to think of other indicators. Not all of the indicators need to be present for a suspicion of exploitation, but it is important to be aware of the possible connection between different reprehensible circumstances. One should not only take note of a worker's residence status, for example, without relating it to sub-standard working hours, remuneration and accommodation.

*Barrier model*⁶

The barrier model, developed by the Social Information and Investigation Service [*Sociale Inlichtingen- en Opsporingsdienst (SIOD)*], is useful to see the interconnection between indicators of labour exploitation. This model provides a schematic representation of four barriers to be overcome by immigrants: travel, accommodation, identity documents and finding employment. There is a legal path and an illegal path associated with each of the barriers.¹⁷ If, for any one of the barriers, migrants (have to) rely on the services of illegal 'facilitators', such as smugglers, rack-renters,¹⁸ document forgers or malafide job contractors, they often build up a debt. Multiple dependence can arise if someone becomes dependent on the same individual in connection with two or more of the barriers. This increases the risk of exploitation. Malafide 'facilitators' sometimes employ violence against migrants. Neither the barriers in this model nor the indicators of THB listed should be understood as falling within any fixed chronology. The model is an analytical tool which facilitates the observation and recording of multiple dependence.

Combination of sexual exploitation and other forms of exploitation

Exploitation in another sector than the sex industry may precede, coincide with or follow on sexual exploitation. BNRM collected eight case descriptions with indications of this combination.

¹⁶ This description of the barrier model is drawn from Van der Lugt and Zoetekouw (2003).

¹⁷ For each barrier, the model specifies illegal facilitators, legal facilitators and the relevant enforcement bodies.

¹⁸ Research commissioned by the Dutch government [*De huisvestingsproblematiek bij tijdelijke werknemers uit het buitenland*] showed temporary migrant workers living or working in more than half of the 139 municipalities investigated. Two-thirds of these municipalities experience problems related to the accommodation of the migrant workers, such as a shortage of suitable housing, or the availability of inferior housing only. The government then developed a leaflet about providing proper accommodations for temporary migrant workers.

8.3.3 Labour and services

Human trafficking revolves around exploitation in labour or services, but a broad interpretation of the terms ‘labour’ and ‘services’ is needed in this context. The description of the offence does not confine itself to formal employment relationships. Labour and services also include other work that represents a financial value, done in a context where one individual exercises control over another.

Some relevant aspects of labour law¹⁹

Labour law has elements of both public and private law. Regarding labour conditions, it principally consists of rules on maximum working hours and on health and safety. Administrative and criminal sanctions are available for infringement of some of these rules, while the enforcement of others is delegated to employees, the parties to collective labour agreements, and works councils. Legislation on employment contracts contains rules on the contract between an individual employee and his or her employer, including rules on the payment of wages. This area of labour law is governed by Article 7:610 Dutch Civil Code and by collective labour agreements. Enforcement occurs through proceedings before the civil courts.²⁰

The Aliens Employment Act [*Wet arbeid vreemdelingen (WAV)*] prohibits employers to hire certain foreign nationals without a permit to do so. This applies to work through an employment contract or by virtue of any other structure, undertaken commercially or in the private sphere. If someone is found to employ a migrant illegally, it is assumed that this migrant has worked with that employer for six months for normal wages and working hours in the relevant sector. This is also the assumption, in case the employee submits a claim for back wages.

Illegal employment does not absolve employers from their obligations in relation to the employees concerned. However, it appears that immigrants who have been working illegally and underpaid rarely claim back wages. One lawyer in the BNRM research described as ‘unique’ the wage claims she had lodged for three Chinese clients held in aliens’ detention – each for more than €15,000 and based on the collective agreement in the catering industry and the number of hours worked. Possible explanations why the underpayment of illegal workers does not lead to wages claims more often include ignorance among these workers about their rights and how to enforce them, fear of the employer, multiple dependence on the employer, untraceability of the employer, inability to demonstrate that they have worked for the particular employer, a desire to stay ‘below the radar’ of official bodies, and the fear that proceedings before the civil courts might have consequences for their residence in the Netherlands.

Normal employment situation, still exploitation

Several cases have been noted in which someone forces someone else to work some place under normal conditions, and then to hand over his or her wage entirely. In this situation, there is no employment relationship between the exploiter and the victim. This often goes hand-in-hand with the money being squandered by the person who has extorted it. Do these cases, without actual abuses at the workplace, constitute exploitation in the sense of Article

¹⁹ The following section is based on Bakels et al. (2003).

²⁰ Reference is made to Chapter 2 for the Bill Amending the Minimum Wage and Minimum Holiday Allowance Act in connection with the introduction of administrative enforcement [*Wet op het minimumloon*].

273f Dutch Criminal Code? Exploitation is not confined to serious abuses *in* an employment situation. It can also take the form of coercion *to* work. It is not necessary for the exploiter to be exercising control over the victim at the workplace or as an employer.

Criminal conduct

BNRM has collected a number of cases concerning coerced criminal acts, such as pickpocketing and forgery, which can be regarded as a form of labour or services. The same applies to the coerced conclusion of loans for someone else. Forcing someone else to commit a crime may in certain circumstances amount to THB, but it can also be dealt with under criminal law as incitement.

Incitement approximating exploitation

In October 2004, the Court of Appeal in Arnhem convicted an accused for inciting minors to commit theft. According to the Court, he had played a prominent and leading part in a criminal organisation formed of members of his immediate family and extended Roma family. Within this organisation, the suspect and his wife on many occasions sent out young children on burglary jobs, including their own children. A telephone conversation between the accused's wife and their son illustrates this; he was reprimanded by his mother because of the fact that he was not a good burglar. The verdict contains little information on how the accused sent the children out to burgle. It is stated, though, that they were often young children, some of whom were under the parental authority of the people inciting them, which suggests that they had no reasonable alternative but to commit the break-ins. An argument could therefore be made that such practices constitute forced or compulsory labour or services.

Other conduct in relation to THB

A possible area for debate is whether having to tolerate something can amount to exploitation in the sense of THB. The question is a relevant one, as appears from media reports in 2006 and the ensuing political debate on the smuggling of Somali children for temporary residence in the Netherlands with a view to enrichment through child benefit. Can the following situation be classified as exploitation: adults bring a child to the Netherlands illegally and under false pretences in order to receive child benefit payments and spend less than that amount on actual care of the child, after which, when this is no longer possible, the child is taken back to Somalia and abandoned there? Or does this only amount to THB if it also involves abuses in relation to work? In the Additional Measures to the National Action Plan on THB [*Aanvullende maatregelen bij het NAM*], the Minister of Justice states that these kinds of practice generally fall beyond the reach of the section on THB, but may be criminal offences under other provisions.

Hence, certain conduct may almost amount to – or form an element of – exploitation, while at the same time constituting a different offence, such as illegal adoption, rack renting and forced marriages. Illegal adoption only falls within the definition of THB if there is an intention to exploit the adopted child, according to the Minister of Justice in the Additional Measures. Rack renting is a form of residential letting where the landlord knowingly and willingly accepts a dangerous condition or use of the accommodation, for the highest possi-

ble return. If this involves the rental of accommodation to undocumented migrants, it amounts to smuggling (Article 197a, paragraph 2, Dutch Criminal Code). Rack renting therefore is not exploitation in the sense of THB *per se*, but may well be an indication, because it can be coupled with a forced labour situation. Schmidt and Rijken (2005) argue that arranging a forced marriage falls, in principle, within the THB provision if the person arranging the marriage receives money or other assets in return.

8.4 Case descriptions

A total of 119 case descriptions of abuse in labour situations were collected. They vary widely in terms of gravity. All cases were considered on the basis of the criterion discussed in the following section in order to determine which should be categorised as exploitation. The aim was to formulate a criterion that could be used in (legal) practice. §8.4.3 contains the categorisation of case descriptions into situations which can indeed be deemed exploitation, and abusive situations which do not amount to exploitation.

8.4.1 Preliminary remarks

Three preliminary comments should be made in relation to the presentation of the case material. First of all, these are second-hand reports obtained in interviews with respondents. Of course, it is not possible to attach the same value to this material as it would be to facts found by a court.

The second remark relates to the benchmark for categorising the cases. The question is whether they fall within the provisions of Article 273f (2) Dutch Criminal Code. Exploitation *per se* is not criminalized as THB, but rather (intended) exploitation in one of the contexts described in sub-paragraphs 1, 2, 4 and 6 of paragraph 1 of the Article.²¹ This means that if the situation qualifies as exploitation here, this does not automatically constitute conduct that can be prosecuted under Article 273f Criminal Code.

Finally, the broadened THB clause entered into force on 1 January 2005. However, in order to research whether exploitation occurs independent of any criminalisation, BNRM asked the respondents about the period from 2000 onwards.

8.4.2 Qualifying criterion for the cases

In order to formulate a sharply defined criterion on the basis of which a distinction can be drawn between abuses amounting to exploitation *within the meaning of Article 273f (2) Criminal Code*, and other abuses, we must refer to that type of exploitation in the non-comprehensive enumeration paragraph 2, with the determinative elements constituting the lowest threshold. After all, these elements have to be found, in any event, for a situation to

²¹ Please refer to §8.3.1 and Chapter 2 for an analysis of the Article on THB.

be covered by Article 273f (2) Criminal Code.²² It goes without saying that more serious forms of abuse then also amount to exploitation. The form of exploitation with the ‘lowest’ requirements mentioned in paragraph 2 is forced or compulsory labour or services (see box below). An actual or alleged lack of freedom on the part of the victim is also a fixed element of exploitative situations.

The criterion for exploitation applied by BNRM is accordingly based on the combination of a lack of freedom, as a constant factor, and at least one of the following practices, which indicate forced or compulsory labour or services:

- force, including (threats of) physical or sexual violence or the reporting of illegal residence or employment; misuse of authority arising from the actual circumstances; or abuse of a vulnerable position;
- bad working conditions, including unreasonable working hours, underpayment, and dangerous work without the requisite protection;
- multiple dependence, including working to pay off debts and being dependent on the same individual for employment and, for example, accommodation and identity papers.

A situation therefore amounts to exploitation if these one of these problems exists *and* the victim is not free to leave the situation, or reasonably thinks that he or she is not free to do so.

In practice, the constant factors and variable factors may overlap. The lack of freedom, for example, may be intertwined with excessive working conditions or the abuse of a vulnerable position may be so severe that the victim has no real choice but to suffer exploitation. When assessing a situation, all the particulars of the case, such as the duration, the degree of organisation and the age of the victim, must be taken into consideration.

Explanation of the criterion

In order to compare the determinative elements of the different forms of exploitation, enumerated in Article 273f, paragraph 2, Dutch Criminal Code, BNRM reverted to internationally accepted definitions. Articles 3(a) of the Palermo Protocol and I.L.C of the European Framework Decision derive concepts from Article 2 of the Convention on Forced Labour of the International Labour Organisation (ILO), Article 4 ECHR and Article 1 of the United Nations Slavery Convention, in conjunction with Article 1 of the UN Supplementary Convention on the Abolition of Slavery. Based on the existing international definitions, forced or compulsory labour or services is the ‘least serious’ form of exploitation mentioned in Article 273f (2) Criminal Code.

In terms of Article 2 of the ILO Convention on Forced Labour, forced or compulsory labour is all work exacted from a person under the menace of any penalty and for which that person has not offered himself voluntarily. Apart from this practice, Article 4 ECHR also prohibits slavery and servitude. In its judgment dated 26 July 2005 in the case *Siliadin vs. France*, the European Court of Human Rights set out the order of the practices prohibited in Article 4 ECHR. The Court followed the definition in Article 2 of the ILO Convention as regards the interpretation of forced labour and deemed the menace of a penalty to exist when employers deliberately stimulate the fear of being picked up by the

²² This threshold need not, however, be a final one. Since the enumeration is non-comprehensive, it is impossible to rule out a potentially wider interpretation of the concept of exploitation in case law.

police of an unaccompanied and undocumented minor working for them. Thus, there does not need to be (the menace of) a penalty in the literal sense.

Servitude involves an even greater deprivation of personal freedom. Though it does not involve a claim to rights attached to ownership, it is in line with slavery in terms of gravity. According to the judgment of the ECHR mentioned above, it is the situation where someone is obliged to provide services, living in the house of his 'keeper' without the possibility of changing his status. It would make sense if the same applies to the servitude-like practices in Article 273f, paragraph 2, Dutch Criminal Code.

It follows that cases must be regarded as exploitation as defined in Article 273f, paragraph 2, if they incorporate at least the elements of forced or compulsory labour or services. These elements – the menace of any penalty and being available for the work involuntarily – can be translated into concrete indications. Anderson and Rogaly (2005) have done this for research on forced labour in the United Kingdom. They mention four indications: violence (or the threat of violence); other forms of force such as debt bondage or the confiscation of identity papers; excessive dependence on an employer or third party; and other abuses such as extremely long working hours and degrading accommodation. According to the authors, none of these indications amounts to forced labour in itself, but someone is deemed to be a victim of forced labour if he suffers from at least one of the indications *and* reasonably thinks that he is not free to walk away from the situation.

8.4.3 Categorisation of the cases

When applying this criterion, exploitation as defined in Article 273f Criminal Code, was found in 45% of the 119 collected case descriptions. Again, though, it should be noted that this criterion cannot be equated with punishable THB. Nor does Table 8.3 reflect the scale of the phenomenon. 24 of the case studies could not be classified as either exploitation (in the Netherlands in the period from 2000 to 2006) or not.

Table 8.3 *Classification of cases*

Classification	Cases
Exploitation	54
No exploitation	41
Other	24
<i>prior to 2000</i>	3
<i>outside the Netherlands</i>	2
<i>borderline cases</i>	2
<i>inadequate information</i>	17
<i>Total</i>	119

The fact that the research produced only two cases that were found to be ‘borderline cases’ should not conceal the fact that there was intensive debate about a far higher number of cases.²³ The following section presents the most important points of this debate.

Obvious exploitation

But first two cases which present obvious instances of exploitation. The first example relates to domestic work. The victim was not paid, she had limited freedom of movement, was intimidated and maltreated. She was also in a vulnerable position and had to work for her in-laws, on whom she depended for both her accommodation and her residence permit. The fact that she suffered the abuse for months on end does not indicate free will, but rather that she had no reasonable alternative.

The case of the Indian daughter-in-law (exploitation)

When she was 22, K was subject to an arranged marriage to a Dutch national of Indian origins. The marriage was arranged by the parents and, in exchange for their consent, K’s parents received a piece of land. There were, however, false pretences, because when K arrived in the Netherlands it turned out that her husband was mentally retarded. It was not a true marriage. The husband and wife, who lived with his parents, slept apart and K was treated as household help. She was confined to the house and could not go out alone or take Dutch lessons. She was socially isolated and not allowed to contact her family or friends in India. Her jewellery, clothing and passport were taken away from her by her father-in-law. K was threatened and abused by various members of the family. Her father-in-law tried to abuse her sexually. He succeeded in doing so after eight months, at which point K fled from the house. She was taken to a shelter by a passer-by, where she related her experiences as a sort of ‘mail order bride’ and domestic worker for her in-laws. She reported to the police, divorced and tried in vain, through a lawyer, to recover her belongings her former in-laws. Her attempt to secure an independent residence permit was unsuccessful, but she did not want to return to India from fear of being ostracised. Her parents wanted nothing more to do with her after the breakdown of her ‘marriage’. K travelled illegally to some relatives in the United Kingdom.

The second example of exploitation concerns Ukrainian temporary workers who were smuggled into the Netherlands. As a result of the practices of a malafide job contractor/rack rent landlord associated with the employment agency, they ended up indebted and working without pay.

The case of the Ukrainian agency workers (exploitation)

About 20 Ukrainians, mostly men, travelled to the Netherlands via an employment agency. For the trip, they had bought fake/forged passports from the employment agency for €1,500. Some paid the agency one time the monthly salary that is promised to them, between €1,200 and €1,600. The people were instructed to contact a particular Ukrainian in the Netherlands, who would get them jobs so that they could settle the outstanding debts to the employment agency. This middleman put them to work

²³ The discussion was mostly internal to BNRM. Some cases were discussed anonymously in an expert meeting organised by BNRM, on the definition and scope of the concept of ‘exploitation’ in relation to THB, in December 2005.

illegally in Dutch horticulture and construction companies. The businesses hiring the workers concluded all of the arrangements on working conditions with the malafide job contractor. The migrants worked 12 hours a day without being paid. Their debts continued to accumulate because they had to pay the contractor between €180 and €350 per person per month for group accommodation in small houses. The job contractor misused the debt situation, threatening those who protested against the labour conditions with the prospect that they would be given no work at all, while their debt would continue to increase. Several Ukrainians who escaped from this situation tried to report the situation to the police. The police did not, however, see sufficient clues for an investigation.

Cases that are obviously not exploitation

Cases where no labour or services is provided cannot constitute exploitation in the sense of THB. The following case description is an example of this, though abuse of another person's vulnerable position is clear here.

Robbing partner (no exploitation)

A Dutch woman, S, (aged 36) lived in a supervised home because of psychiatric problems and lack of anywhere else to stay. S, who appeared to maintain casual sexual contacts with several young men from the Antilles, embarked on a relationship with 'B'. S indicated, though, that she was afraid of him and there were signs that he had raped her. One day, B violently forced S to hand over her cash card and code, and withdrew all the money from her account, amounting to a few hundred euros. He also stole her bicycle. After the incident, S broke up the relationship and reported the theft to the police. The police suspected that B to be a member of a criminal gang and started an investigation.

Labour situations in which abuse occurs that is not serious enough to be described as slavery-like practices also fall outside the scope of Article 273f Criminal Code. For example:

Double shifts in a factory (no exploitation)

T had financial problems when he was offered the prospect of a permanent contract with the factory he worked in. In exchange for the promise of a fixed contract, T had to do extra shifts in the holiday period. T often worked two successive shifts and was not given the obligatory days of rest. After this heavy period had passed, the promise turned out to be false. T was dismissed. He protested but did not challenge the dismissal formally. As a result of his unemployment, his family became homeless.

Borderline cases

Various questions arise, when considering concrete case studies of non-sexual exploitation, particularly with cases where there are several substandard circumstances, none of which on its own amounts to gross abuse.

One question in relation to a borderline case is whether it can be considered exploitation and, if so, on what conditions, if someone collaborates in a fraud benefiting another person without the co-perpetrator being aware of this or profiting from it.

The case of benefit payment fraud (borderline case)

In 1993, A from Iraq obtained refugee status. In the asylum proceedings he had stated that he had a wife and child. A travelled back to Iraq, where he entered into an arranged marriage with 'H', who was 15, and brought her to the Netherlands. Because of her age, he arranged false identity papers for H. They also brought H's five year old nephew, pretending he was their son. H and her nephew obtained a residence permit based on their false papers. Her mother followed some years later, pretending to be A's mother, something H was unaware of. A alleged that H's mother owed him €20,000 for this.

H and A had two children of their own. H started off taking Dutch lessons, but she had few social contacts. A abused her physically and sexually and also abused the children, particularly the nephew. A was generally out of work and he neglected his wife and the children. H almost never had any money and she was unaware that her husband had for years been obtaining family benefit payments, child benefit and a benefit payment for her mother. It was not clear what he spent this money on. A always kept his wife's original and fake documents in his possession. In 2002, H fled with her children to an emergency centre for battered women, where she learned about such basic things as using an ATM. H reported A to the police and applied for a divorce. H and her mother also applied for social security benefits under the false names they were still using.

In 2004, A got into trouble because he was working while receiving benefits. He then reported the illegal immigration of H and her mother, who had by this time obtained Dutch nationality under their false identities. The State reclaimed €40,000 of social security from them. The use of false identities also had negative consequences H's Dutch citizenship. And the police could not or would not associate the report of abuse H had made under her false name with the subsequent reports under her real name. H is now working illegally in the catering industry. She and her nephew are receiving psychiatric treatment. The other children have been referred to child welfare. A lives close to H and continues to threaten her.

In this complex scenario, H did not, at least initially as a minor, consciously use the fake documents. The fact that she continued to use the false identity in the Netherlands is related to her fear of – and multiple dependence on – her violent husband. Does this make her a victim of exploitation in the sense of THB? Are services being provided if someone unwittingly collaborates in another person's fraud? Does the qualification change if it becomes clearer that the fraud is committed under coercion, as in the following case?

Case of participation in child smuggling (exploitation)

L, a woman from Pakistan, was married in Pakistan to 'K', of Pakistani origin but living in the Netherlands. When L came to the Netherlands, she also took with her - in addition to her own son from a previous marriage -, against her will, her brother's six year old son. With false papers, he arrived in the Netherlands ostensibly as L's son. K had arranged this with L's brother. L did not agree because she thought it would be better for the child to stay with his parents. She was, however, put under extreme pressure to cooperate and sign the papers. All of this had to remain a secret in the Netherlands. L's husband seriously mistreated her and her (real) son. There are indications that the child benefit for both young boys was sent to L's brother in Pakistan. In any event, K did not spend it on the children. After some time, L fled from home because of the violence. She only took her own son with her. She ended up in a reception centre via the teacher of her integration course. L reported to the police and divorced K, but she said nothing about her nephew who was still living with K. Social workers only

found out about him, when transferring the child benefit into L's name. L said that she had kept quiet from fear of getting into problems because of her share in the fraud. Out of concern about the boy, a report was made to the Child Abuse Advisory and Reporting Centre.

Points for discussion

It is argued at §8.4.2 that victims' lack of freedom to leave an exploitative situation can be inferred from very poor working conditions. This is all the more so if these conditions are linked with abuse of a vulnerable situation due to illegal residence. At the same time, it is possible that someone consistently works excessive hours for €2 per hour but cannot be described as a victim of exploitation.

Case of Iranian asylum seeker (no exploitation)

D has been in the Netherlands with his wife and children since 1999. The family is awaiting follow-up asylum proceedings. They can no longer stay at an asylum seekers' centre and receive assistance. They have found accommodation via a foundation, which pays for gas and electricity and water. D does not, however, want to take an allowance from the foundation. He provides for this himself by working illegally in a Turkish coffee house. He rides 50 km on his moped to get to work. He does not get travel expenses and earns €100 a week, working five days a week for ten hours a day. He doesn't ask for a raise, as the coffee house is not very successful. Despite the under-payment, D has a good relationship with his boss. D understands his own situation and wants at least to do something to provide for his family.

In this case, the employment conditions are poor, but there is a reasonable alternative for the employee in the shape of an allowance from the foundation supporting him.

In the discussion of actual cases the requirement of a (perceived) lack of freedom to get out was put into perspective for those situations where one person deliberately puts another person to work in dangerous conditions.

Case of endangerment (exploitation)

V, an undocumented migrant in the Netherlands, worked for an agricultural business, using a packaging machine under great time pressure. One day his hand was caught in the machine. V lost two fingers as a result of the accident. He was summarily dismissed without any help or compensation from the employer. V became partially disabled. A NGO telephoned the Health and Safety Inspectorate on his behalf to ask whether any action could be taken against the employer. V did not, however, make a full report, fearing negative consequences for himself and the undocumented migrants among his former colleagues. The HSI did not therefore know which business was involved and could not take any targeted action.²⁴

The NGOs *OKIA* and *Stek* described the HSI response to this case. Three regional HSI offices were asked what would happen if the man fully reported the accident. All three offices answered that there was a chance of the Aliens Police being notified of his illegal residence

²⁴ This case was described by an employee at HSI and an employee from the NGO in question.

(Benseddik & Bijl, 2004). According to the NGOs, this case – which dates back to before Article 273f Criminal Code, entered into force – illustrates the incompatibility of the two functions of the HSI, of both enforcing proper working conditions and combating illegal employment.

It is not necessary for the exploiter to be exercising control over the victim at the workplace or in an employer/employee relationship. Several such cases were collected, and this is one of them.

Case of the son in a family business (exploitation)

K was a solitary youth of Turkish Kurd origins. His father was a violent man. When he was 17, K and his stepmother reported the abuse to the police. K's father was convicted and sent to prison. The man had a contracting firm, whose only permanent employee was K's uncle, who derived his residence permit from this employment. While his father was serving the prison sentence, K had to keep the business going. This meant he could no longer attend school. When business turned bad, his father threatened him from prison and ordered him out of the family home. K wanted to go and stay with his uncle who but his father would not allow this. K ended up in a crisis reception centre. A child protection order was issued, since K's father was in prison and his stepmother had no parental authority over him. K appeared to have skipped school more often, although he had not wanted to, because he had to work for his father or interpret for his stepmother.

Here, because of his father's misuse of authority and (threats of) violence, the youngster had no choice but to work, without pay, at the expense of his education and in breach of legislation on working hours for 17-year-olds.

8.5 Risk sectors

8.5.1 Introduction

In which sectors of the Dutch economy does exploitation occur? The literature often associates migrant work (illegal or otherwise) with '3-D' jobs; *dirty, dangerous and degrading*. In the Netherlands, as well, the work done by immigrants who are not entitled to work here is for the most part poorly valued and poorly paid. Illegal employment is a substantial element of the underbelly of the Dutch economy (Van der Leun & Vervoorn, 2004). Employers find it difficult to get other workers for unpleasant and low-paid jobs. The risk sectors for labour exploitation overlap with the 3-D jobs. Abuse is often identified in labour-intensive production processes, where poorly paid workers perform simple tasks. There is a demand for the cheapest and most flexible labour, certainly where profit margins are tight, staffing costs form an important part of the production costs and the work requires no expertise. This increases the risk that workers are put to work in bad conditions, whether or not arranged by malafide labour subcontractors.

The ILO (2005) points to three trends which partly explain extremely poor working conditions in industrialised nations: the supply of labour migrants, the ever-increasing competition among producers, and the deregulation of the employment market. Cyrus (2005) also points to the links between exploitation and the internationalisation of the labour market, international competition among businesses and the unequal distribution of wealth between different countries. In this context, labour exploitation can be considered as the 'dark side' of globalisation (Cyrus, 2005). Employers seem to impose substandard conditions more easily on foreign workers (Anderson, 2005).

In the West, the informal economy²⁵ is part of the survival strategy for those who have no access to the formal labour market.²⁶ While the informal economy and illegal employment are two different things, they often coincide. The extent of illegal employment in the Netherlands is apparent from research carried out in 2005 by the Ministry of Social Affairs and Employment (SZW) on the level of compliance with the Aliens Employment Act. An anonymous survey of employers indicated that 19% of the respondents had employed one or more migrants in the previous twelve months, in breach of the Act (Mosselman, 2005). It was estimated that 40% of the foreigners working illegally came from the new EU member states in Central and Eastern Europe. The percentage of employers in the three most relevant sectors who indicated that they had illegally employed workers in the past twelve months was 20% in the agriculture sector, 23% in the catering industry, and 28% in construction (Mosselman, 2005). The risk of illegality is particularly high in employment agencies; 42% of the employers stated that they did not always check the documents of workers they hired through an employment agency. It would be interesting to know whether this is a connection with the deregulation of this sector.²⁷

Because of its clandestine nature, the informal economy remains invisible to some extent. Corrupt facilitators profit from this. According to HSI inspectors, malafide labour subcontracting often takes the form of short-lived and invisible businesses. Other respondents also mention, in relation to wrongs, employment brokers who are not registered with the Chamber of Commerce and/or who regularly disappear, through bankruptcy or otherwise, in order to minimise their chances of being caught or to escape from their financial obligations, such as paying employees. In such a circuit, it is difficult for workers to defend themselves against abuse, certainly if they are, for instance, undocumented or socially isolated. It is clear from the collated cases concerning domestic work and ethnic entrepreneurship that exploitation often occurs in concealed situations. The link between ethnic entrepreneurship and the risk of exploitation is not a simple one, though. It can be just as much a safety net as a stranglehold for immigrants with few prospects in the labour market.

²⁵ The informal economy has been defined as 'productive or work activities hidden from or ignored by the state for tax, social security and/or labour law purposes but which are legal in all other respects' or as 'activities aimed at producing a positive effect on income, for which the terms of legislation and regulations applicable are not met' (CGKR, 2005, p.75).

²⁶ The informal economy's contribution to the gross domestic product in the European Union is estimated at between 7% and 16% (notice from the Commission dated 4 June 2004).

²⁷ The licensing system for employment agencies was abolished in 1998.

Finally, the risk of exploitation outside the sex industry appears to be greater in some geographical areas than in others. Thus there is an increased risk in the major cities and surrounding agricultural areas, because of the relatively large populations of undocumented migrants in those cities. In the border areas, exploitative employers can increase employees' dependence and ignorance of their rights by housing them in one country and putting them to work in the other. Cross-border exploitation is also harder to observe and detect.

8.5.2 Relevant sectors

The case studies collected by BNRM confirm this general picture. They are drawn from 16 sectors, but as Table 8.4 shows respondents knew of most cases from the catering industry (29), domestic work (19), employment agency work (15) and agriculture/horticulture (14), all sectors in which illegal employment is known to be quite common. Catering includes a range of facilities, but the main subcategory is that of Chinese restaurants. The cases of abuse associated with domestic work often occur in a family context.

Table 8.4 Number of cases with indications of exploitation, per sector²⁸

Sector	Number of cases with indications of exploitation	
Catering	29	
<i>of which Chinese restaurants</i>		<i>11</i>
Domestic work, including looking after children	19	
<i>of which cases within the family</i>		<i>9</i>
Employment agency work	15	
Agriculture and horticulture	14	
Food industry	11	
Factory work	8	
Crime, including fraud	7	
Construction industry	6	
Transport and logistics	5	
Markets and shops	5	
Cleaning	5	
Other	10	

If restricted to the cases that qualify as exploitation, the distribution across sectors looks slightly different.

²⁸ The total in the table exceeds the total number of case descriptions collected (119), because one case may involve several sectors.

Table 8.5 Number of cases regarding situations involving exploitation, per sector²⁹

Sector	Number of cases with situations of exploitation
Catering	8
<i>of which Chinese restaurants</i>	3
Domestic work, including looking after children	11
<i>of which cases within the family</i>	6
Employment agency work	10
Agriculture and horticulture	11
Food industry	5
Factory work	4
Crime, including fraud	4
Construction industry	3
Transport and logistics	3
Markets and shops	2
Cleaning	2
Other	2

8.5.3 Discussion of the sectors in question

Domestic work

There is no strong tradition of paid domestic work in the Netherlands, by contrast with some other European countries. This is now changing rapidly. The growing number of double-income households and the increasing average age of the population mean that the demand for affordable childcare and other personal services is on the increase. The literature contains indications that illegal employment in private household is also on increasing, with a concomitant risk of abuse (Van der Leun & Vervoorn, 2004). The examples BNRM found illustrate this risk.

Domestic work is rather invisible and hard to check. It can lead to social isolation and multiple dependence issues, particularly for live-in migrant domestic workers. There is also no collective labour agreement or, usually, organisation in a trade union.³⁰ These factors make it difficult for domestic workers to defend themselves against abuse. While illegal residence and employment contribute to these situations, migrants who are allowed to work also fall victim to exploitation in this sector.

²⁹ The total in the table exceeds the total number of cases qualified as exploitation (54), because one case may involve several sectors.

³⁰ In June 2006, mediation by a number of migrant organisations, such as the *Commission for Filipino Migrant Workers*, resulted in the first group of (illegal) Filipino 'migrant domestic workers' becoming members of the ABVA KABO.

The case of the Moroccan girl (exploitation)

When she was 10, Z's destitute mother sent her to a Moroccan family living in the Netherlands. Some of the children in this family were older than Z and they lived in a small house. Z had to do 'everything' in the house, as a 24-hour servant. She received no wages and did not attend school. The girl was not allowed to go out and her only contact was with visitors to the house. She was intimidated and beaten. After a few years of this, Z ran away, and with the help of a passer-by and the police ended up in an emergency shelter. Z, who had no relatives in the Netherlands, had fallen seriously behind in her development. She was given a residence permit and was placed first in an assisted 'group' living facility and then in a home for people who are slightly mentally challenged. It is not known whether a report was filed against the family for whom L worked for years.

This girl had to be on call the whole day, was not allowed to go to school or to play outside, she was physically abused and received only board and lodgings in return for her work. On all of these points the case corresponds with the *Siliadin* case, in which the European Court of Human Rights established servitude.³¹

Three special types of employer were found among the cases descriptions in relation to domestic work: the victim's relatives, 'au pair' host families and foreign diplomats.

Domestic work for relatives

Most recorded cases of slavery-like situations of domestic work occur within family relationships. Some spouses, daughters, daughters-in-law and step-daughters are reduced to unpaid maids. These women are often legal immigrants, whose residence permit (initially) depends on their relationship with a partner or relative(s). In some of these cases, the question arises as to the significance of the element of work in relation to the total situation of abuse and lack of freedom. But also, when does a normal, albeit traditional, allocation of duties turn into disguised employment and exploitation? In the following case studies, the victims were put to work as household drudge in the homes of their violent in-laws.

Case of Turkish marriage immigrant 1 (exploitation)

A grew up in a traditional environment in Turkey. She only attended elementary school. When in her early twenties, she met a Dutch man of Turkish origin. He told her he had a good income and his own house in the Netherlands and that she would have prospects for further development there. They married. A came to the Netherlands and obtained a residence permit to stay with her husband. It turned out that her husband did not have a house, so they lived with his parents, where A was beaten and humiliated by her husband and her in-laws, including her sister-in-law and mother-in-law. A was just ordered around and forced to do a lot of household work. When she did not have to work, A was confined to her room. A's husband was often away, without her knowing where he was. A ended up being socially isolated. Eventually she fled and ended up in a women's shelter, by way of the police. She reported the abuse and arranged for a divorce. A had to receive treatment for psychological problems connected with the abuse. She heard from her grandfather that her former in-laws were slandering her. The women's shelter worried about possible reprisals by her in-laws or her own family. After a

³¹ In *Siliadin vs. France*, see §8.4.2 and Chapter 2.

few moths, A left for an unknown destination. She possibly had fallen in love. She was reported to the police as a missing person.

Case of Turkish marriage immigrant 2 (exploitation)

D, a poorly educated Turkish woman, was not yet 20 when she came (legally) to the Netherlands to live with her Dutch husband, whose family came from the same village in Turkey as hers. It was an arranged marriage. D and her husband lived in his parents' home, where she was obliged to do all of the household work. She was physically abused by the husband and humiliated by him and his parents. D was not allowed to go out alone. Because she had to stay in the house, she was virtually unable to make any contacts outside the family, or learn about the Dutch language and society. D was also unable to talk freely with friends or family from Turkey. D returned to Turkey on one occasion after her migration. She tried to stay there but her parents sent her back with her husband. In the end, D came to a women's shelter. She needed a lot of assistance. After years of being treated in this way, her self-esteem was very low. D applied for a divorce and an independent residence permit. She also reported the situation to the police, which led to a police investigation.

Bearing in mind the violence that women in these situations have had to endure, it is no surprise that social workers concentrate on other issues than possible exploitation.

Domestic work as an 'au pair'

The principal aim of residence as an au pair ought to be to learn about Dutch society and culture. For this purpose, an au pair receives a one-year residence permit, linked to a particular host family.³² The au pair lives with that family and does undertake light household work on the basis of equality with the members of the family and in exchange for board and an allowance. There are conditions attached to this work, so that the au pair and the host family are not in an employer/employee relationship. If the agreement between the au pair and the family is primarily oriented towards working, they are in breach of the au pair regulations and the rights and obligations attached to an employment situation, such as paying the minimum wage, then apply.

There are fairly regular reports in the media about abuse of the au pair system, giving the impression that many 'au pairs', whether or not they have the appropriate residence permit, are actually working as underpaid maids or child minders. In Belgium, which has a similar au pair system and similar concerns raised in the media, it has been asked what the use of this system is. There are, after all, other options for cultural exchange, which do not put people into the precarious position of having to do (certain) work whilst not enjoying the legal status of an employee (Bucquoye, 2003).

In the Netherlands, the Ministry of Justice commissioned an evaluation of the use of the au pair rules. This study showed that some of the au pairs worked harder or for longer than was

³² The au pair can move from one family to another provided that she and the new family meet the requirements. The residence permit will still last for only one year. The au pair would therefore only be available to the new family for less than one year (Kohlmann, 2003). In the United Kingdom, an au pair visa is issued for two years (Anderson et al., 2006)

permitted and that 40% of them had complaints about their stay. These related mostly to the amount of work and how they were treated. The evaluation disclosed hardly any indications of serious abuse (Miedema et al., 2003).

As a result of this evaluation, a temporary complaints desk for au pairs was set up at the Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst* (IND)]. This desk, about which au pairs and host families were informed during the application for the residence permit, received just six reports between June 2004 and December 2005. The number of au pair residence permits issued per annum is 761 on average since 2000. Of these six complaints, most were submitted via au pair agencies and related to more work than was permitted. There were no signs of violence in any of the cases. If there is abuse on the part of the host family, the permit is revoked. If the abuse leads to a fine, for example under the Aliens Employment Act, or a (conclusive) conviction by the court, the host family is excluded from the au pair scheme for five years.

BNRM has not found any cases of exploitation of au pairs who were in the Netherlands for less than a year, and living with the appointed host family. This does not mean that it is not necessary to remain alert to exploitation of au pairs who fail to meet the conditions of their residence permits. Neither the evaluation nor the IND complaints desk provides information about the situation of au pairs who have been in the Netherlands for more than a year or who have changed host families without amending their residence permit. Nor is it likely that an au pair without the proper documents, or without the prospect of another host family, would call the IND with a complaint. Other organisations do, however, have an insight into the employment situations of undocumented ‘au pairs’. The following case study came from an NGO which supports (undocumented) au pairs and other migrants.

Case of the ‘au par’ (exploitation)

V, a Philippino girl, came to the Netherlands as an au pair. At her first host family, despite other agreements on paper, V not only had to look after the children but also had to do increasing housework, and work on Saturdays. Without her knowing it, V became undocumented, because the host family had not registered her. A row broke out and V went to another family where she encountered the same problems: there was no residence permit and V was given too much work to do. V went to a third host family. Her duties there included cleaning the house and the swimming pool, walking the dog, cooking for the 15 and 18 year old sons and being on hand in the evenings and at weekends to serve guests. V was in fact a maid and she earned between €450 and €500 per month. She did not have her own passport and was afraid of the lady of the house, who treated her badly. After more than 5 years of illegal residence, V went to an NGO which tried to mediate. Her boss said she would sort out V’s registration and insurance, but some months later the situation had not changed. Then V’s host family offered her a loan of €1,000 to build a house in the Philippines. The NGO warned that this would increase her dependence, but V still took the loan. V’s working conditions continued to be poor and she was not allowed to rest when sick, for example. When it became too much for her, she left. Because the situation was beyond mediation, the NGO collected V’s things from the family. V gave back the money she had borrowed and got her passport in exchange. The NGO wants to ask a lawyer whether she could claim back wages.

BNRM did not find any exploitation of au pairs with valid residence permits – au pairs who have been in the Netherlands for less than a year and are living with the host family for whom the permit was issued. Nonetheless, the au pair status involves particular risks. Certainly, if au pairs stay in the Netherlands for more than a year, or change host families without reporting the fact, then can find themselves in an extremely vulnerable position.

Domestic work for foreign diplomats

The third group of migrant domestic workers at an increased risk are those working for foreign diplomats. They are vulnerable not only because of multiple dependence and being rather invisible, but also because of their employers' (legal) status – diplomatic immunity can extend to conduct of a diplomat acting as a private individual – and the fact that Dutch law does not automatically apply to their employment situation.

Migrant domestics working for diplomats have a special position under both the law relating to immigration law and labour law. Certain diplomats can bring (a limited number of) foreign employees to the Netherlands under a privileged document issued by the Ministry of Foreign Affairs [*Ministerie van Buitenlandse Zaken (BuZa)*]. There are some 240 individuals with such a document in the Netherlands. BuZa checks the underlying employment contract before it issues the document. These checks have become more rigorous in recent years. Diplomats are now informed of the Dutch minimum wage and are supposed to agree at least that level of wages. The checks do have limitations, though. Diplomats and their employees are free, for example, to have the contract governed by law other than Dutch law.

Literature (e.g. Connor, 2001) shows that these circumstances can result in exploitation within diplomatic households. BNRM was informed about one case of exploitation in this context in the Netherlands.

Case of the domestic worker of a diplomat (exploitation)

A 23 year old Ethiopian, P, came to the Netherlands on a privileged document to work as a housekeeper and child minder to an Egyptian diplomat. The employer paid for her trip and fetched P at Schiphol airport. P immediately handed her passport to him and never got it back. P had to work virtually non-stop for the diplomat's family. She looked after the children and did domestic work such as washing, cooking and cleaning. P had no days off and had to be available for her employers on a 24 hour basis. She lived with the family but did not have her own room. She slept in the children's room. She got little to eat and little sleep. She was not allowed to go out alone and was locked up in the house when her employers were away. Nor was P allowed to attend her own church, as her employers tried to convert her. The lady of the house hit P, sometimes with a shoe or a toy. She also punched her and pulled her hair. P was allowed to telephone her mother once every two months. The contract set out a monthly salary of \$150. The parties allegedly agreed that \$100 of that would be sent to P's family in Ethiopia. In fact, however, P worked for board and lodging. She only received a small amount for clothing on two occasions.

P managed to escape after about three years. The diplomat reported to BuZa that P had gone missing and her residence entitlement lapsed. P applied for asylum. During these proceedings nothing was done with P's statements concerning the (criminal) acts of her employer. The application was rejected but P stayed on in the Netherlands. She got in touch with a lawyer via the STV, and reported the abuse

and unlawful deprivation of liberty by her former employers to the police. P, who was illiterate, could not give a full name or complete address in her report. Little was done with the report, because of the lack of information and the diplomatic status of the employers. These factors also made it difficult to lodge a claim for wages. Eventually her lawyer was given the employer's full name by the government, but by then he was no longer posted in the Netherlands.

Even if the employer had paid the agreed \$150, the wage would have been below Dutch minimum wages. The contract was also in breach of the minimum standards under Dutch labour law on other points. According to BuZa, today no document would not be issued in such a case – the above case dates from 2000 or 2001.

BuZa has little information of the actual living and working conditions of the domestic workers with a privileged document and it almost never receives complaints by them. This might mean that there are few cases of abuse, or that employees are unaware that they can go to BuZa with complaints. The latter option is not inconceivable, as these migrant workers may lead an isolated existence, may not have had their rights explained to them and never have to go to the Ministry. The Dutch government could adopt a more proactive policy as regards this specific group of migrants and their employers – as happens in Belgium, for instance.

Belgian policy in relation to migrant domestic workers with foreign diplomats

The ministries of Foreign Affairs and of Employment in Belgium have embarked on an information campaign aimed at domestic workers, their employers and front-line services about the rights of migrant domestic workers. The campaign, partly focussing on diplomatic staff, was initiated by NGOs and is supported by trade unions and employer organisations. Moreover, the Belgian Ministry of Foreign Affairs maintains contact with migrant domestics working for foreign diplomats. Prior to issuing the visa, it meets with the domestic worker at the Belgian embassy to discuss the labour contract. Once the domestic worker arrives in Belgium, she must collect an ID card in person at the Ministry. At this point, she again talks to an official. The employee needs to renew the ID card each year at the Ministry. This is an opportunity to ask questions or mention any problems. The domestic workers know that they can also contact the Ministry at other times and they do. If they complaint of exploitation, the Ministry refers them to organisations offering assistance. In the year 2004, this happened on six occasions.

Agriculture and horticulture³³

Two NGOs, OKIA and Stek, published in 2004 a study on illegal employment in the greenhouse sector in a region known as the *Westland*. The authors found that employment conditions for undocumented workers here are deteriorating as a result of increases of scale, increasing computerization, growing international competition and the change from a supply-driven market into a market led by demand in which growers were dependent on the wishes of ever larger and stronger consumers (Benseddik & Bijl, 2004). In this context, the farmers try to keep down wage costs and increase productivity. This means that the personnel capac-

³³ This also includes auctions of flowers and vegetables.

ity has to coincide with changing commercial pressures, while there was a shortage of available, legal workers for peak periods. The authors report that it became obvious in 1998, when new legislation on employment agencies [*Wet allocatie arbeidskrachten door intermediairs* (WAADI)] came into effect, that this seasonal work is an important market for employment brokers. Their obligation to be licensed was abolished by WAADI, and within a few months the number of employment agencies operating in the *Westland* grew from a few dozen to about 1,600, including many small-scale intermediaries of Turkish descent. Illegal employment in the *Westland* now largely involves temporary employment agency workers (Benseddik & Bijl, 2004).

The research by OKIA and Stek also shows that the conditions are worse for illegal employment agency workers than for the diminishing numbers of illegal workers employed directly by the growers. Abuses include underpayment, irregular or non payment, no bonuses for overtime or night work, being forced to work while ill or pregnant, not being allowed to talk while working and being shouted at. There were also reports of employers provoking fights, which they would then use an excuse to fire permanent employees (Benseddik & Bijl, 2004).

The picture given by OKIA and STEK is supported by the responses from the AMF teams to BNRM. Ten of the fourteen teams had received indications of exploitation in the horticultural business. For seven teams this was also the case in other forms of agriculture.³⁴ Inspectors mainly see underpayment, long working hours and poor accommodation. In one large farming business which had repeatedly violated the Aliens Employment Act, for example, six illegal Polish and Bulgarian employees shared one small room, there was one shower for at least twenty men and there were no emergency exits.³⁵ Another farmer had 16 people sleeping in a tiny and cold storage room. A strawberry grower had Slovakian employees sleeping on pallets next to rotten fruit. One grower who paid three weeks' wages for four weeks' work told the HSI that this was standard practice.

The respondents also refer to the competition between agricultural employment agencies and the part played by malafide contracting firms. Some gangmasters of Turkish origins allegedly put Turkish-speaking Bulgarians to work illegally for growers without agreeing any (hourly) rate for them. There is an impression that payment is generally below minimum wage levels. The following case study concerns a boy illegally employed, working long hours and being underpaid.

Case of the Somali boy (exploitation)

R, a 17-year old Somali, had been in the Netherlands illegally for two and a half years. R spoke a little Dutch and rented a room from distant relations. R worked in a farming business from 6 am to 6 pm, six days a week. The agreed hourly rate was €5 and R got his meals at work. Three other Africans also

³⁴ The results of enquiries with the AMF teams and SIOD investigators might also have been determined by the selection of the sectors prioritised by the HSI and the SIOD.

³⁵ The HSI also sees dangerous sleeping arrangements for undocumented migrant workers in other sectors, for example in the vicinity of chemicals and without escape routes.

worked there. R got on with his employer, but he was paid less than had been agreed. When R asked the farmer about this, there was always some excuse. He would sometimes give R €20 or €50.

As in other sectors, checks on compliance with the Aliens Employment Act have intensified in agriculture and horticulture in recent years.³⁶ The fine for employing someone illegally was increased with effect from 1 January 2005.³⁷ It is difficult to assess whether these measures are resulting in fewer abuses in employment situations. Now that labour exploitation is punishable as THB, inspectors and (special) investigators will have to be alert on the shop floor for any signs of excess.

Various factors make it difficult to pick up on these signs. First of all, every (special) investigation service has a specific function and appropriate powers. The workplace checks by the AMF teams, for instance, are aimed at checking compliance by employers with the Aliens Employment Act. Inspectors do not generally ask questions about working hours, wages or accommodation. Usually the inspectors only find out about the particulars of an employment situation if they establish an infringement of the Aliens Employment Act. It is also possible that the employer, the intermediary and the worker all have an interest (or think they do) in making sure that a situation is not discovered.

Employment agency work

The growing demand for flexible and inexpensive labour, and the risks associated with this, are particularly visible in the temporary employment. It has been estimated that employment agencies provide work for between 60,000 and 100,000 undocumented migrants, and some of the malafide employment brokers are also known to be active in the illegal rental of accommodations (Van der Laan, 2006). All the teams of the HSI co-operating mention the employment agency sector as one where abuses occur. Two of the examples they provided relate to Poles in the meat processing industry who received an advance payment but no further payments at all, and Ukrainians who worked for 14 hours a day for €4.50 per hour. The Ukrainian workers were accommodated in tents in November and were obliged to buy their meals from the gangmasters men they were clearly afraid of, according to the respondent.

The SIOD also deals with malafide employment agencies. Illegal labour subcontractors, whether Dutch or of foreign origins, not only put people to work illegally but trade in false documents, underpay (migrant) workers, and house them expensively in accommodation that is cramped, dirty or a fire hazard. One investigator reported threats, violence against employees and the illegal possession of weapons. The workers concerned were primarily men from Brazil, Western Africa, Afghanistan, Turkey, Central and Eastern Europe and Portugal.

³⁶ In 2006, the HSI prepared more than 300 reports for fines for illegal employment, out of about 1,300 inspections in the agricultural sector.

³⁷ From an average of €980 to a maximum of €4,000 for an employer who is a natural person and €8,000 for an employer who is a legal entity, for each person employed illegally. The fine is increased by 50% if the employer has been fined for the same offence before.

Representatives of the employer associations in this sector highlight the responsibility of those who hire the employees: they should only do business with certificated employment agencies. They also want to distance themselves from exploitative intermediaries supplying illegal labour. According to a director of one of the sector organisations, the criminal conduct of certain gangmasters is wrongly attributed to the entire sector. This raises questions about the self-regulatory powers of the employment agency sector.^{38,39} The fact is that there are malafide labour mediators, who narrow the gap between illegal employment and the criminal circuit, which can result in excesses (Van der Leun & Vervoorn, 2004). Sometimes there are elusive business practices: small companies regularly operating under different names. Other cases, however, involve large-scale employment arrangements.

Case of Portuguese employment agency workers 1 (exploitation)

A Dutch trade union and a Belgian one collected complaints from Portuguese employment agency workers who had worked for the Dutch employment agency D (using no fewer than 250 employees) in the Netherlands and in Belgium. D recruited people in Portugal via a local bureau. These Portuguese men and women, often from former Portuguese colonies such as Brazil and Mozambique, could work in the Netherlands legally as EU citizens. The selection procedure cost €120. Those who were recruited travelled to the Netherlands or Belgium at their own expense. If they were accepted upon arrival, they signed a Dutch contract which often they did not understand. They agreed, for example, that D would receive the tax rebates and that they would only go to general medical practitioners appointed by D, with €25 being deducted from their wages for each visit to the doctor. These doctors apparently provided incorrect diagnoses and allowed D to examine the medical files. Their work was in agriculture, horticulture, the food industry, construction, metal and timber industries and logistics. D organised accommodation and transport to work. The company had 24 houses, each accommodating 12 workers. Former workers indicated that the accommodation was bad. While the employment contract indicated that accommodation would be free, the employees actually paid €75 rental per month. Generally speaking, D housed those working in Belgium in the Netherlands, and vice versa. The workers were registered at the address of either D or the Portuguese selection bureau, which clouded the situation. Any worker who tried to register at the municipality where he lived was threatened with dismissal. Working ten hours a day was the norm. Payment for overtime was postponed for as long as possible and eventually did not happen at all. Several sick or pregnant workers had to leave just before the expiry of their extendable contract. When they were dismissed, they had to leave the accommodation immediately. Those who were pregnant got a bus ticket to Portugal without any explanation of their rights. D also apparently employed violent tactics.

³⁸ The Dutch government wants to address malafide labour subcontractors through the certification of employment agencies.

³⁹ The *Gangmaster Licensing Act* in the United Kingdom has introduced a licensing obligation for labour mediation in certain sectors, and one of its important aims is to counter exploitation: 'The general purpose of this Bill is to make the operation of gangmasters more transparent, thereby ensuring that they comply with the legal obligations they owe to their [...] workers. The Bill is [...] designed to promote the rights of gang workers and eliminate forced labour [...]' http://www.eti2.org.uk/Z/lib/2004/02/ukagr-bill/gangmstr-bill-2004-02_notes.pdf.

In several cases concerning (serious) abuses in the employment agency sector, gangmasters from ethnic minority groups recruited staff from their own or a related community. One example is the case of a businessman from Afghanistan who put Afghan asylum seekers to work under false identities as temporary workers in garden maintenance and carpet cleaning. The hourly wage was €4, but this was not always paid.

Catering

Abuses in the catering industry occur in a range of establishments. This often involves (a combination of) illegal work, underpayment (for example, because wages are continually reduced), excessively long days and bad accommodation for the workers. Chinese (take-away) restaurants form an important subcategory and are therefore discussed separately. The BNRM case studies relating to catering often involve an employer and an employee of foreign heritage from the same country of origin or with a similar cultural background. Sometimes there are family links. It is mainly workers without a social network or with multiple dependence on the employer who are vulnerable.

Case of Pakistani working conditions (exploitation)

Some Pakistanis were working in very poor conditions in a hotel: illegally, twelve hours a day on average, with virtually no days off, and for €100 in cash per week. When the workers came into conflict with the employer they were dismissed. The dismissed workers did not report to the police but did submit a claim for back wages. When the case came to court, the employer stated that the plaintiffs had never worked for him. Witnesses gave contradictory evidence. Those who first confirmed the plaintiffs' story later revoked their statements, possibly due to intimidation on the part of the employer. The claim was rejected because of inadequate evidence.

Chinese restaurants

Communication with Chinese labour migrants is often difficult. This is partly why the respondents had little understanding of possible arrangements behind the degrading circumstances facing some undocumented Chinese workers. Sometimes it seems illegal Chinese workers remain silent because, despite bad working and living conditions, they hope to return to work for their employer in the future. It is also possible that the silence is caused by fear of reprisals. This was what was suspected, for example, in the case of a young Chinese woman found by the HSI during a workplace check at a restaurant. The woman worked on the basis of a forged document and lived above the restaurant. At the police station, she stated that she earned a few euros a day. She did not want to say any more. She appeared to be afraid and had fresh burn marks on her skin, possibly from cigarettes. The police suspected abuse by her boss but could not continue the investigation without more information from the woman.

The Chinese restaurants where abuse was found often have small numbers of staff and a Dutch owner of Chinese origins. It is not unusual for the owner and his family members to also work in the business. Some respondents suspect that illegal work under these condi-

tions in the Chinese catering industry is associated with other criminal activities such as illegal gambling and document fraud.

According to the respondents, the owners of Chinese restaurants are regularly guilty of underpayment. One team leader at the HSI wrote that even legal employees have to cope with poor conditions. Another respondent at the HSI reported that illegally employed cooks earn between €400 and €500 per month for six long days each week. It also happens that employees are paid less than the agreed wages.

Some people work in the Chinese catering business for only board and lodging. Sometimes this is no more than a mattress in the kitchen or an improvised bed in a stockroom. 'A place where a decent person wouldn't keep his dog', according to one AMF inspector. During one check, several illegal Chinese workers were found to sleep in a stinking shed behind the restaurant and with an outside shower. In another restaurant, the HSI happened upon an employee whose body was covered with scabs. The man had not been treated for this and had to keep working.

The case of the Chinese girl (exploitation)

Y lived with her grandmother in a Chinese village. When she was 11, a man and woman from the village offered to take her to Europe with them. Y and her grandmother accepted. During the trip, the three pretended to be a family. In the Netherlands, the couple forced Y to work as a prostitute in private homes and took all the money. One day Y fled. She did not know where she was and spent the night outside. The next day Y went into a Chinese restaurant and asked for work. Y started working there for board and lodgings in the same property. She was twice transferred to other Chinese restaurants. It is not known whether the restaurants were owned by the same person. Y found the third restaurant too harsh and walked out. She had by then worked in restaurants for two months. Y then tried to find work at an Italian restaurant. The owner felt this was such a strange request from a child who could not speak any Dutch that he took Y home, found an interpreter and contacted the authorities. Y was placed in a youth care centre. The Child Welfare Council considered the case and Y ended up with a foster family, learned Dutch and went to school. She also received psycho-social help, involving the use of (unsent) letters she had written to her grandmother. It is not known whether Y ever contacted her grandmother. The respondent thought that no police investigation was initiated in this case.

Some respondents consider that exploitation in Chinese restaurants is associated with the payment of outstanding debts for people smuggling. However, on the basis of court files and interviews about the smuggling of Chinese, Soudijn (2006) concludes that such a link cannot be established. According to him, exploitation by the smuggler himself is only found with individualist smugglers who smuggle relatives or acquaintances. The individual smuggled may then not need to pay any cash to the smuggler, but instead will work for him for very low remuneration. According to Soudijn (2006), restaurant owners sometimes also pick up smuggled people who have just arrived in the Netherlands, paying off the debt for the smuggling in a lump sum, in exchange for labour. With this sort of structure, it is again likely that the person who has been smuggled and the employer will know each other, but court files contain little information on these relationships.

Food industry

At some bakeries workers earn €20 for a whole night's work. The HSI discovered a number of Bulgarians working illegally at one bakery and living in three rooms above the bakery. The rooms, each with two or three mattresses, were in a very poor condition and the inspectors were astonished that people could live there. The migrants did not want to say much and appeared to be afraid of their employer/landlord. They did say that they worked twelve hours a day, for daily wages of about €30, with rent deducted from that.

Respondents also reported serious abuse in some fish processing and meat processing companies.⁴⁰

Case of Portuguese employment agency workers 2 (exploitation)

Serious abuse of Portuguese temp workers was suspected at a chicken slaughterhouse. The management at the slaughterhouse was aware of abuses at the employment agency. The Portuguese earned €3.50 per hour, their passports were taken away and if they indicated they wanted to work somewhere else they were threatened and beaten. The workers were so intimidated that they did not dare to leave. Nor did they want to say anything about their employer. Violations of the Aliens Employment Act were found at the employment agency, along with signs of document fraud.

Factory work

Serious abuses may also happen in production work. For example, this is what the HSI discovered in an old factory during a night-time check in collaboration with the Aliens Police.

Living at the workplace

The dusty space consisted of a workplace, where plaster statuettes were made, and a small improvised living space. The sleeping quarters measured sixteen square metres with twelve bunk beds. A small hallway contained a gas cylinder camping stove for cooking, and a shower. Ten men and a woman, from Bulgaria and Romania, lived and worked here. They worked six days a week and were under the impression that the job would take ten weeks. They were in the Netherlands illegally and stated that they had had to hand over their passports to the owner of the business. They had been told that they would be paid when they left, but they did not know how much. Because they hardly had any cash, they were more or less confined to the factory.

Crime

It is mentioned in §8.3.3 that criminal activity can, in certain circumstances, amount to forced or compulsory services. The following case illustrates that this can happen within a relationship.

⁴⁰ This has also been found in other countries. In *Blood, Sweat, and Fear. Workers' Rights in U.S. Meat and Poultry Plants*, Human Rights Watch (2006) describes violations of employment rights in the American meat processing industry.

Case in relation to coerced fraud (exploitation)

R, an unemployed 34-year woman, had debts and psychological problems when met a Dutch lawyer who worked from home. He took pity on R, who moved in with him. They began a relationship, in which R was seriously abused physically, sexually and psychologically. Her partner threatened her with a knife or by tying her up and pouring methylated spirits over her. R had to receive medical treatment on several occasions and had permanent scars. The man forced R to help him with fraudulent practices. For example, he and another man committed forgery, with a view to obtaining compensation payments. R made several false statements to the courts in this context. R's partner also saddled her with debts, for instance by concluding a loan in her name. R finally ended up in a shelter for battered women. She reported the abuse to the police, and told about the forgeries. Her ex was convicted of abuse and fraud. R now requires long-term assistance.

Construction

Remarkably enough, only a few descriptions of serious abuse in the construction industry were found in this research. After all, it is well-known, in the Netherlands and surrounding countries,⁴¹ that there is considerable illegal employment in this sector, which increases the risk of abuse. AMF inspectors do point to primarily underpayment and dependence on the employer for accommodation in this sector. Polish workers apparently pay a lot for very poor accommodation, sometimes in amongst the building materials. According to one team leader, underpaid migrant workers are made to do the most unpleasant jobs, such as demolition, clearing up and steel bending. Not being paid during illness is also mentioned. Some of the Poles working in construction in the Netherlands work for private individuals via compatriots who find customers through brochures and adverts.

The case of the Ukrainian construction worker (exploitation)

V, a Ukrainian, was living illegally in the Netherlands and found work with a Belgian contractor, who built and renovated houses using between ten and 15 undocumented workers from Eastern Europe on each project. They were accommodated in a cabin on the building site. The first week, V received the wage that had been agreed. The second week he received half pay, and the third week nothing at all. V took photos of his very poor working and living conditions and recorded the employer telling him that he would not receive another cent. When V said he would go to the police, the contractor sarcastically wished him good luck and told him that he would beat him up if his name was mentioned. V still went to the police but he was told that nothing could be done for him as an undocumented migrant worker.

Transport and logistics

The HSI discovered undocumented migrants working at one business in this sector in a life-threatening situation, in a partly burnt-out shed without any form of protection against the danger of the building collapsing. There are indications, in the media and elsewhere, of abuses in the ports. BNRM noted one case involving an Eritrean, a Somali and two Nigeri-

⁴¹ The chief inspector for the Brussels region of the Belgian HSI, for example, indicated that there considerable abuse and organised crime connected with illegal employment in construction there (presentation by S. Malomgre on 24-03-2006).

ans who were picked up at night at the asylum centre where they were staying, to clean up the engine rooms of ships in the port of Rotterdam. They were poorly paid and, while it is not clear that these men were exploited, it is clear that they were vulnerable to exploitation.

8.6 Groups at risk

8.6.1 Introduction

Recognising indicators of exploitation is essential in preventing and combating THB outside the sex industry. It is also important for anyone who might encounter victims of labour exploitations to be able to recognise them as such. This is not always easy, certainly if the individual in question does not present himself as a victim. The next section deals with factors that render individuals vulnerable to exploitation in employment situations.

8.6.2 Characteristics of (potential) victims

For some people any job, no matter how bad the circumstances, presents an opportunity. The workers in the various cases described to BNRM were men and women, Dutch nationals and foreigners, single people and couples, adults and children. The only characteristic they all shared is a marginal position in the Dutch labour market and/or society.

Nationality

It is impossible to determine the extent to which nationality increases vulnerability to exploitation. It has already been noted that some national and ethnic communities forge tight-knit networks in the Netherlands. Being a member of such a community can be a form of social capital, which people can invest when settling in the Netherlands or finding work. At the same time, people in this situation can end up being exploited by compatriots or those who share their language. An example of this would be the Turkish-speaking Bulgarians who were put to work in very bad conditions by malafide Turkish-Dutch gangmasters.

A wide range of nationalities was found in the BNRM research. The collected cases concern Dutch, Portuguese, Polish, Bulgarian, Ukrainian, Georgians and Russians, as well as Moroccans and Algerians, West Africans (including Nigerians), East Africans (including Somalis), Congolese, Turks, Iranians, Iraqis, Afghans, Pakistanis, Indians, Chinese and Philipinos. A number of countries and regions, such as the Netherlands, Bulgaria and West Africa, are known as important countries of origin for victims of THB for sexual exploitation in the Netherlands. The countries of origin currently predominant among asylum seekers include Iraq, Iran, Afghanistan, China and Somalia. Some victims of exploitation are (ex-)asylum seekers.

Residential status

Migration policy determines which foreign nationals are allowed access to the Netherlands and to the Dutch employment market, and under which conditions. The link between the current migration policy and the existence of exploitation outside the sex industry is a complex one. Vulnerability in employment situations cannot always be inferred from illegal residence, but the restrictive policy on migration does contribute to the fact that there are extremely vulnerable workers. The more difficult it is for migrants to stay in the Netherlands legally, the more those who do come end up in circumstances which easily lead to relationships of dependence and the chance of abuse. Access to the Dutch labour market is also significant in this context: there is a risk of exploitation when legal residence does not give (adequate) access to the formal labour market.

The BNRM research indicates that even migrants who are in the Netherlands legally may have to deal with abuse, and sometimes excesses, related to work. Circumstances that can contribute to their vulnerability, because they weaken their negotiating position in employment situations, include limited access to the labour market, language difficulties, dependence on fellow-countrymen, ignorance of their rights, a lack of economic alternatives and fear of the authorities.

Some migrants residing legally in the Netherlands are not permitted or have a restricted permission to work. First in this group are the asylum seekers. As long as their application is being processed, they are not allowed to work. Unaccompanied minor asylum seekers (AMAs) are particularly vulnerable.⁴² In response to indications that recruitment for sexual exploitation was going on in asylum reception centres, a plan was developed to provide residents and workers with better information on THB, to be able to identify problems at an earlier stage, to prevent disappearances and to provide adequate assistance in good time. This project focuses on exploitation in the sex industry. It is also important, however, to gain greater insight into exploitation of asylum seekers from the centres in other sectors.

Migrants who are here in the Netherlands (legally) for study purposes may work for a maximum of ten hours a week. For many students this is not enough to get by. According to one respondent, who has many contacts with Russian students in the Netherlands, this leads to students entering into marriages of convenience with Dutch nationals, or going into prostitution. The students also do other work, for instance in the catering industry, where their vulnerable position can be abused. Students may work 20 hours a week, for example, but are only on the wages books for ten hours. The other ten hours are underpaid, paid from the tips or not paid at all. This does not amount to exploitation, but it illustrates that the labour rights of legal immigrants can also be violated.

The third group of vulnerable immigrants are those from the new EU countries who were not allowed to work without a permit in the Netherlands when this Report was written. Allowing these EU citizens to work in the Netherlands, may reduce their dependency on mala-

⁴² The BNRM research disclosed no cases of exploitation of AMAs. There are, however, indications that dozens of Chinese and Indian AMAs have disappeared from reception centres in recent years, some of whom are suspected to have ended up being exploited.

fide facilitators and their vulnerability on the shop floor. But it cannot be predicted what impact the increased freedom of movement for workers within the EU will have on exploitation in other sectors than the sex industry in the Netherlands. The composition of the group of risk may just change. After all, exploitative labour subcontractors and employers might well turn their attention to those looking for work from countries just beyond the new boundaries of the EU.

Migrants who are free to work are also exploited, for instance because they are ignorant of their rights.

Case of the illiterate man (before 2000)

A, a Moroccan man, worked legally for years in a restaurant, being underpaid. A had a contract but, being illiterate, he did not understand it. When a lawyer heard how little A was being paid, he sent him to his boss with the Collective Labour Agreement, which resulted in A's dismissal. There followed what the lawyer described as a sordid dismissal proceedings, in which the employer appeared to have bribed people to say that A had been looking for trouble with one of his colleagues. A's wage claim was successful, however: his boss had to pay him five years' of back wages.

Those with a residence permit to stay with a spouse or partner have unlimited access to the employment market. But this residential status also has risks attached, because it is dependent, for the first three years, on the relationship for which it is issued. This can result in an imbalance of power within families and exploitation, also by abusing the dependence to force the other person to work and to hand over all of her income.

Case of being obliged to work and hand over wages (exploitation)

L, a well-educated Moroccan woman, was legally resident in the Netherlands with her Dutch husband, R. When she had met R in Morocco, he had pretended to be wealthier than he really was. In the Netherlands, they shared a room with friends of R. L became pregnant. R forced L, using physical violence, to work for him in a factory. L got nothing back from her wages. She did not know what R did with the money. Because of R, L became socially isolated. Also, without L's permission, he made videos of them having sex, which he may have sold or shown for payment. L ended up exhausted from the combination of work, abuse, pregnancy and isolation. She repeatedly reported the abuse. Once her son was born, L fled, also because R neglected their child and she herself was unable to buy anything for the child without her income.

Finally, it is evident that people who are in the Netherlands illegally are in a vulnerable position that can be abused in employment situations. While employing undocumented migrants does not absolve employers of their obligations to the workers in question, in practice they will often underpay them, make them work long hours or worse, without any punishment. Lawyers, HSI inspectors, SIOD investigators and social workers indicate that the individuals they suspect of being exploited are often very reticent about their situation. Many undocumented migrants do not know their (labour) rights, or never dare to broach the subject with their employers. After all, for every one of them, there are a dozen others. They

also generally want to stay out of the spotlight. If they get accommodation from their employers and know few people in the Netherlands, they have even more to lose. If an undocumented worker does protest about bad working conditions, some employers will threaten to report them to the Aliens Police, or actually do.⁴³

Case of not lodging a wage claim (no exploitation)

14 men employed illegally were placed in aliens' detention following a workplace check at a container transshipment company. They all mentioned (the first name of) the same intermediary, who had instructed them to wait in a particular spot from which they were taken to work in a different city. They did heavy loading and unloading work. The men did this for only two days, by their own account. An hourly wage of €5 had been agreed, but they had not yet received anything. The lawyer suggested a to claim back wages, but the men did not want this. It is not clear whether this was because they did not know from whom to claim the wages, because of fear, or maybe the hope of getting back to the same work.

What happens if an undocumented migrant wants to report abuse in his employment situation to the police? Various respondents indicate that the police will not record the report, or indicate that there is nothing they can do for an undocumented migrant. Sometimes the attempt to report an offence leads to aliens' detention.

Case of the Algerian undocumented migrant (exploitation)

The Algerian Y was illegally resident in the Netherlands and worked in a tearoom. At first he was paid regularly but his wages gradually diminished and eventually he received no more pay. When Y took this up with his employer, the latter threatened to kill him. Y took the threat seriously and went to the police. He was taken into aliens' detention. It is not known whether any investigation was started into the employer.

Gender

Undocumented migrants therefore form an important risk group. According to Leun and Vervoorn (2004), between a half and three quarters of this group probably consists of men. Boys are also in the majority among unaccompanied minor asylum seekers. It is therefore to be expected that more men than women will fall victim to exploitation in sectors other than the sex industry. BNRM subscribes to the expectation that the numerical relationship between men and women among (potential) victims will have changed radically with the introduction of the new Article on THB. This has consequences for how the problem is to be addressed, particularly as regards the reception of victims. In 2006, the STV repeatedly indicated that the number of reports of exploitation other than in the sex industry, as well as the number of male victims, was growing, and that there were problems in accommodation and assistance for male victims.

⁴³ In Belgium, there a strong correlation between informing the authorities about undocumented migrants and labour exploitation (CGKR, 2005, p. 72).

Age

Minors generally encounter multiple dependence issues more quickly, and are more vulnerable than adults. Exploited children are also denied rights that are specifically applicable to them, such as the right to education. Children therefore need extra protection. The legislature has taken this into account in the provisions on THB and on the employment of minors. The use of coercion is not a required element as regards trafficking in minors, contrary to trafficking in adults. At the same time it is clear that not every situation of working children amounts to exploitation. But there are special conditions applicable to work done by children. The Working Hours Act [*Arbeidstijdenwet*] and the Working Conditions Decree [*Arbeidsomstandighedenbesluit*] both specify, for a range of age groups up to the age of 18, what work can be done, for how many hours and at what times. If an employer makes a child work longer or harder, then this is an abuse which, possibly in combination with others, might amount to an excess.

International courts also take minority into account in these matters. For example, in the *Siliadin* judgment of the ECHR, mentioned earlier, the age of the domestic worker played a part in establishing forced labour and services. The Court stated that in particular children and other vulnerable individuals are entitled to protection from the State against such violations of personal integrity. The standard, therefore, within the Dutch and European legal order, is that minors have to be protected so that their fundamental rights (of the child) are not infringed upon as a result of employment.

In practice, however, additional care for (possible) victims below the age of 18 is not yet a given fact. Several cases from the BNRM research show that illegal residence in particular can hamper the attention that is required in terms of alert, reception and assistance, also to report the offence, to (possibly) exploited children.

Case of the Chinese boy (exploitation)

A duty lawyer met C, a Chinese boy. He said he was 15 years old. The lawyer reckoned he was between 15 and 17. C had been apprehended during a traffic check, because he could not produce any personal identification. The Dutch driver next to him did have ID and was allowed to continue his journey. C was taken to the police station, where he was kept for a couple of days in a police cell and then transferred to aliens' detention. C appeared shy and not particularly talkative, but said that he had been smuggled into the Netherlands a few years previously, had no family here but was in touch with his family in China, shared a room with another man somewhere and worked in a place he was taken to and collected from by car. The lawyer did not find out anything about the nature of the work, but he got the impression that apart from working the boy did nothing but eat and sleep. He did not speak a word of Dutch or another European language, appeared to be disoriented and knew nothing about Dutch society.

For his trip, C had borrowed the equivalent of €10,000 from a loan shark. He had a scar in the shape of a flower on his arm, C said that this was done to him to remind him of the debt. C was not paid for his work, but the person he worked for had said that he was sending money to C's family in China every month, and so C wanted to get back to work as fast as possible.

The lawyer spoke to C only once. Because of the transfer to aliens' detention, he did not visit the boy again before the hearing. The Aliens Police interviewed C twice. The lawyer consulted with the Child Protection Agency, which was willing to process an application to place C under supervision urgently. The lawyer did not want to start this procedure, however, without consulting C, but there was no further opportunity to do so. At the hearing, it becomes clear that C had not been brought to, or formally been presented to the court. Because of this procedural error, the detention was lifted and C was put on the street. The lawyer, who expressed his concern at this state of affairs, was informed that the Aliens Police had invited his client to report the next day, following the lifting of his detention. The chance that C had understood this was fairly remote, since he did not understand Dutch and presumably no interpreter had been used.

This case raises some questions, for instance why the police let the car driver go. It is alarming that an unaccompanied minor, who does not speak any Dutch, should be in a police cell for a few days, followed by aliens' detention and finally put out on the street. The lawyer felt he was faced with a dilemma in this case. What is in the client's interests, if the client is 15 years old and indicates that he wants to return to what was probably a perilous situation, possibly involving exploitation?

It is apparent from different cases that the Child Protection Agency does not always respond consistently to the (possible) exploitation of minors. The different responses may have to do with the fact that it is not always possible in practice to strike a proper balance between child protection law on the one hand and migration law on the other (Cardol, 2005). Dutch child protection measures can be applied to foreign children in the Netherlands irrespective of their residential status. The Agency's policy in relation to undocumented minors is no different from their policy in relation to minors residing legally in the Netherlands (Cardol, 2005). But, according to Cardol, the Agency has indicated that there may be some inconsistency in implementation if there is a clash between migration policy and policy on child protection. In his view, in practice, the rule seems to be that migration law takes precedence over youth protection, and also that those involved in youth protection are not always sufficiently familiar with migration law. Anyone who might become involved with unaccompanied underage migrants must be familiar with (the signs of) various forms of THB and the appropriate protective measures.

Socio-psychological condition

One special group of potential victims of labour exploitation are those with socio-psychological problems. Some employers abuse people who are extremely unassertive, or who have to cope with personality disorders. This form of vulnerability partly explains why BNRM also found cases relating to Dutch nationals. Limited social understanding, which involves a certain degree of self-protection, can result in serious wrongs in relation to employment, for example when combined with money worries and social isolation.

What all of this shows is that the composition of the group of (potential) victims has been changed by the broadening of the scope of the criminalisation of THB.

8.6.3 Characteristics of (potential) perpetrators

Because of the central questions and methods applied in the BNRM research into labour exploitation, limited information was collected on the individuals responsible for serious abuse in employment situations. Most of the information that was collected was obtained from HSI and SIOD respondents.

Other criminal conduct

Respondents from the HSI and the SIOD indicate that the businesses where they find the most serious abuses, and also the managers there, were not particularly concerned with observing laws and regulations in general. One AMF team leader gave the example of a company which, apart from illegal employment in bad conditions, was also suspected of violating environmental, social security and tax laws.

Staff

The research gives no insight into any link between the size of the staff of businesses and the occurrence of exploitation. Serious abuses occur in small and informal businesses as well as in major enterprises.

Cultural relationships with victims

It is known from various studies on people smuggling that the perpetrators of this crime often have the same ethnic background as the people they smuggle (Van der Leun & Vervoorn, 2004). This also seems to apply to human traffickers and their victims of exploitation in other sectors than the sex industry.

Relatives and partners

Sometimes the relationship between perpetrator and victim is even closer. Exploitation occurs within relationships, marriages and families, often in combination with multiple dependence, abuse of an imbalance of power in the relationship and mental or physical violence. Several of the BNRM case studies show that there is not always an adequate response to signs of exploitation in the family context, even when the victims are minors.

8.7 Points of attention and bottlenecks when dealing with exploitation outside the sex industry

8.7.1 Introduction

An effective approach to THB for non-sexual exploitation should cover prevention, detection and investigation, the prosecution of suspects and protection for victims. Policy in this area coincides broadly with that in relation to THB for sexual exploitation. It does, however, involve some different cooperating agencies.

Fighting exploitation in other sectors than the sex industry is still in the early stages. The first steps towards its prevention were taken in early 2007 by the Ministry of Social Affairs and Employment and the social partners, in the context of the flanking policy for the free movement of workers from countries that had become EU member states in 2004. Reference is made to Chapter 5 for the issues of highlighting exploitation outside the sex industry, which is now getting into its stride, and the first investigations in this field. At the time when this chapter was being written, there were no irrevocable court verdicts on this form of THB yet.⁴⁴ There is not yet enough material to assess prosecution practice either, but BNRM will be carefully following the case law on exploitation outside the sex industry. Reference can be made to the lengthier experience in Belgium: the CGKR (2005) confirms that not every Belgian court yet views exploitation in other sectors than the sex industry as THB, and that the courts' sensitivity to this issue needs to be improved.⁴⁵ The STV has registered the first (possible) victims of exploitation in other sectors than the sex industry. This means that the STV, and other organisations involved in providing assistance to victims of THB, have to deal with changed client profiles and new requests for help.

8.7.2 Points of attention and bottlenecks

This section includes a number of points for attention and bottlenecks in relation to dealing with THB for exploitation in sectors other than the sex industry.

Legislation and policy

- When the criminalisation of THB was extended, the legislature failed to make it sufficiently clear which abuses in relation to labour or services should be qualified as exploitation within the meaning of THB. The lack of a clear definition of 'exploitation' impedes the identification, investigation and prosecution of non-sexual exploitation.
- The extension of the scope of the offence demands – even more than before – a targeted cooperation among the various government departments, to achieve an effective THB policy.

Prevention on the demand side

- There has as yet been little action on the government's own proposal to try, in consultation with employer and employee organisations, to reduce the levels of the demand that can result in exploitation in sectors other than the sex industry.⁴⁶

⁴⁴ When this chapter was completed, two verdicts at first instance had been handed down. These cases involved the illegal employment of Bulgarians as hemp pickers and of Chinese in a restaurant. In both cases, the accused were exonerated at first instance on charges of THB.

⁴⁵ Various initiatives were being prepared in the Netherlands, at the time when this Report was being compiled, to provide training on THB to judges, and these initiatives will also deal with exploitation in other sectors than the sex industry.

⁴⁶ In the *Additional Measures to the NAM*.

Identifying and investigating possible THB situations

- The wider public is ignorant about exploitation in other sectors than the sex industry and the fact that this is punishable as THB, which reduces the general alertness. There is also a lack of awareness of this criminalisation of labour exploitation among those who might encounter signs of it in their (voluntary) work, such as trade union employees, (youth) social workers, lawyers and those support asylum seekers or undocumented migrants.
- A great deal of attention and capacity have been applied in recent years to combating illegality. The aim of this policy is twofold: on the one hand to deport undocumented migrants and on the other hand to deal with those who exploit these people. Dealing with illegality and combating THB are two separate policy fields, but measures in one field may impact on the other. On paper, it is recognised that there may be victims of THB among undocumented migrants, but it is essential for this to be also taken into account in practice. There is, after all, a risk that victims of exploitation will simply be viewed as illegal workers. A victim-oriented approach to THB requires that in any campaign to combat illegality (possible) victims should be recognised as such, and informed of their rights, for example to make use of the B-9 regulation.
- There are signs that the police do not always take action when undocumented migrants want to report a crime, although the police are obliged to record reports.
- Because of the part it has to play in combating illegal employment, the HSI is not always in a position to protect illegal employees effectively against exploitative working conditions. Terminating an illegal employment situation can be incompatible with gaining the trust of a (possible) victim of THB. The twofold duties of the HSI mean that undocumented migrants will not be inclined to report abuses or accidents at the workplace to the HSI. Workplace checks by the HSI are, however, an important potential source of information on exploitation in sectors other than the sex industry. But checking on infringements of the Aliens Employment Act will only contribute towards ending exploitative situations if signs of serious abuse are picked up and reported to the SIOD. If this does not happen, it could even be the case that an employer might ‘recover’ the fine for illegal employment from his illegal employees.

Risk sectors

- There is a link between the relatively high degree of illegal employment in certain sectors and the chance of serious abuses.
- Ethnic entrepreneurship can provide a hidden circuit in which exploitation can go on relatively unobserved.
- Labour exploitation can occur partly in the Netherlands and partly across the border.
- Exploitation outside the sex industry is taking place in the informal sector as well, including domestic work. This sector is not readily accessible to either inspection and (special) investigation services or trade unions.
- Au pairs are vulnerable to exploitation, because of their multiple dependence on the host family and the fact that they work in a private environment. There is little understanding

of the employment situations of the most vulnerable au pairs, namely those who do not or no longer comply with the conditions of the au pair permit.

- There is no supervision with regard to the actual working situations of the very vulnerable migrant domestic workers who are employed by foreign diplomats.
- Deregulation of the employment market is part of the explanation for the existence of extremely poor working conditions in the industrialised nations (ILO, 2005). The employment agency sector, deregulated in 1998, is a significant risk sector for exploitation. Yet the existence of serious abuses plays no great part in the political debate on (self-)regulation of the sector, or how to deal with malafide labour subcontractors.

Groups at risk and victims

- The position of undocumented migrants in the Dutch employment market appears to have deteriorated in recent years. Illegal work seems to be going further underground, leading to more work situations that can turn into exploitation. Many (undocumented) migrants know (too) little about their rights as employees. A (possible) victim of exploitation outside the sex industry will often have no idea that he has certain rights under the B-9 regulation. It is also difficult in many cases to gain the trust of a (possible) victim, certainly if he is residing in the Netherlands illegally and/or his trust in the authorities has been damaged in the past (Skrivánková, 2006).
- The continued expansion of the EU and the end of the transitional provisions in relation to workers from new EU member states will not mark the end of illegal employment or exploitation. In a globalised world with increasing international competition, inequality and mobility, it seems more likely that the countries of origin of the vulnerable labour migrants will continue to shift.
- Migrants who come to the Netherlands for family formation or reunification have free access to the labour market. Their residence permit carries the risk, however, of abuse of the dependence on relationships or family ties under migration law, which sometimes lead to exploitation.
- The government acknowledges that minors are particularly vulnerable and that underage victims of THB deserve special attention. Nevertheless, the illegal status of a minor sometimes seems to be a hindrance to securing accommodation in a shelter, legal assistance and, if necessary, a child protection order.
- The extension of the Article on THB has introduced new categories of victims, but it has so far not resulted in an expansion or differentiation of the reception and shelter facilities for victims.
- Social workers and legal assistance providers who are in contact with the most vulnerable individuals in the employment market can highlight possible THB cases. One difficulty, however, is that the fear of undocumented migrants to be deported will often deter these professionals from reporting exploitative practices. This attitude is only likely to change if social workers and legal assistance providers can be sure that reporting labour exploitation will be in the interests of their client. Sometimes there are (also) other legal actions

that migrants can take against an employer without risking disclosure of their illegal residence. It is important for those who provide (legal) assistance to be aware of these possibilities and not to advise against them unnecessarily.

Trafficking in Human Beings for the Purpose of Organ Removal

9.1 Introduction

Since the expansion of the definition of the offence on 1 January 2005, trafficking in human beings (THB) can also be aimed at the removal of another person's organs. So far, though, there are virtually no indications that this type of THB takes place in the Netherlands. Nevertheless, the new THB provision prompted BNRM to look into this topic. BNRM opted for a broad survey, because the demand for organs can lead to commercial organ transplants, i.e. the trade in organs, as well as to THB with a view to organ removal.¹

Terminology used by BNRM

- Organ: component of the human body or the human foetus, excluding blood and reproductive cells.²
- Organ transplant: the entire process from preparation for the operation to transfer of an organ from one human to another, including any interim conservation and storage of the organ.³
- Organ tourism: travelling abroad in order to obtain an organ (for) transplant.
- Trade in organs: offering for sale and actually selling an organ, buying an organ and also mediating between a purchaser and a seller with a view to profit, including the actual transplant of a such an organ.
- THB with a view to organ removal: recruiting, transporting or accommodating another person with the use of force and the purpose of removing that person's organ(s).

The BNRM investigation into the subject was twofold. Firstly, it included a study of the literature⁴ exploring the statutory framework for organ transplants in the Netherlands, the international trade in organs, the question whether Dutch citizens are involved in this and the ethical debate on the various ways in which organs can be made available for transplant. The second element of the investigation involved interviewing transplant surgeons and transplant coordinators, and focussed on the question of whether there are any Dutch kidney patients who want to, have tried to or actually have succeeded in buying a kidney for transplant, either in the Netherlands or abroad.⁵

¹ The shortage of organs available for transplantation also leads to research into possible alternatives for human-to-human transplants, such as xenotransplants and artificial organs.

² In line with the definition used in the Explanatory Memorandum to the Organ Donation Act [*Wet op de orgaandonatie* (WOD)]. In legal terms the concept covers more than it does in its standard medical meaning.

³ This definition follows the Council of Europe's Additional Protocol to the Convention on human rights and biomedicine, on transplantation of organs and tissues of human origin (2002).

⁴ Apart from scientific literature, informational booklets and legislation and regulations, media reports and internet sites were studied in order to find more case-oriented information, including 'urban myths' about the trade in organs.

⁵ The BNRM investigation concentrated on kidneys as these are in shortest supply, most of the literature is about

The central issues in this Chapter are the connections and distinctions between the trade in organs on the one hand and THB with a view to organ removal on the other hand. It also deals with legislation on organ donation, and the debate about and of symptoms of the commercialization of organ donation.

9.2 State of affairs and developments

Virtually no research has been done on the involvement of Dutch citizens in organ tourism, trade in organs or THB with a view to organ removal. There are as yet very few indications of any trade in organs or THB with a view to organ removal in the Netherlands.⁶ According to the National Institute for Health Promotion and Disease Prevention [*Nationaal Instituut voor Gezondheidsbevordering en Ziektepreventie* (NIGZ)], the origins of every organ transplanted in the Netherlands are known, and the registration and control systems leave no room for a ‘black market’ in organs. Van der Leun and Vervoorn (2004) as well as the Board of Procurators-General, in the THB Instruction [*Aanwijzing Mensenhandel* (2006)] also conclude that the practice of trade in organs appears to be non-existent in the Netherlands.

At the same time it is quite conceivable that long waiting times for organs in the Netherlands⁷ and the ease of public access to information on the trade in organs abroad may already have led Dutch citizens to get involved in organ tourism, or at least that this might happen in future. After all, there is a significant shortage of available organs in the Netherlands, as in many other countries, for the increasing numbers of patients awaiting a transplant,⁸ with the result that one in five of these patients dies before a transplant can take place (Van Schravendijk, 2006). IJzermans, who is a professor of transplant surgery, indicated in 2005 that organ tourism can be anticipated if the number of organs from living donors does not increase. He referred to opportunities for buying organs in Hungary and (the former) Yugoslavia. Two medical specialists reported in the media in January 2006 that some patients had arranged organ transplants in China.

9.2.1 Organ donation and trade in organs

The donor registration system

There is a passive donor registration system in the Netherlands. This is also called a consent system, as any organ removal (after death)⁹ requires explicit consent. There is no obligation

kidney transplants and the greatest likelihood of THB with a view to organ removal would seem to centre around kidneys.

⁶ Akinbingöl (2003), however, suggests that some migrants smuggled from Turkey to Western Europe have financed their trip by selling an organ.

⁷ An average of four years for a donor kidney transplant.

⁸ About 1,440 people were waiting for an organ at the end of 2006, of whom more than 1,050 were waiting for a kidney. 370 people were awaiting tissue (other than skin). 567 organs from deceased donors and 277 organs from living donors were transplanted in 2006, and tissue (excluding skin) was transplanted more than 2,100 times (www.transplantatiestichting.nl).

⁹ Post mortem non-heart beating donation is allowed and sometimes heart-beating donation.

to register one's consent or objection, and anyone who has not made his choice known is presumed not to be available as a donor.¹⁰ An alternative system is the active donor or non-objection system. The principle here is that everyone is presumed to be a donor unless they have registered an objection. There has been a lot of political debate in recent years on the pros and cons of the Dutch donor registration system. This has not resulted in any fundamental changes, however.

The Organ Donation Act

The statutory rules on the removal of organs from humans are set out in the Organ Donation Act [*Wet op de orgaandonatie* (WOD)]. The most important conditions imposed by the WOD are express prior consent from the donor¹¹ and provision of the organ free of charge.¹² This is an attempt, according to the WOD Explanatory Memorandum, to protect the inviolability of the human body and the right to self-determination, both of which continue beyond the point of death to some extent, as well as a fair distribution of available organs. As far as living organ donation is concerned, the donor must be in a position to give consent, having been adequately informed, for the removal of a specific organ for transplantation (Articles 3 (1) and 8, WOD).¹³ The provision of organs after death also requires in principle the donor's consent or, in the absence of any declaration of will, consent from the deceased's nearest surviving relative(s).

Consent for organ removal is void if it is given in order to obtain a payment for to donation, which is higher than the costs directly resulting from the removal. One reason for this is that the legislator considers that a donor's free will is not guaranteed if there is a profit motive.¹⁴ There may also then be a danger of exploitation (WOD Explanatory Memorandum). Nor may there be any profit motive for the organ centre or organ banks¹⁵ mediating in obtaining, typing, transporting and allocating organs or involved in transporting, storing, processing, transferring or implanting bodily materials.

The WOD contains a penal provision (Article 32), specifying that whoever intentionally removes an organ during life or after death without consent in terms of the WOD will be li-

¹⁰ More than 5 million people have had their preference on donation registered in the Netherlands. Nearly half of these have permitted unrestricted donation. About 10% have allowed donation with restrictions, about 12% have left the decision to their surviving relatives or a specific individual and more than 30% have withheld consent (www.donorregister.nl).

¹¹ There are additional conditions for donation by a minor.

¹² Only those costs which are a direct result of the donation, including lost income, can be compensated.

¹³ Living donation generally occurs with a sick family member or partner. If this is impossible, due to incompatibility of blood groups between donor and recipient, it is sometimes possible to undertake *cross-over transplants*: the exchange of donor organs between two or more donor/recipient pairs (Den Hartogh, 2003).

¹⁴ This is also an argument against the commercialization of organ donation for the *World Medical Association*: "Payment for organs and tissues for donation and transplantation should be prohibited. A financial incentive compromises the voluntariness of the choice and the altruistic basis for organ and tissue donation. Furthermore, access to needed medical treatment based on ability to pay is inconsistent with the principles of justice." (<http://www.wma.net/e/policy/wma.htm>).

¹⁵ The Netherlands Transplantation Foundation is the only organ centre in the Netherlands. It is affiliated to the international donation programmes of *Eurotransplant* and *Bio Implant Services*. There are six organ banks in the Netherlands.

able to a term of imprisonment not exceeding one year and a fourth category fine. The removal of organs from a living person without permission is in certain circumstances also covered by the THB provision (Article 273f Dutch Criminal Code), which provides for a far more serious sentence, i.e. a maximum of six years' imprisonment and a fifth category fine.¹⁶ The penal provision in the WOD also covers those mediating between donors and recipients if the payment involved is higher than the costs incurred, and also those openly offering or asking such a payment for an organ.

Trade in organs

The trade in organs includes offer an organ for sale or selling or purchasing an organ and mediating between the seller and purchaser of an organ with a view to obtain profit. It will often involve desperate patients whose life or quality of life is seriously threatened, on the one hand, and people who are prepared to sell a part of their body, for instance because of extreme poverty or a lack of any alternative means to generate an income. Third parties are always involved in this trade, doctors, but often brokers as well. Organ trade is not permitted in the Netherlands, regardless of voluntariness on the part of the seller and purchaser. There is an ongoing debate on the desirability of market forces in this field.

The medical-ethical debate on trade in organs

A range of moral standpoints are adopted in the debate on commercial organ transplants. Scheper-Hughes (2002), a professor of anthropology and chairman of Organs Watch, a research project into human rights and organ transplants, calls trade in organs 'neo-cannibalism'. She argues that the commercialisation of the human body makes exploitation inevitable and focuses on grotesque abuses in this 'market sector'.

Del Monico is also a fervent opponent of allowing paid organ transplants. 'The poor will remain poor, but lose their health and organs in the process of government authorized exploitation of the poor', according to him (2004).

Den Hartogh and Hilhorst offer different views on the issue of allowing trade or exchange of organs.

Den Hartogh, a professor of ethics, does not regard commercialism as objectionable *per se*, and criticises a number of objections made about the concept. One objection to market allocation is that access may come to depend on the depth of one's pocket rather than on purely medical factors, but Den Hartogh does not rule out the possibility of the Netherlands Transplantation Foundation buying in (some of) the organs that are needed to redistribute them on medical grounds. Den Hartogh (2003) refutes on theoretical grounds the arguments that 'poor people will be forced into doing things that are harmful to them' and that 'if we permit a market, we cannot protest against developing countries doing the same, where the poor will certainly be exploited'. He feels that the key objection to commercialisation is that organs, because of their symbolic value, are not the kind of thing for which a market should be allowed to develop. But where one sets the boundary around what can be bought for money is a matter partly of convention and partly of personal ethics (Den Hartogh, 2003).

The medical ethicist Hilhorst (2003) describes it as 'incomprehensible, unnecessary and unacceptable' that the trade in organs is banned in the Netherlands while the government is failing to resolve the

¹⁶ If the offence results in serious physical injury or death, the maximum penalties are twelve and 15 years' imprisonment respectively (Art. 273f (5) and (6) Dutch Criminal Code).

shortage of organs. If the government cannot meet this need, he argues, then it should not frustrate the alternative offered by trade in organs.

However, the voluntary sale of organs does not alter the fact that trade in organs can in practice imply (health) risks for the sellers, certainly if they are affected by poverty. There can, for instance, be serious medical and economic consequences to organ removal without (proper) aftercare.¹⁷ Awareness of the risks may influence society's acceptance of trade in organs.

Apart from the dangers inherent for organ sellers, in a world with major socio-economic inequality, one objection against commercialisation is that it undermines a fair distribution of the available organs. Thus the Dutch legislator considers that this costly and scarce form of healthcare should not be reserved to those who are well-to-do (WOD Explanatory Memorandum). The medical specialists Friedman and Friedman (2006), on the other hand, claim that is exactly what is already happening on the black market for organs, which has come into being because of the shortage of donors. They argue for the regulation of organ donation in America through a national institute and legalisation on payment of a market price for a kidney.¹⁸

Organ donation and trade in organs abroad

The removal and allocation of organs is regulated in most Western countries, as in the Netherlands, in such a way that they may only be donated and transplanted voluntarily and free of charge, whether during life or on death. According to the NIGZ, this means that there is no trade in organs in Western Europe. European countries do have differing donor registration systems and different (relative) numbers of transplant operations being undertaken.¹⁹

Countries in other parts of the world also have legislation on organ donation, but in certain countries it apparently is being circumvented.²⁰ Possible explanations for this include poverty and a lack of prospects among potential 'donors', inadequate control within the medical world and corruption. Rothman and Rothman (2003) suggest, for example, that illegal trade in organs in Thailand developed due to the lack of a national organ register, and a health care inspectorate that only acts upon complaints.

It is worth mentioning here the media reports from October 2006 that seven funeral undertakers in New York State allegedly removed and sold bones and organs from hundreds of corpses, without consent.

¹⁷ Goyal et al. (2002) show that the financial situation of Indians who had sold a kidney had not improved, or had even deteriorated. Pearson (2004) refers to the research done by Zargooshi (2001), reaching the same conclusion about Iranians who had sold a kidney.

¹⁸ Commercialisation of organ transplants can take various forms, for instance post mortem donation in exchange for payment of burial costs to the surviving relatives (Häyry, 2004, referring to Rothman, 2002).

¹⁹ There is no direct relationship between donor registration systems and the number of donations. Other factors also determine the number of possible transplants. One such factor is the number of road traffic fatalities, which is relatively low in the Netherlands (Coppen, 2003). In practice, the consent of surviving relatives also appears to be a determining factor in the Netherlands, irrespective of the deceased's donor registration status: no transplant will take place without their consent.

²⁰ According to Pearson (2004), research by Organ Watch shows that there is an illegal trade in organs in Cuba, Brazil, Argentina, India, Iran, Israel, Palestine, Moldavia, Romania, the Philippines, Russia, Turkey, the USA and South Africa. Häyry (2004) mentions some of these countries and also Thailand, Egypt, Iraq, Peru and Estonia.

According to Pearson (2004), trade in organs is only formally permitted in Iran and the Philippines. Rothman and Rothman (2006) outline a picture of doctors, politicians and scientists in the Philippines regarding this as quite acceptable that in practice this means that poor slum dwellers in particular sell their kidneys to wealthy kidney patients. It is known that organs from executed prisoners have been used for transplants in China, also for foreign recipients (Häyry, 2004, referring to Guttmann, 1992). The Chinese authorities are apparently also responsible for organ removal from executed prisoners without their consent, which is required by law (Amnesty International, 2004; Bellagio Task Force, 1997). In some cases, those sentenced to death and their relatives were not consulted, while in other cases the surviving relatives received a monetary payment (Human Rights Watch, 1994).²¹ Perhaps because of these practices, foreign visitors to China can arrange for a purchased kidney to be transplanted within a few weeks.

A look at the internet²²

'If you send your personal data to this center by e-mail or fax and accept the necessary body examination in Shanyang, China in order to assure a suitable donor, it may take only one month to receive a liver transplantation, the maximum waiting time being two months. As for the kidney transplantation, it may take only one week to find a suitable donor, the maximum waiting time being one month.'

<http://en.zoukiishoku.com/list/volunteer.htm>

'Are you sick of waiting for an organ transplant? For those awaited kidney patients, we understand life is not meant to be sick all the time, if you or your loved ones has End Stage Renal Failure or Liver or Heart Failure, time is precious. The longer you wait the worse your health will deteriorate. With the increasing gap between donor and patient numbers, for some, waiting is no longer an option. As one of the prominent organ transplant coordinators in China, we can provide you the highest standards of service with minimal risk. Our transplantation programs include kidney, pancreas, liver, heart and lung. ... We then arrange consultation with your surgeon and physician to discuss your most optimal surgery plan. Until such point, you are free of charge. When you do give us the go ahead, a small non-refundable booking fee of \$1,000 along with your application form and your blood type, HLA Type detail have to be logged. We will search our transplant hospital network for the highest blood type and HLA (tissue type) match and inform you the first available surgery date, it could be from a couple of weeks to a few months, depending on availability of your match.'

<http://www.newlifetransplant.com>

'Do the organs come from a live or dead donor? The donor organs come from people that are executed in China. ... What are the costs and what does that include? Kidney transplant cost for non-Chinese citizens: US\$80,000, US\$75,000 (under 60 years old). Please note that for kidney transplant, if your blood type is O then an additional charge of US\$5,000 needs to be added. Liver transplant cost for non-Chinese citizens: US\$135,000, US\$120,000 (under 60 years old). The above price covers the new organs, priority on the waiting list, the transplant surgery, hospital stay, interpreter e.t.c. It does

²¹ According to persistent but unverifiable reports, many of the transplanted organs in China are taken from the supporters of Falun Gong. See Matas & Kilgour (2007) and <http://investigation.go.saveinter.net/Kilgour-Matas-organ-harvesting-rpt-July6-eng.pdf>.

²² These sites were most recently consulted on 15 February 2007. Language errors on the sites were not corrected.

not cover, your travel costs, hotel stay, transportation. Note: If the patient's function of the heart and lungs is poor, the patient has diabetes and/or high blood pressure and if the patient's condition is bad, an additional charge might be added.'
<http://www.bek-transplant.com>

The Chinese government amended the legislation on organ transplants in 2006 by means of a temporary regulation, followed by new legislation in April 2007.²³

The extent to which various countries are involved in international organ trade, as a country of origin for either organ suppliers or organ tourists, is determined not only by legislation, other government involvement and discrepancies in levels of welfare, but also by religious or other culturally determined concepts concerning the human body.

Dutch patients who travel abroad to have an organ transplant are not, in principle, guilty of any criminal offence under Dutch criminal law. This is different if the situation involves THB with a view to organ removal.

9.2.2 THB with a view to organ removal

Article 273f (1)(1) Dutch Criminal Code prohibits the recruitment, transportation or accommodating of another person with the purpose of removing that person's organ(s) when force, which can take on the form of, for instance, deception, is used. Sub-paragraphs 2, 4, 5, 7 and 9 of paragraph 1 also describe transactions aimed at organ removal or profiting from organ removal. The Palermo Protocol and the EU Framework Decision, on which Article 273f Dutch Criminal Code is based, differ on the point of organ removal. Whereas the Protocol (Article 3) classifies it as a form of exploitation, it is not included in the Framework Decision. This is why the Dutch legislator included organ removal *in addition to* exploitation in the THB provision (Explanatory Memorandum).

More fundamental is the distinction between trade in organs on the one hand and THB with a view to organ removal on the other. The essence of trade in organs is the profit motive, and the rationale of the penal provision in the WOD is to counteract commercial transplant activities. One reason for this is that such activities can lead to the involuntary removal of organs. However, trade in organs is not by definition involuntary, whereas the use of coercion is a necessary element to fulfil the statutory description of THB, at least vis-à-vis adults. Article 273f Dutch Criminal Code criminalizes the (intended) violation of another person's physical integrity by way of coerced organ removal.²⁴

Or, to put it another way, trade in organs presumes that there is an organ available for barter. This organ may be obtained in one of two ways; either voluntarily, whether free of

²³ The legislation came into effect on 1 May 2007, information from the Chinese Embassy in the Netherlands dated 17 April 2007.

²⁴ Profit motive is not an essential element of THB with a view to organ removal. It is, however, likely that most criminals who are guilty of the offence will be acting from profit motives.

charge or for payment, or involuntarily, i.e. as a result of THB. Trade in organs is not therefore the same thing as THB with a view to organ removal. Inherent only to the latter is the use of coercion in the transportation or accommodation of another person for the purpose of organ removal.

Article 273f Dutch Criminal Code applies to Dutch nationals abroad, for example when they recruit someone there with deception in order to remove his organs, provided that the activities also constitute a criminal offence in the country where they are committed. This requirement of double criminality does not apply if a Dutch national is guilty of THB involving a minor in a foreign country, including wilfully profiting from the removal of organs from a child.

Minors

Any person who induces a minor – also without the use of force – to make his organs available for remuneration will be guilty of THB (Article 273f (1)(5) Dutch Criminal Code).²⁵ Article 273f (1)(2) also describes certain activities relating to non-commercial, voluntary organ removal from children. According to the letter of this provision, it seems that innocent forms of involvement in organ donation by a child are also criminalized as THB. However, according to the spirit of the law this is certainly not the case when the child involved is in a position to make a reasonable assessment of his interests, has granted consent and fulfilled all other conditions for living organ donation prescribed by the WOD.

9.3 Exploratory research among medical practitioners

It is relevant to know whether commercial transplants are taking place to benefit Dutch patients, or facilitated by Dutch nationals, before investigating whether this might involve THB with a view to organ removal. For this reason, in-depth interviews were conducted with internist-nephrologists (kidney specialists), transplant coordinators²⁶ and a transplant surgeon working at the academic transplant centres. A doctor at the ANWB emergency centre and two kidney patients were also interviewed.

It appears from the 14 interviews that there is little or no trade in organs in the Netherlands. Nonetheless, many of the interviewees felt that greater watchfulness in this respect is necessary as the number of living donations is on the increase. The relationship or emotional bond between the donor and recipient is verified by the nephrologist, the social worker and the transplant coordinator and, if necessary, also by a general practitioner, psychologist or psychiatrist. At the same time, the interviews show that a donation can proceed if the donor

²⁵ The THB provision also serves to cover implementation of the position determined under the Optional Protocol on the sale of children, child prostitution and child pornography, annexed to the Convention on the Rights of the Child. These obligations include penalising the offer, supply or acceptance of a child for the transfer of organs with a view to profit.

²⁶ The coordinators are responsible for the care of organ donors and their relatives before, during and after the donation.

and the recipient confirm that the donation is completely altruistic and there are no indications of coercion, financial consideration or, of course, any medical obstacles. The fact that the relationship and motives of the donor and recipient are not always thoroughly scrutinized means that there is a risk of donation with a view to profit or as a result of force or manipulation. Doctors and transplant coordinators seem to be more on the alert for signs of pressure or manipulation than a possible profit motive. In some cases, a donor indicated that he felt pressurised into donating a kidney to a relative. Some doctors also mentioned cases where they suspected that the donor was receiving some financial remuneration. In a few of these cases, the donation procedure was cancelled for these reasons.

At every one of the academic hospitals, it occurs fairly regularly that foreign relatives of kidney patients (mostly of foreign heritage) come to the Netherlands in order to donate a kidney. This is a time-consuming procedure, according to the interviewees.

All the nephrologists interviewed know or have heard of patients who have undergone a kidney transplant abroad (not through Eurotransplant). These operations took place in the USA, India, Pakistan, Iran, Iraq, China and possible also Colombia, Singapore and Thailand. The letters or medical files patients bring with them after receiving a transplant abroad form one source of information about organ tourism. On a limited number of cases, interviewees provided some more information, but never very detailed. Possible explanations for this are that the patients involved do not tell their nephrologists much about the transplant, or that the doctors themselves are reluctant to discuss the subject (in detail). It may also be that some doctors had difficulty remembering the cases because they dated back several years.

Only rarely, the nephrologists we interviewed pick up on signs that a patient has bought a kidney abroad. Since patients will generally be reluctant to talk about this with their specialists, it is possible that the involvement in the organ trade remains unnoticed to some extent. All the doctors interviewed stated that they had never cooperated with any patients who wanted to undergo a commercial transplant abroad, with the exception of one doctor who assisted a patient of Iranian origins with his preparations for a commercial transplant in the country of his birth, where this is permitted.²⁷

In the context of this research, BNRM spoke to a male kidney patient of Chinese origins who had travelled to China in 2004 in order to receive a kidney transplant there. The patient received help for this from his relatives in China. The total amount paid for the kidney and the transplant was between €10,000 and €50,000. Apart from the long waiting period in the Netherlands, the ease of receiving health care in his own language was another reason for this patient to have a paid kidney transplant in China. He was helped out in his preparations for the transplant by his dialysis doctor in the Netherlands, with whom he also kept in contact during his stay in China.

²⁷ For a description of the Iranian model, see Fazel (2004).

9.4 Points of attention and bottlenecks

- There are regular reports in the media about the drawbacks of trade in organs, including the looting of organs, in other parts of the world. While some may be based on serious investigative journalism, it is difficult to verify these news items.
- There is no reliable information on Dutch patients who arrange for an organ transplant abroad. This makes it difficult to assess the risk of Dutch nationals being involved (on the demand side) in coerced organ removal in other countries.
- Long waiting periods for transplants, international discrepancies in legislation and access to information about transplant opportunities abroad can form a breeding ground for organ tourism from the Netherlands.
- Medical specialists indicate that the increasing numbers of organ donations by living donors implies that a greater watchfulness on the part of transplant centres for donations which are possibly not entirely voluntary or made for a financial consideration is necessary.

Recommendations

Once again, great efforts have been applied and progress has been made in the fight against THB since the appearance of the previous Report. The previous Chapters show, however, that there are still a number of shortcomings. This Chapter contains recommendations designed to address and improve these matters. They are formulated concisely and should be understood in the context of the previous Chapters, as well as the recommendations made in previous Reports. The recommendations are grouped thematically and are not arranged in order of priority.

Legislation

1. The Netherlands must ratify the Council of Europe Convention on Action against Trafficking in Human Beings as quickly as possible. The Convention states, amongst other matters, that assistance to a victim may not be made conditional on that victim's willingness to act as a witness in the criminal legal process. This is in line with previous recommendations by the NRM (NRM3, recommendation 12), to the effect that reception and assistance should not be confined to victims who cooperate in investigation and prosecution, or who are considering doing so. Speedy ratification is also important in connection with the establishment of GRETA, the independent group of experts which is to monitor the implementation of the Convention.

2. It is recommended that the legislator develops a national framework for prostitution policy, based on the principle that every municipality *must* set rules in relation to *all* establishments where commercial sexual transactions are undertaken, or where commercial facilities are provided for such transactions to be undertaken with or for a third party. Research is required into the most appropriate format of legislation for this purpose.

3. Since the employment agency sector is a risk sector for exploitation, an enquiry should be made as to whether the British *Gangmaster Licensing Act*, in terms of which there is obligatory licensing in the United Kingdom for employment brokers in agriculture and the fishing industry, is having any impact on the battle against exploitative practices in the employment agency sector, and whether similar legislation should also be introduced in the Netherlands.

Regulations (B-9 and continued residence)

4. The B-9 regulation for (possible) victims of trafficking should always be offered as soon as there is a slight indication of THB.

5. In light of the judgment by the Council of State to the effect that the suspected victimhood of a foreign national does not preclude placing that individual into aliens' detention, the

regulations in this matter should be amended. After all, the intention behind the reflection period under the B-9 regulation is that a possible victim should be allowed to consider *in peace* whether or not to report the criminal offence, and this is not compatible with detention.

6. It is recommended to include in the B-9 regulation a provision to the effect that a statement by a victim of THB should be regarded as the equivalent of a report of the criminal offence for the purposes of applying the regulation.

7. The new rules on continued residence following expiry of the B-9 regulation, contained in Chapter B16/7 of the Aliens Act Implementation Guidelines, should apply not only to victims who have reported the criminal offence but also to victims who have cooperated as witnesses in the investigation and prosecution processes. This follows on from the previous recommendation.

8. The grounds for continued residence contained in Chapter B16/7 of the Aliens Act Implementation Guidelines – that the victim has reported the offence for the purpose of a criminal case which has led to a conviction – should not be confined to criminal cases that result in a conviction for THB. There should also be a presumption in law that repatriation involves risks if the victim reports the offence of THB for a criminal case where THB is included in the charges and the accused is convicted for another offence related to the THB, but not for THB as such.

9. The grounds for continued residence under Chapter B16/7 of the Aliens Act Implementation Guidelines must be adjusted so as to express more clearly that, after three years in the B-9 regulation, the length of time the victim has resided in the Netherlands constitutes the humanitarian grounds for approving an application for continued residence.

10. Regarding applications for continued residence not covered by the new regulations, the burden of proof should be placed less on the shoulders of the victim. This implies a more far-reaching duty of investigation for the government, with a view to preparing a thorough risk assessment.

Central government policy

11. The fight against THB demands an inter-departmental approach, with each of the Ministries accepting its responsibility. An active contribution on the part of the Ministry of Social Affairs and Employment is particularly important when it comes to THB with a view to exploitation outside the sex industry.

12. The criteria for employment and self-employment in the sex industry have to be established as soon as possible and then publicised widely.

13. In policymaking regarding illegal migration, labour migration and working conditions (the impact of any measures on) THB with the intention of exploitation in other sectors than the sex industry should always be taken into account.

14. The government should consider the possibility for undocumented migrants to report a criminal offence to the police, or report abuses in the workplace to the Health and Safety Inspectorate, without running the risk of aliens' detention and expulsion.

Law enforcement in the prostitution sector

15. All of the parties involved in the administrative enforcement in the sex industry must accept their responsibilities and must undertake such enforcement jointly. This requires more intensive checks by the police on the illegal prostitution sector, and a consistent and visible repressive approach to law enforcement within the licensed circuit by the municipalities. The capacity required for this needs to be made available. This is the only way to achieve a prostitution sector as crime-free as possible. It is also recommended that information on efforts in this area, and the results achieved, should be made available centrally.

16. It is recommended that every municipality should impose a licensing requirement on escort businesses and make it a condition of granting a licence in the General Municipal Ordinance that escort businesses must have a fixed address (with a fixed telephone number) where they keep their day-to-day records, including staffing records. In this context, see also recommendation 2.

17. Research should be undertaken into how to maintain effective supervision over sex businesses where paid and unpaid sex is taking place, such as couples' clubs. A set of instruments should be developed for this purpose. Experience from the supervision of escorts show that supervision is possible even for parts of the sex industry that are hard to check up on.

18. It is important to adequately investigate whether prostitutes working *legally* are victims of THB. For instance, because prostitutes from (previously) significant countries of origin for victims of THB have apparently found a way to work in the sex industry legally, for instance via marriages of convenience or self-employment.

19. Operators of sex businesses (licensed or otherwise) who employ victims of THB must be tackled and dealt with in every way possible. This might involve prosecuting them for employer's fraud or tax fraud in addition to THB, for example. This requires the collaboration of all the chain partners.

Prevention

20. Little is known about the impact of prevention and support projects on the victims of loverboys or THB. It is recommended that research should be undertaken in this area, to allow for a more evidence-based approach.

21. More should be done to prevent unaccompanied underage asylum seekers from falling victim to THB. This must involve clearer arrangements – in a new or adjusted *Protocol for Missing AMAs* or elsewhere – on the responsibilities of the various chain partners in preventing AMAs from leaving for unknown destinations, as well as in finding them as quickly as possible if they do disappear. These responsibilities then have to be acted on – soon after the AMA arrives, or immediately after he or she goes missing. The pilot on secure shelter may make a contribution here.

22. The government must accept its responsibility in relation to former AMAs who have just reached the age of adulthood and who are vulnerable to exploitation, by keeping this group under supervision and offering them support.

23. Dealing with perpetrators – both preventatively and repressively - through (local) projects dealing with the loverboy problem is still in its infancy and requires further development input.

24. The fight against THB with a view of exploitation in other sectors than the sex industry should incorporate involving potential new partners more actively, including employers and their organisations, sectoral organisations and trade unions in the known risk sectors. The government must provide them with information on THB and enter into a dialogue with them on their potential role in preventing and detecting THB.

25. Since people are more vulnerable to exploitation in sectors other than the sex industry if they are unaware of their rights, more needs to be done to inform those who have a marginal position on the labour market, and in society, about their basic labour rights. The government has an important part to play here.

26. It is recommended that the Ministry of Foreign Affairs should adopt a more proactive policy in relation to the employment and working conditions foreign diplomats in the Netherlands impose on their migrant domestic workers. These employees should be informed of their rights (including labour rights) and should have the opportunity for reporting any abuses in their employment situation to the Ministry, which should then refer them if necessary.

27. Making recommendations on how to encourage organ donation is outside the scope of this report. However, a general recommendation is made to encourage organ donation so as to reduce the risk of coerced organ removal, as well as other irresponsible methods of meeting the demand for organs.

28. As a number of doctors also indicated, with regard to living organ donations there needs to be greater alertness in relation to the possibilities of involuntary donations and financial considerations.

Public awareness and identifying (possible) THB

29. Public awareness should be extended as regards all forms of THB. There are various ways to do this, from broad publicity campaigns to the targeted provision of information. It is recommended in this context that all employees of those institutions which might encounter THB should be given enough information to be able to recognise indications of THB and to be alert in this respect. Attention should also be given here to the rights of (possible) victims and the (initial) assistance provided to them, as well as the reporting of any indications of THB.

30. Minors deserve extra attention as a group at risk of exploitation, particularly those amongst them who are especially vulnerable, such as those residing in the Netherlands illegally and those with minor psychological handicaps. It is recommended that organisations working with vulnerable children should be involved in identifying and assisting underage victims, including helping them to report the criminal offence. It is also recommended that standard procedures should be developed and disseminated for the protection of children who have no residence permit, guided by the Treaty on the Rights of the Child.

31. Undocumented migrants form a group at risk of exploitation. The training of officials involved in dealing with illegal residence and fraud in the employment market should systematically deal with all forms of THB, in order to improve their attentiveness of the signs of exploitation. Progress has been made in relation to identifying and supporting possible victims of THB in aliens' detention. It is important to maintain this attentiveness, and not to lose sight of the possibility of male victims of THB in aliens' detention.

32. It appears that certain foreign nationals who reside in the Netherlands legally – such as asylum seekers, migrants with a dependent permit to reside with a partner and au pairs – are vulnerable to exploitation. It should be investigated how the government can inform these individuals of their legal position, and how they can be given an opportunity to ask questions or report any employment abuses. In this context, see also recommendation 25.

33. As regards exploitation in the sex industry, clients, operators, social workers, neighbours, passers-by and others who are on the spot – whether professionally or otherwise – all have an ongoing and important responsibility in identifying THB. (Potential) clients must be made aware of their responsibility to only purchase sexual services in the regulated sector, and even then to remain observant. After all, in this sector as well, abuses cannot be ruled out by (administrative) checks alone. The public information campaign '*Appearances are deceptive*', which has yielded results, should be continued in an adjusted format. In this context, see also recommendation 29.

34. Raising awareness of employers is important in connection with exploitation in other sectors than the sex industry. This can be done by providing information to employers in the sectors where many migrants provide manual labour, profit margins are small and staffing

costs are a significant element of production costs. Private individuals employing someone for domestic work should also be informed about the minimum standards under employment law and about THB with a view to labour exploitation.

Assistance for victims

35. It should be investigated to what extent the problems of finding (suitable) accommodation in shelters or reception facilities for victims of THB could be reduced by measures such as a central intake and a category-oriented initial reception.

36. The facilities for victims of THB require expansion and adjustment because of the growth in numbers and changes in the target group. A comparison with Belgium, where specialised centres are used for the reception of male and female victims of sexual exploitation and other forms of exploitation, could be instructive in light of the shift in the numerical proportions of male and female victims.

37. Attempts must (continue) to be made to create appropriate and effective alternatives to simply locking underage girls up if they have been, or are in danger of being introduced to prostitution.

38. It is important that sound legal support for victims of THB is safeguarded in all relevant areas of the law – migration law, criminal law and possibly also labour law.

39. Victims should be informed at the earliest possible stage of the possibility of obtaining legal aid. For victims residing in the Netherlands illegally, this should be done at the same moment they should be offered the period for reflection under the B-9 regulation.

40. More should be done to ensure that victims (can) recover their tangible and intangible losses by way of compensation.

Investigation

41. Police capacity for the investigation of THB must be extended. Police forces should always and without delay investigate indications of THB. An investigation should be initiated for every person suspected of THB who comes to the attention of the police, whether or not a victim has reported the criminal offence (for example by collecting and aggregating information about the suspects).

42. Greater attention needs to be paid in the battle against THB to facilitators such as document forgers, financial and legal advisers, malafide employment agencies and labour brokers.

43. Detecting victims of THB is not easy, certainly if they do not want to be recognised as such. However, police officers (also from the perspective of their supervising role in the

prostitution sector) have indicated that if they invest time in possible victims – build a bond of trust with them and provide sound information – some of them are prepared to come forward and even report the criminal offences after all. It is important for all divisions of the police force (including the Aliens' Police) to do this and to thereby give attention to proper support, adequate accommodation and the provision of accurate information. The same considerations apply outside the sex industry. Individuals who are arrested in connection with working illegally must always be interviewed, with attention being paid to any indications of THB. The manuals used by the (special) investigation agencies for their operations against illegal residence and labour market fraud should always refer to the possible presence of trafficking victims, so that these can be recognised at an early stage and informed about their rights.

44. It is crucial that those police officers who in practice are (likely to be) the first point of contact for possible victims of THB who wish to report the offence are also aware of the fact that reports regarding THB must always be recorded.

45. The police must immediately inform the Public Prosecution Service of any report of THB.

46. While human dignity is always at issue in cases of THB, practical experience in investigation and prosecution has shown that the strict ban on tolerating the continuation of THB during investigations requires differentiation for each specific case. The police and the Public Prosecution Service look for ways of achieving this differentiation in practice without any rules to guide them. The ban on tolerating THB also sometimes obstructs an adequate financial investigation. Therefore the recommendation for a critical examination of how the policy regarding this ban is being applied in practice is repeated here.

47. Financial investigation should form part of every THB case from the start, aimed at both the confiscation of illegally obtained profits and the provision of evidence. Financial investigation can also prove useful in tracing large-scale (foreign) criminal THB organisations, facilitators and contacts in the legitimate business world.

48. Which method of calculating the amount of illegally obtained profits (either on a transactional basis or by cash position/asset comparison) will provide the best chance of confiscation should be considered carefully on a case-by-case basis.

49. Cash flows destined for foreign countries should be followed where possible. The BNRM research has also shown the possibilities for good cooperation with foreign partners and acquiring useful information.

Prosecution

50. The fight against THB as a policy priority within the Public Prosecution Service must be made concrete and realised in practice.

51. It must be ensured that the Public Prosecution Service policy proposals – such as investing in investigation and prosecution of all of the partners in crime, financial investigations, confiscation and international cooperation – do not end up being pressurized by performance contracts affecting the police and the Public Prosecution Service.

52. Some of the Public Prosecution Service policy proposals are expected to result in larger numbers of investigations and prosecutions for THB. This must be taken into account as regards capacity within the investigative bodies, the Public Prosecution Service and the judiciary.

53. Those public prosecutors holding THB portfolios should be involved (to a greater extent) in the investigation and prosecution of individual THB cases.

54. If asked to do so, the Public Prosecution Service must always keep victims informed about the progress of ‘their’ cases.

55. It is recommended that relevant (official) reports and background information on the nature and gravity of the offence should be included in a THB case dossier for the court’s information.

Sentencing

56. Greater attention should be paid to developing knowledge and expertise in the field of THB among the judiciary.

57. Consideration should be given to whether THB should become a specialism for the judiciary.

International cooperation

58. It is recommended that the Dutch government persists in its efforts to ensure that THB remains on the agenda at the European level, where the work in relation to THB should (more often) build on what has already been achieved in this field.

59. In order to ensure a greater impact from the many international conferences on THB, it is recommended that the meetings should as far as possible result in concrete agreements, which should then be implemented.

60. In order to prevent THB, to promote joint action on investigation and prosecution and possibly repatriation of victims (in a responsible manner), it is important for a range of organisations to seek or continue an active – coordinated – cooperation in these areas with the

prevalent countries of origin for victims (Bulgaria, Nigeria and Romania), as well as remaining alert for countries of origin from which the number of victims appears to be increasing.

Registration and (scientific) research

61. Enquiries must be made as to how to make the registration of clients at the STV less ambiguous and the records more complete. Every possible measure for improving the situation should be taken (adjustments to the registration process and possibly more manpower).

62. Every institution that does or might have to deal with victims and indications of THB must be encouraged to report the circumstances to the appropriate body. The appropriate body is the STV as regards support and victim registration.

63. As far as registration of juvenile prostitution is concerned, it is of crucial importance to distinguish between those who might be and those who actually are working in prostitution, between minors and young adults and between cases that do and do not involve a third party who is inducing or deriving a profit from the activities, as well as recording per individual as much as possible.

64. Research is required into how to distinguish between sexual exploitation and other forms of exploitation in the databases containing information on THB (and the fight against it), such as Public Prosecution Service data and records from the Immigration and Naturalisation Service for B-9 applications.

65. It is recommended that a study should be made of verdicts in THB confiscation cases, to find out why claims are awarded (or not), which factors are at play and the nature of any bottlenecks. The results should then form the basis for finding solutions designed to improve confiscation in THB cases.

66. It is recommended that research should be carried out into cases of victims who – for the benefit of those who are exploiting them – take out loans or who get into debt in some other way.

Many of the recommendations from the previous Reports of the NRM have found their way into the *National Action Plan on Trafficking in Human Beings* (NAM) and the *Additional Measures to the NAM*. It would seem likely that the above recommendations will lead to new additions to the NAM. However, it will be clear to the reader that a significant proportion of the recommendations deal with putting into practice what has already been set down in black and white concerning the fight against THB. A high-level THB Taskforce, on which all of the chain partners are represented, could play an important stimulating and facilitating role for this purpose. The final recommendation is therefore the creation of such a Taskforce.

II.1 Introduction

The entry into force of the new Criminal Code provision relating to trafficking in human beings (THB) was an important recent development, which brought exploitation in sectors other than the sex industry within the scope of the criminal provisions, as well as certain activities aimed at organ removal. Three topics were subjected to further research for this report: financial investigations, exploitation in sectors other than the sex industry and THB for organ removal purposes.

It is generally recognised that knowledge about THB is of great importance in enabling us to deal with the phenomenon in an adequate manner, but also that it is difficult to collect reliable information. Another significant question is the type of research that is required. There is a great need for numbers and a better understanding of them. There has not however, up to the present time, been a great deal of success in estimating the populations of the victims of THB. This is regrettable, but – to put matters in context – although knowing the numbers may well say something about the scale of the measures needed to be able to deal with THB, this would not clarify *what* has to be done. For this, we (also) need more in the way of qualitative information.

The quantitative information in this report relates to the period up to and including 2005, while the qualitative information also covers 2006.

II.2 Legislation and regulations

II.2.1 Human trafficking in the Dutch Criminal Code

The new THB provision (article 273f Dutch Criminal Code entered into force on 1 January 2005. The new article is included under the title ‘Offences against personal freedom’. The new provision is partly based on a range of international agreements and signifies a distinct expansion of the conduct that is criminalised as THB: in addition to sexual exploitation, other forms of exploitation in the area of employment and services and the forced removal of organs are also criminalised, as is wilfully profiting from this type of exploitation and forcing or inducing to provide with the proceeds from sex work or organ removal.

Sentences for aggravated THB have been increased. The penalty for THB without aggravating circumstances remained at a maximum of six years. When compared with crimes of a comparable nature and gravity, this sentence could be described as light.

Article 273f Dutch Criminal Code is a very extensive and complex article. In order to interpret it, one requires not only the Explanatory Memorandum, but also the underlying international legislation, which classifies THB as a (serious) form of organised crime and a violation of human rights.

II.2.2 B-9 regulation

The B-9 regulation has undergone a number of amendments since the new THB provision came into effect. The scheme now also applies to victims and witness-complainants of exploitation in sectors other than the sex industry. A new facility was also introduced for victims and witness-complainants, enabling them to start work from the point when they receive a B-9 residence permit. It also became possible for underage children of victims and witness-complainants to obtain a residence permit for the same duration as that of the principal applicant. The reflection period was extended to victims of all forms of exploitation.

The criteria for continued residence after expiry of the B-9 regulation were also amended. If information on THB provided by a victim has ultimately resulted in conviction of the suspect in relation to that THB, the Minister will henceforth assume that this intrinsically implies, in law, that returning the victim to his or her country of origin would involve risks. If the prosecution does not lead to a conviction but three years have passed between the granting of the B-9 residence permit and the judgment becoming irrevocable, then the most significant humanitarian factor to be considered by the Minister will be the length of the victim's residence. Applications for continued residence that are not subject to these criteria will be dealt with in accordance with the former policy.

The moment at which the B-9 is offered remains an obstinate bottleneck. The police ought to inform the foreign national about the possibility of reporting the offence of THB, as well as about the B-9 regulation, as soon as there is the *slightest indication* of THB, but this does not always happen in practice. And while the purpose behind the period for reflection is that a possible victim should be able to consider whether or not to report the crime 'in complete peace', victims do end up in aliens detention during the reflection period.

A large number of organizations, who are partners in the chain, exchange information on bottlenecks in the implementation of the B-9 regulation, on a regular basis, in the STV Platform.

II.2.3 Other primary and subordinate legislation

The report also contains information on the state of affairs in relation to other relevant primary and subordinate legislation. Attention is devoted, amongst other matters, to the Aliens Employment Act [*Wet arbeid vreemdelingen*], Act on Prevention of Marriages of Convenience [*Wet voorkoming schijnhuwelijken*], Act on Review of Maximum Penalties [*Wet herijking strafmaxima*], Act on Strengthening the Position of Victims in Criminal Proceedings [*Wet versterking positie slachtoffers in het strafproces*], Bill on Secure Juvenile Care [Wets-

voorstel gesloten jeugdzorg], and the Act on Minimum Wage and Minimum Holiday Allowance [*Wet minimumloon en minimumvakantietoelage*].

11.2.4 International developments

Once again, a number of agreements and regulations have been drawn up among international organisations, such as the UN, EU, Council of Europe and OSCE, in an attempt to counter THB. The following sections deal with the most relevant of these to policy in the Netherlands.

EU Communication on fighting trafficking in human beings and EU Action Plan

In October 2005, the European Commission produced the *Communication on fighting trafficking in human beings – an integrated approach and proposals for an action plan*. The Communication covers a number of actions to be undertaken by the EU and/or the member states. The underlying principle is that THB can only be challenged with an integrated approach based on respect for human rights, and in viewing THB as a worldwide problem.

In December 2005, the Council produced the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (hereafter the ‘THB Action Plan’). The Action Plan consists of an overview of actions in the area of coordinating EU efforts, mapping the problem, prevention, repressing demand, *investigation* and prosecution, protection of and assistance for victims, repatriation and reintegration, and external relations. Its goal is to increase the involvement of the EU and its member states in prevention of and challenge to all forms of THB, as well to increase the attention for the protection, assistance and rehabilitation of victims.

The Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings, which opened for signature in May 2005, applies to all forms of THB, either national or cross-border, and whether or not associated with organised crime. The human rights approach is an important angle of attack for the Convention, with the aim of preventing and countering THB, protecting the rights of victims, arranging for effective investigation and prosecution, and finally promoting international collaboration to challenge THB. The Convention contains obligations which go further than other international instruments in this area, and it provides for the setting up of a group of independent experts (GRETA) to monitor the enforcement of the Convention

European Court of Human Rights (ECHR)

In 2005, for the first time in its existence, the ECHR established a violation of article 4 of the European Convention on Human Rights, which sets out the prohibition against slavery, servitude and forced or compulsory labour. In the case of *Siliadin v. France* (ECHR, 26 July 2005) the Court held that French criminal law offered inadequate protection to a girl from

Togo, working in a French household in very poor circumstances, against the servitude to which she was subjected by a private individual.

11.3 Administrative enforcement in the sex industry

11.3.1 Developments in the sex industry

The number of licensed sex businesses is declining. (New) companies where sexual services are on offer (sometimes covertly and sometimes licensed) include Turkish coffee houses, Chinese and Thai massage salons, (gay) saunas, couples' clubs, (Chinese) barber shops, nail studios and tanning studios. Sex businesses are set up in some areas along the lines of the German 'FKK' model, recreational houses where arrangements can also be made with prostitutes working independently. A 'hustle circuit' has also come into existence, and Internet prostitution appears to be on the increase. Streetwalkers' zones were closed in a number of municipalities, while in others they were either maintained or opened up.

No increase has been established in the number of prostitutes or victims of THB from the countries in Central and Eastern Europe who joined the EU in 2004. Because the situation is comparable for prostitutes from Romania and Bulgaria, who joined the EU on 1 January 2007, the expectation is that in these cases, as well, the new situation will not lead to an increase in (coerced) prostitution from those countries. Nor is there expected to be any impact on the number of prostitutes from the new EU member states as a result of the termination of the temporary restriction on the free movement of workers. Operators of sex businesses have not hitherto taken on any salaried employees, but rather prefer to look for structures in terms of which the prostitutes are independent entrepreneurs – and residents from the new member states are already permitted to work as independent entrepreneurs in the Netherlands.

11.3.2 Preventive enforcement

In the regulation of the prostitution industry, preventive enforcement includes the granting of licences. So far as we are aware, all of the municipalities which have adopted a prostitution policy impose, as a condition of granting a licence, a prohibition against putting minors or undocumented prostitutes or victims of THB to work. These municipalities have actually made a range of choices in relation to the forms of prostitution covered by the licensing system. Virtually all of the municipalities have included brothels and window prostitution in the licensing system. This does not apply in relation to escort companies, home workers or prostitution on the street.

The Public Administration Probity Screening Act [*Wet BIBOB*] is of significance if licences are granted to (prospective) operators in the prostitution industry. This Act provides for the option of refusing to grant a licence, or an extension of a licence, if there is any danger that it

is also likely to be used for the commission of criminal offences or the enjoyment of the proceeds of such offences.

11.3.3 Administrative supervision

Checking (including administrative checks) on compliance with licence conditions for running a sex business is undertaken by the police in most municipalities in the Netherlands. Supervision of licensed site-specific sex businesses (for example licensed clubs and window brothels) is, relatively speaking, the most straightforward and also the most systematic. But the checks still leave something to be desired. Abuses are still being discovered on the licensed circuit, even though it is not clear how often, because neither the police nor the municipal authorities have hitherto published any (national) data on this.

Mechanisms have been developed for checking on sex businesses that are not site-specific (for example escort bureaus), such as a protocol for 'supervision by arrangement', also described as the 'hotel procedure'. The disadvantage of this procedure is the capacity it takes up. Consideration is being given in Amsterdam not only to bringing escort companies within the ambit of the licensing system, but also to specifying, as a condition of the licence, that escort companies should have a fixed address where they maintain their (staffing) records on a day-to-day basis.

Checks on the unlicensed (illegal) sex industry, in those places where licences are obligatory, occur to a significantly lesser extent than checks on the licensed sex industry. In addition, the checks are not always easy to carry out, certainly where (publicly accessible) facilities are involved where paid and unpaid sex can take place (for example couples' clubs and dating cafes). The fact that there is less (possible) supervision over this sector of the sex industry means that it becomes a place of concealment for THB.

The responsibility for the planning and implementation of enforcement must be fully in the hands of the local administrative authorities. The deployment of the police has to be complementary to this. The police have a larger part to play with respect to unlicensed businesses, but even here the initiative has to remain with the municipal authorities. This initiative is lacking in many municipalities.

11.3.4 Repressive administrative enforcement

In order to ensure an integrated approach, it is necessary that mutual information be passed between the municipal authorities and the police on matters of potential mutual significance. If the police come across relevant information in the context of administrative supervision or criminal investigation, they should draw this to the municipality's attention by means of an administrative report. After all, administrative intervention is only possible if the municipal authorities have the relevant information. Sanctions must be imposed if licence holders for sex companies do not observe the conditions. These may vary from a warning, via a restriction of opening hours or imposition of an administrative penalty up to temporary or permanent closure and revocation of the licence. There are still some municipi-

palities whose administrators are not addressing abuses and who do not respond to administrative reports.

11.3.5 A more sharply focussed statutory framework

Decentralised prostitution policy, which was opted for when the general ban on brothels was lifted, has resulted in local differences as regards the substance of licence conditions and also in relation to the scope of the General Municipal Ordinance [*Algemene Plaatselijke Verordening*]. The differences between the various municipal licence systems result in unequal facilities for supervision and enforcement, from which malafide operators, as well as human traffickers, can profit. As far as administrative enforcement in relation to dealing with THB in the prostitution industry is concerned, the significance of a more ‘solid’ statutory framework for municipal prostitution policy lies in the fact that it would no longer be possible for dishonest operators to set up their operations in places where they have no - or less stringent - licensing conditions and administrative controls to deal with. Municipal authorities should therefore be *obligated* to regulate certain matters in their local prostitution policy, which at the moment is only *optional*.

11.4 Victims

11.4.1 Specific (risk) groups

The report discusses several groups of (possible) victims. First of all, minors. Exploitation of minors has been known to occur in the Netherlands. Some important factors that render minors (particularly) vulnerable include emotional dependency, lack of documents, family circumstances and financial reasons.

One vulnerable group receiving attention is made up of (former) AMAs (unaccompanied underage asylum seekers. AMAs continue to disappear for unknown destinations, and (former) AMAs whose living allowances end on their 18th birthdays often do not return to their countries of origin but end up involved as an illegal resident, with all the concomitant risks including the possibility of exploitation.

Asylum seekers in general also form one of the vulnerable groups.

11.4.2 Victims ‘in numbers’

Victims in STV records

One of the tasks of STV is to record (suspected) victims of THB. The recorded numbers have grown, following a dip in 2003; 403 victims were recorded in 2004 and 424 in 2005. Provisional data indicates that the growth continued during 2006. As in previous years, the largest number of reports come from the police. In 2004 and 2005, the Netherlands was the most frequent country of origin for victims of THB. Bulgaria takes second place, with Nige-

ria and Romania intermittently holding third and fourth places. The number and percentage of Dutch victims increased steeply in 2004 and 2005. As in previous years, most of the victims were in the age bracket from 18 to 30. The victims included three men during those two years.

Unfortunately, the computerised STV record system still has insufficient detailed background information on many of the victims.

Victims in IND records

In 2005, the IND received 77 B-9 applications and issued 61 B-9 permits. The figures for 2006 were 180 applications and 150 permits. The applicants included seven minors, two of whom were almost certainly the children of victims. Nearly all B-9 applicants in 2005 were female, with only three men among them.

In 2005, one in six of the victims/witnesses of THB who applied for or were granted a B-9 residence permit were Bulgarian nationals. This means that – just as in 2002 and earlier years – Bulgaria topped the list of countries of origin of victims and witnesses with a B-9 permit. Sierra Leone was in second place in 2005. If allocated according to region of origin, it appears that the majority of the victims and witnesses who applied for or were awarded a B-9 residence permit came from countries that had joined the EU in 2004 and 2007, (Western) Africa, and non-EU countries in Eastern Europe.

In 2006, the IND contact officials for THB recorded 34 applications for continued residence, with equal numbers being approved and rejected (17 and 17) at first instance.

II.5 Assistance

II.5.1 System-oriented operation

Many parties are involved in combating THB. System-wide collaboration among the partners in the chain is gaining ground both as regards repression of THB and also in relation to assistance for victims.

II.5.2 Victim reception

The increasing numbers of applications for reception have made it difficult to find (suitable) reception places with accommodation for victims of THB. There is not much experience yet with victims of exploitation in sectors other than the sex industry, and there are few reception places available for male victims.

Opinion is divided on the question of whether assisting victims of THB requires specific expertise and reception specific to the category. One option being considered at the moment is a (category-specific) reception path before victims enjoy the rights of the B-9 regulation, where it could be established what sort of care and assistance was required by the victim, as well as what type of reception.

Minors who are victims of loverboys, as well as girls who are under threat of being drawn into prostitution, are actually placed in judicial juvenile institutions for their own protection. While it is important to detach these girls from the loverboys, locking them up does not sit easily with the child's interests, certainly if the treatment is delayed, perhaps even for some time.

11.5.3 Dealing with juvenile prostitution and the loverboy problem

Juvenile prostitution is not the same thing as THB, but developments in this area are undoubtedly relevant in the context of this report. After all, if someone introduces a minor to prostitution, this can certainly be considered a case of THB. The situation here is that it is not always immediately possible to detect the potential involvement of a pimp or human trafficker.

Since 2003, local, regional and national institutions have been exchanging information several times each year concerning recent developments in the area of juvenile prostitution, in the National Juvenile Prostitution Platform [*Landelijk Platform Jeugdprostitutie*]. The Juvenile Prostitution Information Centre [*Informatiepunt Jeugdprostitutie*], which operates as a national source of information, set up the meetings for this Platform in 2005, with a view to collating 'good practices' in the field of combating juvenile prostitution. Its follow-up is the Juvenile Prostitution Expertise Centre [*Expertisepunt Jeugdprostitutie*].

Various municipalities have juvenile prostitution projects and strategies (or plans for them) to address the loverboy problem. Generally speaking these include a combination of a reporting point and arrangements for an integrated and systematic approach, with the aim of preventing minors from becoming involved in prostitution, preventing boys from becoming loverboys, providing adequate reception, shelter and assistance for victims, and investigating and prosecuting suspects. In addition to the municipal authorities, the participating organisations usually include Juvenile Care Bureaus, the police, the Public Prosecution Service (PPS), the Child Protection Agency and local projects including those for the reception of victims. Work is currently underway on a national register for juvenile prostitution. This will cover minors and young adults (up to the age of 24) who have ended up - or run the risk of ending up - in prostitution.

11.5.4 Some assistance organisations

STV [Dutch Foundation against Trafficking in Women] plays an important part in many of the developments and initiatives in the area of helping and supporting victims of THB. For instance, STV promotes a system-oriented approach, is setting up the recording of juvenile prostitution, for reception facilities it has sounded out views on the desirability of category-based reception and, in conjunction with a range of chain partners, it has developed a *Checklist for Continued Residence in Human Trafficking Cases* which may have a part to play when an application for continued residence is lodged on humanitarian grounds.

BLinN [Bonded Labour in the Netherlands] has recently set up buddy projects, assisted with victim support groups and developed a range of training programs for victims. *BLinN* can also provide a mediation service for finding courses, training or (voluntary) work, and it also has an emergency fund for victims of THB. *BLinN* has issued pamphlets with information for victims.

IOM [International Organisation for Migration] offers support to victims of THB who wish to return to their country of origin, sometimes making use of native counsellors.

More than 100 individuals in the *La Strada* partner nations, now numbering nine countries, are actively involved in prevention, information, education and support for victims.

IOM, *BLinN*, and *La Strada*, along with *SRTV* and *STV*, have concluded an accord in relation to assistance and support for victims returning to their country of origin.

The *Scharlaken Koord* [Scarlet Cord] is involved in street work, prevention, information and social assistance in connection with prostitution, and has a *Get Out Programme* for women who wish to stop their involvement in prostitution.

ECPAT [End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes] campaigns against the commercial (sexual) exploitation of children, undertakes research and has developed a multidisciplinary training programme for professionals working with children who are victims of trafficking for sexual purposes and children who run an increased risk of becoming such victims.

The reception project of the Refugee Council [*Stichting Vluchtelingenwerk*] in Utrecht offers assistance to former AMAs who are trying to decide about their future. *SAMAH* [Foundation for Unaccompanied Underage Asylum Seekers, Humanitas] has developed the project *Beyond Borders* for AMAs and former AMAs, offering youngsters the possibility of returning home voluntarily and with prospects.

II.6 Investigation and prosecution

II.6.1 (Policy) developments in investigation and prosecution

National

A new *Human Trafficking Guideline* appeared in 2006, also covering exploitation in sectors other than the sex industry. Human trafficking was also named by the Ministers of Justice and Internal Affairs and Kingdom Relations and the Board of Procurators General as one of the six priorities in the campaign against organised crime. Performance indicators are also to be designated in the field of THB. Increased qualifications will also be imposed on THB prosecutors and their support staff. The National Public Prosecutor for human trafficking and people smuggling (LOvJ) coordinates the campaign against (international) organised THB from the National Public Prosecutor's Office. For this purpose, the LOvJ directs the National Crime Squad [*Nationale Recherche*] and maintains close contact with its subsidiary *EMM* [Expertise Centre on Human Trafficking and Smuggling] which collates, organises and provides information on (signs of) THB for tactical and strategic purposes. The Dutch

Royal Military Constabulary, SIOD [Social Information and Investigation Service] and the IND are also represented in EMM. For some years now, the police have had a National Human Trafficking Expert Group, one of whose purposes is to aim for uniformity and cohesion in the Dutch police campaign against THB. Police districts also exchange operational information on THB in the *Human Trafficking Operational Consultation Group*, which meets every two months.

International

Both the police and the PPS are involved in international cooperation to combat cross-border crime. Police forces in the border regions of the Netherlands have long collaborated with their colleagues in the neighbouring countries of Germany, Belgium and Luxembourg. In one of these collaborative arrangements, human trafficking is the main priority.

11.6.2 Indications of human trafficking

Various organisations who can encounter THB in the context of inspection and enforcement are mentioned in the *Human Trafficking Guideline*. Apart from the police, the Royal Military Constabulary and the municipal authorities, these would include for example the Health & Safety Inspectorate [*Arbeidsinspectie (AI)*], the Social Information and Investigation Service [*Sociale Inlichtingen en Opsporingsdienst (SIOD)*] and the Fiscal Information and Investigation Service/Economic Audit Service [*Fiscale Inlichtingen- en Opsporingsdienst/Economische Controledienst (FIOD)/ECD*]. In recent years, the police have deployed a range of activities designed to improve on their collecting and recording of signs of THB, such as the (further) development of a THB checklist, which also covers the detection of exploitation in other sectors than the sex industry and coerced organ removal. In addition, in order to increase the knowledge of THB among all police officers, a leaflet on THB has been developed, and work is going on to improve the information position of Criminal Intelligence Units with regard to THB. This sort of activity is important, because THB is not always recognised as such by police officers and signs of THB are not always recorded as such in police systems. On the one hand, this is due to the fact that victims of THB do not always want to be recognised as such. On the other hand, victims who do wish to escape free from their situation are not always found, recognised or helped by the police or the Aliens Police. Victims are not always given the opportunity to report the crime, they are offered little or no time for reflection and the police process official reports themselves without consulting the PPS. It is worth mentioning that the National Ombudsman has established that police officers are obliged in principle to record any report of a criminal offence.

During investigations by the SIOD, multiple dependency on the employer, which is a sign of exploitation, is regularly discovered. The Labour Market Fraud Teams of the AI are in a good position to pick up indications of exploitation in other sectors than the sex industry. IND employees may also be in a position to identify THB, for example in asylum proced-

ings. The IND does not (yet) have an internal instruction on this. All of these bodies are supposed to pass any signs of THB to EMM, but this procedure needs to be improved.

Assistance organisations and interest groups can also spot (possible) THB. Some non-governmental organisations report indications of possible THB to the police (anonymously). But because they are primarily interested in the interest of individual clients, they are not always inclined to inform the police or the AI, for example, about exploitation situations.

Ordinary citizens can also pick up indications of THB. It is important that the public is able to recognise THB and knows what to do with the information. This is why, at the start of 2006, Crimestoppers [*Stichting Meld Misdaad Anoniem*] started the campaign ‘Appearances are deceptive’ [*Schijn bedriegt*] in some regions, aimed at the prostitution sector. The campaign has produced useful reports of THB.

11.6.3 Investigation

Not every case with a clue for criminal investigation is taken up. Cases are passed on (sometimes for a lengthy period) either internally, to other regional police forces or to the National Crime Squad, without any action being taken in the meantime. However, other police forces and the National Crime Squad are generally reluctant to take up such cases. This results in stagnation, case backlogs and in some cases dismissal (by the police). Potentially large investigations are also curtailed, more often than is desirable, into ‘quick hit’ cases. Capacity available for THB is under pressure because of performance contracts.

There are, however, regional police forces which do invest a great deal in the fight against THB. In these forces, it has been agreed, for example, that any sign of THB will always lead to the start of a police investigation even if no one has reported the crime (yet). This can be done by aggregating information.

In addition – in the context of the programmatic approach to organised crime – there is the THB investigation ‘Sneep’ in terms of which various authorities such as (regional) police forces, the Royal Military Constabulary, SIOD and IND, Customs and municipalities collaborate using the ‘barrier model’. The programmatic approach is aimed at combating crime not only from the perspective of criminal law. This means that those involved in this case are also proceeded against via administrative law. Financial investigations also take place, including the investigation of ‘facilitators’.

The detection of THB aimed at exploitation in sectors other than the sex industry is still in its infancy. Various regional police forces, however, are investigating cases of non-sexual exploitation. The SIOD has also started investigations into THB for the purpose of labour exploitation. In 2006, one investigation into this type of THB resulted in prosecution and a judgment (acquittal) at first instance.

The police successfully completed 60 THB investigations in 2004, a higher number than in previous years. The number of investigations into domestic THB, in particular, increased

sharply in 2004. The 60 investigations brought to light 34 minors, 24 of whom submitted an official report to the police. In three of the investigations, the victims were forced not only to do sex work but also to conclude loans or take on debts for the suspects. At least 184 reports of THB were submitted to the police in 2005.

11.6.4 Financial investigations

The *Human Trafficking Guideline* stated that financial investigation should be a standard element of investigations into THB. BNRM researched the financial investigations in the THB cases that were successfully completed in 2004. In many of the cases studied, financial investigation appeared to be a standard element, and confiscation of illegally obtained profits seemed to be a strong motivator. By contrast, financial investigation was bypassed if it appeared that the suspect had few assets or no illegally obtained profits. Yet, even then it can be worthwhile to carry out a financial investigation, for example to gather evidence, but also to gain an understanding of the scale of a criminal network, (new) suspects that may be involved, the different legal sectors that might be involved or the operating methods of the criminals.

A range of financial investigation methods were studied more closely. This made clear the significant importance of asking financial questions to victims: in three quarters of the investigations where there was some financial gain and the victims were questioned about this, it was possible to estimate the illegally obtained profits partly on the basis of the statements made by the victims. The profit can also be calculated on the basis of other information, such as tapped telephone conversations. This is important, because many victims do not wish or dare to make a statement. And it is through ‘tapping’ that the ban on allowing cases of THB to continue makes itself felt: if the taps show that THB is going on, immediate intervention is necessary in order to remove the victims from the exploitative situation. Sometimes this is at the expense of the (financial) investigation. Searches also often lead to valuable information. In nearly three quarters of the investigations where the search focused on financial information, financial records (sometimes a ‘shadow’ set of books) were indeed discovered. Checking money transfers takes up a lot of time, and is far less frequently successful in terms of results. In a quarter of the investigations, indications were found of cash flows going abroad, or assets being held abroad. This only resulted in requests for foreign legal assistance in a limited number of cases, however, but these had positive results (sometimes against all expectations).

Information was exchanged with the Tax Administration in a range of investigations, for example with a view to catching a slice of criminal profits by means of a tax surcharge.

In one of the investigations studied, the police investigated the THB while the SIOD looked into the employer fraud. The SIOD investigation also resulted in a confiscation case. Both organisations achieved better results by sharing their knowledge and understanding. Also, if the suspects were acquitted of THB, they can still be convicted for fraud and suffer a (financial) penalty.

The police calculated illegally obtained profits of 19 suspects, with the average amount for each suspect being €122,759. The highest amount earned by a suspect according to these calculations was €500,000 and the lowest was €1,000. In 4 (10%) of the 42 THB cases successfully completed in 2003 a confiscation claim was presented.

The interviewees indicated that victims hardly ever see any of the money back that they paid to the human traffickers. There are several ways in which victims can lodge a claim for compensation. Victims seldom make use of these options, probably because they are not told about them (or not sufficiently and clearly informed about them), or because they receive very little in the way of legal assistance, are unwilling to proceed from fear (vengeful perpetrators) or are in love (loverboys) or because they do not regard themselves as being a victim.

11.6.5 Prosecution

Human trafficking cases registered with the Public Prosecution Service

220 cases were registered with the PPS in 2004, and 135 in 2005, which (also) involved a suspicion of THB. The provisional figures for 2006 show a further increase. Out of these cases, 15% (2004) and 27% (2005) involved victims who were minors.

The majority of the cases involved THB in aggravated circumstances. The courts did not deal with any cases of exploitation in another sector than the sex industry or organ removal in 2005.

Human trafficking is generally the sole or most serious offence registered. In nearly 20% of the cases in 2004 and 2005, there was a more serious crime charged in addition to THB, usually some form of (sexual) violence. The combination with participation in a criminal organisation is being charged less frequently.

Dealing of cases by the Public Prosecution Service and settlement by the courts

The PPS dealt with 252 cases in 2004 and 146 in 2005. About 70% of these resulted in a summons.

Virtually all of the cases brought before the courts by the PPS ended up with a sentence being imposed (89% in 2004 and 85% in 2005 of the cases prosecuted) and this involved imprisonment in 88% and 91% of the cases respectively.

288 sentences in relation to THB were issued in the period from 2003 to 2005. In 252 of those cases, unconditional imprisonment was imposed with an average sentence of about 25 months.

About 39% of the cases in 2004 and 50% of those in 2005 were appealed, most of them (jointly or solely) by the accused.

The accused

Three quarters of the accused in THB cases, registered with the PPS in 2004 and 2005, were between the age of 18 and 41. There were 4 underage suspects in 2004, and the same number in 2005. More than 80% were male, with the number of female suspects varying markedly according to country of origin.

Again in 2004 and 2005, the Netherlands was the most common country of birth for the suspects, with Turkey and Romania having reasonably stable positions in the top five countries of origin. There was a marked increase in the incidence of Morocco as the country of birth for suspects, with Hungary also coming into this picture and Bulgaria and the former Yugoslavia playing a lesser part.

11.7 Exploitation in sectors other than the sex industry

11.7.1 Definition of terms

The introduction of the new THB article has not resulted in clear-cut dividing line between poor employer conduct and conduct that deemed to be exploitation as defined in Article 273f, paragraph 2, Dutch Criminal Code. What is clear, though, is that the legal expression ‘exploitation’ covers extremely poor working conditions, where human rights are at stake. This can be due to a single obvious excess or an excess consisting of an accumulation of less serious abuses. The indicators that might point towards exploitation include physical violence against an employee, coerced dangerous work, unreasonable working hours, underpayment, working to pay off debts and dependence on the employer for, for example, accommodation and documentation.

In relation to THB, the expressions ‘labour’ and ‘services’ are not confined to formal employment relationships. Nor is it necessary for the exploiter to be the employer or to be present in the workplace. Practices that can border on THB for non-sexual exploitation include illegal adoption, rack rent housing and forced marriages.

11.7.2 The criterion for exploitation used

BNRM conducted an exploratory study into serious abuse in employment situations. 197 cases descriptions were collected, dating from 2000 to the start of 2006.

The criterion for exploitation in the meaning of THB applied in this study was based on the combination of, on the one hand, the impossibility to leave the situation, as a constant factor, and on the other hand, as variable factors, coercion, bad labour conditions, and multiple dependency. When assessing a particular case, factors such as the duration of the situation, the degree of organisation and the age of the victim were also taken into consideration. Applying this criterion, exploitation as defined in article 273f, Dutch Criminal Code, was found in 54 (45%) of the 119 case descriptions. The research thus shows that exploitation in other sectors than the sex industry is going on in the Netherlands, but it does not reveal the scale of the problem.

11.7.3 Risk sectors

Illegal employment is a substantial element of the underbelly of the Dutch economy. In concealed circuits of malafide employment agencies, employees have difficulty protecting

themselves against abuse, particularly if they are undocumented migrants. It is clear from the cases on domestic work and ethnic entrepreneurship that exploitation often occurs in hidden employment situations. The collected case descriptions were drawn from 16 sectors. The respondents mostly described situations in the temporary employment sector, agriculture and horticulture, the catering industry – with the most significant subcategory being Chinese restaurants – and domestic work. As far as domestic work is concerned, three types of employer merit special attention: relatives, ‘au pair’ host families and foreign diplomats.

II.7.4 Characteristics and risk groups

The new definition of the offence of THB has changed the numerical relationship between men and women among the victims and potential victims of THB. This has consequences for, among other things, the image of the offence and for how to provide victim assistance. A marginal position in the Dutch labour market and/or society may render individuals vulnerable to exploitation. Residence permit status, age and psychological disposition have a part to play in this respect.

Many undocumented migrants are unaware of their rights, do not dare to make any claims against employers and, as far as possible, avoid contact with the authorities.

Minors are generally more vulnerable than adults. Clearly, putting a minor to work does not necessarily constitute exploitation, but if an employer makes a child do more or harder work than permitted, this abuse can (in combination with others) amount to an excess. In cases with (possibly) underage victims of exploitation extra care is not yet a standard measure. Illegal residence can hamper the attention that is required in terms of identification, reception and assistance, also in reporting the crime, of (possibly) exploited children.

II.7.5 Dealing with exploitation in sectors other than the sex industry

Little is yet known about the characteristics and operating methods of perpetrators of THB with a view to exploitation in other sectors than the sex industry. It appears that the exploiter and the victim often belong to the same ethnic group. Exploitation sometimes occurs within relationships and families.

Efforts to prevent and combat exploitation outside the sex industry are still in the early stages. Certainly in this phase it is important that inspectors and detectives who enter the shop floor should be alert to any signs of exploitations and should be aware of the fact that there may be (possible) victims of THB among undocumented migrant workers. A victim-oriented approach to THB requires that they should be informed about their rights.

It is not yet possible to report on how the Dutch courts deal with exploitation outside the sex industry.

11.8 Human trafficking with a view to organ removal

There are scarcely any indications that THB with a view to organ removal takes place in the Netherlands, but the shortage of available organs for transplant purposes may lead to organ tourism (travelling abroad for transplants), organ trade (commercial transplants) or THB for organ removal.

11.8.1 Organ donation

The Organ Donation Act [*Wet op de Orgaandonatie (WOD)*] sets out the rules for the removal of organs. The most important conditions are permission from the donor (or, on donation after death, from the surviving relatives) and provision of the organ free of charge. In the Netherlands, someone who has not indicated that his permission for the removal of organs is not, in principle, available as a donor. The WOD criminalises the removal of organs without permission. In certain circumstances this will also amount to THB, which carries the threat of a heavier punishment.

11.8.2 Trade in organs

Trade in organs includes offering organs for sale, selling and/or purchasing them, and mediating between the seller and purchaser with a view to profit.

There is an ongoing debate on the desirability of (free) market processes in relation to organ transplants. Some argue that commercialising the body renders exploitation inevitable. Others do not regard commercialisation as objectionable in principle, and argue for certain forms of organ trade to be allowed. The point has to be made that there are economic and medical risks associated with the voluntary sale of organs, for instance when no proper aftercare is provided. The trade in organs is formally permitted in a few countries. News reports on (illegal) organs trade are difficult to verify. In China, the authorities appear to have been involved in organ removal, without permission, from prisoners who were executed. Dutch citizens who buy an organ abroad are not deemed guilty of committing a criminal offence under Dutch law, unless coercion has been used.

11.8.3 Human trafficking with a view to organ removal

There is a distinction to be drawn between the trade in organs and THB with a view to organ removal. The trade in organs is not by definition involuntary, whereas the definition of THB, at least when it regards adults, incorporates the use of coercion. Article 273f, Dutch Criminal Code, concerns forcibly purchasing, transporting or taking another person with the purpose of removing organs. This provision also applies to Dutch citizens who commit this offence abroad, provided that it also constitute a crime in the country in question. Whoever induces a minor – without or without coercion – to make his or her organs available, for remuneration, will be guilty of THB (Article 273f, paragraph 1.5, Dutch Criminal Code).

11.8.4 Interviews among medical practitioners

Interviews with kidney specialists, transplant coordinators, a transplant surgeon, a doctor with the ANWB and two kidney patients show that there is (virtually) no trade in organs in the Netherlands. Still, many of the respondents argued for increased alertness now that the number of living donors is on the increase. With living donors, the relationship and motives of the donor and recipient are not always investigated thoroughly, so that there can be a risk of donation with a view to profit or as a result of coercion or manipulation.

In all university hospitals in the Netherlands, it has been known to occur that foreign relatives of kidney patients (principally those of foreign heritage) come to the Netherlands in order to donate a kidney. There is no reliable information on Dutch patients who go abroad to have an organ implant, but the kidney specialists who were interviewed were aware of (accounts of) patients who had undergone kidney transplants abroad. Only very rarely did they have indications that payment was made for a kidney abroad, but these possibly escape them because patients do not often talk about this with their specialists. With one exception, the doctors indicated that they had never cooperated with a patient who wanted to undergo a paid transplant abroad. The exception related to a patient who wanted to have a commercial transplant in Iran, his country of origin, where this is permitted.

11.9 Conclusion: recommendations

The report contains a large number of recommendations on a range of topics, namely: legislation and regulations, government policy, law enforcement in the sex industry, prevention, public awareness, assistance to victims, detection, investigation, prosecution and trials, international cooperation and registration and (scientific) research. These can be found in Chapter 10.

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*This bibliography is an annex to the original Dutch report; not all references thus appear in the current English translation.

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Appendix I

THB provision in the Dutch Criminal Code

Article 273f Criminal Code (in force since 1 January 2005)
(non-official, English translation)

(1) Any person who:

1. by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
2. recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
3. recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
4. forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (1) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
5. induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
6. wilfully profits from the exploitation of another person;
7. wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (1);
8. wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;

9. forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine*, or either of these penalties:

(2) Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.

(3) The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine*, or either of these penalties:

1. offences as described in the first paragraph if they are committed by two or more persons acting in concert;
2. offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

(4) The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine*, or either of these penalties.

(5) If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine*, or either of these penalties.

(6) If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine*, or either of these penalties.

(7) Article 251 is applicable mutatis mutandis.

*A fifth category fine is a fine of maximum € 67,000,-

Appendix 2

Justification of research methods used

BNRM collects information in a variety of ways. This Appendix explains the aims, research questions and methods used for the various BNRM studies.

I The B9 research

Aim and research questions

In principle, BNRM annually researches the files supplied by the IND, which include all applications for and grants of residence permits in the context of the B9-regulation. For various reasons, the current report only covers 2005.

The research questions are:

- How many victims/ witnesses applied for a B9 residence permit?
- How many victims/ witnesses were awarded a B9 residence permit?
- What are the (background) characteristics of individuals holding a B9 residence permit?
- In which police districts did the applications for B9 residence permits originate?

Research method

The IND supplied files containing all contacts for the period from 2001 to 2005 where the B9-regulation played some part. These files accordingly contained all applications for B9 residence permits (or extensions of them) and all approvals. BNRM aggregated all of the files at the individual level and collated them. This file was then subjected to more detailed analysis. This process highlighted a number of inadequacies. We learned from consultations with the IND that these shortcomings were the result of technical problems that arose through the IND taking over the aliens administration, which was previously the duty of the Aliens Police. Various attempts have been made to clean up the registration systems. The results for 2003 and 2004 remained unsatisfactory, however. This is why it was decided to report only on 2005.

Incidental comments on the research

Firstly: the IND's registration is not consistent and/or unambiguous on whether applications and awards of residence permits are linked to the B9-regulation. The result is that someone applying for a residence permit under the B9-regulation may be registered as having obtained a permit on different grounds. The reverse is also true: B9 residence permits were granted to individuals who had not applied for them when they were first registered. All of these individuals have been included in the analyses on the assumption that they relied on the B9-regulation either in their application or when a permit was awarded. It is possible that these files did not include every individual who invoked the B9-regulation, as reliance on the B9-regulation is not registered by the IND as a matter of course or compulsorily.

Secondly: the IND does not record whether an individual obtains a B9 residence permit as a victim or as a witness.

Thirdly: the B9 data relates only to victims and witnesses of THB who are residing in the Netherlands illegally. Additionally, the IND files only include data on individuals eligible for a temporary residence permit because they have reported the crime of THB. Victims are not registered by the IND during the period available to them for reflection.

2 The BNRM police study

Aim and research questions

In each of the earlier reports, BNRM included many details of successfully concluded investigations into THB. Since the beginning of 2004, BNRM is now only collecting certain key information regarding these investigations. The aim of the current police research was to obtain an understanding of the number of successfully completed police investigations into THB.

The research questions are:

- How many investigations for THB did the police successfully complete in the Netherlands in 2004?
- How many official reports/witness statements did these investigations relate to?
- What type of sex work were the victims supposed to do?

Research method

All of the investigations into THB which were successfully completed in 2004 were listed in the now customary fashion. The total number was 60. The team leaders for these investigations were interviewed by telephone. The questions asked in this interview, based on a short questionnaire, related to the general characteristics of the THB concerned. We also asked questions about the extent of any financial investigation that might have accompanied the detective work.

3 The BNRM research into financial investigations

Aim and research questions

The aim of the research was to establish the part played by financial investigation in the successfully completed criminal investigations into THB, or what part such investigation might have played.

The research questions, concerning five sub-areas, are:

Financial investigations in THB cases (input)

- To what extent is financial investigation undertaken in THB cases (from the start), i.e. what efforts are made to obtain financial information, record it accurately and analyse it?
- Which factors determine whether or not this happens?

- How is the financial investigation undertaken?
- Do THB cases have any especially significant features for financial investigations?
- What bottlenecks occur during financial investigations (in THB cases)?
- How could financial investigations in THB cases be encouraged?

Financial investigations in THB cases (output)

- To what extent are the (potential) aims of financial investigations achieved?
- Does financial investigation also produce other valuable results?
- How are illegally obtained profits calculated?
- To what extent are confiscation procedures deployed in THB cases?
- To what extent is money successfully confiscated in THB cases?

Missed opportunities

- How often is there (wrongly) a failure to carry out financial investigation in THB cases?
- What are the reasons for this?

Alternatives

- Are there other ways to attack human traffickers in financial terms, apart from confiscation?
- Has this happened in one or more cases?
- What were the results?

Victims

- Do victims of THB profit (indirectly) from financial investigations?
- How?
- How can financial investigations (also) benefit victims?

Research method and the tools used

The research was undertaken in three parts:

Part 1: Study of literature and general orientation

Information on financial investigations (and confiscation, so far as relevant) was studied for the current research. This included academic research, policy reports and memoranda, articles in newspapers and (professional) periodicals, study materials for police courses in this area and informational material in print and on the Internet. We also attended conferences and symposia and had discussions with experts in this field.

Part 2: General characteristics of criminal investigations/financial investigations (2004)

Questions were asked, during the telephone interviews, of the team leaders in the 60 criminal investigations into THB successfully completed in 2004 as regards the extent of financial investigation that had been undertaken and any results it produced. If financial investigators had also been involved in the case, we also tried to contact them (if necessary) to obtain in-

formation. Five cases that were interesting from the perspective of financial investigation were chosen for case studies. For these case studies, the team leaders for the police investigations and the financial investigators were interviewed (in greater depth) and we also studied the files produced by the police.

Part 3: Confiscation (2003)

The fourth NRM report presented the features of every successfully completed investigation into THB in 2003. For nine of the cases, the team leaders indicated at the time that a confiscation sanction had been or would be claimed. The present research enquired as to the results produced by this. The number of cases in which a confiscation sanction was actually claimed turned out to be significantly lower. The results of this part of the research accordingly relate to four completed cases from 2003 rather than nine. One of these four was examined as a case study. The case description is based on information from an interview with the financial investigator concerned, the police file on the case and research into the case carried out by students at the police academy in the context of their training (Volmerink & Jager, 2004).

Two questionnaires were used in the research: one for telephone interviews and one for the case studies. Because of the exploratory nature of the research, both of the questionnaires contained many open questions.

Incidental comments on the research

Collecting the information took longer than had been planned. The most important reasons for this were that the police appeared to have less time available for interviews than previously, that information on financial investigations was not always readily available, and the extra time needed to contact the financial investigators concerned. The information we asked for could not be obtained in some cases. The information was also sometimes difficult to interpret because (tactical) investigators were not always aware of the (statutory) basis for the financial investigation that had been carried out, or what the results had been in financial terms. In addition, many open questions were asked, so that we cannot always say whether the results we obtained would apply to all of the investigated cases.

Finally, we only studied successfully completed criminal investigations. It is possible that financial investigation played a greater part in the successfully completed cases than in the cases that were (necessarily) discontinued.

4 The Public Prosecution Service data investigation

Introduction

At the request of BNRM, annual analyses are carried out on a ‘THB’ sub-file from the national Public Prosecution Service database, which includes information on the prosecution

of suspects drawn from the 19 District Court area prosecution offices.¹ The analyses provide a picture of procedural progress at first instance. Public Prosecution Service data includes information on cases and offences. A (criminal) case, in the context of prosecution, is a case against one accused. Criminal cases against individual suspects may relate to more than one offence.

Aim and research questions

The aim of the research was to provide an understanding of how suspects of THB are prosecuted in the Netherlands. The research questions were:

- How many cases relating to THB were registered with the Public Prosecution Service in 2004 and 2005?
- How often did these involve underage victims?
- How are the suspects classified as regards gender, age and country of origin?
- Which offences, apart from THB, are they suspected of having committed?
- How did the Public Prosecution Service process the cases in 2004 and 2005?
- How did the courts dispose of the cases in 2004 and 2005?
- How often did the various parties intimate appeals against court verdicts?
- What developments have occurred during the period in relation to THB?

Research method

We selected the cases from the entire Public Prosecution Service database which involved (at least) the registration of an offence of THB. No specific cohorts of perpetrators or victims were followed in the analyses, but we checked the data for each year to see how many cases were registered and how many were processed by the Public Prosecution Service and disposed of by the court.²

Additional comments

The Public Prosecution Service data only includes the main offence that is charged. Also, where the charge includes more than one main offence, only the first offence is registered in the Public Prosecution Service database. What this means is that some of the information reaching the Public Prosecution Service, and which might play a part during the course of the prosecution, cannot be found within the Public Prosecution Service data.

¹ The analyses are carried by SiBa (Statistical Information Provision and Policy Analysis) of the Scientific Research & Documentation Centre (WODC).

² This means that we did not necessarily deal with the same cases.

5 The BNRM research into exploitation in sectors other than the sex industry

Working definition

The working definition of exploitation in sectors other than the sex industry as applied in this research is: Serious abuse in an employment situation, with the victim being coerced to undertake work or services in a sector other than prostitution. Exploitation brings human rights into play.

Research questions

- Do the relevant players have concrete practical experience of the occurrence of exploitation in sectors other than the sex industry in the Netherlands? If so:
- Which manifestations of exploitation in sectors other than the sex industry are they aware of?
- What are the economic sectors where exploitation in sectors other than the sex industry occurs?
- Who are the victims of exploitation in sectors other than the sex industry and what factors render people vulnerable to it?
- Who is guilty of exploitation in sectors other than the sex industry and how do these people operate?³
- To what extent can the situations described by the respondents be classified as exploitation as defined in Article 273f Dutch Criminal Code?

Research methods

A study of literature, including Dutch policy documents and public and confidential government service documents, studies of particular professions, ethnic commercial enterprise and employment market fraud, investigations into particular groups such as au pairs and people held in aliens' detention, and reports on topics associated with THB such as people smuggling. Also literature concerning exploitation in sectors other than the sex industry in other countries: reports covering the entire world or Europe, including those from the ILO, as well as studies on the situation in Germany, Belgium, France and the United Kingdom.

Enquiries. Brief questionnaires were set out on a large scale. For this 'grapeshot method' we opted to draw the research, and with it the subject matter, to the attention of as many organisations and individuals as possible who might be in contact with clients who were potentially vulnerable to exploitation in sectors other than the sex industry. The aim of the questionnaire was to form a picture of the symptoms of this type of exploitation that are

³ So far as the respondents were aware, since they had been approached on the basis of their possible contacts with *victims* of exploitation.

picked up on in practice, and also to identify individuals to interview about actual cases. The enquiry consisted of open questions relating to the period from 2000 onwards.⁴

Interviews. Respondents who indicated they were aware of examples of abuse in employment situations, and who were prepared to cooperate, were interviewed either in person or by telephone.⁵ These semi-structured interviews attempted to obtain case descriptions that were as full as possible. A direct approach was made to organisations and individuals where we assumed or knew in advance that they might know of examples of exploitation in sectors other than the sex industry or have expertise in specific subject areas. One lawyer also made contact with BNRM on his own initiative in connection with a relevant case.

Study of completed investigation files. BNRM enquired as to whether the police investigations into THB for sexual exploitation, which we were already aware of and which had been concluded during the period between 2000 and 2004, also contained indications of exploitation in sectors other than the sex industry. Five investigation files were studied as a result and these supplied two case descriptions.

Accompanying an employment market fraud team (AMF-team). The Health and Safety Inspectorate's AMF teams check up on compliance with the Aliens Employment Act. In order to obtain a picture of the practicalities of workplace checks and the operating methods of the AMF teams, we spent one day with a team carrying out checks in the construction, agricultural and horticultural sectors.

Response rate

Several factors contributed to the non-response rate, including the method of approach (wide distribution of a brief questionnaire). Many of the organisations and individuals who were approached were also surprised at the possible link between their practical experiences and THB. It is possible that some organisations who devote themselves to the interests of people without residence permits did not respond from fear that the results of the research might contribute towards what they would describe as the 'hunt' for illegals. Many of the professionals we approached also had a bond of trust with their clients and had to deal with professional confidentiality. This might have been the reason why some refused to provide any information, even though this could be done anonymously and all of the information was dealt with in confidence.⁶

⁴ Every questionnaire followed the same pattern. The layout or wording was adjusted to the specific target group where necessary. For instance, respondents from the Health and Safety Inspectorate were asked what they did if they came across possible exploitation during checks at workplaces, and the questionnaire for lawyers explored any legal actions considered or undertaken following indications of an exploitative situation.

⁵ With the exception of the HSI inspectors and SIOD investigators.

⁶ The responses from lawyers indicated varying interpretations of professional confidentiality. According to the Secretary of the Netherlands Bar Association [*Nederlandse Orde van Advocaten*], it is always a personal decision for the lawyer as to whether or not he invokes the right to professional confidentiality.

Incidental comments on the research

The recent introduction of the new offence meant that there had scarcely been any investigation or prosecution of exploitation in sectors other than the sex industry at the time when the research was carried out. This is one of the reasons why not much information was obtained from the police. The Expertise Centre on Human Trafficking & People Smuggling (EMM) did provide information at the start of 2006 on the number of ongoing criminal investigations into exploitation in sectors other than the sex industry. This operational information is not discussed at this point. The input from trade unions and employer organisations was also limited, although these are potentially important sources and players as regards exploitation in these other sectors.

The case study material is a collection of indications taken at a given moment in time. Once the case details had been noted, further developments in the case were not pursued. This means, for example, that we do not know whether certain exploitative situations are still going on, or the results of actions such as official reports of THB and wage claims. The information is also second-hand. The perspectives of victims and perpetrators are lacking, because there was no contact with victims and no field work where exploitation actually occurs.

Appendix 3

Explanation of tables and statistics

1 Explanation of the tables

This report contains several tables. The following comments are important for a proper understanding of the tables.

When the table figures are added up, they do not always reach 100%. For ease of reading, however, 100% is always used as the sum total in the tables.

A dash (-) in the tables indicates that the number is zero or that the appropriate percentage is 0%. When the figure is more than zero but the percentage rounds out to 0% then the dash is replaced by 0%.

2 Explanation of the statistics used

Standard deviation

This report sometimes states the average figure. The actual number and the standard deviation are also indicated occasionally. The standard deviation indicates the extent of divergence among the figures used to calculate the average: the higher the standard deviation, the greater the divergence.

Index figure

Some tables indicate an index figure. The index figure shows how far the number – of suspects, for instance – has changed in a particular year in relation to a base year. The year chosen as the base year is stated in the table heading. This year is set at 100. An index figure greater than 100 reflects an increase in relation to the base year and a figure below 100 represents a decline.

Appendix 4 Supplementary tables

Table B3.2 Nationality of (possible) victims registered with the STV, per annum

Nationality	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Afghan	-	-	-	-	-	-	1	0%	-	-	1	0%
Albanian	4	1%	8	2%	2	1%	8	2%	2	0%	24	1%
Algerian	-	-	1	0%	-	-	-	-	-	-	1	0%
Angolan	1	0%	3	1%	2	1%	2	0%	8	2%	16	1%
Antigua and Barbadian	-	-	-	-	-	-	-	-	1	0%	1	0%
Armenian	-	-	-	-	3	1%	3	1%	-	-	6	0%
Bangladeshi	-	-	-	-	-	-	1	0%	-	-	1	0%
Belarussian	1	0%	8	2%	-	-	12	3%	3	1%	24	1%
Belgian	-	-	1	0%	-	-	-	-	2	0%	3	0%
Beninese	-	-	-	-	1	0%	1	0%	2	0%	4	0%
Bosnian	1	0%	1	0%	1	0%	-	-	1	0%	4	0%
Brazilian	1	0%	-	-	12	5%	5	1%	8	2%	26	2%
British	-	-	-	-	-	-	2	0%	-	-	2	0%
Bulgarian	40	14%	59	17%	48	19%	55	14%	52	12%	254	15%
Burundian	-	-	1	0%	-	-	-	-	2	0%	3	0%
Cameroonian	2	1%	10	3%	5	2%	11	3%	4	1%	32	2%
Canadian	-	-	-	-	-	-	1	0%	-	-	1	0%
Chinese	10	4%	8	2%	8	3%	9	2%	5	1%	40	2%
Colombian	1	0%	2	1%	1	0%	4	1%	1	0%	9	1%
Congolese	1	0%	3	1%	1	0%	-	-	3	1%	8	0%
Croatian	-	-	1	0%	-	-	-	-	-	-	1	0%
Cuban	-	-	3	1%	-	-	2	0%	-	-	5	0%
Czech	8	3%	6	2%	3	1%	2	0%	18	4%	37	2%
Dominican	-	-	3	1%	-	-	2	0%	1	0%	6	0%
Dutch	11	4%	18	5%	11	4%	59	15%	98	23%	197	12%
Ecuadorian	-	-	1	0%	-	-	1	0%	-	-	2	0%
Egyptian	2	1%	-	-	-	-	-	-	-	-	2	0%
Eritrean	1	0%	-	-	-	-	1	0%	-	-	2	0%

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Nationality	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Estonian	1	0%	-	-	2	1%	1	0%	-	-	4	0%
Ethiopian	-	-	1	0%	2	1%	2	0%	1	0%	6	0%
French	-	-	1	0%	-	-	-	-	-	-	1	0%
Georgian	2	1%	1	0%	1	0%	-	-	-	-	4	0%
German	-	-	1	0%	1	0%	1	0%	2	0%	5	0%
Ghanaian	2	1%	2	1%	1	0%	6	1%	2	0%	13	1%
Greek	-	-	-	-	-	-	-	-	1	0%	1	0%
of Guinea-Bissau	-	-	-	-	-	-	5	1%	4	1%	9	1%
Guinean	3	1%	6	2%	5	2%	3	1%	4	1%	21	1%
Guyanese	-	-	1	0%	-	-	-	-	-	-	1	0%
Hungarian	4	1%	1	0%	-	-	3	1%	9	2%	17	1%
Indonesian	-	-	1	0%	1	0%	-	-	-	-	2	0%
Iranian	-	-	1	0%	-	-	5	1%	-	-	6	0%
Iraqi	-	-	-	-	-	-	2	0%	-	-	2	0%
Irish	-	-	-	-	1	0%	-	-	1	0%	2	0%
Italian	1	0%	-	-	-	-	-	-	2	0%	3	0%
Ivory Coast	-	-	4	1%	2	1%	2	0%	-	-	8	0%
Kazakh	1	0%	-	-	-	-	-	-	-	-	1	0%
Kenyan	-	-	-	-	-	-	2	0%	1	0%	3	0%
Kyrgyz	1	0%	-	-	1	0%	-	-	-	-	2	0%
Latvian	1	0%	1	0%	-	-	1	0%	3	1%	6	0%
Liberian	4	1%	-	-	2	1%	1	0%	1	0%	8	0%
Lithuanian	10	4%	13	4%	9	4%	3	1%	3	1%	38	2%
Luxembourg	-	-	-	-	-	-	1	0%	-	-	1	0%
Macedonian	-	-	-	-	-	-	1	0%	-	-	1	0%
Malawian	-	-	-	-	-	-	-	-	-	-	-	-
Malaysian	-	-	-	-	-	-	1	0%	-	-	1	0%
Moroccan	1	0%	4	1%	2	1%	11	4%	11	3%	29	2%
Mexican	-	-	-	-	-	-	1	0%	-	-	1	0%
Moldavian	9	3%	14	4%	1	0%	6	1%	2	0%	32	2%
Mongolian	-	-	2	1%	-	-	-	-	2	0%	4	0%
Namibian	1	0%	-	-	-	-	-	-	1	0%	2	0%

Nationality	2001		2002		2003		2004		2005		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Nigerian	15	5%	45	13%	21	8%	39	10%	28	7%	148	9%
North-Korean	-	-	-	-	-	-	-	-	1	0%	1	0%
Norwegian	-	-	-	-	-	-	-	-	1	0%	1	0%
Pakistani	-	-	-	-	-	-	1	0%	-	-	1	0%
Philippino	-	-	-	-	1	0%	2	0%	-	-	3	0%
Polish	4	1%	9	3%	3	1%	8	2%	13	3%	37	2%
Portuguese	-	-	-	-	-	-	-	-	1	0%	1	0%
Romanian	4	1%	22	6%	31	12%	45	11%	23	5%	125	7%
Russian	27	10%	16	5%	11	4%	14	3%	13	3%	81	5%
Rwandan	-	-	1	0%	-	-	1	0%	-	-	2	0%
Senegalese	-	-	-	-	-	-	2	0%	1	0%	3	0%
Sierra Leone	6	2%	12	3%	11	4%	6	1%	14	3%	49	3%
Slovakian	1	0%	2	1%	2	1%	3	1%	10	2%	18	1%
Somalian	-	-	1	0%	1	0%	-	-	-	-	2	0%
Sudanese	1	0%	1	0%	-	-	2	0%	1	0%	5	0%
Surinamese	1	0%	1	0%	1	0%	3	1%	1	0%	7	0%
Swedish	1	0%	-	-	-	-	-	-	-	-	1	0%
Tajiki	1	0	-	-	-	-	-	-	-	-	1	0%
Taiwanese	-	-	1	0%	1	0%	-	-	-	-	2	0%
Thai	-	-	3	1%	5	2%	2	0%	2	0%	12	1%
Togolese	2	1%	6	2%	2	1%	2	0%	2	0%	14	1%
Turkish	-	-	5	1%	1	0%	2	0%	2	0%	10	1%
Ugandan	1	0%	1	0	3	1	-	-	4	1%	9	1%
Ukrainian	18	6%	5	1%	14	5%	8	2%	10	2%	55	3%
Uzbekistan	1	0%	-	-	-	-	2	0%	1	0%	4	0%
Vietnamese	1	0%	-	-	-	-	3	1%	1	0%	5	0%
(former) Yugoslavian	3	1%	-	-	1	0%	2	0%	5	1%	11	1%
Zimbabwean	-	-	-	-	-	-	-	-	2	0%	2	0%
Unknown	72	25%	21	6%	19	7%	16	4%	27	6%	155	9%
Total	284	100%	343	100%	257	100%	403	100%	424	100%	1711	100%

source: STV (files).¹

¹ The information in this Table differs slightly from the figures presented in the STV's yearly reports on 2003 and 2005. This is because BNRM worked with STV files in which the STV had made some additional corrections.

Table B3.6 Nationality of persons with a B-9 permit (application), 2005

Nationality	Applications		Permits granted	
	N	%	N	%
Albanian	1	1%	1	2%
Armenian	1	1%	1	2%
Belarusian	2	3%	1	2%
Brazilian	1	1%	-	-
British	1	1%	1	2%
Bulgarian	12	16%	11	18%
Burundian	1	1%	1	2%
Cameroonian	1	1%		
Chinese	2	3%	1	2%
Czech	2	3%	2	3%
Dominican	1	1%	1	2%
Guinean	2	3%	-	-
Hungarian	1	1%	1	2%
Iranian	1	1%		
Italian	1	1%	1	2%
Latvian			1	2%
Moroccan	2	3%	1	2%
Nigerian	6	8%	4	7%
Nigerien	1	1%	1	2%
Norwegian	1	1%	1	2%
Polish	3	4%	3	5%
Romanian	6	8%	6	10%
Russian	5	7%	5	8%
Senegalese			1	2%
Sierra Leone	7	9%	8	13%
Slovakian	2	3%	2	3%
Surinamese	2	3%		
Thai	1	1%	1	2%
Turkish	1	1%		
Ugandan	1	1%	1	2%
Ukrainian	4	5%	1	2%

Uzbek	2	3%	2	3%
Vietnamese	1	1%		
Unknown	2	3%	1	2%
Total	77	100%	61	100%

Table B7.5 Countries of birth of suspects, per year of registration

Country of birth	2001	2002	2003	2004	2005	Total	
	N	N	N	N	N	N	%
Afghanistan	-	1	-	-	1	2	0%
Albania	4	26	5	-	-	35	4%
Angola	1	-	-	-	1	2	0%
Belgium	-	2	1	2	-	5	0%
Brazil	1	-	1	-	-	2	0%
Bulgaria	12	27	19	14	4	76	9%
Cameroon	-	-	1	-	-	1	0%
Cape Verde Islands	1	-	-	-	2	3	0%
China	-	1	-	-	2	3	0%
Colombia	-	1	-	1	1	3	0%
Czech Republic	5	2	-	2	5	14	2%
Democratic Republic Congo (former Zaire)	-	-	-	1	-	1	0%
Egypt	2	1	-	-	-	3	0%
Estonia	2	1	-	-	-	3	0%
France	-	-	-	1	-	1	0%
(Federal Republic of) Germany	1	-	1	5	1	8	1%
Ghana	3	1	-	-	1	5	0%
Greece	-	2	-	-	-	2	0%
Hungary	1	1	-	-	6	8	1%
Indonesia	3	1	-	2	-	6	1%
Iran	2	-	-	2	-	4	0%
Iraq	1	6	-	2	-	9	1%
Ireland	1	-	-	-	-	1	0%
Korea	-	-	-	1	-	1	0%
Kuwait	-	-	-	-	1	1	0%
Latvia	1	-	-	-	-	1	0%

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Country of birth	2001	2002	2003	2004	2005	Total	
	N	N	N	N	N	N	%
Lebanon	2	-	-	-	-	2	0%
Liberia	1	-	2	-	-	3	0%
Lithuania	2	-	-	-	-	2	0%
Malaysia	-	-	1	-	-	1	0%
Morocco	5	3	3	9	17	37	4%
Netherlands	30	51	47	91	53	272	32%
Netherlands Antilles	1	1	2	7	3	14	2%
Niger	1	-	-	-	-	1	0%
Nigeria	3	7	5	4	-	19	2%
Poland	-	4	-	3	3	10	1%
Portugal	-	-	-	1	-	1	0%
Romania	2	8	22	23	6	61	7%
Sierra Leone	-	1	1	-	-	2	0%
Somalia	-	1	-	-	-	1	0%
Soviet-Union	6	7	11	8	1	33	4%
Sudan	-	2	-	-	-	2	0%
Suriname	4	5	10	9	6	34	4%
Syria	1	-	-	-	-	1	0%
Thailand	-	1	2	-	1	4	0%
Turkey	8	26	16	24	15	89	11%
Uganda	-	-	-	-	1	1	0%
United Kingdom	-	-	-	1	-	1	0%
United States of America	-	-	-	1	-	1	0%
Vietnam	1	-	-	-	-	1	0%
(former) Yugoslavia	22	6	3	3	4	38	5%
Unknown	-	4	3	3	-	10	1%
Total	130	200	156	220	135	841	100%

COLOFON

Reference:

Dutch National Rapporteur on THB (2007). Trafficking in Human Beings - Fifth report of the Dutch National Rapporteur. The Hague: Bureau NRM.

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