

Trafficking in Human Beings

First report of the Dutch National Rapporteur



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Preface

You have before you the English, somewhat abbreviated, version of the first report of the (Dutch) National Rapporteur on Trafficking in Human Beings. The report, which intends to contribute to an increase in attention to the prevention and combat of trafficking in human beings (THB), was presented to the Dutch government in May 2002. This report indeed particularly concerns Dutch actors, and the Dutch situation, but is presumably also interesting for foreign, or international persons and organisations, who are dealing with the topic as well. This because the report gives an overall picture of the Dutch situation, as far as legislation is concerned, victim support, police investigation and prosecution of perpetrators, and it touches on more general problems and possible solutions as well, in relation to THB. At this it should be pointed out that some of the data, especially the quantitative data, are not entirely up to date. Therefore, the Rapporteur will publish a quantitative update at the end of this year. Sometime at the beginning of 2003, an English version of the update will become available.

Many individuals and organisations have provided the Rapporteur with information. This contributed significantly to the coming about of the report. For that we are obliged to all those concerned.

The importance of prevention and combat of THB is generally fully endorsed, but opinions differ on ways to realise this. However, there seems to be a world-wide agreement on the fact that THB at least partly blossoms 'thanks to' the yawning gap between poor and rich countries, the fact that young people in some countries lack opportunities to build up an existence in their native country, and the deprived position women still have in many countries and cultures, which makes them especially vulnerable for exploitation in the sex industry. This consensus should be the core and the angle of a global approach of the issue. After all, THB means a gross violation of basic human rights, against which society ought to act. May this report contribute to this end.

Anna G. Korvinus
Dutch National Rapporteur on THB

List of abbreviations

AIV	Adviescommissie Internationale Vraagstukken (Advisory Committee on International Issues)
AMA	Alleenstaande Minderjarige Asielzoeker (unaccompanied minor asylum-seeker)
AMOC/DHV	Amsterdams Oecumenisch Centrum/Deutscher Hilfsverein
BFO	Bureau Financieel Onderzoek (Financial Investigation Office)
BlinN	Bonded Labour in Nederland (Bonded Labour in the Netherlands)
BNRM	Bureau Nationaal Rapporteur Mensenhandel (Bureau of the Dutch National Rapporteur on Trafficking in Human Beings)
BRT	Boven Regionaal Team (supra-regional team)
Bureau NRM	Bureau Nationaal Rapporteur Mensenhandel (Bureau of the Dutch National Rapporteur on Trafficking in Human Beings)
CCIC	Cross Channel Intelligence Conference
CICP	Centre for International Crime Prevention
CID	Criminele Inlichtingen Dienst (Criminal Intelligence Service)
CIE	Criminele Inlichtingen Eenheid (Criminal Intelligence Unit)
CoE	Council of Europe
COM	Commission of the European Communities
CRI	Centrale Recherche Informatiedienst (National Criminal Intelligence Service)
DCI	Defence for Children International
DCI-NL	DCI the Netherlands
DNP	De Nederlandse Politie (The Dutch Police)
EC	European Communities
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (formerly: End Child Prostitution in Asian Tourism)
ECPAT-NL	ECPAT the Netherlands
EEA	European Economic Area
ERV	Europees Rechtshulp Verdrag (European Legal Assistance Convention)
EU	European Union
EUNATW	European Network Against Trafficking in Women
Europap	European Intervention Project AIDS Prevention for Prostitutes

FNV	Federatie Nederlandse Vakbeweging (Dutch Trades Union Federation)
GAATW	Global Alliance Against Trafficking in Women
GGD	Gemeentelijke en Gewestelijke Gezondheidsdiensten (Municipal and Regional Medical Services)
GG&GD	Gemeentelijke Geneeskundige & Gezondheidsdiensten (Municipal Medical & Health Services)
GOC	Grensoverschrijdend Criminaliteitsteam (Cross-Border Crime Team)
GSR	General Situation Report (on Trafficking in Human Beings)
HKS	Herkenningsdienst Systeem (Identification Service System)
IEM	Informatie Eenheid Mensenhandel (Trafficking in Human Beings Information Unit)
IKP	Informatie Knooppunt Politie (Police Information Node)
IKPS	Informatie Knooppunt Politie Systeem (Police Information Node System)
IND	Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service)
IOM	International Organization for Migration
IRT-NON	Interregionaal Recherche Team Noord- en Oost-Nederland (Interregional Investigation Team North and East Netherlands)
KLPD	Korps Landelijke Politie Diensten (National Police Services Agency)
Kmar	Koninklijke Marechaussee (Royal Military Police)
LPO	Landelijk Prostitutie Overleg (National Prostitution Consultation)
NAPS	Nationaal Actieplan Aanpak Seksueel Misbruik van Kinderen (National Action Plan to Combat Sexual Abuse of Children)
NDMN	Nigerian Democratic Movement the Netherlands
NGO	non-governmental organisation
NISSO	Nederlands Instituut voor Sociaal Seksuologisch Onderzoek (Netherlands Institute for Social Sexuological Research)
NL	The Netherlands
NRI	Nationale Recherche Informatie (National Criminal Intelligence Service)
OBJD	Onderzoeks- en Beleidsdatabase Justitiële Documentatie (Investigation and Policy Database Judicial Documentation)
ODCCP	Office for Drug Control and Crime Prevention

ODIHR	Office for Democratic Institutions and Human Rights
OJ	Official Journal (of the EU)
OOM/DNP	Operationeel Overleg Mensenhandel/De Nederlandse Politie (Operational Consultation on Trafficking in Human Beings/The Dutch Police)
OSCE	Organisation for Security and Cooperation in Europe
PBAM	Politiële Beleids- en Adviesgroep Mensenhandel (Police Policy and Advice Group on Trafficking in Human Beings)
PIC	Prostitutie Informatie Centrum (Prostitution Information Centre)
PMW	Prostitutie Maatschappelijk Werk (Prostitution Social Work)
PPM/DNP	Projectgroep Prostitutie Mensenhandel van De Nederlandse Politie (Prostitution and Trafficking in Human Beings Project Group of the Dutch Police)
PPS	Public Prosecution Service
Rvb	Regeling verstrekkingen bepaalde categorieën vreemdelingen (Regulation on allowances for certain categories of aliens)
SAMAH	(Humanitas) Stichting Alleenstaande Minderjarige Asielzoekers (Humanitas Foundation for unaccompanied minor asylum-seekers)
SFO	Strafrechtelijk Financieel Onderzoek (Criminal Financial Investigation)
SGBO	Onderzoeks- en Adviesbureau van de Vereniging van Nederlandse Gemeenten (Research and Advice Bureau of the Association of Dutch Municipalities)
SiBa	Statistische Informatievoorziening en Beleidsanalyse (Statistical Information Supply and Policy Analysis)
SIOD	Sociale Inlichtingen- en Opsporingsdienst (Social Information and Investigation Service)
SOA	Seksueel Overdraagbare Aandoeningen (Sexually Transmissible Diseases)
SOR	Samenwerkend Overleg Raamexploitanten (Cooperating Consultation of Operators of Window Prostitution)
SRTV	Stichting Religieuzen Tegen Vrouwenhandel (Foundation for Religious Against Trafficking in Women)
STD	Sexually Transmissible Diseases
Stichting SOA- Bestrijding	Foundation for the control of sexually transmissible diseases
STV	Stichting Tegen Vrouwenhandel (Foundation against Trafficking in Women)

TAMPEP	Transnational STD/AIDS Prevention Among Migrant Prostitutes in Europe
THB	Trafficking in Human Beings
UK	United Kingdom
UKO	Unit Kennis en Onderzoek (Knowledge and Research Unit)
UN	United Nations
VAS	Vreemdelingen Administratie Systeem (Aliens Administration System)
VER	Vereniging Exploitanten Relaxbedrijven (Association of the Operators of Relaxation Businesses)
VNG	Vereniging Nederlandse Gemeenten (Association of Dutch Municipalities)
WAV	Wet arbeid vreemdelingen (Aliens Employment Act)
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum (Scientific Research and Documentation Centre)
WRTV	Werkgroep Religieuzen Tegen Vrouwenhandel (Working Group Religious Against Trafficking in Women)

I Introduction

I.1 Trafficking in human beings

All over the world human beings are being exploited by other human beings on a large scale. This includes for example exploitation in the sex industry, but in all sorts of other sectors, too, humans beings are being employed under involuntary, frequently degrading conditions, such as in agriculture, sweat shops and for domestic work. Once this exploitation takes on forms that must be described as taking advantage of others, one talks of modern forms of slavery or *trafficking in human beings* (THB).

Much has already been written and debated on the question of what exactly must be understood by the term 'THB'. Individual countries and international organisations use various definitions that may differ considerably from one another. Nevertheless, in essence all these definitions involve a certain 'recruitment' activity, where an element of force or coercion is used against a person, with the aim or the result of exploitation of this person for one's own gain.

Where this involves THB for *prostitution* purposes the term '*trafficking in women*' is often used. This is linked with the fact that in practice women in particular are victims of forced prostitution. Nevertheless, because men may also be victims of trafficking for sexual purposes, as well girls and boys, this report keeps to the sex- and age-neutral term '*trafficking in human beings*'. Article 250a of the Dutch Penal Code (Wetboek van Strafrecht) is also formulated in sex-neutral terms.¹ The research field of the Bureau of the Dutch National Rapporteur on THB (Bureau NRM) is delimited by the scope of this article. For linguistic reasons, however, unless this is important with a view to the distinction, in this report the woman is assumed to be the victim. This report focuses primarily on the Dutch situation and the definition used in the Netherlands for the offence of THB. This is tailored (but also limited) to exploitation for sexual purposes in the prostitution sector. Although THB often has an international dimension (in many cases this involves crossing borders), the exploitation of forced prostitution also occurs within national borders, without crossing the border playing a part.

In spite of the subject of THB being approached in and from the Dutch context, international developments are not disregarded. These are developments at United Nations (UN) level and within the context of the European Union (EU) that have a direct influence on the Dutch situation and the policy to be adopted by the Netherlands relating to THB. Furthermore, many developments are going on within other international and supranational organisations, such as the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE).

¹ An official translation of article 250a Penal Code is not available. See Annex 1 for an unofficial translation.

1.2 Trafficking in human beings and prostitution

In the Netherlands the offence of THB is related to prostitution. The offence is made punishable in article 250a of the Penal Code. In short, in the Netherlands THB is understood to mean placing and holding human beings in prostitution by means of force, placing and holding minors in prostitution and recruiting, transporting and abducting someone to place him or her in prostitution in another country, irrespective of whether that happens voluntarily or involuntarily. Article 250a Penal Code also makes it punishable to profit from the above-mentioned circumstances.

As long as the term 'THB' has had a place in Dutch criminal law, this is associated with prostitution. The then article 250ter Penal Code dating from the early 20th century contained the term 'trafficking in women', which meant 'handing women over into prostitution'. Although originally this meant in particular procuring women and girls for prostitution abroad (called the white slave trade), gradually people came to see that this could also involve trafficking within national borders. In later years it was realised that men and underage boys could also be the subject of trafficking for prostitution purposes. This finally led to the replacement of the term 'trafficking in women' by the sex-neutral description 'trafficking in human beings'. To this very day there is a link in Dutch legislation between the term 'THB' and prostitution. In an international context any form of exploitation of people and profiting from this is increasingly termed THB, irrespective of the sector in which this occurs.

1.3 Trafficking in human beings and migrant smuggling

In Dutch legislation, THB (art. 250a Penal Code) is distinguished from migrant smuggling (art. 197a Penal Code). Nevertheless, THB and migrant smuggling are often confused in everyday language. Although there are similarities, the two offences are fundamentally different in their (legal) essence. Migrant smuggling is assisting people for money or other gain to enter or stay in the Netherlands illegally. The difference with respect to THB - exploitation in prostitution or (from an international point of view) in another economic sector - lies in particular in the interest encroached and in the (protection of) the victim of the offence. In the case of migrant smuggling the territorial integrity of a state comes into play. In this respect the State of the Netherlands is the victim of migrant smuggling, or at least the party whose interest is directly prejudiced, and not the person who is smuggled. That does not detract from the fact that the conditions under which people are smuggled may be so bad or degrading that the smuggled person themselves can in fact also be called a victim. Yet, he or she is therefore more a victim of the circumstances than of the smuggling itself. THB is by definition a serious violation of the human rights and personal integrity of the trafficked person themselves. So, the protected interest in the offence of THB is the mental and physical integrity of the trafficked person and the maintenance of their personal freedom. THB has been criminalised to protect that interest. THB may be coupled with (illegal) border crossing, but does not have to be.

The two criminal offences may occur alongside one another, or develop from one another, namely in those cases where the person smuggled must (re)pay exorbitantly high amounts to the smuggler, certainly in relation to the financial position of the person smuggled. Under the pressure of this heavy debt-bondage the person smuggled often feels forced to carry out work and to hand over the major part of the proceeds from this to the smuggler. When the pressure on the person smuggled to pay off his debt is then also increased, often accompanied with (the threat of) violence, they are soon put in a position of social-economic exploitation. The illegal entry into the country with the help of another then changes into a situation of dependency and exploitation. If this exploitation takes place in prostitution, this situation falls under the Dutch notion of THB.

1.4 Characteristics of trafficking in human beings

Exploitation in prostitution may occur in different forms and degrees. The exploitation and the circumstances under which this often occurs are reasons why THB is nowadays frequently called modern-day slavery. After all, it involves forced labour, which generates no or virtually no own income, while the victim is treated as an object to be used or even sold or sold on. The comparison with slavery as we know it from earlier years can soon be made.

A characteristic of THB is that the victim is restricted in his or her freedom of choice. This is among other things due to the different forms of force, violence or implicit restriction of choice referred to in article 250a Penal Code. The purpose of this is to force the victims to make themselves available to perform sexual acts with a third party in return for payment. With regard to minors and trans-border THB however, force, violence or deception are not relevant for punishability. An activity with the sole intention of exposing a minor to prostituting him or herself in itself already constitutes THB. The same applies with respect to a person taken, recruited or abducted for prostitution in another country. For the perpetration of that criminal offence it is not necessary that sexual acts actually took place. Law enforcement action can already be taken in case of any behaviour or act the intention of which is to lead someone into a form of prostitution.

Once they end up in prostitution, the victim is kept under control. This may be done by violence, but also by placing or holding the victim in a situation of dependency. For example taking (the major part of) the income generated, imposing an actual or fictitious debt-bondage that is so high that it is virtually impossible to pay off, or limiting the victim's freedom of movement (for example by taking away travel and identity papers or by means of observation) and the freedom of choice. Also, when the victim has no way of improving their position as a prostitute, or is left no freedom in the choice of clients or services to be performed, or it is made impossible for them to stop working as a prostitute - in accordance with present Dutch jurisprudence - this involves THB.

1.5 Character and scale of the phenomenon

A lot of figures on the scale of THB are doing the rounds world-wide. Partly because a wide range of definitions of the term 'THB' are used, these figures may vary considerably. The numbers given are virtually always estimates, where it is often added that the actual figures will presumably be higher. The reason given for this is the considerable dark number because of the features of the phenomenon. When presenting figures, reference is also often made to other bodies who have already published these figures. The danger is that repeating figures over and over again may give rise to the impression that these can be regarded as indisputable.

With that danger, emphatically as a marginal note, some figures that are mentioned in reports and literature are however given below. The Bureau NRM has not been able to verify these figures.

According to various estimates, each year between 700,000 and 2,000,000 women and children are trafficked world-wide. Of these, in Europe around 175,000 to 200,000 are trafficked from Central and Eastern Europe to Western Europe, largely for the sex industry (among others IOM Quarterly Bulletin, April 2001, EU-Trafficking in women² and OSCE/ODIHR - Trafficking Unit³). In Europe the total number of women that are trafficked and at present work as sex slaves in the sex industry is between the 500,000 and 700,000 (Hughes, 2000). These figures do not include numbers of men and boys trafficked for the sex industry; for them, it is very generally stated, there are no (reliable) estimates. If the figures mentioned in regional reports or country reports were added up, these figures would be considerably higher. It is also estimated that world-wide more than 200 million human beings live under one form of slavery or another (De Pauw, 2001); the number of people world-wide that live under slavery-like conditions as a result of THB is estimated at 9 million.⁴ Even if the actual numbers were considerably lower, it is still clear that this is a problem of overwhelming proportions.

It is widely assumed that international, organised crime is active in the area of THB (Morrison & Crosland, 2000). This is not surprising if one considers that the victims are more often treated as commodities rather than non-durable objects, as a result of which exploitation can take place repeatedly and so immense profits can be made from them. This is partly due to the fact that the risks involved in THB are relatively low (Europol, 1999; idem 2000; UN forum 2000 - 4).

² Trafficking in women; The misery behind the fantasy: from poverty to sex slavery - A comprehensive European strategy. Site:
http://europe.eu.int/comm/employment_social/equ_opp/index_and.htm.

³ <http://www.osce.org/odihr/unit-trafficking.php3>.

⁴ UN estimate, quoted in Combating Trafficking in Human Beings; Cornerstones of an EU strategy to establish efficient judicial and law enforcement cooperation; Ministry of Justice Sweden, 22 January 2001; available via www.eu2001.se.

It is also often considered that corrupt governments or official institutions are involved in international THB (among others O'Neill Richard, 2000). This is partly deduced from the fact that the problem in some countries is large scale and virtually overt, but nevertheless little or nothing is done about it. That soon leads one to assume the involvement of senior government, investigation and prosecution officials. The large number of stolen and wrongfully issued travel and residence documents that are moreover reported lead one to suspect that corrupt (junior) officials also play a part in the networks, in particular those involved in issuing visas and passports, but also border guards and police officers entrusted with aliens control. Reports of arrests of police officers and embassy staff that appear regularly in the press seem to give support to these suspicions. Added to this is the fact that some of the major countries of origin of victims of THB also score high in the Corruption Perceptions Index 2001 (Transparency International, 2001).⁵

1.6 The why of trafficking in human beings

For the trafficker the material gain is the main reason for exploiting other human beings. Exploitation can, however, only take place when there are also people who can be exploited.

The reasons that make human beings victims of traffickers are legion, but in the literature on cross-border THB (among others De Ruyver & Siron, 2001), are generally broken down into two categories: the so-called push and pull factors. The push factors relate to the situation in the victim's country of origin, and are the factors that give those involved a push in the back to launch into the unknown. The pull factors are the attracting or drawing circumstances in the destination countries.

The most important push factor is generally called the unequal distribution of wealth in the world. The lack of social services, the low standard of living and/or the lack of future prospects are for many (potential) victims found to be reasons to take their chance elsewhere. Causes of this unequal distribution of wealth may be political (dictatorship or (civil) war), but may also have much more of a socio-economically or culturally determined background, such as poverty, unemployment, lack of education, violations of human rights, disadvantaged position of minorities or women, discrimination against minority groups etc. Other factors such as environment (the natural conditions in a country or region, such as drought, floods and earthquakes, but also ecological pollution) and safety (crime, corruption, random persecution) also play a part (see also Pearson, 2001a). Personal circumstances of those involved may further

⁵ This index is drawn up on the basis of information from NGOs and indicates the level of 'perceived corruption' among politicians and officials. Examples of countries of origin scoring relatively high in the index are Bulgaria, Czech Republic, Lithuania, Slovakia, Romania, Ukraine, China, Russia, Thailand, Colombia and the Dominican Republic, all with an average score of 4.0 or lower on a scale of 0 (very corrupt) to 10 (very 'clean').

increase the pressure for improvement. Further examples are things like unstable family situation, having an incorrect picture of the (economic) situation in the destination country, lack of prospects for personal development (education or work) or also simply too much trust, but also having an adventurous attitude, perhaps combined with some degree of (youthful) naivety. Finally - and that applies in particular for the people who in the first instance consciously and voluntarily choose to work in prostitution, but later still become victims of THB - a push factor may be the urge to earn a lot of money quickly (to improve the living situation of themselves and their immediate family) and underestimating what working in prostitution may actually mean.

Important pull factors - partly complementary to the push factors - are the usually better economic situation in the destination country and the social services there, or at least the idea the person involved has thereof. This gives rise to the hope of better chances of a good future. A pull factor not to be underestimated is also the need for cheap labour, often for those sectors of the labour market for which it is difficult to recruit nationals. This demand for labour creates migration flows, which the malicious can abuse. The increasing globalisation and economic liberalisation are facilitating factors here.

The above-mentioned push and pull factors assume a certain form of involvement by the (potential) victim in what ultimately leads to a situation of dependency and exploitation. However, there are people who get into prostitution entirely against their own will and there become victims of exploitation (Vocks & Nijboer, 1999). This category includes human beings who are abducted to be employed in prostitution in another country and people who are deceived about the nature of the work to be carried out.

1.7 Different perspectives and approaches

The phenomenon of THB can be approached in various ways, such as with a view to prevention, investigation, prosecution and support of victims. The phenomenon can also be seen from the perspective of the various parties involved, such as that of the regulatory authority, the victim, the police, the Public Prosecution Service, non-governmental organisations (NGOs) involved in prevention, support or protecting the interests of victims and perhaps also of the suspects. The problems of THB may also be described in different ways. According to Wijers and Lap-Chew (1999), who limit themselves to trafficking in *women*, six angles can be identified in the approach to preventing and combating trafficking in women. These are trafficking in women as: a) a moral problem that is a direct extension of morally reprehensible prostitution, b) a problem of public order, c) a problem of organised crime, d) a migration problem, e) a human rights problem and f) a labour law problem (see also Kootstra (1996a); Pearson (2001a)).

In this report the problem of THB is approached broadly, without making a specific choice of the perspective of a particular person involved, or of a particular angle.

1.8 This report

Chapter 2 covers the present Dutch legislation and regulations relating to THB. This involves more particularly the article of the law that criminalises THB, but the lifting of the general ban on brothels on 1 October 2000 is also discussed. In addition, attention is paid to (lower) regulations that are relevant in relation to the phenomenon of THB and to changes to the law under discussion. The previous history of these laws and regulations is also covered, as well as the most recent international regulations and conventions. Chapter 3 describes how the institute 'Nationaal Rapporteur Mensenhandel' (Dutch National Rapporteur on THB) came into being and what the field of research and the terms of reference of this official is. The chapter also gives an idea of the activities of the Bureau NRM during the first period of its existence. Chapter 4 is devoted to the victims of THB. Among other things attention is paid to the backgrounds of victims, the way in which they are procured for prostitution purposes and the way in which they are put under pressure to continue their work within prostitution. On the basis of both the records of the Stichting Tegen Vrouwenhandel (Foundation against Trafficking in Women - STV) and from a survey by the Bureau NRM among organisations that in view of their function could come into contact with victims of THB, further numerical data are given on victims. Chapter 5 focuses on investigation and prosecution. This chapter contains a description of the policy context of the work of the Public Prosecution Service and the police. Figures and qualitative information are then presented relating to investigations into THB and relating to prosecution of suspects, including the judgements in this respect. The chapter also pays attention to a number of international developments. The victim support organisations and pressure groups relating to the subject of THB are discussed in Chapter 6. A description is given of the victim support available in the Netherlands, padded out with numerical data from the BNRM survey. This is followed by a review of bodies engaged in prostitution questions and pressure groups. The chapter concludes with a summary of key problems that occur in relation to the support for victims of THB.

Chapter 7 gives a view of the (near) future of the Bureau NRM. It discusses the situation of the work of the Bureau NRM and gives an idea of the planning for the next reporting period, both as regards research and as regards other activities. Presented are both the proposed activities of the Bureau NRM and the research announced and commenced by third parties, which may serve as a potential source of information for the Bureau NRM. Finally Chapter 8 contains the conclusions and recommendations.

2 Legislation and regulations relating to trafficking in human beings

2.1 Introduction

This chapter discusses laws and regulations, where they are directly relevant to the subject of THB.

It should be noted that in this report the term 'prostitution' is generally used, while the Penal Code and the other laws referred to in the law on the Opheffing algemeen bordeelverbod (Lifting of the general ban on brothels) talk of 'making oneself available to perform sexual acts with a third party in return for payment'. This description, however, includes what is traditionally understood by prostitution, so for the sake of brevity the term 'prostitution' is used.

2.2 Prostitution and its regulation from a historical perspective

There have always been defenders and opponents of prostitution and also of its banning or regulation. The discussion on the regulation of prostitution is not then a matter that has only come up in recent years. Directly related to this discussion is that of the criminalisation of THB.

De Vries (1997) states that prostitution in the 19th century, although immoral in itself, was regarded a necessary evil, unavoidable to control the male sex drive. Of course it would be desirable in a civilised society to completely prohibit vice, but because the incentive was felt to be stronger than the fear of punishment for vice, this was not thought to be expedient. In particular from the point of view of the protection of public health (preventing the spread of sexually transmitted diseases, not so much among the prostitutes, but rather among the clients) in 1852 a State Commission produced proposals to regulate prostitution. As the greatest danger to health was deemed to exist in secret prostitution, it was proposed to deal with secret prostitution by generally regulating public vice on this point. The system proposed by the State Commission was based on the compulsory registration of prostitutes with the police, combined with control by the police of the prostitution sector and compulsory medical examination for the prostitute. In this system the failure to register as a prostitute was punishable. Prostitution in itself was not (after all, a necessary evil), but was associated with conditions: not in certain places, no public advertising, curtains closed, compulsory medical examination and even compulsory hospital admission, until you were declared better, etc. So the system in practice gradually developed from a (proposed) regulation to protect the safety and health of the man to a regulation in the interest of public order and safety of the citizens.

The proposals of the State Commission did not lead to national legislation. The lack of this meant that many municipalities themselves drew up regulations on prostitution via their bylaws. So the starting point here was the protection of public health, in particular that of the prostitute's client. In the course of time, however, additional rules were drawn up. In practice this amounted to adopting a licensing system for brothels, with conditions coupled to this such as registration of prostitutes, health and medical inspection and control and police powers to control and regulate the sector. The wish to regulate prostitution partly came from the fear that 'secret' prostitution would flourish if 'public prostitution' was prohibited, with all the consequences this would have for public health and public order. Regulation made monitoring and control possible.

There was of course also opposition to the regulation of prostitution. On the one hand people and organisations, often with a church background, tried to save 'fallen women' from prostitution by offering them schooling and opportunities to work, on the other hand people tried to fight the regulation of prostitution and prostitution itself. This fight against regulation in the Netherlands among other things took shape via the *Nederlandsche Vereeniging tegen de Prostitutie* (Dutch Association against Prostitution) and the *Nederlandsche Vrouwenbond tot Verhooging van het Zedelijk Bewustzijn* (Dutch Women's Association to Increase Moral Awareness). By working on public opinion with arguments of a legal and medical nature they gradually gained support for their abolitionist views on prostitution. In their fight the church-based organisations were supported by the socialists and the feminists, each from their own point of view. Where the confessionals placed the emphasis on prostitution as a moral evil, the socialists stressed in particular the social evil of prostitution, while the feminists in turn focussed their arguments on the position of the woman and the equality of man and woman.

The ideas of the abolitionists gradually gained more supporters. This led to the regulations being abolished in more and more municipalities and here and there even a local ban on brothels was introduced. It was not until 1911 that national legislation came into being. In that year the *Wetsvoorstel tot bestrijding van de zedeloosheid* (Suppression of immorality bill) was passed. This bill led to an amendment of the Penal Code, by including many provisions to regulate morality, including a general ban on keeping brothels (art. 250bis Penal Code). A further development was also to criminalise trafficking in women via this bill (art. 250ter Penal Code). By this legislation the legislator wanted to set a moral standard that fitted in with the spirit of the time. Prostitution in itself, though, was not criminalised.

It is remarkable that the discussion on exploitation of prostitution and THB was then virtually silenced for a time in the Netherlands (Haveman, 1998). Over the years - we are now talking about the first half of the 20th century - the government did in fact develop a criminal policy on prostitution, based on the assumption that the government would be better to support the protection of those who had involuntarily got into prostitution, than to fight immorality in general. This practical approach presumably arose due to the fact that, in spite of a ban on brothels, prostitution and its

exploitation had not disappeared and the social attitudes to the phenomenon were again changing. The heart of the policy gradually introduced was that in practice a distinction was made between voluntary and involuntary prostitution and the government in principle limited its concern for prostitution to regulating the exploitation of voluntary prostitution and combating involuntary prostitution. Because the ban on brothels formulated in article 250*bis* Penal Code was still in the Penal Code, this policy in practice meant that the exploitation of voluntary prostitution in the Netherlands was in fact tolerated. This toleration developed in the course of time from a passive tolerance to an active tolerance (Venicz c.s., 2000). Passive tolerance meant permitting the establishment of prostitution businesses, as long as they did not cause any inadmissible nuisance or other articles of the law were not infringed. Active tolerance, on the other hand, meant the government taking controlling action so as to guide developments in a particular direction by various measures. A classic example of this is the system of tolerance orders or licences for brothels and other sex establishments used in many municipalities at the end of the 20th century, by which requirements and stipulations were laid down for their establishment and operation. And so in the 20th century the government did take virtually no action against brothels, except in those cases involving manifest abuses, exploitation of involuntary prostitution or disturbance of public order, peace and safety. In spite of an earlier attempt to amend article 250*bis* Penal Code in the Eighties, the ban on brothels was finally only abolished from the Penal Code on 1 October 2000.

The THB article 250*ter* Penal Code had already been the subject of amendment before. As a result of the International convention of 1921 (see § 2.3.1), in which the sex-neutral term ‘trafficking in children’ was introduced, the existing criminalisation in the Dutch Penal Code, by which in 1911 only ‘trafficking in women’ was criminalised, was extended in 1927 with trafficking in minors of the male sex. In 1993, a new amendment of article 250*ter* Penal Code followed. It was then replaced by an article in which *trafficking in human beings* was criminalised, with a description of what was meant by this. The reason for this amendment was twofold. The first was of a technical-legal nature: the existing article 250*ter* Penal Code did in fact contain no description of the offence, so to determine the content of the offence, as intended by the legislator, one had to look to legal history. The second reason was related to the fact that the social attitudes on prostitution had undergone a development, as a result of which a criminal policy regarding the exploitation of prostitution had gradually arisen. In that policy the emphasis came to lie on the regulation of voluntary prostitution versus criminalising the exploitation of involuntary prostitution. The distinction that this change in attitudes brought with it was made by the amendment to article 250*ter* Penal Code. This new formulation meant that more acts could be included under the term ‘THB’ than before under trafficking in women and trafficking in minors of the male sex. Trafficking in adult men was now also punishable. In addition, the penalty was increased from a maximum of 5 to a maximum of 6 years imprisonment and the possibility of imposing a cumulative fine was introduced. The next and most recent

amendment to article 250ter Penal Code dates from 1 October 2000, at the same time as the lifting of the general ban on brothels.

2.3 Trafficking in human beings from an international historical perspective

Although the discussion on (the regulation of) prostitution and THB in the Netherlands was silenced for a long time after 1911, this just continued on an international level.

2.3.1 Conventions on trafficking in human beings

An important achievement was the Paris protocol that came into being in 1902 and in 1904 led to the *Internationale regeling betreffende de bestrijding van den zoogenaamden handel in vrouwen en meisjes* (*International regulation on combating the so-called trafficking in women and girls*) (for the Netherlands approved by law in 1906). This regulation intended to offer protection against trafficking for prostitution purposes to adult women who had been deceived or forced and to underage girls. In this regulation a number of agreements were laid down in the field of inspection, information gathering and exchange and repatriation of victims of trafficking in women. Trafficking in women was understood to mean procurement by deception and force of women and girls for prostitution abroad. This definition arose from the fact that in those times Dutch women were sold abroad as so-called white slaves, while mainly foreign women worked in the brothels in the Netherlands (De Vries, 1997). The possibility of punishment of the perpetrators was not regulated in the International regulation; that was left to the participating countries themselves.

In a second international convention, dating from 1910, the *Verdrag tot bestrijding van de handel in vrouwen en meisjes* (*International Convention for the suppression of traffic in women and girls*) (for the Netherlands approved by law in 1912) punishment and extradition of traffickers was made possible. The convention obliged its member states in fact to criminalise those who procure, entice or lead away an adult woman by means of deception, threat, abuse of authority or any other form of coercion to carry out vice, but also those who procure, entice or lead away an underage woman to carry out vice, even with her consent. Provisions were also included that made rogatory commissions and extradition of suspects possible, provided conventions to this end existed between countries. Further, attempted THB and making preparations to commit THB were criminalised. Also THB within the national borders fell under the scope of the convention. The obligations arising from this convention were the direct reason for the Netherlands to include the crime of trafficking in women in the Penal Code in 1911.

In 1921 the above-mentioned regulation and convention were supplemented within the League of Nations (that from its establishment was specifically entrusted with monitoring the execution of the existing conventions relating to trafficking in women and children), in the *International Convention for the suppression of the traffic in women*

and children (for the Netherlands approved by law in 1923). In this convention among others the extradition possibilities were extended and the sex-neutral term ‘children’ was introduced, as a result of which underage boys were also recognised as potential victims of trafficking for prostitution purposes.

In the *International convention for the suppression of the traffic in women of full age* from 1933 (League of Nations, 1933, promulgated in the Netherlands in 1935) the existing regulations were again extended and criminal protection was now also offered to women of full age who were trafficked with their consent.

Finally, in 1949 the *UN Convention for the suppression of the traffic in persons and of the exploitation of prostitution of others* came into being (entered into effect in 1951). This convention consolidated into one the four conventions mentioned and further supplemented them on some points. The convention obliged parties to criminalise all forms of exploitation (including the running) of prostitution. This was the reason the Netherlands did not ratify this convention, as this was considered to contravene the (tolerance) policy now followed in the Netherlands in this respect. That policy, as stated, aimed at suppressing involuntary prostitution and regulating the running of voluntary prostitution. In the view of the government this did better justice to Dutch criminal law policy, which was not intended to suppress immorality, but rather to protect those who involuntarily got into prostitution. This actually means that the conventions of 1910, 1921 and 1933, that the Netherlands did ratify, continued to apply for the Netherlands. These conventions, concluded within the League of Nations, or taken over by them, were converted by the 1947 Protocol of New York into conventions concluded within the UN. The most recent regulation within the UN is discussed separately in paragraph 2.10.1.

2.3.2 Other international regulations

The above international UN instruments are specifically aimed at suppressing trafficking in persons. Furthermore, over the years in a UN context various international conventions and regulations came into being in related areas. Without claiming to be complete, a number of these are summarised below. All these conventions and regulations should be understood from the point of view of protecting human rights, the general starting point of the UN.

- *The universal declaration of human rights* (1948). This declaration contains general human rights provisions, in which among other things slavery and the slave trade are prohibited.
- *International covenant on civil and political rights* (1966). This covenant established the ban on slavery, the slave trade and forced or compulsory labour.
- *International covenant on economic, social and cultural rights* (1966). In this covenant among other things the right to free choice of work is recognised, as well as the right to mental and physical health.
- *Slavery convention*, including additional protocols (1926, and 1953 and 1957 respectively). This convention also lays down rules and obligations relating to

slavery, slave-trading and slavery-like practices, such as debt-bondage and servitude.

- *Convention on the elimination of all forms of discrimination against women* - also called the UN Women's convention - including additional protocols (1979 and 1999 respectively). This convention obliges states among other things to take measures to suppress and prevent all forms of trafficking in women.
- *Convention on the rights of the child*, including additional protocols (1989 and 2000 respectively). States are obliged by this convention to take all possible measures to protect children against exploitation, including sexual abuse.
- *Declaration on the elimination of violence against women* (1993). This declaration calls upon states to take measures among other things to suppress trafficking in women and forced prostitution, from the idea of suppressing sex-related violence.
- *ILO Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour* (1999). This convention stamps as 'the most serious forms of child labour' among other things the sale of and trafficking in children, as well as the use, procurement or offering of a child for prostitution or for other illegal work, in particular work which is harmful among other things for morality. States are obliged to draw up and implement plans of action to suppress these forms of child labour.

Also other international organisations have over the years developed initiatives in the fight against THB. For example within the Organisation for Security and Cooperation in Europe (OSCE), in particular by the Office for Democratic Institutions and Human Rights (ODIHR) which comes under it, by the Council of Europe and by the EU, many initiatives have been taken in the field of prevention and suppression of THB. Most of these are not discussed in this report. However, in paragraph 2.10 further attention is given to the most recent regulations of the UN and the EU in the field of THB, the *Protocol to prevent, suppress and punish trafficking in persons, especially women and children* and the *Council framework decision on combating trafficking in human beings* respectively.

2.4 Lifting of the general ban on brothels

On 1 October 2000 the most recent change in the law in the field of prostitution and THB came into force in the Netherlands. Amendments were then made to various provisions of the Penal Code and to some other laws. The purpose of this was to decriminalise the running of prostitution,¹ thus legalising the existing tolerance

¹ In the following, the wording 'running of prostitution' is used for the legal(ised) forms of operating a prostitution business, both by an individual prostituting herself and as concerns the running of a professional prostitution business. This notion is used opposite to the term 'exploitation of prostitution'. With the latter are meant, in accordance with the international understanding, all forms of operating a prostitution business in which (forms) of abuse, force and threat are used, as well as the employment of minors in prostitution, irrespective of this

situation. Together these amendments are known as the *Opheffing algemeen bordeelverbod* (Lifting of the general ban on brothels).

The heart of the change in the law is the disappearance of article 250*bis* from the Penal Code. After almost 90 years the ban on keeping a brothel was abolished from Dutch criminal legislation.² Pimping (art. 432 Penal Code) was also removed from the Penal Code. The Minister of Justice explained the change in the law as follows: “That prostitution exists is a given fact, even for the government. That requires a realistic approach, without moralism”. From this point of view the government wanted to lift the ban on the running of voluntary prostitution by adults and at the same time lay down rules for a more effective approach to punishable forms of exploitation of prostitution. Because criminal policy had already for years been aimed at regulating the running of voluntary prostitution, these changes actually meant only the revision of the legislation in line with current practice. The change in the law formally brought to an end the existing tolerance situation regarding running and benefiting from prostitution, where voluntary prostitution by those of full age is concerned. As already indicated involuntary prostitution and prostitution by minors did not fall under the tolerance policy. These had all along been the object of a criminal approach. The change in the law made stricter attention to the latter forms of exploitation of prostitution possible. For, at the same time as the disappearance of the general ban on brothels, the existing THB article, article 250*ter* Penal Code, was revised. While being renumbered as article 250a Penal Code, the article was extended with provisions that criminalised benefiting and profiting from THB. Also this extension was in fact no more than the revision of the relevant article of the law in line with the way jurisprudence and criminal practice had developed in recent years.

In total six main objectives were formulated for the change in the law to lift the general ban on brothels:

1. control and regulation of the running of prostitution;
2. improvement of the combat of exploitation of involuntary prostitution;
3. protection of minors from sexual abuse;

being voluntary or involuntary. ‘Exploitation of prostitution’ thus relates to THB, whereas ‘running of prostitution’ refers to a legal business, not falling within the scope of a punishable act. The Dutch term for the wording ‘running of prostitution’ is the term ‘exploitatie’, which has a neutral meaning. Because literal translation of this term into English (‘exploitation’) could easily lead to confusion with the forbidden forms of organising prostitution, for the purpose of this report is chosen for a more descriptive translation.

² The proposal for a change with a similar effect had already existed in the early Eighties, but the proposed amendment submitted at the time never made it. The motives at the time were comparable with the motives for the amendment as of 1 October 2000: “The result of the right to self-determination that an adult independent woman or man who is not exposed to unlawful influence has is that she or he can voluntarily decide to prostitute themselves and to benefit another person from the proceeds of this prostitution. Running of prostitution is a social reality that cannot be eliminated by an absolute ban. Running of prostitution that is combined with an exploitation situation must be powerfully resisted,” said the then Minister of Justice.

4. protection of the position of prostitutes;
5. separation of prostitution and peripheral criminal phenomena;
6. reduction in the scale of prostitution by illegal migrants.

The heart of the policy is the legalisation of the prostitution sector on the one hand and a tightening up of the criminalisation of unwanted phenomena in this sector on the other. To this end it was decided to combine a criminal and an administrative (law) approach. THB and punishable exploitation of prostitution are approached via the Penal Code, in particular article 250a Penal Code,³ while the legalisation of the prostitution sector via an administrative (law) approach should lead to better control and regulation of the sector. This administrative approach must take shape at municipal level.

2.5 The trafficking in human beings article in the Penal Code

2.5.1 Article 250a Penal Code

The most important article as regards the criminal approach to THB is article 250a Penal Code. The aim of this article is to criminalise on the one hand the involuntarily placing or holding in prostitution, and on the other hand profiting from this. Running of prostitution is only punishable where violence, abuse of authority or deception is used. Force, abuse or deception are however not a material component of the offence where this concerns trafficking in minors. Inciting a minor to prostitution, without exerting pressure on them in some way or another, is already considered THB. Also, a form of force is not required if in perpetrating the crime a border is crossed. The intention to place someone, irrespective of their age, in prostitution in another country can already be stamped THB (art. 250a paragraph 1, sub-section 2°). This latter variant also arises from the previously discussed convention provisions, in particular the Geneva Convention of 1933.

The formulation of article 250a Penal Code is such that it does not actually have to have come to the victim prostituting themselves for there to be a question of behaviour punishable under article 250a Penal Code. According to established jurisprudence, the description of the crime in the article also covers the situation where a person, who wants to work in prostitution of their own free will, is prevented or hindered from stopping that work. Forced exploitation is then involved, the physical integrity and the freedom of choice of the prostitute is put under pressure, and this therefore is regarded as THB.

³ Not everyone is so enthusiastic about this. Haveman (2000) is of the opinion that prostitution in all its facets must be regarded as work. He states that the criminalisation of exploitation in prostitution stands in the way of its prevention and repression and that in fact any reference to prostitution in the penal code should be deleted.

In addition to actual THB, the intentional benefiting and profiting from THB is made punishable in article 250a Penal Code (sub-sections 4° - 6°). This relates to those who use the exploitation situation for (financial) gain. That does not necessarily have to be the person who has caused the exploitation situation (the trafficker). In each specific case the judge will have to look at what circumstances can still be regarded as 'profiting from' an exploitation situation. THB or punishable exploitation of prostitution (profiting) are threatened in paragraph 1 with a maximum sentence of six years imprisonment or a fine of up to €45,000. Paragraphs 2 and 3 of the penal provision indicate circumstances that increase the punishment. If the acts are carried out by two or more people in association, or with respect to a minor who has not yet reached the age of sixteen years, or the means of force employed have caused serious physical injury, the maximum sentence is increased by two years to eight years imprisonment or a maximum fine of €45,000. The acts described carried out in association, either with regard to a minor who has not yet reached the age of sixteen years or where the means of force employed lead to serious physical injury, constitute an additional circumstance increasing the sentence, with a maximum sentence of ten years imprisonment or a fine of €45,000.

2.5.2 The place of article 250a in the Penal Code

Article 250a is included in the Penal Code under the title "Crimes against morality". When in 1911 the trafficking in women article was included in the Penal Code, this was done as part of the suppression of immorality. Although, as indicated, the article has been amended a number of times over the years, there has never been any discussion of the article's place in the Penal Code. A lot has, however, been said and written about the content of the term 'trafficking in women', later THB, in relation to the character and the scale of the phenomenon. It has increasingly been stated that the circumstances under which forced prostitution occurs are such that they lead one to think of the slavery of olden times. THB is often called a form of modern-day slavery. Partly as a result of this a link is made with article 274 Penal Code, the article that criminalises slave-trading. Article 274 Penal Code is included under the title "Crimes against personal freedom" and is intended to prevent the exploitation of human beings. The tenor of article 274 Penal Code is such that the crime of slave-trading anyway includes THB (Cleiren & Nijboer, 2000). This is aimed at the mediation aspect of trafficking. Cleiren and Nijboer do however further state that one cannot exclude other forms of exploitation and oppression of fellow human beings also being regarded as 'slavery'. This must be understood to include the actual exploitation, although strictly speaking that should be called slavery rather than slave-trading. The Penal Code does however not include a provision that actually criminalises slavery, so this possibility depends on the scope that the judge wants to give to the term 'slave-trading'. As far as the Bureau NRM knows to date⁴ there have been no cases in which

⁴ Position in autumn 2001.

exploitation in prostitution has resulted in a conviction for slave-trading. This also applies for the mediation version of THB.⁵

Clearly a crime like THB, that by definition is accompanied by infringement of personal freedom, from the point of view of the norm violated and the interest protected belongs more under the title “Crimes against personal freedom” than under the title “Crimes against morality”.

If, as a result of the recent UN Trafficking Protocol, it is considered that other forms of social-economic exploitation covered by the broad international definition of THB should be given their (own) place in the Penal Code, then in the light of the above it is recommended to reconsider the place of article 250a in the Penal Code.

2.5.3 The prostitute’s client punishable?

Article 250a Penal Code is not aimed at the prostitute’s client. Because prostitution in itself has never been punishable, in principle neither was the use of the services offered. For sex with minors, which must also be understood to include sex with underage prostitutes, however, different provisions apply. Since the Lifting of the general ban on brothels bill came into force, as of 1 October 2000, having sex with a minor offering themselves for prostitution is in all cases punishable. Sex with a minor, under twelve years of age, is in any case punishable, irrespective of whether this involves prostitution (art. 244 Penal Code). Having intercourse with a minor aged twelve to sixteen years, offering themselves for prostitution, is also punishable (art. 245 Penal Code). However, since the change in the law of 1 October 2000 a complaint is no longer required in a number of cases and sex with an underage prostitute aged 12-16 years can be prosecuted *ex officio*. For the category of minors aged between sixteen and eighteen years, having sex with someone in this age group who prostitutes themselves is made punishable under the new law (art. 248b Penal Code). Before 1 October 2000, intercourse with a minor, older than sixteen years, who voluntarily offered themselves for this, was not punishable.

2.6 The local policy

2.6.1 The regulatory authority of the municipalities

Upon the lifting of the general ban on brothels the legislator placed the central weight of the administrative approach to the legal running of prostitution in the hands of the municipalities. The municipalities are designated as the major designers and upholders of the new policy. This policy is aimed at control, guidance and cleaning up of the prostitution industry and improvement of the conditions under which people work in prostitution. This involves not only suppressing public nuisance, but also improving

⁵ In 2001 a district public prosecutor in a case involving the sale of a young girl for exploitation in prostitution, brought the charge of (co-)suspicion of slave-trading.

the position of the prostitute. Because of this multi-disciplinary objective the development and execution of the local prostitution policy is a joint responsibility of the municipality, the police, the Public Prosecution Service and the individual initiative, such as organisations for support and protection of the interests of victims. For this purpose in many cases agreement has been reached between the (government) bodies and organisations involved. This paragraph concerns the (licensing) policy adopted by the municipalities. On a number of points reference is made to findings of a study carried out by the Onderzoeks- en Adviesbureau (Research and Advice Bureau) of the Vereniging van Nederlandse Gemeenten (Association of Dutch Municipalities) (SGB0, 2001). The study is one of the studies commissioned by the so-called interdepartmental Monitoringsoverleg (Monitoring Consultation) (see further on this Chapter 3) as part of the monitoring and evaluation of the lifting of the general ban on brothels, promised by the Minister of Justice when considering the bill in the Lower House. The purpose of this study was to take stock of the local municipal policy on prostitution and chart the developments in the prostitution sector.

Decentral implementation of prostitution policy was chosen, said the Minister of Justice, because of the fact that the local governments actually have to deal with the phenomenon of prostitution, so the public concern for prostitution should also be left to the municipalities. The central government has only a guiding function in this respect, where the creation of policy and legislation in the field of criminal law, immigration law and public health are concerned. Many municipalities already have experience in pursuing a (form of) prostitution policy, dating from the period when prostitution was tolerated. In this period, after all, many municipalities had already developed their own prostitution policy, due to the lack of a clear national policy. Because decentralisation was chosen as the angle of approach, the new legislation aims first of all at creating better facilities for municipalities to develop and implement an effective and integral policy. Article 151a Gemeentewet (Local Authorities Act) provides for this. This article creates the possibility of adopting a local bylaw, which lays down regulations relating to running a business to provide the opportunity to have sexual relations with a third party in return for payment. In concrete terms this means that the municipalities are offered the possibility by means of a licensing system to lay down conditions for the exploitation of prostitution within their borders. The Minister of Justice has emphatically stated that the decentralisation of this power is not intended to give municipalities the opportunity to bar prostitution within their borders because of any moral objections. Since the running of prostitution has been legalised by the lifting of the general ban on brothels, the complete banning of prostitution within municipal borders could, in the opinion of the Minister of Justice conflict with the right to free choice of work, a right that is set down both in the Grondwet (Constitution; art. 19 paragraph 3), and in various international human rights conventions ratified by the Netherlands. The SGB0 study shows that nevertheless 43 municipalities follow a so-called 'no brothel policy'. Out of 348 municipalities that means a percentage of over 12%. This primarily concerns the smaller municipalities (SGB0, 2001). Although the drawing up of prostitution policy

is left to the individual municipalities, an attempt has been made by the Association of Dutch Municipalities (VNG) to bring some uniformity into this. The VNG has in fact drawn up a model regulation based on article 151a Local Authorities Act, that could be taken over by the municipalities in their local bylaws. The SGB0 study shows that 94% of municipalities have taken over the provisions from the model bylaw into their own bylaws more or less unchanged (SGB0, 2001).

2.6.2 The licensing obligation

The intention of the regulatory power given to the municipalities is that the municipalities will lay down rules in their bylaws for the establishment, installation and management of sex establishments within their borders. In practice this happened in 95% of the municipalities (SGB0, 2001) by imposing the obligation of having a licence for the operation of a sex establishment. In this license requirements may be laid down for the operator and the manager, for the building (installation requirements) and its actual operation (such as closing hours, monitoring, labour law and health care aspects). The introduction of a licensing obligation also makes it possible to lay down conditions for obtaining a licence. These conditions concern for example the person of the operator and the manager, but also the location of the establishment. The decision on a licensing application is taken by the municipality.

2.6.3 Power of control and enforcement

In view of the great diversity of the fields for which conditions may be laid down in the licence,⁶ as well as because of the diversity of applicable legislation, many different bodies are involved in enforcing prostitution policy. The (administrative) licensing obligation lays the responsibility for compliance with the conditions laid down in the licence on the operator or the manager of the sex establishment. The control and enforcement of this lies in hands of the municipality. Special enforcement bodies,⁷ the police and Public Prosecution Service are responsible for the control and enforcement of the provisions of the Penal Code and other national legislation. With a view to the great number of those involved in control and enforcement the Minister of Justice has proposed the adoption of a so-called enforcement arrangement⁸. This must include measures that each partner will take where it is found that the regulations laid down in their respective fields of control have been infringed. In this way active enforcement in both the administrative and criminal field is guaranteed. Many municipalities have in

⁶ Examples of this are matters such as involuntary prostitution, minority, health aspects and health and safety for the prostitutes, suppression of crime and illegal migrants in the sector, but also hygiene and fire safety regulations (SGB0, 2001).

⁷ For example the Labour Inspectorate, but a task here is also feasible for the recently set up Sociale Inlichtingen- en Opsporingsdienst (Social Information and Investigation Service - SIOD).

⁸ An enforcement arrangement contains agreements between the municipality and the enforcement partners on carrying out monitoring of compliance with the regulations relating to prostitution and the prostitution sector and on the criminal law approach to crimes and infringements (see SGB0, 2001).

the run-up to the entry into force of the Lifting of the general ban on brothels bill already drawn up similar enforcement arrangements.⁹ According to the results of the SGB0 study key partners in enforcement are the police, the GG&GD (Municipal Medical & Health Service) and the municipal building and housing inspectorate department. Within these key partners a very wide range of departments may be entrusted with the actual control and enforcement, such as the aliens and youth and vice departments in the police, and in the municipality the fire service and, in addition to the building and housing inspectorate department, the administrative (law) affairs department. Other partners mentioned in the SGB0 study are the Labour Inspectorate, the Tax Authorities and the Public Prosecution Service. Furthermore, the administration agencies for social security and the Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service - IND) are involved in the enforcement. Because of this large number of enforcers involved the enforcement arrangements should ideally provide for combined and interdisciplinary controls, in order to prevent disproportionate nuisance for the sex establishments due to control.

2.6.4 Measures and sanctions

Of course it must be possible to attach consequences to an infringement of the norms laid down. Depending on the infringement established, measures or sanctions can be taken. On establishing punishable acts the Public Prosecution Service may proceed to prosecute or decide on a settlement. Separately from or in combination with the criminal approach, also administrative measures can be taken if the act established (also) constitutes an infringement of licensing regulations. These administrative measures may vary from giving warnings, via ordering a temporary closure or altering the permitted opening times, to the withdrawal of the licence and closure for an unlimited period. The specific measure that is taken depends on the nature and severity of the infringement established. According to Public Prosecution Service guidelines the finding of illegal or underage prostitutes will in each case lead to prosecution by the Public Prosecution Service. In addition, the municipality as licensing body in these cases may decide to withdraw the licence and close the sex establishment for an unlimited period. Where, pursuant to the model bylaw of the VNG, a licence to operate a sex establishment contains the requirement that no illegal migrant or underage prostitutes may work in a sex establishment, municipal policy on this point supports the criminal policy.¹⁰

2.6.5 Temporary nature of the present regulation

When considering the Lifting of the general ban on brothels bill the government considered that the time was not yet ripe for further regulation of the running of prostitution by (national) law. A national law was not considered necessary to achieve the objectives of the legislation at hand, because municipalities could also adopt a

⁹ The SGB0 research (p. 35) indicates that of the total of 214 municipalities that responded 170 (79%) have made enforcement arrangements and 44 municipalities (21%) have not.

¹⁰ When taking administrative measures one does not have to wait for the results of the criminal proceedings. The municipality has an independent decision-making power in this.

licensing policy without any (national) legal framework (framework prostitution legislation) and could hence act in an effective administrative way against running of prostitution involving peripheral criminal phenomena. With this reasoning in the back of the mind it was decided to first wait for the evaluation of experience with the present instruments, in order to then be able to take a sound decision on the desirability of centrally guiding framework legislation and on the content thereof. For this evaluation an interdepartmental Monitoring Consultation was set up, which is discussed further in Chapter 3.

2.6.6 Municipalities and the Aliens Employment Act

The introduction of a legalised prostitution sector led to the question of whether aliens can obtain a work permit for carrying out prostitution work in the Netherlands. The *Wet arbeid vreemdelingen* (Aliens Employment Act - WAV) did in fact contain a categorical ban for nationals from outside the EU/EEA¹¹ to work in the prostitution sector in the Netherlands. As a result of the parliamentary debate on the lifting of the ban on brothels, this categorical ban was re-established for a temporary period. In reply to written questions about this, the Minister of Social Affairs and Employment, also on behalf of the Minister of Justice, indicated that in any case they would wait for the evaluation of the lifting of the general ban on brothels before deciding, in consultation with Parliament, to drop the ban on issuing work permits for the prostitution sector. In the same answer the prospect was however stated that in the long term the WAV would no longer apply to the prostitution sector and that no work permit would then any longer be necessary for prostitutes from abroad. It was announced here that in the case of a specific application for a licence, in line with the decentral regulation of the prostitution sector, they were thinking of municipal consultation on the question of whether an intended establishment of new prostitutes fitted within the municipal prostitution policy. It is however ultimately the Minister of Justice who decides on the intended establishment.

2.7 The identification obligation

Relatively late in the course of the debate on lifting the general ban on brothels the question came up for discussion of whether the officials responsible for monitoring compliance with the municipal regulations relating to running a sex establishment would have sufficient means to carry out this task. This concerned in particular the control aimed at preventing and suppressing prostitution by illegal migrants and minors. With a view to this objective the central government - in line with the current criminal provisions - had in fact pressed for a municipal ban on making use of illegal migrant and underage prostitutes. The VNG followed this up by including a ban provision to this end in its model bylaw. The Minister of Justice concluded that, for an

¹¹ The European Economic Area (EEA) consists of the 15 member states of the EU, as well as Norway, Iceland and Liechtenstein. In a later stage also the EU candidate countries, as well as some potential candidate-countries, may enter the EEA.

effective enforcement of the municipal prostitution policy, introduction of an identification obligation for prostitutes was desirable. In practice this meant that the inspectors would have to be able to ask the prostitutes directly for their identity card, with a view to determining their age and nationality. As a legal basis is required for this and this did not yet exist for control in sex establishments, a proposal to amend the Local Authorities Act was submitted to extend article 151a for this purpose. This created the power for inspectors to ask to see a prostitute's identity card. In weighing up the interests the general importance of enforcement was thus considered to be more important than the infringement of individual privacy arising from the identification obligation. The bill was the subject of lively discussion in both the Lower and Upper House and adopted with a large majority, so that it could still come into force at the same time as the Lifting of the general ban on brothels bill.

The regulation obliges the prostitute to show an identity card on request. This does not however mean an obligation to carry it, so the prostitute who if requested cannot immediately show an identity card must be given the opportunity to do so at a later date. Not being able or not wanting immediately or at a later date to comply with a request for inspection may give an indication that the licence-holder or the operator of a sex establishment obliged to have a licence is employing illegal migrants or minors and so is infringing the municipal regulations. If this non-compliance is sufficiently established, administrative or criminal sanctions against the operator may follow.

The introduction of the identification obligation has resulted in a lot of protests. It has for example been alleged in particular by prostitutes and their pressure groups that the prostitution sector is the only professional group for which such an obligation applies and that this therefore involves unequal treatment. It is also stated that the identification obligation is an infringement of privacy, as this means that people can no longer work anonymously as a prostitute whereas this anonymity is important for many (in particular Dutch) women and men. The profession (or at least the running thereof) has of course now been legalised, but has not thereby yet gained (full) social acceptance. A frequently heard complaint from the regulated sex sector is that Dutch women and men, who might make a responsible choice for the profession, stay away because of lack of anonymity. That could lead to a shortage of prostitutes in the legal sector and also involve the risk of creating gaps that are filled by women living illegally in the Netherlands. Also the predilection for anonymity would push many women (and men), in particular those staying illegally in the Netherlands, into the illegal sector, where they are more likely to be threatened with the danger of becoming a victim of THB.

2.8 Immigration Law Circular B-9

“Trafficking in human beings is not an offence prosecuted only on lodging a complaint. Reporting the offence is therefore not an absolute condition for proceeding with prosecution. Nevertheless, it is very important for the investigation

and prosecution that both victims and witnesses who report an offence remain available to the Public Prosecution Service for a lengthy period in order to complete the furnishment of evidence.” This is stated in the introduction to chapter B-9 of the so-called *Vreemdelingencirculaire* (Immigration Law Circular), hereinafter called: the B-9 regulation. This seems to indicate a unilateral objective of the B-9 regulation - namely the judicial interest with a view to collecting evidence - yet the introduction to the chapter states that the aim of the B-9 regulation is expressly two-fold:

- to provide facilities for the investigation and prosecution of perpetrators of THB; and
- to provide shelter and protection for the victims of this crime.

Specifically, the B-9 regulation offers aliens, who are (possibly) a victim of THB, and aliens who are witness to cases of THB, the possibility of making use of certain facilities when they report THB. These facilities concern (temporary) residence in the Netherlands, reception and shelter, medical assistance and legal aid and special provisions for maintenance. When during a prostitution or police control a alien is found who is possibly a victim of THB, but also when an alien who does not have a valid residence permit and who is (or has been) working in prostitution in the Netherlands contacts the police themselves, even if there is only little indication of THB the police must bring to their notice the rights described in the B-9 regulation. In order to be able to make the estimate whether or not the person found could be considered to be a (possible) victim of THB, the police have a list of indicators of THB.¹² Following the B-9 regulation the (possible) victim is then offered a maximum period of three months, within which she must take a decision as to whether or not she wishes to report THB. During this reflection period her deportation from the Netherlands is suspended. If the (possible) victim decides to report the offence, this report is officially regarded as an application to grant a residence permit for a certain time. The application is dealt with, on behalf of the Minister of Justice, by the IND, that (partly) for this purpose has appointed special contact officers for THB. The application is honoured in the case of a criminal investigation or prosecution investigation (already underway or to be brought). In principle a decision on the application for a residence permit must be taken within 24 hours. The Public Prosecution Service is notified of the decision. If the alien does not wish to report an offence, she is issued a notification to depart and must leave the Netherlands.

The reflection time is not offered to aliens who wish to report THB as a witness or to aliens who may possibly be a victim of THB, but have not yet worked in the Netherlands in prostitution. They must decide immediately whether they want to report an offence. For them too the report is regarded as an application to grant a residence permit for a limited period. Here too the Minister of Justice is the competent

¹² This indicative, but not limitative list contains twenty five factors that may play a part in the establishment of whether THB may be involved. The list contains points such as: not having travel documents, having an exorbitant debt, having to hand over the (major part) of the earnings, (signs of) maltreatment, restriction of freedom (of movement).

authority, but as an additional criterion for the decision a residence permit for a limited period is only given to a witness-informant if the Public Prosecution Service considers the presence of the witness-informant in the Netherlands to be necessary for criminal investigation and prosecution against the suspect against whom the report is made. The report by the witness does however postpone their departure until the Public Prosecution Service has decided whether the presence of the informant in the Netherlands is necessary.

Residence permits based on the B-9 regulation are issued for a maximum of 1 year and may be extended, provided the conditions for this are still met. The residence permit for a (possible) victim of THB is valid for as long as a criminal investigation or prosecution continues, while the validity of a residence permit of a witness-informant is limited to the period within which the Public Prosecution Service considers the presence of the witness in the Netherlands necessary. In both cases the period ends in any case at the time when the court investigation on the facts has actually been completed, that is as a maximum until the Court of Appeal has given a verdict and this verdict has become irrevocable.

As regards providing services for (possible) victims and for witness-informant of THB, in the period prior to whether or not a residence permit for a limited period is granted the alien involved can claim a benefit to cover the costs of maintenance, under the *Regeling verstrekkingen bepaalde categorieën vreemdelingen* (*Regulation on allowances for certain categories of aliens* - Rvb), as well as reception and shelter, where the protection of the person involved requires this. By applying the Rvb the person involved is also insured against medical expenses. In addition the (possible) victim is put in a position to have a medical examination carried out and, if necessary, to receive treatment. In accordance with the B-9 regulation victim and witness-informant are also given information on the legal implications of reporting a crime¹³ and the (possible) victim may - if it appears necessary - claim financing for legal aid via the Raad voor de Rechtsbijstand (Legal Assistance Council).

From the time when a (temporary) residence permit is granted the benefit paid under the Rvb is stopped and the alien claims a benefit under the Algemene Bijstandswet (Social Assistance Act). The (possible) victim may apply for follow-up reception to the regional reception centre where she had previously been housed, where the possibilities of this are examined. The benefit provides for a (financial) component for housing and medical expenses.

Irrespective of whether they are a (possible) victim, or a witness-informant, it is *not* permitted for the alien to work. The (possible) victim may, however, make use of facilities to follow training or a leisure pursuit.

¹³ The care coordinator for THB, a regional employee who is responsible from the reception centre for day-to-day counselling of the (possible) victim, must deal with this.

In accordance with the B-9 regulation any crime report must be notified to the Stichting Tegen Vrouwenhandel (Foundation against Trafficking in Women - STV). The STV must also be notified when a (possible) victim of THB is found and she wants to make use of the reflection time. All these notifications must be registered by the STV, so that it has a national overview available of the number of cases reported.

When the residence permit of the alien involved is withdrawn, she receives a notice to depart. This is omitted if the person involved submits an application for granting of a residence permit for another purpose. Such an application is then looked at in the light of and checked against the applicable conditions. In addition, the notice is also omitted if, on application from the person involved, the Minister of Justice considers sufficient reasons are present to grant a residence permit on the basis of convincing reasons of a humanitarian nature.¹⁴

2.9 Draft law 'Partial amendment of morality legislation'¹⁵

In execution of the Memorandum *Bestrijding seksueel misbruik van en seksueel geweld tegen kinderen* (Suppression of sexual abuse of and sexual violence against children), drawn up as a result of the World Congress against commercial sexual exploitation of children in Stockholm in 1996 and leading to the *Nationaal actieplan aanpak misbruik van kinderen* (National Action Plan to Combat Sexual Abuse of Children - NAPS), on 18 May 2001 a proposal was submitted to the Lower House of Parliament to amend a number of provisions from the Penal Code, the Code of Criminal Procedure and the Local Authorities Act. This bill is known as *Partiële wijziging zedelijkheidswetgeving* ('Partial amendment of morality legislation').

One of the objectives of the bill is to criminalise the exploitation of sexual services other than prostitution and the use of these sexual services from a minor. This objective must in practice be implemented in article 250a Penal Code and in article 151a Local Authorities Act by replacing the phrase "with a third party" by "with or for a third party". This should result in forms of sexual exploitation other than forced prostitution also being qualified as THB and so coming within the scope of the penal provision. Another component of the proposed amendment concerns the abolishment of the requirement for a complaint to be lodged for some categories of underage victims of offences against public decency. This amendment has been submitted because of the fact that the requirement to lodge a complaint can sometimes stand in the way of an effective investigation of child prostitution and sex tourism. With the simultaneous introduction of a right of hearing for the minor

¹⁴ When assessing whether such a permit can be granted various factors play a part: risk of reprisals in the country of origin, the possibility of protection from this, risk of prosecution in the country of origin and the (im)possibility of social reintegration in the country of origin.

¹⁵ At the time this paragraph was written, it still concerned a draft bill. On 1 October 2002 the law came into effect.

involved, it is for this reason proposed to drop the requirement to lodge a complaint, among other things for having intercourse with a minor aged between 12 and 16 years. The purpose of this right of hearing is that the Public Prosecution Service gives a minor the opportunity to give their view on what has happened and on the desirability of prosecution, so prosecution can only be instituted in those cases where this is considered expedient and desirable.

The above-mentioned amendments form part of a bigger package of amendments, supporting an integrated approach to sexual abuse and violence. The amendments should contribute to increasing the effectiveness of criminal action against sexual abuse and violence and also increase the protection of victims of offences against public decency, including those of THB.

For the sphere of activity of the Bureau NRM the proposed amendments mean that the scope of article 250a Penal Code is enlarged, in the sense that the running of more forms of forced sexual services than just prostitution becomes punishable. Exploitation of adults and children in forms of sexual services where the client is not directly involved in the sexual acts, such as a peepshow or erotic-pornographic shows, will after the amendment to the law also be qualified as THB. What precisely the consequences of the proposed amendment of the law may be as regards the character and scale of THB in the Netherlands cannot be readily estimated at present. It can, however, clearly be assumed that widening the description of what is punishable behaviour could lead to more cases of THB.

Another aim of the bill, finally, is to extend the applicability of criminal law to offences against public decency carried out outside the Netherlands by aliens that have their permanent place of residence or domicile in the Netherlands. To this end it is proposed to insert a new article to this effect (art. 5a Penal Code). This extension will relate to various articles, also including article 250a Penal Code, the THB article. Article 5a Penal Code does however apply a restriction in the sense that the extension of the jurisdiction referred to only applies where the act is carried out with respect to a minor and is also criminalised by the law of the country in which it is committed (requirement of double criminalisation). This extension of the extraterritorial jurisdiction arises, according to the Minister of Justice in the Explanatory Memorandum, from regulations of the EU in this field and is intended to harmonise the Dutch legislation with it. The extension is the result of the wish to be able to take more specific and appropriate action against sexual exploitation or sexual abuse of children. The Minister of Justice is, however, not a supporter of establishing a universal jurisdiction with regard to offences against public decency carried out against minors, by dropping the requirement for double criminalisation. That may in his view only be considered when there is more international agreement on the scope and the level of protection of the criminal legislation in this respect. Also this amendment could result in a higher number of (established) cases of THB.

2.10 Recent regulations within the UN and EU

2.10.1 The UN Trafficking Protocol

Following the previously mentioned international conventions and activities, within the UN the plan to clamp down hard on THB has been continued. This was not only prompted by the in severity and size constantly growing problem of THB, but also because no universal and all-embracing instrument existed in which all aspects of the phenomenon are approached. For this reason in a relatively short period¹⁶ the *Protocol to prevent, suppress and punish trafficking in persons, especially women and children* came into being. This protocol (in short: the Trafficking Protocol) supplements the *UN Convention against transnational organised crime*. It was decided to link the Trafficking Protocol with this convention from the point of view that THB is not only a serious violation of the human rights of the victims, but must also be regarded as an area in which international, organised crime is active. The involvement of this organised crime is related to the (often trans-border) character of THB and the enormous profits to be obtained from this. For effective action to prevent and suppress THB, according to the preamble to the protocol, a general, international approach in the countries of origin, transit and destination is required, including measures to prevent this trafficking, to punish the traffickers and to protect the victims of this trafficking. The special nature of the problem justifies such an all-embracing approach, in which international cooperation is of prime importance. And so the Trafficking Protocol contains provisions relating to prevention, punishment, international cooperation and provision of information to the public in the field of THB, as well as provisions relating to the protection of and assistance to victims of this offence. In particular regarding the latter the protocol is very progressive compared with the regulations drawn up to date. The underlying convention provides general rules relating to the confiscation of criminal proceeds and money laundering. In particular these rules must remove the breeding ground - the material gain - of transnational, organised crime and facilitate their investigation and prosecution. The convention also includes measures to protect witnesses.

In addition to this pluriform character of the protocol - in conjunction with the underlying convention - its special feature is that for the first time in an international context, with universal scope, a definition of the term 'THB' has been laid down. This definition is considerably wider than the meaning given at present in the Netherlands to the term 'THB'. In addition to forms of sexual exploitation, the protocol also understands by THB other forms of social-economic exploitation (exploitation in the form of forced labour, both paid and unpaid), slavery and similar situations, as well as forced removal of organs.

¹⁶ The decision was taken in General Assembly Resolution 53/III of 9 December 1998; in November 2000 the final document was ready.

The convention and the protocol are international law instruments and as such only bind the states that have ratified them. Individuals are not bound by them. Ratification of the protocol is only possible if the underlying convention is also ratified. The convention and the Trafficking Protocol were opened for signature during a special conference in Palermo, in December 2000. Already during this conference many countries signed the convention and the protocol. The Netherlands was one of these countries. Signature is the first step on the way to ratification and means that the signatory country agrees with the present text and will have to make preparations in the national legislation and national policy, so that after ratification this will be in line with the obligations entered into. Signature implies, moreover, the moral duty as far as possible to act in the letter and spirit of the convention up to the time of ratification. As regards the Trafficking Protocol the Netherlands will therefore have to see in what way Dutch legislation and Dutch policy in the field of combating THB must be revised. The extension of the definition of THB alone already means that provision must be made for the criminalisation of all other forms of exploitation, slavery and forced organ donation, and subsequently for measures to protect the victims of these forms of exploitation, as well as for preventive measures. A first step in this direction has been made by submitting the bill for 'Partial amendment of morality legislation', as a result of which forms of sexual exploitation (other than in prostitution) will be brought within the scope of the Penal Code. The question is whether the current legislation and regulations are also enough to comply with the further obligations that the protocol lays down. The convention only comes into effect after forty countries have ratified it. That also applies for the protocol.

2.10.2 The EU Framework decision

Also within an EU context for some years increased attention has been paid to the phenomenon of THB. Because of its degrading character, related to the structural nature in which it occurs and the degree to which the countries of the EU and its applicant member states are affected by it, the problem also remains a subject of constant concern within the EU and has become a political priority.¹⁷ This is partly determined by the fact that THB is called a major form of international, organised crime. For this reason a range of measures are considered necessary, including preventive measures and measures to ensure that the victims involved are protected and assisted.

Although many initiatives have already been developed relating to policy and legislation in the field of THB within the member states since the *Joint action* of 1997, the European Commission found that existing discrepancies and divergences in this make it difficult in practice to arrive at effective judicial cooperation and effective cooperation between the law enforcement bodies in these fields. The Commission considers that is an unsatisfactory situation that must be remedied. It is doing this in

¹⁷ European Commission: Trafficking in women; The misery behind the fantasy: from poverty to sex slavery. A comprehensive European strategy (Brussels, 8 May 2001).

its most recent initiative in the field, (the proposal for) the *Council framework decision on combating trafficking in human beings*, for short: the Framework decision on THB.¹⁸ This initiative was decided upon because the Commission assumed that the main reason for not achieving its objectives with the enforcement of the *Joint action* must be looked for in the lack of jointly laid down definitions, criminalisation and punishment in the criminal law of the member states.¹⁹

The Framework decision on THB imposes on the member states a number of very specific obligations. For example, the member states must take measures to criminalise THB with a view to sexual exploitation, but also with a view to exploitation in (other) fields of labour. In the decision itself a definition of THB is given to this end, and in the Explanatory Memorandum to the Framework decision it is then stated that the description used reflects the key elements of the definition in the UN Trafficking Protocol. In addition, the use of force, violence or deception is assumed here, as well as a continuing infringement of the basic rights of the person involved, which forms the core of the exploitation. The Framework decision then lays down minimum and maximum sentences, both for simple THB and for the case where aggravating circumstances occur that increase the sentence, and attention is paid to the liability and punishment of legal persons in case of (involvement in) THB. With a view to the simplification and promotion of the facilities for being able to investigate and prosecute the crime of THB, further rules are laid down relating to the jurisdiction of the member states in case of THB and relating to judicial cooperation in legal assistance and extradition.

Finally it is stated here that the Framework decision on THB obliges the member states to ensure that a victim of THB enjoys the necessary legal protection and is eligible for legal procedures. This obligation, that is only stated in very general terms, has caused the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees - and in their wake a large number of NGOs - to urge the Commission and the member states to pay more specific attention to the protection of victims and witnesses in the Framework decision.²⁰ The lack - in their view - of even basic protective measures for victims and witnesses of THB means according to them that the Framework decision on THB does not comply with the most elementary, established international standards on that point. General rules

¹⁸ European Commission, 22 January 2001 COM(2000) 854 final /2 - 2001/0024 (CNS).

¹⁹ In addition a proposal has been drawn up for a Framework decision in the field of combating sexual exploitation of children and child pornography, with a similar purpose. This concerns European Commission, 22 January 2001 COM(2000) 854 final /2 - 2001/0025 (CNS). This is also a result of the *Joint action* from 1997.

²⁰ Observations by the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees on the Proposal for an EU Council Framework Decision on Combating Trafficking in Human Beings, 27 June 2001, as well as NGO Recommendations on the draft Framework decision (Cooperating (international) NGOs (2001)).

drawn up within the EU in the field of witness and victim protection²¹ do not take sufficient account of the specific character of THB and therefore in the view of the High Commissioners are not sufficient. Also missing is a provision to the effect that victims of THB may not be excluded from being able to appeal for protection as a refugee or asylum-seeker, even if it may be suspected that a reason for this can be found in exceptional cases only. Normally, the fact that someone is a victim of THB is in fact not sufficient to make a justified appeal for refugee status, according to the High Commissioners. Such a limited approach to the problem in the Framework decision on THB differs from the one in the UN Trafficking Protocol and could lead to a weakening of the relation between the two instruments, the High Commissioners think. The Commission and the member states are therefore asked to consider including in the Framework decision specific provisions that provide for rules relating to protection and assistance of victims, protection of witnesses, but also relating to repatriation and prevention, as well as relating to non-discrimination of victims and protection of asylum rights. In this way the Framework decision on THB would be brought into line with current international minimum standards in these fields and the Framework decision would actually work out the obligation from the UN Trafficking Protocol as the Explanatory Memorandum to the Framework decision states to be the intention.

The request of the two UN High Commissioners came at a very late stage in the negotiations on the draft text of the Framework decision. During the European Council for Justice and Home Affairs on 28 and 29 May 2001 agreement was in fact already reached on the main provisions from the Framework decision, with the exception of setting maximum sentences for THB. The discussion has since then concentrated on designing a system of minimum maximum sentences. During the Justice and Home Affairs Council of 27 and 28 September 2001 a political agreement was then reached on the whole Framework decision. Final adoption will be carried out under the Spanish presidency in the first half of 2002.²²

As far as can be ascertained the recommendations of the two UN High Commissioners and the NGOs have not led to further revisions to the draft Framework decision. The fact, however, that the Framework decision pays relatively little attention to the position of the victim of THB does not mean, according to the Dutch Minister of Justice in a letter to the Dutch National Rapporteur on THB,²³ that within Europe the importance of an adequate level of protection is not being looked at. In a further explanation of this it is stated that the provision relating to the

²¹ Among others the *Framework decision of the Council of the European Union dated 15 March 2001 on the standing of victims in criminal proceedings* (OJ L 082, dated 22 March 2001).

²² Meanwhile adopted on 19 July 2002, OJEC 1.8.2002, L203

²³ Letter dated 21 December 2001; archive of Bureau NRM. This letter was a reply to an earlier request made, in a letter dated 15 August 2001, by the Dutch National Rapporteur on THB for clarification of the Dutch viewpoint in this matter, as a result of the intervention of the High Commissioners.

protection of and assistance to victims of THB in the Framework decision is indeed restrained, but that a very great majority of the member states did not consider it right to include provisions in this specific Framework decision, aimed primarily at the criminal approach to THB, relating to measures for victims of THB that go further than the measures in the general Framework decision on the standing of victims in criminal proceedings and that are, moreover, outside the limited scope (namely the criminal approach) of this Framework decision on THB. With reference to the Hague Declaration and the UN Trafficking Protocol reference is also made to the resultant obligation for the member states of the EU to comply with the provisions included therein on protection of and assistance to victims of THB. And, the Minister concludes, “The framework decision on combating trafficking in human beings, as it is now worded, does not stand in the way of the protection and support of victims of trafficking in human beings in Europe reaching a sufficient level.”

3 The Dutch National Rapporteur on Trafficking in Human Beings

3.1 Introduction

This chapter focuses on the Dutch National Rapporteur on THB and the Bureau NRM supporting her. It first discusses the previous history of the rapporteur's function in the field of THB.

3.2 Predecessors of the Bureau NRM

In the *Internationale regeling betreffende de bestrijding van den zoogenaamden handel in vrouwen en meisjes* (International regulation on combating the so-called trafficking in women and girls) from 1904 indicated in Chapter 2, the participating governments undertook to entrust a separate authority with collecting information on trafficking in women. The Netherlands fulfilled this obligation in 1908 by setting up the *Rijksbureau tot het verzamelen van gegevens omtrent den zoogenaamden handel in vrouwen en meisjes* (National Bureau for collecting data on the so-called trafficking in women and girls). This Rijksbureau could be regarded as the early predecessor of the Bureau of the Dutch National Rapporteur on THB. The Rijksbureau did however focus particularly on the 'lewd publications' that also fell within its terms of reference. As regards trafficking in women the Rijksbureau cannot then be called a resounding success (Haveman, 1998). It was abolished already after the Second World War. In addition to this official government bureau there were similar private initiatives, such as the *Nationaal informatie-bureau tot bescherming van vrouwen en meisjes* (National information bureau for the protection of women and girls), with which the Rijksbureau was deemed to work. This private bureau among other things collected addresses of suspect premises, but also of people and organisations involved in providing victim assistance and information. Specific figures on THB did not appear in the research results, but indications of its considerable scale were given, as well as information on the methods of recruitment and the nature and mechanisms of exploitation. After the abolition of the Rijksbureau the Minister of Justice was appointed as "the authority, entrusted with collecting all data relating to trafficking in women". In 1949 the Minister placed this task in the hands of the *Centrale ter bestrijding van de handel in vrouwen en kinderen en van de handel in ontuchtige uitgaven* (Centre for the combat of trafficking in women and children and the trade in lewd publications). This Centre was entrusted with the combat of trafficking in women and children, as regulated in the international agreements of 1904, 1910 and 1921. In concrete terms this meant that the Centre, that was a section of the Police Department of the Ministry of Justice, had to collect data on police reports, prosecutions and jurisprudence relating to trafficking in women and children. Data also had to be collected on people suspected of trafficking in women and children. In addition the Centre was entrusted with assisting with police investigation and with

carrying out research into trafficking in women and children. This was at the request of the procurators-general or the superintendents of police. Exploration into the specific results of the work and the continued existence of the Centre have not given any results. It was not until 2000 that a successor to the Centre was provided for.

3.3 Appointment of the Dutch National Rapporteur

During its presidency of the European Union (EU) in the first half of 1997, the Dutch government called an EU ministerial conference on trafficking in women. In a unique joint venture between the associated Ministers of Justice and the Ministers of Emancipation Affairs of the member states, of representatives of ten applicant member states and of the United States, Canada and the Council of Europe, recommendations were formulated for specific measures in the fight against trafficking in women. These European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation were set down in the so-called Hague Declaration (*The Hague ministerial declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation*). This Declaration contains recommendations on cooperation of member states in combating trafficking in women, on the reception of victims and on specific measures that the member states can take themselves to improve the knowledge about and combating of trafficking in women. One of the recommendations in the Hague Declaration is to appoint national rapporteurs. They must report to the respective governments on the scale, prevention and combating of trafficking in women, and must develop criteria in order to be able to report on the scale, nature and mechanisms that play a part in trafficking in women and on the effectiveness of the policy pursued and the measures taken relating to this phenomenon. Finally, the national rapporteurs must encourage mutual cooperation on a regular basis.

On 1 April 2000 Ms. Anna G. Korvinus was appointed Dutch National Rapporteur on THB. At her request the official name chosen for the function is National Rapporteur on Trafficking in *Human Beings*, while the Hague Declaration talks about trafficking in *women*. The reason for this is that men and minors (girls and boys) may also be victims of trafficking in people. The penal provision in which the offence was criminalised had since 1994 already used the designation THB instead of the previously employed term 'trafficking in women'.

The Rapporteur has a supporting bureau, the Bureau Nationaal Rapporteur Mensenhandel (Bureau of the Dutch National Rapporteur on THB - Bureau NRM or BNRM), that consists of a senior researcher, a researcher, a legal staff member and an administrative secretary. The Bureau NRM started its work mid September 2000. The start of the Bureau NRM thus more or less coincided with the lifting of the general ban on brothels (as of 1 October 2000). The basis for the appointment of the Dutch

National Rapporteur on THB and the setting up of the Bureau NRM does not however lie in this change in the law.

3.4 Field of research and task of the Bureau NRM

3.4.1 Field of research

The Hague Declaration understands trafficking in women to be any behaviour that facilitates the legal or illegal entry, transit, residence or emigration of women with the intention of placing these women in prostitution by means of force, violence, threat, deception or other forms of pressure. The field of research of the Rapporteur mainly covers this form of offence, but for the specific description of her function a link is sought with article 250a Penal Code. This article uses a broader description of the offence than exclusively trafficking as referred to in the Hague Declaration. Article 250a Penal Code also criminalises trafficking within national borders and taking advantage of or profiting from involuntary prostitution or of prostitution by minors. Furthermore it also includes victims of the male sex. The field of research of the Rapporteur is thus broader than the field covered by the Hague Declaration. It is, however, more limited than the field that, as already indicated, is often understood in an international context by THB. The fact that the Netherlands signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* in December 2000 and is also expected to ratify it, does however mean that the Netherlands will (have to) see the concept of THB in the future in a broader perspective,¹ which, as it appears, will also have consequences for the area of research of the Rapporteur. In addition, upon the announcement of the appointment of the Dutch National Rapporteur on THB in a letter from the Minister of Justice to the Lower House (dated 29 June 1999) reference was made to the fact that at a later date one would have to look at whether the field of research of the Rapporteur should perhaps be extended with matters that were discussed during the *World Congress against Commercial Sexual Exploitation of Children* in August 1996 in Stockholm, such as in particular abuse of children for making pornographic material. The recently submitted *Partiële wijziging zedelijkheidswetgeving* ('Partial amendment of morality legislation') bill, discussed in paragraph 2.9, might also affect the sphere of activity of the Rapporteur.

3.4.2 Task of the Rapporteur

The task of the Dutch National Rapporteur on THB is to report annually on the character and scale of THB, the mechanisms that play a part in THB, as well as on the developments in this field and the effects of the policy adopted and pursued in this respect. According to the Minister of Justice in his previously mentioned letter of 29 June 1999 to the Lower House, the report will in any case include:

¹ Also including other forms of sexual exploitation, as well as enforced labour or services, slavery, or slavery-like practices, forced labour and the removal of organs.

- an account of the method of research;
- the results of the research carried out and the conclusions based on this (in the subsequent years also a comparison with previous years);
- recommendations to improve the combating and prevention of the offences as described in article 250a Penal Code, in particular trafficking in women and trafficking in children. The recommendations may be directed at the central government, municipalities and other administrative bodies, at (a Dutch contribution to) international organisations and at NGOs.

An initial familiarisation with the field of research immediately made it clear that a thorough report on THB must contain information on many different things, namely: prevention, investigation and prosecution of THB and assistance to victims of THB, as well as legislation and regulations in this field and the policy adopted and pursued on the basis of this. Because THB is in many cases a cross-border offence, because international regulations and policy affect the situation in the Netherlands, because the Dutch regulations and Dutch policy may affect the situation particularly in neighbouring countries, but also because we can learn from experience outside the Netherlands, it is also important to include developments abroad in the report.

Various methods are used to collect information for the report. These include:

- literature study and study of laws, regulations and jurisprudence;
- interviews with key figures who have information that may be important for the BNRM report. These are in any case police and judicial officers, government institutions and other policy-makers, diplomatic representatives, NGOs to support and protect the interests of victims and scientific researchers, both at home and abroad;
- secondary analysis of information collected elsewhere and by others;
- data collection as part of own empirical research;
- attendance at symposia, congresses and discussion meetings, as well as participation in expert-meetings at home and abroad.

In order to carry out the key task - the annual report - well, it is important to maintain very close contact with the various actors in the field of preventing and combating THB. Partly for this reason, the Bureau NRM has taken part in various structural and occasional consultations and in the spring of 2001 the Bureau organised a symposium where the various 'partners in the chain' involved in preventing and combating THB were able to exchange thoughts with one another on the subject. For the Bureau NRM such meetings are also a source of information on THB and on the closely related field of prostitution.

The Rapporteur does not by definition wait to express her findings until the time of reporting. Where there is a reason to do so and there is scope for this, initiatives are taken or attempts are made to alter the existing situation sooner. Two examples of this within the Netherlands are:

- pleading at the top of the Public Prosecution Service for (even) more attention to be paid to combating THB, more particularly in the structure of approach of organised, cross-border crime, and
- pressing for the short term guarantee of financing for and the good implementation of the registration function of the STV.

Examples of internationally-oriented initiatives are:

- to request during the so-called Cross Channel Intelligence Conference (CCIC) of police for more attention to THB by the English, Belgian, French and Dutch police;
- the encouragement to appoint rapporteurs on THB in other EU countries, but preferably also outside the EU. This in order to be able to place and view the information collected in the Netherlands more easily in a broader perspective, to be able to make comparisons and to more easily signal any movements over the borders, as a result of the policy adopted and
- establishing contact with the Johns Hopkins University, Washington D.C., on figures published by this university under the *Protection Project*² to the outside world on the prosecution of THB in the Netherlands. These figures were incorrect and gave an unjustifiably bad picture of the situation. Action was also indicated in this case because the figures were quoted again by others.³

In fact, the above-mentioned activities are regarded as important additional tasks inherent in the function. Another additional task is passing on reports of THB. Very soon after the Bureau NRM had started its work, it was found that individuals know how to find their way to the Bureau with information on THB practices with which they were confronted. Often they want something done about these practices, but do not really know where to go with their often sensitive information. The Bureau NRM has no investigation functions or powers, but does count it as an (additional) task to refer the people in question to the appropriate bodies (depending on the situation that may be: police, embassies or NGOs) and/or to inform these bodies of the information obtained.

3.5 Position of the Dutch National Rapporteur

The nature of the terms of reference requires an *independent* position of the Dutch National Rapporteur on THB and of the supporting Bureau NRM. The results of the research and the conclusions to be drawn from it must after all be as objective as possible and therefore not subject to (the appearance of) influence by directly

² This 'legal research project' collects all sorts of information on THB from many countries and ensures its dissemination (see Lederer, 2001).

³ This was done for example by Mr Arlacchi, Under-Secretary-General in the UN Office for Drug Control and Crime Prevention (ODCCP) in his speech before the Permanent Council of the Organisation for Security and Cooperation in Europe (OSCE), on 1 November 2001 in Vienna (Arlacchi, 2001).

interested parties. This independent position is guaranteed, on the one hand by establishing this in so many words, on the other by giving the Bureau NRM an independent place. For practical and logistic reasons, however, it has been decided to accommodate the Bureau within the Ministry of Justice. This means that things such as personnel matters, bookkeeping, financial reporting and equipment management are dealt with under the responsibility and control of the Rapporteur, within the Ministry of Justice.

The independent position of the Dutch National Rapporteur on THB is also expressed in the fact that the institute is set up directly by the Dutch government. It is financed from contributions from five ministries: the Ministry of Justice, the Ministry of Home and Kingdom Affairs, the Ministry of Foreign Affairs, the Ministry of Public Health, Welfare and Sport and the Ministry of Social Affairs and Employment. For a maximum period of four years (up to 2003) an annual budget is available of approx. € 430,000.

The Rapporteur and the staff of the Bureau NRM have the right to study criminal and police files for the purpose of carrying out their research task.

3.6 Activities of the Bureau NRM to date

When the Bureau NRM started work in mid September 2000, there were various time-consuming organisational matters to deal with. More as regards content the Bureau NRM in the first period of existence among other things has familiarised itself with the field and the sphere of activity, taken part in consultations in the field of THB, organised a symposium, prepared and partly also carried out data collection and developed initiatives with respect to the Public Prosecution Service and other partners in the chain. This and a number of other activities are briefly explained in the following.

3.6.1 Familiarisation with the field and the sphere of activity

Familiarisation with the field and the sphere of activity was carried out in various ways.

Survey of literature. A quantity of literature was collected and studied.

Introduction letter. All sorts of people and bodies that are active in one way or another in the field of preventing or combating THB in the Netherlands and also abroad, received an introduction letter in which the Bureau NRM announced its existence and terms of reference.

Introductory visits and interviews. During the early months of its existence many introductory visits were made and introductory interviews held with people and organisations within the Netherlands. In addition working visits were made to Belgium and Germany and meetings were held with people and delegations from various foreign countries.

Congresses, thematic meetings and symposia. The Rapporteur and staff from the Bureau have attended various thematic meetings and conferences in the field of THB and related fields.

3.6.2 Participation in structural consultations

Participation in structural consultations relating to the subject of THB initially took place mainly with a view to familiarisation, later with the important aims of keeping informed of recent developments and information collection.

From Bureau NRM the following meetings were in principle always attended:

- meetings of the *Monitoringsoverleg (Monitoring Consultation)*. This consultation has the task of setting up and supporting the prostitution policy monitor, reporting to the Lower House on the (side) effects of lifting the general ban on brothels and offering the opportunity to exchange information on developments and experience in the field of prostitution. Many of the organisations closely involved in lifting the general ban on brothels take part in the monitoring consultation, such as representatives of the central government and municipalities, police and Public Prosecution Service, pressure groups such as the Stichting SOA bestrijding (Foundation for the control of sexually transmissible diseases), but also researchers and representatives of the tax authorities. The intention is that two years after the entry into force of the Lifting the general ban on brothels bill the monitoring consultation will come up with an evaluation of the effects of this amendment to the law.⁴
- the meetings of the *Projectgroep Prostitutie Mensenhandel van de Nederlandse Politie (Prostitution and Trafficking in Human Beings Project Group of the Dutch Police - PPM/DNP)*. This Project Group, that has existed since 1999, brings together representatives of all the police regions, as well as of the Koninklijke Marechaussee (Royal Military Police - Kmar) and of the Korps Landelijke Politie Diensten (National Police Services Agency - KLPD).
- the meetings of investigation officials and other experts in the field of combating THB that are organised by the *Trafficking in Human Beings Unit of Europol*, the police body of the EU, each year. During the meetings police officers from the member states of the EU, as well as from the applicant member states, report on the situation in their country regarding the fight against THB with the aim of sexual exploitation. Numerical data are also presented. The member states must also supply this information in writing to Europol each year for the purpose of compiling an annual report, the *Trafficking in Human Beings General Situation Report (GSR)*.⁵

⁴ This evaluation was presented to the Dutch government in the beginning of October 2002.

⁵ These presentations, which as regards content and information may differ considerably from country to country because of the absence of a clear standard, contain information on trafficking routes, trends, means of transport, modus operandi etc. The written reports for the General Situation Report are, however, drawn up in accordance with a previously discussed standard.

- the meetings of the EU Forum on the Prevention of Organised Crime. This Forum was set up by the European Commission to execute an activities plan for crime prevention that was proposed in the *Communication on the Prevention of Crime in the European Union*⁶. The aim of the EU Forum is to bring together those involved in the field of crime prevention, who can advise the European Commission on their plan to develop a general strategy for crime prevention. The Forum has four areas for attention, including THB. The Bureau NRM participates in the meetings in this field.

In addition, the BNRM has (once so far) participated in a meeting of:

- the *contact officers for trafficking in human beings of the Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service - IND)*. Every two months these THB officers, who (on behalf of the Minister of Justice) are responsible for awarding a temporary residence permit under the B-9 regulation for victims of THB, meet to exchange experience and to discuss news, key problems, literature and any jurisprudence. Among other things the relevant meeting focused on key problems in the B-9 regulation;
- the *Landelijk Prostitutie Overleg (National Prostitution Consultation - LPO)*, a consultation of operators, clients and pressure organisations in the field of prostitution, that meets four to six times per year to discuss developments in the field of prostitution policy. The LPO was set up around ten years ago in response to the difficult course of political discussions on lifting the general ban on brothels. The meeting attended by Bureau NRM discussed among other things: the role of the Federatie Nederlandse Vakbeweging (Dutch Trades Union Federation - FNV) relating to workers in prostitution, a shortage of workers in prostitution signalled by operators⁷ and the general work ban for prostitutes from outside the EEA⁸;
- the *Cross Channel Intelligence Conference (CCIC) working group*, a working group of police people from the four channel countries: Belgium, England, France and the Netherlands, where opportunities for cooperation are discussed, experience is exchanged and the content of the annual meetings of the higher police executive of these four countries is prepared. The participation of the Bureau NRM was involved in the preparation for the contribution of the Rapporteur to the 2001 annual meeting, in England.

3.6.3 The symposium

In the spring of 2001 the Bureau NRM organised a symposium on THB with the central theme of the chain in preventing and combating THB. The aim of the symposium was two-fold, namely firstly to offer a discussion forum to people,

⁶ Commission of the European Communities, COM(2000) 786 final, 2000/0304 (CNS), Brussels, 29 November 2000.

⁷ The LPO attributes this to the fact that prostitutes have disappeared into the illegal sector en masse because of the tax obligation and the identification obligation.

⁸ The LPO is of the opinion that this makes prostitutes from outside the EU dependent on traffickers in human beings and that the ban thereby promotes THB.

organisations and bodies in the Netherlands⁹ that in one way or other are active in the field of preventing and combating THB, in short the partners in the chain, and secondly to collect information for the purposes of this report. This set-up was successful: many participants stated that they appreciated being able to meet other partners in the chain for the first time (personally) or to have the opportunity to talk further with them and the meeting produced a lot of information. Some of this information is incorporated in this report.

3.6.4 (Preparation of) data collection and secondary analyses

Data collection was carried out as already mentioned above via the survey of literature, talks with key figures, participation in symposia and consultations and via the symposium organised by Bureau NRM. In addition, the Bureau carried out a survey among victim support organisations, empirical research was prepared, a secondary analysis¹⁰ of data was carried out, activities were undertaken to permit a (secondary) analysis of registration material and some court sessions were attended.

Survey among victim support organisations

A survey was carried out among victim support organisations and pressure groups that might have contact with victims of THB. Chapters 4 and 6 contain the results of this survey.

Preparation of empirical research into THB cases by the police

On request of the then chair of the PPM/DNP, Bureau NRM designed a questionnaire with which uniform information can be collected on THB cases with which the police and Kmar are involved. This questionnaire was tried out in various police regions and submitted to several experts in the field of THB with the request for comments. On the basis of the comments the questionnaire was revised and shortened.

Secondary analyses

Secondary analyses were carried out on data obtained from Public Prosecution Service data on people who were suspected of THB over the period from 1995 to 2000. An initial analysis was also carried out of data on the previous B-17 procedure (now B-9), obtained from the IND. As there was a lack of clarity about the precise significance of part of these data the report on this point is still outstanding. In addition, to prepare opportunities for secondary analysis of data on victims of THB, extensive consultation was carried out with the STV on their registration system. During these consultations the Bureau NRM announced what information it would like to have supplied from this system, with a view to the annual report. At present

⁹ As in the recent past it has repeatedly been found that certain partners in the chain did not know one another and the Bureau NRM wanted in the first instance to gather information on the Dutch situation, it was decided to hold a national symposium. The success of the meeting invites a repetition. Perhaps the next time an international form will be chosen.

¹⁰ Secondary analysis concerns analysis of material already collected previously - and often for reasons other than for the purposes of the research in question.

work is being carried out on revising the content and computerising the existing registration system.

Attending court sessions

Also in order to get an idea of the actual routine during court sessions where THB cases are on the list, staff from the Bureau NRM attended some court sessions, both in first instance and in appeal.

3.6.5 Activities aimed at the Public Prosecution Service

Positioning and structuring of the approach to THB within the Public Prosecution Service

Within the Public Prosecution Service the subject of THB is often classed as a crime against morality. Because of the relation of the subject with the phenomenon of prostitution that is not in itself a strange choice. In view of the context and the form in which THB occurs in many cases, the interests infringed by this offence and the international developments in the field of THB, more attention on the one hand to the human rights aspect and on the other hand to the aspect of international, organised crime is however desirable. The Rapporteur has therefore asked the College van Procureurs-Generaal (Board of Procurators-General) to pay attention to the positioning of the subject within the Public Prosecution Service. In addition, the nature of the offence in the view of the Rapporteur requires coordination at national level. The attention of the Board was called to this as well.

The Board of Procurators-General has meanwhile established the function of national (coordinating) public prosecutor for THB, smuggling of migrants and child pornography in the Landelijk Parket (National Public Prosecutor's Office). The public prosecutor in question has a national coordinating task and by coupling the portfolios of THB and smuggling of migrants within one function this has also positioned the subject of THB within the Public Prosecution Service in the broader context of organised, internationally operating crime.

Meetings of district public prosecutors for THB

Because up until the appointment of the national public prosecutor for THB there was no central point of contact for THB affairs in the Public Prosecution Service, the Rapporteur very soon after the Bureau NRM started work took the initiative to bring together the district public prosecutors for THB for consultation. The purpose of that consultation was two-fold. On the one hand it offered the opportunity to introduce the Bureau NRM to the public prosecutors responsible for the investigation and prosecution of THB cases. On the other hand the Bureau NRM was able during this consultation to obtain useful information from these public prosecutors on the sphere of activity entrusted to them. A further benefit of the meetings was that the public prosecutors had the opportunity to get to know one another and exchange knowledge and experience with one another.

With the appointment of the national public prosecutor for THB the Rapporteur has asked her to consider the possibilities of continuing the meetings with the district

public prosecutors for THB. The national public prosecutor has meanwhile announced that such meetings will be organised. Bureau NRM will remain involved in the meetings.

3.6.6 Other activities

Contribution to research by third parties

Many actors in the field, both national and international, are carrying out research on THB or related matters. The Bureau NRM is often asked to contribute to such research. The Bureau NRM in various cases gave feedback to research schemes and questionnaires and cooperated in research as a respondent.¹¹

In cooperation with the Bureau NRM a researcher from Tilburg University, as part of her doctoral research into the prosecution of THB from a European perspective, is at present carrying out dossier research with the aim of charting the key problems that arise in the field of criminal cooperation on a material, procedural and organisational level, in the prosecution and trial of transnational THB cases in the Netherlands.

The Bureau NRM has also participated in various commissions supporting research in the field of prostitution/THB or related subjects. These include:

- the research *Mensenhandel in Nederland (Trafficking in human beings in the Netherlands)* of the Unit Kennis en Onderzoek (Knowledge and Research Unit - UKO) of the Nationale Recherche Informatie (National Criminal Intelligence Service - NRI);
- the *Monitor prostitutiebeleid 2001, een onderzoek naar de aard en omvang van onvrijwillige en illegale prostitutie gedurende het eerste jaar na opheffing van het algemeen bordeelverbod (Monitor on prostitution policy 2001, a study of the character and scale of involuntary and illegal prostitution during the first year after lifting the general ban on brothels)*;
- the research *De sociale positie van prostituees in de gereguleerde bedrijven, een jaar na de wetswijziging (The social position of prostitutes in regulated businesses, one year after the amendment of the law)*;
- the research *Nieuwe bestemmingen van kinderekstoerisme (New destinations for child sex tourism)*.

The 'help desk function'

What is called here for the sake of brevity the 'help desk function' of BNRN, is understood to mean activities such as:

¹¹ For example, BNRN supplied information to the American embassy for the purposes of the country overview that the US State Department draws up each year. In the first report (US State Department, 2001), which, by the way, received a lot of criticism, among others from Human Rights Watch (<http://www.hrw.org/press/2001/07/traffick-0712.htm>), the Netherlands was put in the category of countries that meet certain (minimum) standards for combating THB.

- explaining abroad and to foreign people and delegations, including diplomatic representatives, the Dutch prostitution policy and in particular the possible consequences of this policy for the combat of THB.
- answering questions, giving information and referring people seeking information on the subject of THB;
- the (already mentioned) processing and depositing at the right place of reports of THB practices.

Ministry of Defence

It is generally stated that in areas where large contingents of the armed forces are present, prostitution is increasing in scale. Because of the interdependence of THB and prostitution the Dutch National Rapporteur on THB also focuses attention on this field. Partly as a result of a number of failed attempts by ECPAT-NL and DCI-NL to put the subject of THB, but in particular abuse of minors by (Dutch) military personnel, on the agenda of the Ministry of Defence, the Rapporteur has sought contact with this Ministry. The aim of this contact was to urge the Ministry of Defence to pay attention to the phenomenon of THB in its training programmes. This would make military personnel, in particular the military personnel sent out for (short) missions abroad, aware of the existence and the dangers of the phenomenon, but also of the possible ways of dealing with abuse found.

Representatives of the defence staff indicated during a meeting that before and during missions reference was made to the dangers of prostitution, but that they did not support the need to pay specific attention to (forms of) THB. The nature and duration of foreign missions is, according to the Ministry of Defence, such that the possibility for Dutch military personnel of being involved in abuses in the form of forced prostitution or prostitution of minors, is virtually excluded. Because of the lack of indications of this from the 'military intelligence service', according to the Ministry of Defence there are then hardly any or no concrete cases. The structural inclusion of the subject of THB in the training programme will therefore not be considered. In order to meet to some extent the plea for attention to be paid to the subject, assurance was however given that the opportunities would be considered for discussing the subject of forced prostitution and prostitution by minors in the existing course *Ethiek en Krijgsmacht* (*Ethics and the Armed Forces*).

Training investigation officers

On the invitation of the Rotterdam police a staff member from the Bureau NRM attended as an observer a course they had developed. The aim of this course is to train investigation officers of police in being heard before (and by) the court. A THB case was used as an exercise.

3.7 National rapporteurs in other countries

The Hague Declaration recommends all countries in the EU, and also the applicant member states, to appoint national rapporteurs on THB. To date however this recommendation has not had much result. As far as is known, Belgium and Sweden are the only other countries that have in any way dealt with the reporting task in the field of THB, though in a different way to the case in the Netherlands.

In Belgium, the *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding* (Centre for Equal Opportunities and Combat of Racism) has since 1995 (so, well before the Hague Declaration) been responsible for 'the promotion, coordination and the follow-up of the policy to combat international trafficking in human beings'. In this capacity the Centre draws up an annual evaluation report. Four annual reports on THB have now been published (Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, 1998, 1999, 2000, 2001). Other tasks of the Centre are: conducting the secretariat of the so-called Interdepartementale Coördinatiecel (Interdepartmental Coordination Cell) to combat international THB and coordination of the cooperation between the three specialist reception centres for victims. In addition, the Centre also has the possibility, on its own behalf and on behalf of the victims, to act as plaintiff in legal cases relating to THB. The broad terms of reference of the Centre are apparent in the annual reports. Among other things these pay attention to the policy and jurisprudence in the field of THB, victim policy and the reception centres for victims, activities of the various departments, the situation in various cities and judicial districts and what in Belgium is called 'specific domains', such as minors in THB, exploitation of young foreign footballers, fight against sex tourism and exploitation of domestic staff by people with 'a diplomatic status'.

In Sweden, a government decision of December 1997 appointed the *Rikskriminalpolisen*, or the 'National Police Board', as the international point of contact for THB, and this police department also has the task of reporting to the government each year on trafficking in women.¹² Since 1999 a number of reports have been published (including *Rikskriminalpolisen*, 1999; 2000; 2001 and - in English translation - National Criminal Investigation Department 1999; 2001). The reports discuss both international contacts and activities and the situation in the various regions of Sweden as regards the investigation and prosecution of THB.

¹² In Sweden the term 'trafficking in women' is used, which also includes trafficking in underage girls. This sex-specific designation does not cause any problems, because to date no cases have been reported of trafficking in underage boys or in men (according to written communication from Mrs Wahlberg, *Kriminalpolisen*).

To date, in addition to the Netherlands, then, only Belgium and Sweden have an institute that is in any way comparable with the national rapporteur institute recommended in the Hague Declaration and implemented by the Netherlands. Various countries, including the United Kingdom and Italy, have however stated that they are interested in appointing such an officer, or that they are considering appointing a national rapporteur.

4 Victims of trafficking in human beings

4.1 Introduction

THB was already indicated in the previous chapters as a serious infringement of the human rights and personal integrity of the victim. The mental and physical integrity and the personal freedom of the victims are grossly violated by the exploitation to which they are exposed. Who are these victims and where do they come from? What are their background characteristics and how have they fallen prey to the traffickers? And, what are the numbers involved? This chapter focuses on these questions.

4.2 The survey among victim support organisations

4.2.1 Objective

Many organisations are active in the field of providing assistance to and defending the interests of victims of THB, or come into contact with them. The Bureau NRM carried out a survey among such victim support organisations and pressure groups, in order to get an idea among other things of the numbers of victims and their characteristics, of the number of victims not brought to the knowledge of the STV,¹ but also of possible shifts as a result of the lifting of the general ban on brothels and of key problems in providing assistance to victims of THB.

4.2.2 Survey group and response

All 155 Dutch victim support organisations and pressure groups, known at the time to the Bureau NRM, that, in view of the nature of their work, might come into contact with victims of THB, were approached with the request to fill in a questionnaire. This produced filled-in questionnaires from 77 organisations (the *survey group*). In view of the considerable non-response (50%) and the fact that the reasons for not cooperating with the survey are in most cases not known, the data presented below can only be regarded as indicative. Added to this is the fact that of the survey group only 59 organisations indicated that in the survey year (2000) they had had contact with victims of THB. Of these 59 organisations, 53 (90%) keep some form or other of registration. In only 39 (74%) of these registrations can victims of THB be identified as a separate category. This must be kept in mind when reading the figures given in following paragraphs.

¹ This is also important for planning further research activities by the Bureau NRM. One of the questions facing BNRM is whether - in the case of getting a better idea of the victims of THB - it is enough to analyse information from the records of the STV, or whether additional data collection is necessary.

4.2.3 The questionnaire

The questionnaire drawn up for the survey comprised 21 questions on (contact with) prostitutes and victims of THB. Most questions related to the calendar year 2000. To ensure that the respondents would understand the offence described under 'trafficking in human beings' in article 250a Penal Code (earlier art. 250ter Penal Code), the offence was described in the explanatory notes to the questionnaire. These notes also explicitly stated that the list does not only relate to foreign, but also to possible Dutch victims. The questionnaire asked for both qualitative and numerical data. It was known that some organisations register their (assistance) contacts and that others keep no records. This fact was taken into account in designing the questionnaire, by asking the respondents to indicate how they arrived at the numbers given: by estimates or via registration. In the latter case the reliability of the answer is expected to be greater.²

4.3 Breakdown of victims of trafficking in human beings

Victims of THB cannot be described as one homogenous group, with fixed characteristics. Behind every victim is a different story, in which personal circumstances, living environment and personality of the victim play a part. However, in order to be able to make statements on victims of THB in general, some features are described in the following, on the basis of which victims of THB can be distinguished. These are country or region of origin, sex and age (full-age or underage). The starting point taken for the numerical data in this paragraph is the records kept by the STV of (possible) victims of THB, found in the Netherlands and reported to them. Furthermore, similar information is presented that was obtained from the survey carried out by the Bureau NRM.

4.3.1 Origin

In the case of possible victims of THB the factor 'country of origin' plays a major part. It determines the environment in which the person involved grew up, the social and economic structures and the culturally-determined value and standards pattern that influence her. Such circumstances are, as already indicated, in many cases as push and pull factors the reason why people become victims of THB.

STV data

Victims of THB, who are or were working in prostitution in the Netherlands, come from virtually every part of the world, including - and not last - from the Netherlands itself. In the STV records of (possible) victims of THB in the Netherlands a distinction is made by country of origin of the reported victims. Grouped by region this gives the picture shown in Table 4.1.

² Where organisations have not indicated whether the answer is based on an estimate or on record data, it is assumed that this was an estimate.

Table 4.1 Registration data relating to reports of (possible) victims of THB over the period 1992-2000

<i>Region/ country</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>Total</i>
Central and Eastern Europe	31 (44%)	55 (63%)	115 (69%)	125 (78%)	77 (64%)	117 (65%)	131 (57%)	123 (43%)	134 (39%)	908 (55%)
Africa	5 (7%)	5 (6%)	8 (5%)	2 (1%)	13 (11%)	21 (12%)	45 (20%)	79 (28%)	101 (30%)	279 (17%)
Asia	12 (17%)	10 (11%)	13 (8%)	5 (3%)	14 (12%)	14 (8%)	15 (7%)	26 (9%)	26 (8%)	135 (8%)
Latin-America + Caribbean	17 (24%)	18 (20%)	25 (15%)	19 (12%)	5 (4%)	10 (6%)	24 (11%)	15 (5%)	7 (2%)	140 (9%)
The Netherlands	2 (3%)	- (-)	3 (2%)	4 (3%)	7 (6%)	8 (4%)	13 (6%)	13 (5%)	25 (7%)	75 (5%)
Middle East	- (-)	- (-)	1 (1%)	2 (1%)	- (-)	- (-)	- (-)	3 (1%)	2 (1%)	8 (0%)
Western Europe (excl. NL)	3 (4%)	- (-)	1 (1%)	2 (1%)	3 (2%)	1 (1%)	- (-)	6 (2%)	1 (0%)	17 (1%)
Unknown	- (-)	- (-)	- (-)	2 (1%)	2 (2%)	9 (5%)	- (-)	22 (8%)	45 (13%)	80 (5%)
<i>Total</i>	70 (99%) ³	88 (100%)	166 (101%)	161 (100%)	121 (101%)	180 (101%)	228 (101%)	287 (101%)	341 (100%)	1642 (100%)

Source: STV, 2001

The table shows that the number of reported victims differs by region or country of origin. It also appears that shifts have taken place over the years.

Central and Eastern Europe is the region where most victims found in the Netherlands and reported to the STV come from. The most important countries of origin in this region are Bulgaria, Czech Republic, Poland, Russia, Ukraine, Lithuania and Romania. In the percentage of Central and Eastern European victims, after an initial increase up to 1996, a fall has been noted in the last five years. The absolute number of victims from Central and Eastern Europe has, however, hardly changed in the same period (apart from 1996). The percentage fall in the number of victims coming from Central and Eastern Europe compared with the total number of victims can largely be explained by the rise in the *total* number of victims. This total growth is largely caused by the increase in the number of African victims of THB, in particular as from 1996. The group of African victims largely consists of Nigerians and – to a lesser degree - of victims from Malawi and Sierra Leone. The number of victims of THB that come from Latin America (including the Caribbean) has steadily declined since 1992 - with an exception in 1998, and to a more limited degree in 1999. The main countries of origin in this region are the Dominican Republic and - to a slightly lesser degree - Colombia. The number of reported victims coming from Asia, on the other hand, shows a rising trend in recent years. Up to 1998 the Asian victims came mainly

³ Due to rounding, the figures do not in all cases add up to 100%.

from Thailand; after that Thai victims were only reported sporadically to the STV. Also the number of Filipino victims has, after six registered victims in 1992, fallen to one to two victims per year in the following years. Since 1997, however, a great increase can be observed in the number of victims from China. It is mainly this increase that causes the rising line in the number of victims coming from Asia. The number of Dutch victims has become greater in absolute numbers over the years and shows an increasingly rising trend. Also in relation to the total number of victims the number of Dutch victims has clearly risen.

Data from the BNRM survey

The numerical data from the STV records differ considerably from similar data from the BNRM survey. Although these data are only available for 2000 and are only divided into two categories, namely victims of Dutch and of non-Dutch origin, they nevertheless show a considerably higher number of victims than the STV records. Nonetheless, the information apparent from the STV records on the general trend in the origin of foreign victims of THB is supported by the organisations providing victim support, according to the survey. They also state in fact that the majority of the victims with which they had contact had come from Central and Eastern Europe, mainly from countries such as Bulgaria, Romania and Russia, but also the Czech Republic, Ukraine and Poland. Relating to the other regions distinguished, Nigeria was frequently mentioned as a country of origin. Only a limited number of victims from Asia - particularly from China and the Philippines - and from South and Central America - in particular the Dominican Republic - were mentioned.

Table 4.2 gives a summary of the numbers of victims indicated in the survey with which the responding victim support organisations have had contact in 2000, broken down into victims of Dutch and non-Dutch origin.

Table 4.2 The number of victims with which Dutch victim support organisations came into contact in 2000⁴

<i>Origin of victim</i>	<i>Estimate</i>	<i>Registration</i>	<i>Total</i>
Non-Dutch	222	248	470
Dutch	70	68	138
<i>Total</i>	<i>292</i>	<i>316</i>	<i>608</i>

Table 4.2 shows that the organisations stated that in 2000 they had had contact with a total of 608 (possible) victims of THB. Of these, 138 were of Dutch origin and 470 of non-Dutch origin. According to the records of the STV in 2000, however, only 25 Dutch and 316 non-Dutch victims were reported to the STV. The differences between these figures are remarkable. That certainly applies for the numbers of Dutch victims, since even the number of victims *registered* by the victim support organisations far

⁴ Of the 77 responding organisations, 59 actually had contact with victims. These organisations stated by estimate and on the basis of records they keep how many victims they had had contact with in 2000.

exceeds the numbers mentioned in the STV records. Three possible explanations can be given for these differences. Firstly, the BNRM survey may include double counts, where (possible) victims have made contact with several victim support organisations and they are registered in several places or included in the estimate. Furthermore, victim support organisations, such as for example the ‘drop-in projects’ in the street-walkers’ districts, state that they also meet victims who are in a situation of coercion without this being known to the police. The victims in this situation are usually not reported to the STV and so are also not registered by them. According to information from the STV, many victims are in fact only reported to them when they have actually brought charges for THB and the survey shows that this does not happen in a considerable number of cases, for a wide range of reasons (see also § 4.5). A third reason could be that some victim support organisations do not report victims to the STV at all. A number of victim support organisations (close on 14%) do in fact state in the survey that they do not maintain contact with the STV. The conclusion can then only be that central records kept by the STV do not give national cover. This corresponds with the picture that the STV itself gives of its own record data, for which it wrote in 1999: “From interviews with women it also appears that they usually know one or more other women who are a (possible) victim of trafficking in women, but have not been reported to the STV. So, the numbers indicated above may be at least doubled. Even then this is probably the tip of the iceberg.” (STV, 1999). Furthermore, there is also no obligation to report *Dutch* victims to the STV, in line with the compulsory reporting of foreign victims, as laid down in the B-9 regulation.

4.3.2 Sexes

It was previously stated that victims of THB who end up in prostitution are usually of the female sex. Although the push factors mentioned in Chapter 1, such as poverty, lack of future prospects and negative environmental factors (for example war, insecurity or environmental pollution) from an objective point of view apply equally for men and women, the negative effect of these on women is in practice often greater. This coincides in many cases with the (marginal) position that women in certain cultures occupy in the community, as well as with the tasks of caring for the family, which in many countries rest (almost exclusively) on the shoulders of women.

Women as victims

In reports by Wijers and Lap-Chew (1999), IOM (1996) and the Adviescommissie Mensenrechten (Advisory Committee on Human Rights) (AIV, 1992) it was noted with regard to THB that women are in many countries compared with men in an additionally vulnerable and subordinate position, as a result of which they rather than men may be the victims of THB. This position may have religious or more traditional backgrounds. If the woman tries to change her position, then that may be a reason for her to be open to temptations or opportunities offered elsewhere. Traffickers often unerringly know how to make use of these circumstances, by persuading women with wonderful stories and false promises to opt for well paid work and new opportunities abroad. Driven by the desire to escape from the often hopeless situation that she is in, the woman accepts such an offer. Specifically with respect to the sex industry it is also

true that this is mainly aimed at the heterosexual, male client. Just as in any other business sector, the market of supply and demand does in fact determine what is offered in the prostitution sector, as a result of which there is a lot of demand in the sex industry for female prostitutes.⁵ This combination of demand and being (having to be) open to opportunities elsewhere, forms an ideal breeding ground for the activities of traffickers in human beings and means that particularly for women there is a lurking danger of abuse in prostitution.

Circumstances may also push a woman more directly towards prostitution, without there having been any moment of choice for her. This may in particular arise in those countries where women and girls are still regarded as a (financial) burden and of less value compared with men and boys. Such a cultural environment, often in combination with poor economic circumstances or with government policy adopted (for example the Chinese one-child-policy), may mean that girls and young women are sold or hired to traffickers by family members or even by their own parents. Another example in this respect is the prevailing (sexual) morals, that in many countries make a distinction between what is deemed permissible (sexual) behaviour for men and for women. For example, in some cultures a woman, who in accordance with the current values and standards has displayed impermissible sexual behaviour or has become a victim of a sexual offence,⁶ often no longer has any other choice than to go and work in prostitution. With her behaviour she has in fact, irrespective of the question of blame, shamed the family, which from a social point of view is not accepted. This may mean that a woman is rejected by those around her and, in order to support herself, she is in fact forced into prostitution. Partly because of this enforced choice, abuse and exploitation by others then lurk. In such a case an attractive looking offer of work abroad falls on fertile soil.

The above effects may also play a part when the person involved lives in a country, where in general different values and standards apply. This is for example the case for Dutch allochthonous Moroccan and - to a lesser extent also - Turkish women who grow up in a strict religious environment. The behaviour of these women must meet certain standards to maintain the honour of the family. So it is of essential importance that the woman remains a virgin until her marriage. The loss of the hymen or the threat of being married off are mentioned as reasons why Moroccan and Turkish girls run away from home and fall into the hands of the so-called loverboys (Bouchakour, 1996).

Finally, the pure profit motive is the reason for some to simply abduct in particular women and children of the female sex, in order to exploit them in the country itself or

⁵ De Rode Draad (The Read Thread) (2001, p. 20) comments on this market mechanism that market forces assume equal partners, but that, because of the weak position of in particular illegal migrants, there is no question of this.

⁶ For example women who have been raped or become pregnant outside marriage, but also women in a relationship not accepted by the parents (for example homosexual or cohabiting).

in a (far distant) foreign country in prostitution. Push and pull factors in relation to the victim play no part in such cases.⁷

Men as victims

Little is known about the character and scale of male prostitution in the Netherlands. This is related without doubt to the double taboo involved, namely the taboo on prostitution and that on homosexuality, as a result of which male prostitutes do not so easily disclose their work. This form of prostitution in general is carried out much less openly than prostitution by women and is carried out in many cases in the informal and very mobile circuit, such as soliciting work at stations or in parks and the escort business. There are few control facilities for official bodies and the prostitutes themselves are very reticent in their contact with police and victim support organisations because of the above taboo atmosphere.

For the running of male prostitution, in view of the criminal ban on certain forms of exploitation, the same requirements apply as for the running of female prostitution: purely on the basis of voluntariness and only where the prostitute is of full age. If that is not the case, then (in principle) this involves THB. Male prostitutes must also come from one of the EEA countries, or they must have a work permit. If this condition is not met, then this may also indicate THB.

There is a wide range of assertions about the background of men who get into prostitution and the reasons why that happens. Van Gelder (1998) carried out field research into the phenomenon of male prostitution in the Netherlands. This research showed that most men began as prostitutes of their own free will and also continue to work voluntarily, which means that in principle they cannot be regarded as victims of THB. Almost the half of the people questioned by Van Gelder started in prostitution before the age of 18. Nevertheless, because the majority of them work independently, in accordance with the letter of the law that is also not THB (namely no running of prostitution by another). With regard to minors it also applies that 'only' running in prostitution by another can be qualified in accordance with the present description in article 250a Penal Code as THB.⁸ Korf, Nabben & Schreuders (1996, p. 93) note in the research they carried out among Romanian boy prostitutes that their level of education did vary, but that on average they were not poorly educated boys who hence had few prospects. Economic motives often seem to be the main reason for going to work in prostitution in the Netherlands. Hence, it appears that own initiative - and so voluntariness - is also of prime importance in the choice of prostitution work by these boys. The survey groups in both studies also concerned in particular boys who did not work from a closed sex establishment, but rather 'on the street' or from meeting places.

⁷ In this sense, specifically relating to Albania: OSCE ambassador for Albania, Mr Ahrens, during the conference *Europe against Trafficking in Persons*, 15-16 October 2001 in Berlin.

⁸ However, as previously described in paragraph 2.5.3, having sex with a minor is punishable, but this does not fall within the scope of the present article 250a Penal Code and so is not THB.

Other researchers and victim support organisations on the other hand state that there are many minors among the male prostitutes found in sex establishments. This would often be emotionally damaged boys from broken families, who in many cases are of allochthonous origin (Hoogendoorn (1999) and in a similar sense: ECPAT-NL (no year) and Werkgroep Kinderporno en Kinderprostitutie in Nederland (Child Pornography and Child Prostitution in the Netherlands Working Group) (1998)). Also, discrimination because of sexual orientation and a lack of prospects in the country of origin are mentioned as reasons why boys seize the opportunity elsewhere. These are, in line with the factors described above with respect to female victims of THB, indicators that again may indicate a considerable chance of becoming a victim of THB. In general, however, it is assumed that the number of male victims of THB is limited and that prostitution by men is usually a conscious, and in principle voluntary choice. Earning money is the most important motive here.

Transsexual prostitutes

Whereas little information is available about male victims of THB, virtually nothing is known about transsexuals in prostitution in general and working under coercion in particular. Little more is known than that there are transsexual prostitutes, who would mainly work in the streetwalkers' districts and who are often of South American origin.⁹ There are reports in the media that South American transsexuals not only work in prostitution because of the money, but specifically also in the Netherlands because of the medical facilities for being 'reconstructed' here. Furthermore, they are said to feel accepted here.¹⁰ That suggests that coming to the Netherlands and possibly also working in prostitution is their own, voluntary choice. There are no cases known to the Bureau NRM where charges of THB have been brought by a transsexual prostitute.

Numerical data relating to male prostitutes and victims

Van Gelder (1998) estimates the number of men that earn money in prostitution at three thousand to five thousand on an annual basis. Set against the estimated number of people working in Dutch prostitution (20,000 - 30,000; among others: Van der Helm and Van Mens (1998-1999)) this would mean a percentage of between the 10% and 25%. Another estimate (Venicz & Vanwesenbeeck, 2000) indicates that of the total number of prostitutes in the Netherlands around 5% are men and a further 5% transsexual or transgender. No (scientifically sound) foundation is however given for either of the two figures. Whereas in women the readiness to be open about their work in prostitution is not very great, among men this readiness is even more limited, because of the above-mentioned double taboo (Terre des Hommes, 1999). In their research among GG&GDs (Municipal Medical & Health Services) in the Netherlands, carried out under the auspices of EUROPAP-TAMPEP in the years 1998-1999, Van der Helm and Van Mens (1998-1999) calculate the number of male

⁹ In this respect, among others, Van der Helm and Van Mens (1998-1999).

¹⁰ "Jacht op illegale straatprostitutie geopend" (Hunt for illegal street prostitute opened) (Haags Straatnieuws, no. 12 - November 2001), as well as Vennix c.s. (2000).

prostitutes in the Netherlands at 1015 and the number of transgenders at a further 1003.¹¹

Because of the often independent character of the sexual services provided by men, the informal circuit in which they work and the apparently high level of conscious choice for the profession, nothing can be deduced from this wide range of figures about the number of possible victims of THB among them. In the survey by the Bureau NRM a specific question was however asked as to the sex of the victims of THB with whom the victim support organisations have had contact in 2000. This showed that of the non-Dutch victims of THB (Table 4.2) there was only one (an estimate) transsexual or transvestite. Of the Dutch victims one is registered as a man and one as a transsexual or transvestite and the estimate also contained one transsexual or transvestite victim. All the other victims reported are, according to our information, of the female sex. This means that less than 1% of the victims of THB with whom victim support organisations had contact, is of the male sex.¹²

4.3.3 Age

An understanding of the scale on which the exploitation of prostitution by minors occurs is of evident importance in order to be able to adopt and execute an effective policy of prevention and control. Although force or deception, as indicated in Chapter 2, are not determining elements for punishability when minors are involved, in practice they often play a part. Two phenomena, specifically observed with regard to exploitation of minors in prostitution and in which (a form of) force or deception plays a part, concern on the one hand the phenomenon of loverboys and on the other hand trafficking in migrant girls, who enter the Netherlands as unaccompanied minor asylum-seekers (AMA). Both phenomena are discussed in paragraph 4.4.2.

Underage women

Research carried out by the Nederlands Instituut voor Sociaal Seksuologisch Onderzoek (Netherlands Institute for Social Sexuological Research - NISSO) into the position of prostitutes in the Netherlands (Venicz & Vanwesenbeeck, 2000) found that almost one fifth (19%) of the prostitutes interviewed for the research began in prostitution as a minor. Of these prostitutes 45% on their own admission began at that time under coercion. These cases by definition involve THB. In all other cases (without initial coercion) THB may nevertheless have been involved, since inciting minors to prostitution or facilitating their stepping in the direction of prostitution is already punishable as THB under article 250a Penal Code. Only an own, free and voluntary choice of a minor to work in prostitution, without mediation, involvement

¹¹ The research was carried out by questioning GG&GDs. The (estimated) data obtained from this have been combined with similar data obtained from the police and bodies that carry out tests for sexually transmissible diseases among prostitutes and then extrapolated. This resulted in a number of 19,683 prostitutes, including 1015 (over 5%) men and 1003 (just under 5%) transgender.

¹² Transsexuals and transvestites are counted here as men.

or efforts of another, is not regarded as THB.¹³ This then concerns minors who of their own choice work independently in prostitution.

Underage men

Paragraph 4.2.2 has already described that underage boys also work in the Dutch sex industry. It was stated there that other than general estimates of the number of (underage and full-age) men in prostitution are not available, let alone of the number of victims of THB among them. It can however be remarked that the chance that there are victims of THB among underage male prostitutes is also considerable. This already applies for Dutch boys, but on an even greater scale for foreign boys. After all they come to the Netherlands, voluntarily or involuntarily - just like many young women - because of lack of prospects in their own country or because of financial problems. These boys are, because of their often illegal status, frequently forced to work in the difficult to control escort-services or in gay bars. Their illegal residence, poor command of the Dutch language and the fact that they are often homeless, soon make them dependent on an operator or a client, as a result of which they are vulnerable to abuse and exploitation. Among these foreign boys are, according to the annual report of AMOC/DHV for 1999 (AMOC/DHV, 2000), Eastern European boys - in particular Romanian, Polish and Czech - but also, and increasingly, North African boys from, among other countries, Morocco, Tunisia and Algeria.¹⁴ Korf c.s. (1996) and Van Gelder (1998) also identified Romania and Morocco in their respective research as a common country of origin of male prostitutes.¹⁵

Numerical data on minors

Only estimates are available on prostitution by minors and the number of victims of THB among them.

In the above-mentioned research from the NISSO (Venicz & Vanwesenbeeck, 1998) estimates are made of the number of underage female prostitutes in the Netherlands. It was concluded that the number of underage girls that work or have worked in prostitution and that each year come into contact with institutions, organisations, services and reception centres, can be estimated at at least 1000 to 1500 and the

¹³ The force of circumstances mentioned above is, as a phenomenon in itself, that means without being abused by another, however not an indication that THB is involved. The punishability in article 250a Penal Code does after all explicitly refer to a person, not to circumstances separate from a person.

¹⁴ In the same annual report it is stated that a majority of the boys in question struggle with the problem of illegality, even if they come from countries of the EU (p. 38). It can be deduced from this that a majority of the boys with which AMOC/DHV had contact, were of non-Dutch nationality or origin. These statements can again be found in the annual report for 2000 (AMOC/DHV, 2001).

¹⁵ In a report published on the completion of this report on the character and scale of sexual abuse and prostitution among underage allochthonous boys, reference is also made to a relatively large number of Moroccan, as well as Surinam, boys in prostitution (Van Horn c.s., 2002).

number of minors *suspected* to work in prostitution again at at least 500. In addition, the research also reported the existence of a dark number. According to the authors it is clear that one in nine underage prostitutes is clearly *not* working under any form of coercion. Of the other minors at least 40% certainly work under coercion and for 37% that is probably the case. This would mean that - some years ago - in the Netherlands at least 600, but perhaps even more than 1150 underage girls were the victim of THB.¹⁶ This concerns different forms of coercion and pressurisation, varying from (threat of) physical force and emotional manipulation to debt-bondage and blackmailing with residence papers, which differ in degree of severity and intensity. DCI (no year) reports in the above-mentioned country report on the Netherlands, that is based on interviews with various key figures, that the majority of the underage victims fall in the age category of 16 to 18 years.

In the survey carried out by the Bureau NRM the victim support organisations were asked for the numbers of underage victims they had found. Table 4.3 shows the total number of *underage* victims with which these organisations came into contact in 2000. A distinction is made here between Dutch and non-Dutch victims.¹⁷

Table 4.3 Total number of underage victims with which the organisations questioned came into contact in 2000

<i>Underage victim</i>	<i>Estimate</i>	<i>Registration</i>	<i>Total</i>
Non-Dutch	49	34	83
Dutch	31	15	46
<i>Total</i>	<i>80</i>	<i>49</i>	<i>129</i>

In total the organisations in question did report not more than 129 underage victims, of which 49 are registered as such. These numbers bear no relation to the - high - numbers often mentioned (in and via the press). Some of these estimates are however not limited to victims of THB, but relate to victims of various forms of commercial sexual abuse, which is a considerably wider category than just THB. Because the estimates are not always based upon sound research, opinions differ considerably on their value. The above figures do however only concern victims of THB. The relatively small number of victims shown in the table, compared with the above estimates, could be explained by the lack of readiness of minors to disclose the fact that they work in prostitution, certainly if they are exploited. For victims of loverboys a factor could also be that in many cases they do not really feel themselves to be a victim. These people will presumably not go looking for help and so will not come into contact with police or victim support organisations of their own volition.

¹⁶ Namely: 40% + 37% = 77% of 1500.

¹⁷ No distinction by sex is made in this table. The data from the survey however show that a maximum of four victims are of the male sex. It is not known whether they are minors. See also the last paragraph of section 4.3.2.

4.4 Recruitment, transport and exploitation

The process of THB in practice usually consists of three phases: recruitment, transport and exploitation. These phases are linked to one another and cannot be seen separately from one another. They do not, however, necessarily all have to occur and also not in a fixed order. For example, the transport phase is missing in the purely national forms of THB (among other things the loverboy activities) and the transport phase may precede the recruitment. Transport in this context is usually aimed at getting the (later) victim over the border.¹⁸ The three phases are explained in the following paragraphs.

4.4.1 Recruitment methods

In all cases that ultimately lead to a situation that can be stamped under the current legislation as THB, there has been some form of recruitment of the victim. The first approach toward ultimate recruitment may be active or passive. Often it is a gradual process, in which the (later) victim is pushed little by little in the direction of prostitution. It may also be that a victim is put into prostitution without too much ceremony and/or it is made impossible for them to stop working in prostitution. According to established jurisprudence of the Supreme Court in fact THB must also be understood as those cases where a person is hindered in his or her freedom from leaving prostitution.

The person who recruits, transports and exploits does not have to be one and the same person. These may be different people, who may or may not be aware of one another's intentions. One may also be called in by the other to carry out certain activities. More and more, however, it is found that the whole process of recruitment up to and including exploitation is carried out within the context of organised networks.¹⁹ This increases the efficiency and control of the whole process and at the same time reduces the risks. In addition, the profits obtained from trafficking in this way remain in one hand. The fact that this involves considerable amounts of money is apparent from estimates of the unlawfully derived benefits in the research of Kleemans, Van den Berg & Van de Bunt (1998). These range from €450 per woman (for a transporter in one case) to €250,000 in total (for one of the main suspects).²⁰

¹⁸ Also within the national borders victims are often moved to other prostitution areas. Although an internal move may play an important part in the exercise of force and control over the victim, that is not in itself part of the description of the offence in article 250a Penal Code. This does, however, actually apply for crossing the border (paragraph 1 sub-section 2°).

¹⁹ Among others Kleemans c.s. (1998), who on the basis of an analysis of eight trafficking in women cases conclude that with regard to these cases the chain structure is striking, but also the variety of forms of organisation. Furthermore also verbal information from the police, obtained during a working visit to France, January 2002.

²⁰ In this context reference is also made to the *Europol General Situation Report 1999*. Contributions from the United Kingdom (UK) and Germany to (the open version of) this report indicate amounts of over €40,000 earnings of one criminal group in the UK in one week, or €10,000,000 estimated income in 84 cases of THB in Germany (Europol, 2000).

Recruitment based on fraud and deception

Prompted by the often poor (economic and/or social-cultural) situation in their home country and the will to guarantee a better future for themselves and their family some, often young people,²¹ actively go in search of new chances and opportunities. Often they expect to find this abroad, and particularly in the West, that because of its wealth is seen as the region of unlimited opportunities. Migrant smugglers and traffickers in human beings take advantage of this by offering to help them achieve their ambition. When this simply involves supplying or facilitating transport to and illegal entry into another country, this is called smuggling of migrants, which is outside the scope of this report. When the person who helps the woman in question also intends to exploit her or to have her exploited in prostitution abroad, the recruitment forms the start of the offence of THB. In practice, recruitment is usually carried out by offering study or work abroad. By means of advertisements, word-of-mouth advertising or personal recruitment in for example discotheques, bars or other hotel or catering establishments, women are offered an attractive and lucrative job or study abroad. Sometimes it is immediately made clear that this involves work in the sex industry. Often, however, domestic work, as an au-pair, in the hotel and catering industry, in the theatre or dance world or in a similar position is offered. Kangaspunta states that around 25% of the women are aware of the fact that they will work abroad in the sex industry.²² According to Vocks and Nijboer (1999) this is the case for the majority of the victims of 'trafficking in women' from Central and Eastern Europe.²³ Although in these cases the facilitating person from the outset has the intention of exploiting and taking advantage of the woman in question, that only becomes clear to the woman involved at a (much) later stage. That passage of time in the awareness process is important for the perpetrator as the (intended) victim ideally cooperates voluntarily in her transport to and entry into the destination country. That considerably facilitates the process for the trafficker. The trafficker therefore has an interest in deceiving the woman in question about the purpose and destination. The deception lies in the information about the nature of the work or - where this involves working in prostitution with the knowledge of the woman involved - the circumstances or conditions under which that work must be carried out. Lies may also be told about the earnings, the share of them for the trafficker, and sometimes also about the residential status of the woman involved in the destination country. Unwittingly the woman willingly cooperates in her transfer to the country of destination. She may be aware of the illegal character of her (intended) entry into and work in the country of destination, but that is not necessarily the case. The deception by the trafficker may, after all, also cover that aspect.

²¹ In the following women are discussed. This also concerns - to a lesser extent - men and minors of both sexes.

²² In her contribution '*Counter-trafficking: the Palermo Protocol against Trafficking in Persons and beyond*' to the conference *Orderly Migration; Visions and Challenges for the 21st Century*, on the occasion of 10th anniversary of IOM-Nederland (5 November 2001).

²³ Sources in both the police and victim support organisations confirm this picture as regards Central and Eastern European women, working in prostitution in France.

In addition to offering work or study abroad, women are also deceived by traffickers who use the phenomenon of marriage broking. Many women in poorer countries see a marriage with a Western man as *the* opportunity to escape from the conditions in their country and to ensure a good future for themselves. Some traffickers abuse this situation by registering themselves as a potential marriage candidate with a marriage bureau. The woman is thereby deceived about the true intentions of this candidate, who may also be in league with the agent. When the woman has left her country for an introductory visit or possibly at a later stage, to go and live with the intended applicant, his true intention becomes apparent. The result may be exploitation in prostitution.

Usually the woman only becomes aware of the fact that she has been deceived when she has left her country of origin. This may still be on the way to the country of destination, but also only when she has arrived there.²⁴ The awareness of having been deceived may arise in various ways, for example because the facilitating person takes away her travel documents, continues to withhold information about the final destination of the journey or the country of residence, uses (physical) violence and threat of violence against the person involved or her family or instils a fear in her of the police, in combination with stressing the illegal residence status. After being made dependent on the trafficker or his accomplices by these methods, it is then explained to the woman what is really expected of her. This may again be accompanied by threat, violence or (gang) rape to break down any (remaining) resistance. So in the power of the traffickers or their companions, the woman is then put to work in prostitution. Methods of control are used to prevent her from escaping, about which more later.

'Recruitment' with (initial) violence

In some cases the initial 'recruitment' itself already consists of violence. This means cases where the victim is at no time left any choice in her action. This occurs for example when women are abducted or sold in order to exploit them in prostitution, or when they are - sometimes literally - beaten into prostitution by another. These forms of 'recruitment' may occur abroad, with a view to placing the woman in prostitution in another country, but also in the country itself where the (ultimate) exploitation will take place.

Wijers and Lap-Chew (1999) goes extensively into abduction and sale of women in relation to THB. They state for example, in the broad context of abuse of women, that THB may result from a marriage. That may be marriages of convenience or marriages based on false promises, but also forced marriages. In particular in those cultures in which the woman has a subordinate or inferior position with respect to the man marriages may be arranged. Women are made 'available' for such a marriage by abducting them or selling them to a potential husband, or simply by handing them over to a husband. Any opposition on the part of the woman is broken by means of

²⁴ The latter applies in any case for those who knew that they would go and work in prostitution, but are deceived about the working conditions.

violence or threat of this. Once a woman is married then she is regarded as the possession of the man, who can then use her as his personal slave, in the household, but also by making her available for prostitution (Wijers & Lap-Chew, 1999). In that latter case the marriage leads to THB. Vocks and Nijboer (1999) mention in the research they carried out into victims of trafficking in women from Central and Eastern Europe a relatively large number of women among these victims who *say* they were abducted or sold. The researchers suggest however that this assertion may be prompted by a feeling of shame in the victims about the actual method of recruitment.

Another phenomenon in this context are the auctions of women reported to Europol by various countries for the General Situation Report (GSR) (Europol, 2000, p. 31, Stop-Traffic electronic reporting²⁵). At these auctions women are offered for sale by their procurers to people or organisations who exploit the women in prostitution. Both 'newly' recruited women and also women who were already working in prostitution and who are regarded by their pimp as a commodity may become victims of these practices. Once sold the women are regarded as 'property', with which the owner can do what he likes.

Selling people in order to place them or have them placed in prostitution also happens with respect to children. The scale on which this phenomenon occurs depends on the country or the region of origin and also seems to be closely linked with the economic and cultural situation in the geographic area in question.²⁶ In particular in very poor areas parents or family members sometimes see themselves forced to sell or pawn (their) children, in order to acquire means of existence (ECPAT, no year). Not rarely they are misled about the fate of their child, who, they are told, will be given a job for example in domestic work or the hotel or catering industry (among others: IOM Bangladesh, no year). It also happens that children are put to work in prostitution by their parents or family members themselves in order to generate income for the family.²⁷

4.4.2 Two recruitment methods further explained

Because of their specific character, the assertion that in practice they are possibly being used more and more²⁸ and the fact that they (mainly) make underage victims,

²⁵ View via www.stop-traffic.org.

²⁶ In country reports on THB specific characteristics of (recruitment for) prostitution purposes are usually given for that country or region. For some countries or regions the sale of children is expressly reported. This concerns in any case some Asian countries. See for example Shamim (2001), pp. 6 and 11 and Derks (1997), pp. 8-10.

²⁷ Various reports via electronic reporting of Stop-Traffic can be viewed via www.stop-traffic.org.

²⁸ Bureau NRM has received reports of this from among others the police, but also from victim support organisations and interest organisations such as ECPAT (ECPAT-NL, no year) and Hoogendoorn (1999) and from the press. Other publications, for example IOM STOP (2001), indicate that an increase observed in the number of unaccompanied minor asylum-seekers who are victims of forced prostitution may also be the result of increased attention to the

two methods of recruitment are further explained in the following. These are the loverboy method and the abuse of the unaccompanied minor asylum-seeker procedure for THB activities.

The loverboy method

The loverboy method is aimed at winning over vulnerable, usually underage, girls²⁹ to then have them work in prostitution for the profit of the loverboy. The introduction into prostitution and the subsequent exploitation are carried out by means of (gradual) emotional manipulation, possibly accompanied by physical threat or mistreatment. In her research into the backgrounds and causes of youth prostitution Van Lune (1997) describes the way in which young girls often get into prostitution.³⁰ She makes the comparison here with a snare into which the girl involved gets more and more deeply entrapped. The loverboy method is in fact characterised by a tighter and tighter hold on the girl, which increasingly restricts her freedom and which (more or less) gradually leads to her exploitation. Typical here is that the method used has such an effect on the girl that in some cases she does not (really) feel abused. The emotional manipulation exerted is then not experienced as force (Venicz & Vanwesenbeeck, 1998, p. 33). Because winning affection and attachment by entering into a relationship is a time-consuming activity that is hard to carry out from a distance, loverboys are a typical national phenomenon. With some exceptions, this is therefore a form of THB that is carried out within national borders.

To come into contact with possible victims loverboys hang around at strategically chosen places. In particular places where vulnerable girls come, such as reception houses and special schools are suitable places for loverboys, but also ordinary schools and discotheques are used for this. Unfailingly the loverboys know in these places how to seek out the 'right' girls, at whom they will direct their attention (Working Group on Child Pornography and Child Prostitution in the Netherlands, 1998). When the first contact has been made the process of winning over the girl begins. This is done by impressing her, for example by showering her with attention or presents. Because of this attention the girl gradually falls in love with the loverboy. To reinforce this the loverboy often tries to drive a wedge between the girl and her social environment, so the dependency of the girl on him gradually increases. The relationship between the girl and the loverboy meanwhile takes on a more permanent character and at some point sexual contact will form part of it. For girls with an allochthonous background - among others Moroccan and Turkish girls - the way back is then often closed. When in their social environment it is discovered that they are no longer a virgin, they may be cast out by their family. After the girl has in this way become fully dependent on the loverboy, his attitude changes. Usually under the pretext of shortage of money or an

problem.

²⁹ The term 'girl' used in this paragraph is understood to mean both underage and full-age women. This term was chosen in view of the mostly young age of the women involved.

³⁰ Van Lune does not mention the loverboy method by name, but the description she gives clearly relates to this.

outstanding debt, he puts pressure on the girl to go to bed with someone else (in return for payment). This is done by playing on the girl's feelings, but it may also be combined with inciting her to use soft drugs or alcohol. Because the girl is then usually so wrapped up in her relationship with the loverboy she goes along with the request, out of love and affection, but also because of the fear of losing him (which will be played upon by the loverboy). Once the first barrier has been broken down in this way, the loverboy goes on manipulating the girl to have sex with more men for money. If the girl does not give in to this sufficiently he will reduce his attention and interest in the girl as a means of pressure, which will make her, dependent and isolated as she now is, feel insecure. Because of this insecurity or because of feelings of loyalty to her 'boyfriend' the girl gives in to this pressure, if necessary 'helped' by the use of violence or threat. So the girl is gradually pushed towards prostitution. Once the girl is working as a prostitute, no means is spared from keeping her under control. Victims are intimidated, blackmailed, threatened and mistreated to enable the exploitation to continue.

Loverboys mainly aim their attention at girls who are not sure of themselves. Causes of this may be their (youthful) naivety, often in combination with a limited (intellectual) development. Also a problematic family situation or a disrupted youth (due for example to mistreatment or sexual abuse) may play a part in this respect (Working Group on Child Pornography and Child Prostitution in the Netherlands, 1998). Not surprisingly, victims of loverboys are in many cases starved of affection, they have less education and have a low self-esteem. Also they often have a poor social network and are open to new things, such as the use of (soft) drugs (Van Lune, 1997). From various sides it is reported that the number of victims of loverboys seems to be greatly increasing in recent years.³¹ The victims would mostly be allochthonous Dutch girls, but indigenous Dutch girls may also become victims of loverboys. Although age is an important factor in the susceptibility of the victim to the system used, victims of loverboys are not by definition underage. In general, however, they are the youngest generation of Dutch prostitutes (Venicz c.s., 2000). Loverboys are usually aware of the risk that they run if it is known that they are exploiting a minor. Often the victims are recruited when they are still underage and only put to work in prostitution ((window) brothel or club) when they are 18 years old. Underage victims tend to work more in streetwalkers' districts, in coffee shops or the loverboy provides the clients himself (IOM, 2001). These forms of prostitution are difficult for police and other monitors to control. Venicz and Vanwesenbeeck (1998) state that loverboys are relatively often of Moroccan origin and on average are a bit older than their victim. There are also loverboys of Turkish, Antillian and Dutch origin. They usually have a history in the field of theft or drug dealing (IOM, 2001). They are well-dressed, attractive to potential victims and make an impression by their (apparent) wealth. Loverboys look like charming 'gentlemen'. They usually work independently, but also use so-called 'aides', younger boys who are used as accomplices (Van Lune, 1997). Between the loverboy

³¹ Among others Terre des Hommes (1999), IOM (2001) and Bureau Jeugdzorg c.s. (1998).

and his partners there is usually a certain hierarchy, which leads one to suspect a form of organisation.

Abuse of the AMA procedure

A specific category among minors that are exploited in prostitution is formed by aliens that have come to the Netherlands as an AMA and end up in prostitution here. Two groups can be identified among them. Firstly there are minors who, using the AMA procedure, come or are brought to the Netherlands specifically for work in prostitution. Also AMAs, who have already arrived in the Netherlands, may be recruited in one of the ways indicated above, to then be put to work in prostitution. Finally, a slightly different form of abuse of the AMA procedure, that is not considered further here, are those of full-age who try to gain access to the Netherlands as an AMA. They may also be or become a victim of THB.

Not very much is clear about the use of the AMA procedure in relation to THB. As far as is known, to date no structured and all-encompassing research has been carried out into this. Furthermore, many victims, after their arrival in the Netherlands, or after they have been found in prostitution, tell a virtually identical story, that in all probability was impressed on them beforehand by those who sent or brought them here (Vellinga, 1999). The true story behind their arrival is then not sufficiently known. As a considerable proportion of the AMAs entering the Netherlands each year are of West African or of Chinese origin (IOM, 2001), and it is also assumed that many of them are victims of THB, the literature reports in particular on these two groups of AMAs.³²

A considerable - and as regards Nigerian AMAs the largest³³ - group of girls coming to the Netherlands using the AMA procedure and finding themselves in child prostitution here, are girls who do not know that they are going to work in prostitution. These girls, or their parents, are deceived by traffickers about the ultimate purpose of their arrival in the Netherlands. They are promised heaps of money and good earnings, by holding up before them the prospect of work in a sewing workshop, the hotel and catering industry or nursing. In this way their child can then earn money to support the family in the country of origin. In the light of the ultimate exploitation in prostitution that the trafficker has in view, a sick detail is that the parents often have to pay a lot of money for the (assumed good) services of the trafficker. Because, seeing the level of that amount (certainly in relation to their own income position) they are not usually able to put that money on the table or borrow it themselves, the trafficker declares that he is prepared to put up the money, on condition that the loan is paid off from the girl's income. To persuade the parents the trafficker also gives the impression that this amount can be earned in a relatively short period (Vellinga, 1999), and so is a sound investment. Because of the financial debt,

³² In this context the Nigerian Democratic Movement the Netherlands (NDMN) has played a stimulating part.

³³ According to Oviauwe and Iyare (1999), pp. 3-4.

however, the parents and the girl are bound hand and foot to the trafficker. To seal the agreement the girl often also undergoes a voodoo ritual. Voodoo or similar rituals are very common in Nigeria, so this does not arouse any suspicion in those involved.³⁴ The ritual is however later abused to bring the girl into a situation of dependency and put her under pressure, so that the exploitation can be maintained.

In some cases the AMA procedure is used by girls that come to the Netherlands with the express intention of working here in prostitution. This may be at their own instigation, but more often these girls are sent by parents or family members because of the poverty in which they live.³⁵ Prompted by words that a lot of money can be earned in Europe with prostitution, they send their child to the West with that purpose, possibly making use of the help of a third party for this (Oviawe & Iyare, 1999).³⁶

In addition to the above-mentioned groups of AMAs that may become victims of forced prostitution, there is a group that is only recruited for prostitution purposes after applying for asylum in the Netherlands. They may have arrived in the Netherlands as refugees and have got into the asylum procedure here as AMAs. At the time of their departure from their country of origin, they or others did not have the intention or the idea of going or having to go and work in another country in prostitution. Their presence in the Netherlands can, nevertheless, be abused with that end in view.

For each of the above-mentioned groups the transport to the Netherlands is carried out by themselves, by using a smuggler or arranged by the trafficker or his accomplices. On arrival in the Netherlands the minor often no longer has any travel documents, which are either taken by the travel agent who brought them to Europe, or are mislaid by the person themselves. The reason for this is that when going through the AMA procedure it is in this way more difficult to establish the origin and age of the person involved. False or forged travel and personal documents are also used (Vellinga, 1999).

³⁴ According to Van Dijk c.s. (2000, p. 31) in Nigeria there are very many different religious rituals that are described here in the Netherlands by the term 'voodoo'. Although binding, these rituals are generally not felt to be threatening or evil in the country of origin. They are, however, given this connotation in Dutch society, certainly if features of these rituals recur in methods used to blackmail and instil fear in the person on whom they were used, in order to place or hold her in prostitution. In this report the term 'voodoo' is used for these practices.

³⁵ In the Briefing Note *Causes and contributing factors* of the NGO Group for the Convention of the Rights of the Child and ECPAT International for the 2nd World Congress against Commercial Sexual Exploitation of Children in December 2001 in Yokohama, it is rightly stated that poverty undoubtedly plays an important part in trafficking in children, but that this cannot be seen separately from additional factors. Poverty alone is often not the decisive element.

³⁶ The words on the good earnings come from ex-prostitutes (madams) who returned from the West or from clever characters (migrant smugglers or traffickers) who in this way try to get their share from prostitution by the minor.

Once in the Netherlands AMAs can be exploited in prostitution in various ways. Either soon after their arrival in the Netherlands they are picked up by characters who, as previously agreed or under threat or force, put them to work in prostitution, or they disappear themselves with the same purpose to a previously agreed address. This usually concerns the AMAs who, with their own agreement and in an organised context have come or been brought to the Netherlands and for whom on their departure in the country of origin it was already decided that they would go to work in prostitution. Other AMAs on the other hand first get into reception and only then disappear after a time, while they are waiting for or are already in possession of a residence status as an AMA. This latter group concerns the AMAs that are only recruited in the Netherlands for prostitution purposes, usually by the previously described loverboy-method or a similar method.³⁷ Making use of the trust gained, by deception about the nature of the work or the circumstances under which prostitution work must be carried out or by (physical) violence or threat the AMA is ultimately exploited in prostitution. The emotional bondage, fear of expulsion, violence or shame then prevent the girl from escaping from the situation of force and exploitation. A not inconsiderable means of pressure is also the fact that sometimes big debts have been incurred that can only be paid off by working. Also the abuse of voodoo rituals carried out seems to be an effective means of keeping the girl under control, since she is convinced that she is in the power of the trafficker. The (combination of the) methods of pressure and coercion used and the fear instilled by these will prevent the girl from escaping from her situation and seek help.

Specifically with regard to Nigerian AMAs, it can be stated that research (Vellinga, 1999 and Oviawe & Iyare, 1999) shows that the largest group among them may have taken the first step towards going abroad themselves, but they are deceived in this by traffickers about the work to be carried out by them or the circumstances under which previously agreed prostitution work must be carried out. Chinese AMAs (and their parents) are also usually deceived about the chances and opportunities of earning a lot of money abroad. They are taken abroad by smugglers for a lot of money. Unlike Nigerian AMAs, Chinese AMAs, however, are already put into prostitution on the way to the West in order to pay off their debt to the smuggler. At that point smuggling of migrants and THB then come together, at least in the case that those who for money help them gain entry or residence in a country are involved in the exploitation of people entrusted to their care.

³⁷ In the study of the NDMN (Oviawe & Iyare, 1999) it is reported with regard to Nigerian girls that they often come into contact with traffickers in the reception centre. These are usually fellow-countrymen or even fellow-tribesmen of the girl, who by regularly visiting try to win the trust of these girls. Once the victim's trust has been won, the procurers offer her a job and/or accommodation. The victims often go into this full of trust and leave the reception centre without leaving an address or telephone number. Ultimately this often leads to forced prostitution, where voodoo (also carried out in this country) is usually again used as a means of pressure.

4.4.3 Transport and crossing the border

In the case of transnational THB, the necessary transport, transit and border crossing are mostly arranged by the procurer or by other people called in for this. On the one hand this coincides with the fact that the women recruited usually do not know what routes and procedures they need to follow for exit and entry and also do not have the financial resources and travel documents required. On the other hand this enables the organiser to place or keep the (intended) victim as far as possible in a situation of dependency. In concrete terms: the organiser will arrange and pay for the actual transport and, where necessary, also for (false) travel documents. Because of the control element and the possibility of surveillance, the trafficker will often act as guide during the journey or appoint someone who accompanies and keeps an eye on the women during the travel abroad.

Transport and transit

Depending on the country of origin and the country of destination, a travel route will be prepared for the (intended) victim and - if necessary - travel documents will be obtained. These may be legal documents, but also forgeries or false documents. The trafficker charges high costs for organising and arranging all this. These must either be paid or borrowed in advance, or the (intended) victim has to undertake to use her earnings abroad to pay these costs. In this way the (intended) victim incurs a debt that binds her to the trafficker. Also the use of false documents, the secrecy of the transport in itself and the presence of a travel guide are factors that increase the dependency of the (intended) victim on the trafficker.

Border crossing

Non-Dutch residents who are intended by traffickers as a prostitute for the Dutch market must enter the Netherlands in some way. This may be done legally, but also by using illegal methods. Legal ways of entering the Netherlands are for example to enter the Netherlands as a tourist, student or business relation, with lawful use of papers issued for this purpose. In these cases the (later) victim's way of entry is of course completely legal, but nevertheless one might already deduce from facts and circumstances at the time of entry into the Netherlands that THB is (possibly) involved.³⁸ It is important to identify this, as simply taking a person recruited or abducted over the border in order to put them to work in the Netherlands in

³⁸ An example is the phenomenon of providing a guarantee. When the same person stands guarantor repeatedly or does this simultaneously for several young women from abroad, that may be an indication of THB. Another example is the so-called 72-hour regulation. This regulation is based on a clause for flight delays, included in the Schengen Treaty to be able to house passengers in transit who are faced with long delays in a hotel until they can continue their journey. The regulation offers the option of leaving the airport for a maximum of 72 hours, even if the person in question does not have a (transit) visa for the Netherlands. Some travel organisations offer city break packages, using this regulation. Although this is an improper use of this clause, according to our information, no action is taken against this. Such a city break may however be used by traffickers to sneak women into the country.

prostitution can already be labelled THB (art. 250a paragraph 1 sub-section 2° Penal Code). The 'ban on letting people through' (doorlaatverbod; see paragraph 5.4) may then require intervention. A suspicion of THB may however also arise when the person in question is already present in the country.

Another way of getting into the Netherlands is to follow routes that are in themselves legal, in an improper way or for improper purposes. Examples here are abusing the asylum procedure or methods such as marriages of convenience, adoption or family reunification. The use of such methods leads one to assume that the person involved in principle is aware of the fact that her entry and residence has not been carried out in accordance with the applicable rules. Nevertheless, this does not have to mean that she is aware of the fact that prostitution work is expected of her and not at all that this will take place in the form of exploitation.

Finally, with a view to exploitation in prostitution, one may also opt for providing help with illegal entry into the Netherlands. This concerns matters such as border crossing using false or forged travel documents or simply surreptitiously sneaking someone into the country. If one just looks at bringing someone in the country, separately from the exploitation that may ensue, that is de facto smuggling of migrants, irrespective of whether the person involved is deceived about the illegality of their entry into and residence in the Netherlands.

4.4.4 Exploitation

Once the victim has been recruited and transported (on the way) to the country of destination, the actual exploitation will start so that the financial fruits of this can be picked. So, the exploitation of the victim, or the intention to do this, forms the core of the punishability of the offence of THB. The running of others in prostitution in itself is after all no longer punishable, provided they are of full age and their prostitution is carried out on a voluntary basis.

Whether exploitation is involved depends on the circumstances of the specific case. The basic assumption here is that this must be determined in the light of values and standards generally applicable in the Netherlands. That means that human beings - by objective criteria - may also be a victim, without them perhaps themselves feeling that or without a situation being regarded as such in the country of origin. In particular in those cases where the exploitation is carried out in a very subtle and refined way it may be difficult to get the victim to see that she must try to escape from it and/or report it to the police. Then again, the exploitation is usually so flagrant that it is experienced as such by the victim and considered as inadmissible.

The exploitation may take various forms and is aimed at earning as much as possible from having someone else work. This occurs almost by definition in employment under unfavourable conditions. These conditions may be of a financial nature, but may also relate to the working conditions for the victim. Examples of exploitation in a financial field include lending or advancing money by the trafficker, coupled with the

(unilateral) fixing of almost impossible repayment terms, claiming very high debts, fictitious debts, or increasingly higher debts, the obligation to hand over the income or a disproportionate part of it, the collection of these earnings by another and the so-called 'saving up' of the earnings for the person involved to be paid out later. Also the reselling of the victim, as a result of which they see themselves (sometimes repeatedly) faced with a new 'owner' who wants to recover his investment at her expense, results in exploitation.

Exploitation in the field of labour law already occurs just by the fact that someone is put to work involuntarily in prostitution. Because of its particular nature, this work can and may in fact not be done other than on the basis of one's own choice to do so.³⁹ Once active in prostitution, also in some way preventing someone from leaving it can be considered exploitation. In addition, ignoring rest and working hours or in some other way categorically withholding labour rights, obliging to provide certain services, forcing to work without a condom, employing in another prostitution site or in another form of prostitution than that agreed are also forms of exploitation.

4.4.5 Methods of control

To make the financial profit as great as possible, it is important for the exploiter that the exploitation situation continues for as long as possible, in order to recuperate his 'investments' and to enrich himself as far as possible. The victim will in principle not voluntarily cooperate in this, so it is necessary to exert constant pressure on her to maintain the exploitation situation. Various methods are used for this that, just like the methods used in the recruitment and for the actual exploitation, are all covered by the terminology, used in the penal provision on THB, of force or another act of violence, threat of force or another act of violence, abusing actual relations arising from authority or deception.

Frequently used control methods are, in random order:

- blackmail;
- debt bondage, maintaining existing debts and making it impossible to finally pay them off;
- mistreatment, rape, intimidation, violence or threat of this against the victim;
- mistreatment, intimidation, violence or threat of this against the victim's family;
- isolation of the victim by confinement, permanent surveillance or constant accompaniment;
- taking away personal documents and travel documents;
- demanding or taking (a disproportionately large part of) the proceeds of prostitution;
- selling - or threatening to do so - the victim to another pimp;
- (social) isolation of the victim from friends, family and colleagues;
- instilling fear of police, justice and victim support organisations, among other things by giving incorrect information on rights and options;

³⁹ See on the particular nature of sex work: Haveman (2000).

- withholding medical assistance, food, leisure time and holiday;
- forced use of alcohol and drugs;
- abusing the (good) faith of the victim, for example by using incantation rituals such as voodoo;
- specifically in the case of loverboys: tattooing the victim as a sign of 'ownership'.

These methods may each in themselves create a situation as a result of which the victim does not or no longer resists the abuse made of her. Often methods are also used in combination, which can increase their effectiveness even further. The effectiveness is also increased because of the context in which the methods are used and in relation to the victim against whom they are used. For example, aliens who are in the Netherlands without the required papers are an easy prey for methods that do not directly involve (a form of physical or mental) violence. It so happens that they may be influenced because of their illegal position and the threat of making this known to the authorities, with all the supposed and possible consequences of this. Because the Dutch culture, language and environment are usually also completely unknown to them, they usually do not dare to ask for help anywhere. Often also a victim is already so senseless from what has happened to her, that she can simply no longer summon up the courage to resist.

4.5 Reporting THB in relation to the B-9 regulation

THB is not an offence that can only be prosecuted on the basis of a complaint or on reporting by a victim. That means that in order to be able to start an investigation into THB a report is not necessary. The punishability of the offence after all does not exist only because of the interest of the victim, but also with a view to upholding and protecting general values in the community. The community as such must then also be active in investigating and combating cases of THB, even if no specific report or complaint is present. If during regular police or prostitution controls signs are found of THB, the police and prosecution are even obliged anyhow to investigate, and, if at all possible, to prosecute.⁴⁰

Readiness to report an offence

Although it is not a requirement to start an investigation, a written statement from a victim (sometimes also from a witness) is usually very important to provide evidence in a THB case. Without the cooperation of the victim in particular, it is often very difficult to get anywhere in providing evidence. Furthermore, obtaining supporting evidence in itself is not an easy task, let alone when this must be done without a specific report or statement.⁴¹ In Chapter 6 this point is discussed further with regard

⁴⁰ According to the *Aanwijzing aanpak mensenhandel en andere vormen van uitbuiting in de prostitutie* (Instruction of approach to trafficking in human beings and other forms of exploitation in prostitution) dated 29 June 1999. This instruction also contains a list of signs that may indicate THB.

⁴¹ According to verbal information from district public prosecutors for THB and police officers.

to the importance of investigation and prosecution. This paragraph discusses the problem of readiness to report an offence mainly from the point of view of the victim and the witness-informant.

In practice it appears that the readiness to report an offence by both victims and witness-informants (non-victims) is relatively low.⁴² The reasons for this can in most cases be attributed to the circumstances in which the person involved is usually in. Pearson (2001) mentions various reasons why trafficked people refuse to report an offence or make a statement. Fear and shame seem to be the biggest motives for the reticence in the readiness of victims and witness-informants to make incriminating statements. The fear may lie in the dread of physical or mental violence against herself or against her family members here or abroad. Furthermore, the illegal situation in which many victims and witness-informants find themselves or the fact that someone is working or has worked as a prostitute, even if that has happened under coercion, is used to blackmail the person involved and prevent them from making a report. In particular the usual lack of a legal residence status, in combination with the fear of prosecution and punishment because of violation of immigration and labour legislation, with possible deportation as a result as soon as one reports to the police, is a reason for not reporting the offence. Also practical points, such as being left with the debt-bondage (accrued), not speaking the national language and simply not knowing where one is and where an offence can be reported, have an inhibiting effect in this respect.

But also if a victim is found during a police check and is informed of the possibility of reporting the offence, the readiness to do so is in practice small. This is on the one hand due to the fear of reprisals or feelings of guilt and shame already mentioned, on the other hand for foreign victims (aliens) in particular considerations of a more practical nature may also play a part. The B-9 regulation (see paragraph 2.8) may in this context have a considerable effect. Although among other things intended to give foreign victims the opportunity to consider reporting the offence of THB, the regulation may also form a hindrance to doing so. Victims of THB have in fact often had a debt imposed on them. As long as this debt exists the victim in her view remains bound to the trafficker.⁴³ This means that income must be generated. Nevertheless, a victim that makes use of the B-9 regulation is not permitted to work. This then means that the victim is not given the opportunity to pay off her debt, so she cannot get away from the trafficker. Under these circumstances a victim may choose to go on working in prostitution, or in another form of work (illegally), rather than to use the facilities offered by the B-9 regulation. Also simply the attitude that, no matter what, money must be earned for the home front or for herself, however little that is because of the

⁴² Franssen (1994) indicates that in spite of the stress that the criminal proceedings may involve, around half of the women that the STV had contact with in 1993, decided to report an offence. (Verbal) sources of a later date report a much lower level of readiness to report an offence.

⁴³ In many cases the victim is also 'reminded' of this by actual threat or blackmail of herself or her family members.

interference of the trafficker, and irrespective of the conditions under which it must be earned, can prevent a victim from getting out of prostitution by reporting the offence. The pressure of having or wanting to earn money may also be so great that victims, although initially making use of the B-9 regulation, during the sometimes long duration of it disappear and turn up again in prostitution somewhere else. The same thing may result from pressure that is exerted over the victim by the (original) traffickers. As a consequence, a frequently heard opinion in this respect is that the B-9 regulation offers little to no specific solutions for the underlying problems of the victims.

Seen from the point of view of the pure importance of investigation and prosecution the victim might in these cases still consider making a statement, without this actually being regarded as reporting an offence, so that in any case for that reason the police may have further investigation or evidence material. There is, though, no obligation for a victim, or for a witness-informant, to make use of the facilities that the B-9 regulation offers.

Furthermore, some victims are so senseless or traumatised by what has happened to them that they do not think of coming forward about their situation or making a report. Their situation seems so hopeless for them that nothing can be done about it and any attempt to do so is already too much for them. Also, making a report is no sinecure from an emotional point of view. The process that they must go through as a result of making a report is often emotionally very stressful for the victim (see also Franssen, 1994). Facing up to this consequence can also prevent victims from reporting the offence and if, in spite of all the possible obstacles mentioned above, someone is still inclined to report an offence, then unfamiliarity with the way in which, the place where and the procedure by which this must be done throws up a new obstacle.

The pressure on the victim may, in addition to the use of violence, blackmail or threat of this, also arise because of the unequal position she has in the field of legal help and assistance, compared with the suspect. Insufficient knowledge of rules and procedures by the victim, where a suspect is usually assisted by a skilled solicitor, may result in experiencing a form of 'inequality of arms'⁴⁴ that may prevent the victim from entering the legal process. There is also the fact that the victim runs the risk that the suspect will not be found guilty or that her credibility will be attacked by the defence, so that she can once again feel a victim of humiliation, the so-called 'secondary victimisation' (see also Follmar, 2001).

Also the readiness of clients of prostitutes to make a statement is generally very small. For many clients there is a taboo on coming forward about their visit to a prostitute,

⁴⁴ Although 'equality of arms' as a principle more often relates to parties in the proceedings standing opposite one another (e.g. prosecutor versus suspect), the interests of victim and suspect during the proceedings often have to be assessed in a similar controversial way.

so because of fear of this becoming known they have little inclination to expose possible abuse.

The B-9 regulation and the reflection period

In paragraph 2.8 was already explained that the B-9 regulation has two objectives: it offers facilities to aliens⁴⁵ who are (possible) victims of THB, but also to aliens who are witnesses of that offence, for a - temporary - residence in the Netherlands, from the point of view that their reports or statements are an important instrument for the law-enforcement in the investigation and prosecution of suspects. As victims of acts of sexual violence can often only talk about their experiences after some time, the B-9 regulation provides for (possible) victims of THB⁴⁶ for a reflection time of three months, within which they must decide whether or not they wish to report THB. If upon expiry of this period of three months the (possible) victim for whatever reason decides not to report the offence, preparation is made to deport them. Extension of the reflection time is not possible. Furthermore, the reflection time is only granted once. Because it is assumed that witness-informants are not themselves faced with acts of sexual violence as a victim, there is no reflection time for them. They must decide immediately whether or not to report the offence.

In spite of the obligation, even in case of a slight indication of THB, to point out to the alien the possibility of reporting THB and thereby also to point out the possibility of using a reflection time, in practice this does not always happen. Several victim support organisations report that in a not inconsiderable number of cases victims are not informed of the options available and so do not know about the existence of the B-9 regulation or, because they do not know of the existence of the reflection period, feel pressurised to report the offence (immediately). It is also reported that between the recognition of the B-9 status of a victim and the actual confirmation thereof, a long time sometimes passes. The victim in question is then not able to prove their status, as a result of which difficulties are experienced in arranging facilities via the administration agencies for social security.

Numerical data relating to reporting the offence of THB

Chapter 6 explains why no data on numbers of reports of THB from the computerised police system are included in this report. Partly for this reason, but also to get an idea of the numbers of victims that do *not* report the offence, the Bureau NRM in the survey carried out by it made inquiries among the victim support organisations into the figures known to them about reports of THB. Table 4.4 summarises these data.

⁴⁵ An alien is anyone not in possession of the Dutch nationality and who is not treated as a Dutch citizen on the basis of a statutory provision (art. 1 Vreemdelingenwet (Aliens Act) 2000).

⁴⁶ At least, limited to those who work (have worked) in prostitution in the Netherlands.

Table 4.4 Report by victims

Type of victim	Estimate	Registration	Total
Non-Dutch	123	97	220
Dutch	16	3	19
Total	139	100	239

The table shows that of the total of 608 victims of THB with which the organisations have had contact in 2000 (Table 4.2) 239 have reported the crime. That is just under 40%. It is striking here that the readiness of non-Dutch victims to report the offence is greater than that of Dutch victims (respectively 220 of the 470 victims, or almost 47% and 19 of the 138 victims, or almost 14%). The survey also included the question of how many victims have made use of the reflection time in the B-9 regulation.⁴⁷ It is reported that 154 victims have made use of this (estimate 59 and registration 95). This means that 70% of the victims that have ultimately reported the crime have only done this after making use of the reflection period. This also means that 30% of the victims have not made use of the reflection period. They may have refrained from doing so because they were prepared to report the offence immediately, but it is also possible that they were not, or insufficiently, aware of the existence of the reflection period. Furthermore, it cannot be excluded that, although being victims, they have reported the crime as a witness-informant and for this reason were not eligible for a reflection time.

Victims who decide to report THB are, when criminal investigation or prosecution is started, granted a residence permit for a limited period. The report is officially regarded as an application to grant this residence permit. The survey (see paragraph 4.2) showed that in over a quarter of cases the reporting of an offence by victims does not lead to granting a temporary residence permit.⁴⁸ The reason for this is unclear, but will on the one hand be connected with the way in which the applications are assessed - partly in relation to the criteria laid down for granting the permit - and obviously sometimes result in rejection and on the other hand will undoubtedly also be connected with the unfamiliarity of the administration agency (agencies) for social security with the B-9 regulation. Similar data on witness-informants are not available.

⁴⁷ As described in the B-9 regulation (paragraph 3.1.3) the fact that a possible victim is found and wishes to make use of the reflection period must be reported by the chief of police to STV. This obligation to report to STV partly exists so that the Dutch National Rapporteur on THB can be provided by STV with information on making use of the reflection time. Up to the time of this report such information was however not available via the STV. The Bureau NRM has therefore tried to obtain further data on this via its own survey.

⁴⁸ The question relating to this was answered for 187 victims (78%) of those who reported the offence. Of these, 138 (74%) were granted a temporary residence permit (based on the B-17 regulation). The application of 23 victims (12%) was rejected, while in 26 cases (14%), for otherwise unknown reasons, no application was made. Of these numbers, 95 were based on estimates, while 92 cases are registered as such.

Following on from the above, the victim support organisations were asked the question how far in their experience or estimation after the lifting of the general ban on brothels shifts occurred in the numbers of victims and prostitutes with which they have contact. Table 4.5 indicates what shifts the victim support organisations have noted since 1 October 2000, in comparison with the period before this (1 January 2000 - 1 October 2000).

Table 4.5 Have shifts occurred? (N=44)

<i>Sign</i>	<i>Number</i> ⁴⁹
No change in total number of victims	12
Increase in non-Dutch victims	8
Reduction in non-Dutch victims	2
Increase in Dutch victims	3
Reduction in Dutch victims	2
No change in total number of prostitutes	11
Increase in foreign prostitutes	7
Reduction in foreign prostitutes	2

The significance that may be given to the statements must be related to the very short period over which the victim support organisations have been able to do this (the survey took place in June 2001 place). As regards the number of victims it is striking that twelve of the 44 victim support organisations state that no changes have occurred in this. The organisations that have noted changes, state more frequently that there is an increase, rather than a reduction, in particular as regards non-Dutch victims. The differences in findings can perhaps be explained by regional differences. Whether shifts noted are related to the abolition of the general ban on brothels on 1 October 2000 cannot be stated. In the light of these results it is also difficult to predict what the (national) trend will be in this field. For the time being we have therefore confined ourselves to just present the data. Also no clear conclusions can be drawn from the replies relating to the numbers of prostitutes. It is, however, remarked that the option 'increase or reduction in the number of *Dutch* prostitutes' is not mentioned. In this respect it is noteworthy that on the part of the operators of sex establishments it is stated that it is very difficult for them since 1 October 2000 to recruit prostitutes who may work in accordance with the current rules. Mention is then usually made of an outflow to the difficult to control escort sector or the underground (illegal) sector. Verbal information from the Mr. A. de Graaf Stichting however shows that for the present it has received no signs of noticeable shifts to the escort sector.

4.6 International developments

In the international field there are many developments going on, relating to the status and position of the victim of THB. In an increasing number of countries the drafting

⁴⁹ As several of the situations/signs mentioned may be applicable, the signs do not add up to 44.

of victim regulations, possibly prompted by these international developments, is high on the agenda. International organisations keep their end up as well. For example the UN Trafficking Protocol contains various provisions (see § 2.10.1) that oblige the member states to take measures relating to assistance to and protection of victims of THB, the (residence) status in the destination country and the safe repatriation of the victim to their homeland. The European Commission has, in addition to the proposed Framework decision on combating THB (see § 2.10.2) and the Framework decision on the standing of victims in the criminal proceedings, also applicable to victims of THB,⁵⁰ recently submitted a proposal for a directive relating to the granting of temporary (short term) residence permits, among others to victims of THB who cooperate with the competent authorities.⁵¹ The proposal is put in the context of *illegal immigration* and in that respect makes a link both with THB and with (a special category of) smuggling of migrants. Furthermore, the possibility of granting a temporary residence permit to the victim is directly related to her cooperation in the investigation and prosecution of the suspect, for which both the interest of the victim in investigation and prosecution, as well as the interest of the investigation authorities in the cooperation of the victim, are mentioned as reasons.⁵² Also within the Council of Europe at present, at the request of the *Committee of Ministers*, the *Steering Committee for Equality between Women and Men*, in cooperation with the *Steering Committee for Human Rights* and the *European Committee on Crime Problems* are studying the desirability of drawing up a convention on THB, whereby the existing legal instruments in this field, in particular the UN Trafficking Protocol, are taken into account.⁵³

The thread in these regulations is that more attention must be paid to the victim in the approach to THB. Although purely humanitarian and social aspects in that respect play an important part, in most regulations a link is emphatically made with the investigation and prosecution of the perpetrators. From the reasoning that the cooperation of victims is vital in the fight against THB and for the dismantlement of the networks behind them, by offering certain facilities in the sphere of (temporary) residence, reception and assistance, attempts are being made to reduce the reticence of victims to report an offence or otherwise to cooperate in the investigation and prosecution. These facilities therefore usually depend on their cooperation in the criminal proceedings. This input elicits from many victim support organisations the

⁵⁰ Framework decision of the Council of the European Union of 15 March 2001, OJ No. L82, dated 22 March 2001. This decision is aimed at victims of criminal assaults in general, not specifically at victims of THB.

⁵¹ Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or THB who cooperate with the competent authorities (COM(2002) 71 final dated 11 February 2002). The document can be found on the web-site: http://europe.eu.int/eur-lex/and/com/pdf/2002/com2002_0071en01.pdf.

⁵² See the Explanatory memorandum, paragraph 1.1.: Nature of the phenomenon.

⁵³ Verbal information from the Directorate of Human Rights of the Council of Europe. The Feasibility Study for a CoE Convention on Trafficking in Human beings was finished and presented in late summer 2002.

response that this is too one-sided and does not do justice to the victim as such and to what she must have gone through. Help and assistance for the victim must from their point of view take precedence and may not depend on cooperation in criminal procedures. Support for this reasoning may be found in the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*,⁵⁴ which includes recommendations for (among other things) dealing with victims of crimes. On the other hand it must be said that only adequate investigation and prosecution can bring an end to the occurrence of THB. For that purpose information from the victims themselves is also vital, so that it is reasonable to seek their cooperation in this matter. Furthermore - one could say - it may be difficult for the term 'victim' to have anything other than a criminal connotation.

4.7 Key problems and points for attention

Below is a summary of key problems noted and reported in relation to victims of THB.

Research, preventive measures and victim registration data

- On various points relating to the problems of THB there is an insufficient or no specific understanding or view. Further research is then indicated. With regard to victims specific matters can be mentioned, such as underage victims of THB, among which AMAs form a special category, male victims, the extent to which and the reasons why use is or is not made of the B-9 regulation and integration or return of victims.
- It is stated from the field that insufficient attention is paid by the authorities to preventive measures and information. This concerns firstly specific prevention measures aimed at the potential 'target groups' of traffickers, both in the countries of origin and also in the Netherlands. Furthermore, there is a lack of information for prostitutes' clients and operators of sex establishments, except on those points where the sector has taken the initiative for this itself.⁵⁵ Also general public information, in order to create a form of awareness among the general public on the existence and the characteristics of the phenomenon of THB, is completely lacking at present.
- There is no reliable national overview of the number of victims of THB. The record system used by the STV, that would have to serve as the most obvious source for this, is not systematically fed with information. Also the method of registration is not at present such that reliable numbers of reported victims can be generated from it (the system contains double counts). Furthermore, a breakdown by (background) characteristics - other than country of origin - is not (yet) possible.

⁵⁴ General Assembly Declaration of 29 November 1985 (A/RES/40/34).

⁵⁵ An example of the latter is the Vereniging Exploitanten Relaxbedrijven (Association of the Operators of Relaxation Businesses - VER), which in its Newsletters regularly refers to the existence and the dangers of THB, not only for the victims involved, but also for the management of the sex establishment (VER, var. years).

The registration system used is also not yet computerised. Work is however being carried out on this; more details are given in Chapter 6.

- Information on the residence status of victims of THB, on the use of the facilities offered by the B-9 regulation, as well as on the use of the reflection period offered by the B-9 regulation, is very fragmented over several bodies and departments within organisations. The collection of this information and linking it together is for this reason not easy to carry out and is also very time-consuming. Furthermore the reliability of these data is not fully guaranteed.

The position of victims

- It is not always easy to establish whether someone can be regarded as a victim of THB. Of course there is a (not limitative) list of signs that may possibly indicate a victim of THB, but there is a grey area between clearly having to work under coercion or threat and those cases that involve an absolutely free choice or only slight pressure (pressure of circumstances) on the person involved to work in prostitution. The inability to provide (prompt) clarity on the standing of victims does in practice mean that a delay arises in allocating financial resources for executing the B-9 regulation. This faces the victim support organisations that provide the actual help and assistance with financial problems.
- Not all people who in some way, other than based on their own choice or complete voluntariness, are recruited for prostitution activities *feel* themselves to be victims of exploitation. Some know what is expected of them and choose such a life over the life they may suffer in their homeland. Even if not all the conditions under which they must work can be called ideal, from their point of view this does not have to involve exploitation or taking unlawful advantage of them.⁵⁶ In determining whether they are victims Western criteria are assumed in this respect and limited account is taken of the person involved's own perception. From the point of view of victim support, and in particular to enable this to be as effective as possible for the individual victim, but also aimed at the investigation and prosecution importance, it has been suggested from the field that this would require some differentiation.
- The know-how and experience among the bodies entrusted with the execution of the B-9 regulation and the facilities provided in it is not the optimum in all cases. This leads to delays in pointing out the existence of the regulation and in granting the facilities provided in it. The victim may be in such an unclear position that this hinders both the progress of the proceedings and the settlement of the financial aspects.
- The readiness of victims and witnesses to report the offence or make a statement is generally small. Various reasons can be given for this. It is, however, also true, according to the comments on the part of the victim support organisations, that in most cases cooperation in the end does not gain victims or witnesses anything.

⁵⁶ Centrale Cel Mensenhandel (Central Cell Trafficking in Human Beings), no. 5 (2001).

- In particular the victim support organisations, but also the police, state that a key problem is that victims who make use of the facilities of the B-9 regulation may not work. Also the facilities for spending their days usefully are not extensive. This leads on the one hand to some victims and witnesses of THB refraining from reporting the offence or making a statement. On the other hand women step out of the B-9-regulation early and disappear from the sight of the investigation authorities and the victim support organisations. If the (alleged) victim continues to work in prostitution or at a later date is found in prostitution again that may affect the credibility as regards her being a victim and of any (previous) statements she has made.
- Also mentioned as a key problem is the fact that the B-9 regulation offers the victim no prospect in the longer term. The chance of being able to stay permanently in the Netherlands when the criminal proceedings end is very small. Although most victims and witnesses then ultimately have to return to their country of origin, the system of the B-9 regulation is also not aimed at this. The lack of facilities for work and spending the day usefully does not prepare them for this return, as a result of which there is a chance that, with a lack of future prospects, on return to their country of origin they will again fall prey to traffickers in human beings. Also the (sometimes lengthy) B-9 regulation - according to the critics - does not prepare them for a possible permanent residence in the Netherlands: a social process, aimed at integration into Dutch society, is missing.
- The victim support organisations raise as another key problem the fact that there is no access to assistance for victims that do not have a valid residence permit in the Netherlands, but - for whatever reason - also do not want to make use of the B-9 regulation. Although victim support organisations do offer these victims (some form of) help in a number of cases, that cannot be done in a structural way, as it is stated that no money is available for this. The position of these victims is marginalised as a result.
- Although the Netherlands in principle considers and treats victims of THB as victims and not as illegal migrants, it does happen that in the first instance they are treated as unwanted aliens. That may mean that they are only in the second instance identified as possible victims and are informed of the options that this status offers them, but also that they are deported as an undocumented migrant before they are identified as a victim of THB. This not only frustrates the policy aimed at reception and assistance for victims, but also the investigation and prosecution of possible perpetrators of THB.

Minors and forced sexual exploitation

- There is not enough reception specialising in underage victims of THB. Because of the specific features and problems that their being a victim involves for the young person, this category of victims deserves special attention, reception and counselling. In this group the AMAs form a separate category. On the one hand they are in an immigration law process with associated conditions and regulations, on the other hand their vulnerability as a (possible) victim of THB deserves a specific and adequate approach from the point of view of being a victim.

- A phenomenon that is signalled as a key problem particularly in African countries and that in addition to a high level of sexual abuse of minors in general also leads to an increase in the number of trafficked minors, is the myth that having intercourse with a virgin can cure sexual diseases, including HIV and AIDS. This myth leads to a growing demand for the young for sexual services. This is a development that for the time being is outlined for countries where large numbers of people infected with HIV or AIDS live.⁵⁷

A final key problem is the lack of safety of reception centres for asylum-seekers, frequently raised in the media. Factors that are mentioned in this respect are the often isolated, but with a view to the vicinity of escape routes often also central location of the centres, the lack of sex-segregated, multicultural reception, as well as the fact that the centres are often difficult to control from a buildings point of view, but also because of their size. Specifically relating to underage asylum-seekers in this respect a factor often mentioned is the fact that AMAs are usually not accommodated separately from full-age asylum-seekers and refugees.

⁵⁷ Briefing Note 'New challenges: HIV/AIDS and drugs' of the NGO Group for the Convention of the Rights of the Child and ECPAT International for the 2nd World Congress against Commercial Sexual Exploitation of Children in December 2001 in Yokohama.

5 Investigation and prosecution

5.1 Introduction

This chapter focuses on the investigation and prosecution of THB. This is preceded by detection. This may happen via reports or witness statements, via controls in sex establishments, via reports by the Bureau Bijzondere Zaken (Special Affairs Bureau) of the Immigratie- en Naturalisatie Dienst (Immigration and Naturalisation Service - IND) of the Ministry of Justice, via the Mobiel Toezicht Vreemdelingen (Mobile Border Control) by the Koninklijke Marechaussee (Royal Military Police - Kmar) and via (anonymous) tips received by the Criminele Inlichtingen Eenheid (Criminal Intelligence Unit - CIE) of the police. Signs of THB may also emerge in exploratory inquiries or investigations relating to other offences, for example in case of a crime analysis¹, when listening to taps, during an interrogation, or in an analysis of money flows relating to a suspect or a criminal organisation. Almost all police departments may play a part in the investigation following detection: the aliens police, the vice squad, the regular police, the criminal investigation department and the Bureau Financieel Onderzoek (Financial Investigation Offices - BFO), but also the Grens Overschrijdende Criminaliteitsteams (Cross-Border Crime Teams - GOC) of the Kmar². An investigation is preferably carried out by a multi-disciplinary team and in the case of large-scale organised THB the use of a 'core team' (kernteam) is expedient (according to the *Handleiding aanpak van mensenhandel (Approach to trafficking in human beings Manual)* of the Procurators-General, 1995)³. In supra-regional cases concerning THB bovenregionale teams (supra-regional teams - BRTs) may also be appointed.⁴ This must involve criminal acts committed by the same perpetrators or groups of perpetrators in more than one region (as a rule a minimum of three) and for which the approach exceeds the scope of an average region. Investigation is carried out under the direction of the Public Prosecution Service. Within the regional Public Prosecution Services at the district courts public prosecutors have been appointed for THB. In a number of districts these public prosecutors simply play a coordinating role in the approach to THB. In other districts the public prosecutor for THB 'runs' THB cases himself, or he divides these cases with and among other public prosecutors. The

¹ Such as a perpetrator group analysis or a case-comparing analysis.

² These teams have the task of supporting the police.

³ The Interregional CID Team North and East Netherlands (IRT-NON) is such a 'core' team. It fights organised crime, with the special areas for attention of the regions of Central and Eastern Europe, Turkey and the Middle East and - inherently - migrant smuggling. The team has, however, in the recent past also investigated THB cases.

⁴ Other areas for attention for which a supra-regional team (BRT) can be appointed are: robberies, child porn, synthetic drugs, firearms, burglaries, vehicle crime and environmental crime. Working with supra-regional teams is in its infancy as regards THB. In the field of child porn and robbery crime experience has already been acquired. Work has not yet been carried out in the other areas for attention with supra-regional teams (position in mid 2001).

Public Prosecution Service is also responsible for the prosecution of THB, that is preparing and bringing before the courts a case to be judged by the court. The latter makes a judgement which is then open to appeal.

5.2 Policy of the Public Prosecution Service and the police

Within the Public Prosecution Service and the police, there has for some time already been a policy relating to the approach to what was initially called ‘trafficking in women’ and later ‘trafficking in human beings’. In the following the policy context is described for successively the Public Prosecution Service and the police.

5.2.1 Public Prosecution Service

In 1987 the Procurators-General set up a working party a) to get an idea of the character and scale of the phenomenon of trafficking in women and b) to set up an inquiry into the desirability of guidelines for investigation and prosecution of trafficking in women. The working party reported in 1988. The report contained among other things a proposal for the issue of guidelines relating to investigation and prosecution. This was followed, in 1989 and 1995, by the publication of (revised) guidelines for the investigation and prosecution of THB by the Procurators-General. In 1999 their most recent instruction was published: *Aanwijzing aanpak mensenhandel en andere vormen van uitbuiting in de prostitutie (Instruction of approach to trafficking in human beings and other forms of exploitation in prostitution)*. This formulated four objectives: protection of victims, exposure of criminal acts and motives of traffickers/operators of sex establishments and rounding up the (criminal) organisations behind them and creaming off the financial benefit as well as special and general prevention. In the instruction reference was also made to the importance of cooperation and uniformity in police, judicial and administrative policy, as well as to the operator of a sex establishment as the central link in the market mechanism relating to exploitation in the sex industry. The instruction also refers to local prostitution policy and the administrative (law) enforcement of this, as well as to various aspects of the investigation. In the latter among other things the desirability of multi-disciplinary investigation teams again came to the fore, as well as the importance of (early) financial investigations. It was also indicated that signs of THB must in any case lead to investigation and “if possible to prosecution” and that prosecution in any case is of the greatest importance where there are underage victims (p. 5). The instruction also states that in THB custodial sentences must be demanded, whereby the sentence demanded must be determined in the light of:

- factors such as the number of trafficked victims;
- the scale of distress caused;
- the fact that the suspect has acted with a view to his own financial gain;
- the circumstances mentioned in article 250a Penal Code paragraph 2 and paragraph 3;
- the violent and/or cunning character of the acts of the suspect;
- the duration of the period in which the THB has taken place;

- the coercion used in the specific case;
- the scale of organisation of the traffickers;
- other crimes considered proven.

It is also stated that, should the case arise, confiscation of illegally acquired gain or a fine can be demanded. Some annexes are attached to the instruction. They concern the relevant legal context, a list of possible signs of THB,⁵ relevant policy regarding victim care and the B-9 regulation. Finally, the instruction refers to the importance of reporting any possible victim to the Stichting Tegen Vrouwenhandel (Foundation against Trafficking in Women - STV), for the purpose of a subsequent national registration of victims.

The fact that THB is a spearpoint in the policy of the Public Prosecution Service can not only be read in the above-mentioned documents and deduced from the fact that district public prosecutors for THB have been appointed. It is also apparent from the fact that the College van Procureurs-Generaal (Board of Procurators-General) has appointed a national coordinating public prosecutor, with among others the portfolio of THB.⁶ Previous consultation has been carried out on the terms of reference of this officer and opportunities for cooperation in the reporting task of the Bureau NRM. From the time when the national public prosecutor started her work, regular consultation on content has taken place between on the one hand her and her staff and on the other hand the Dutch Rapporteur on THB and her staff.

5.2.2 Police

In 1994 the vice squads of the four big cities and the then *Centrale Recherche Informatie dienst* (National Criminal Intelligence Service - CRI)⁷ of the Dutch police took the initiative to set up a *Protocol Vrouwenhandel* (Trafficking in Women Protocol). The reason for this was the lack of uniformity found in the approach to trafficking in women. The purpose of the protocol was “to give direction to the prevention, reduction and suppression of trafficking in women” (Verhees & Holla, 1994, p. 2). Two years later, in 1996, representatives of some police corps expressed their concern about the degrading conditions under which some women worked in prostitution. They stated that a clear approach to the suppression of THB was necessary. This led to the setting up, in 1997, of the *Politiële Beleids- en Adviesgroep Mensenhandel* (Police Policy and Advice Group on Trafficking in Human Beings - PBAM), a national working party of all police corps, the CRI, the Ministry of Justice and the Kmar. The purpose of the working party was the prevention and suppression of THB by implementing a uniform national administrative, judicial and police policy.

⁵ This list includes for example: not having paid for the journey oneself, no possession of own travel documents, having to hand over the largest percentage of the income, having to work under all circumstances and for disproportionately long hours, blackmail or threat of family in the country of origin and threat or use of violence.

⁶ In addition she has migrant smuggling and child pornography in her portfolio.

⁷ Now Nationale Recherche Informatie (National Criminal Intelligence Service - NRI).

In 1998 the PBAM drew up the *Beleidsadvies voorkoming en bestrijding mensenhandel: een eenduidige aanpak* (Policy advice on prevention and suppression of trafficking in human beings: a uniform approach (PBAM, 1998)). The conclusions are that there has been insufficient implementation of the existing policy, that the policy is not implemented uniformly, and that the insight in the character and scale of THB is limited. The PBAM stresses that a repressive approach to THB is not sufficient. Alternative possibilities are not being sufficiently utilised according to the working party. As an alternative among other things making the operator of a sex establishment liable is mentioned. It must be made unattractive to employ victims of THB. It is therefore recommended, after the lifting of the general ban on brothels, to include provisions in the licensing system whereby the operator of a sex establishment is made liable via administrative measures. In addition, it is stated that the deportation of victims with an illegal status is not only victim unfriendly, but also maintains the THB circuit. Furthermore, via the visa policy embassies and consulates in countries of origin can try and contribute to the prevention and suppression of THB and the Kmar can do this in the form of border controls, according to the PBAM. The PBAM report was presented to the Ministers of Home Affairs and Justice at the end of 1998. In the covering letter a number of possible consequences of the upcoming lifting of the general ban on brothels are signalled, including a possible attraction effect on foreign traffickers in women and prostitutes, and a possible shift to forms of prostitution that do not fall under the licensing system. Such consequences require an extra policing effort, an estimated 0.5% of the existing capacity. In a letter of 30 December 1998 the Minister of Justice did, however, announce that the required capacity had to be found within the existing personnel and financial resources.

The *Beleidsplan Nederlandse Politie 1999 - 2002* (1999 - 2002 Dutch Police Policy Plan) (DNP, 1998) states that the police will expressly pay attention to THB: with the disappearance of the general ban on brothels and the introduction of a municipal licensing system for the running of prostitution, the police with other enforcement bodies will be able to maintain regular control of the course of events in sex establishments.

In 1999 the PBAM was (temporarily) followed up by the *Projectgroep Prostitutie Mensenhandel van de Nederlandse Politie* (Prostitution and Trafficking in Human Beings Project Group of the Dutch Police - PPM/DNP). The reasons for this were: the upcoming lifting of the general ban on brothels, the conclusions and advice of the PBAM, the fact that THB was mentioned as a policy theme in the policy plan of the Dutch police, the fact that the Public Prosecution Service had indicated the suppression of THB as a policy priority, the updated *Aanwijzing aanpak mensenhandel en andere vormen van uitbuiting in de prostitutie* of the Board of Procurators-General, which was on the way, and international obligations. All the police corps invest in the PPM/DNP in the form of participation by contact officers or corps project managers for THB, for at least two years “to set down the new prostitution policy in a controllable way” (PPM/DNP, 1999, p. 10). In the project, in addition to the police corps, the Kmar and the KLPD are represented. The PPM/DNP has delivered various products, including a document

*Werkproces prostitutiecontrole (Guidelines Prostitution Control)*⁸ and examples of the procedure for control teams. These products were recently, combined with other relevant information, published in the *Handboek Prostitutie en Mensenhandel (Prostitution and Trafficking in Human Beings Handbook)*, published by the police (DNP, no year).

A recent development is the implementation of a 'trafficking in human beings' module within the *Informatie Knooppunt Politie Systeem (Police Information Node System - IKPS)*. This system may be fed and called up decentrally - by officers authorised to do so - and contains all sorts of information on (possible) victims of THB.⁹

In March 2001 the *Informatie Eenheid Mensenhandel (Trafficking in Human Beings Information Unit - IEM)* started up. The aim of the IEM is to make information on THB present in the Netherlands visible to the police, so that this information can be used more adequately.

In addition to the more policy-oriented PPM/DNP consultation, in February 2002 a two-monthly operational consultation has started: the *Operationeel Overleg Mensenhandel/De Nederlandse Politie (Operational Consultation on Trafficking in Human Beings/The Dutch Police - OOM/DNP)*. The four-fold objective of the consultation is:

- to build up and maintain a well-functioning operational police network;
- to exchange empirical data and investigation information;
- to signal trends;
- to identify key problems.

Operational representatives of the various police regions, the NON 'core team' and the Kmar take part in the consultation, as well as information coordinators of the IKP and the IEM.

5.3 Research results

This paragraph discusses the results from a number of completed and still continuing inquiries concerning investigation in the field of THB and concerning the prosecution of THB cases.

⁸ The document aims in a systematic and clear way to chart the brothel control work process for the various actors involved in these controls. Among other things, it contains a prostitution control process model, a summary of documents that must be produced as a result of a control, and a number of resources, such as a control teams manual, the above-mentioned code of conduct and a questionnaire for informants or victims of THB.

⁹ Including data on a possible report of the offence and signs found of THB, personal data concerning the possible victim, data on work site(s) and any contacts of the victim.

5.3.1 Police investigations

Surveys by the police

In recent years the police have carried out various surveys to determine the state of affairs regarding prostitution and THB in the Netherlands. An initial survey was carried out in 1997/1998 on the initiative of the PBAM. Because some questions were not clearly formulated, not all the questions were filled in uniformly and correctly, according to the authors (Van de Ven & Neefe, 1998). On the initiative of the PPM/DNP in 1999 another survey was carried out (Luyx & Van Soest, 1999), which used a revised questionnaire. In 2000 the PPM/DNP surveyed the THB cases for 1999 and 2000 (up to 1 October). Finally the PPM/DNP carried out a survey on the year 2000 and the first half of 2001 (PPM/DNP, 2001).

In the following, some results from the surveys mentioned are reviewed. Between brackets is the year of the survey from which the point mentioned comes.

- the Dutch police have a limited view of the character and scale of THB and information provision and processing is not carried out uniformly in this field (1997/1998);
- in 24 of the 25 police regions the subject of THB is included in regional policy plans and in 20 of these regions the subject also has a high, or even very high priority (1999/2000);
- in various police regions it happens that investigation into THB cases is not started way, or that investigation has stopped. This is for example due to insufficient evidence, lack of capacity, or because of a decision of the Public Prosecution Service to refrain from prosecution (1997/1998) (1999) (2000/2001);
- without witness statements from victims, as a rule no investigation is started (1997/1998);
- THB is often carried out in an organised context or network-like structure and there are often links with other forms of crime, usually in the field of firearms and/or narcotics and (less frequently) forms of fraud (1997/1998);
- in almost half the regions the police had the impression that victims are being circulated between different countries and places (the carrousel system). In eleven regions the police were of the view that there were sufficient reception facilities for victims, in eleven other regions this was found not to be the case and in three regions the question could not be answered (1997/1998);
- the police have a need for advancement of expertise, exchange of information and harmonisation between police, public administration and the Public Prosecution Service (1997/1998);
- in 18 regions the police are of the opinion that there are sufficient reception facilities for victims, in five it is found that this is not the case and in two regions the question could not be answered (2000);
- between regions there are big differences in the specific departments or people who are responsible for the item of THB. This may for example be (often in combinations): policemen on the beat, youth and vice departments, prostitution teams, trafficking in women and prostitution teams, aliens services, regional

investigation teams and organised crime or serious crime (zware criminaliteit) departments, whether or not in cooperation with the Kmar.

- the number of operational investigations (underway and completed) is for the years 1997 and 1998 together 93 (1999), for the year 1999 106¹⁰ (1999/2000), for the year 2000 144 and in the first half of 2001 91 (2000/2001).¹¹ The number of investigations into THB seems to have increased.

The research of the UKO

The Unit Kennis en Onderzoek (Knowledge and Research Unit - UKO) of the Nationale Recherche Informatie (National Criminal Intelligence Service - NRI) of the KLPD is doing a research on THB whereby among other things the investigations into THB in the period 1997 to 2000 are analysed. The purpose of the research is to gain an understanding of the suspects that are involved in THB and of their criminal activities, so that on this basis recommendations can be made about the suppression of THB. The report on this investigation will be published in early 2002.¹² The UKO department has however already made a number of results available for inclusion in the present report.

For the period 1997 to 1999 an attempt has been made to survey all the investigations into THB. This produced a total of 83 investigations. In Table 5.1 the investigations are classified.

Table 5.1 Investigations into THB surveyed by the UKO (period 1997 to 1999)

<i>Type of investigation</i>	<i>Number</i>
Completed	45
Interrupted/not started	23
Exploratory investigation	5
CIE investigation	1
Investigation transferred to another region	5
Completed in a crime other than THB	2
Unknown	2
<i>Total</i>	83

Of the 83 investigations surveyed in 1997-1999, a total of 45 were completed in the sense that suspects were arrested. Some more investigations (23, which is 28%) were interrupted or not started. This involved, on the one hand, cases where the victims do not want to report the offence. On the other hand, this involved reports of offences from victims with which nothing was then done (for whatever reason).

¹⁰ For two police regions the information is missing.

¹¹ Four corps supplied no information.

¹² By the time that the report of the Dutch National Rapporteur on THB had been translated, the UKO report had been published. The author is now a staff member of the Bureau NRM and is working on an update of the research that will be published (in Dutch) in a more encompassing update at the end of the year 2002.

For the full investigation period 1997-2000 81 investigations that, with reporting of an offence, have led to arrest of suspects, were analysed. 70% of these investigations involve cross-border THB. In the 81 investigations a total of 521 suspects were recognised. This is on average slightly over six per investigation. Here, the researcher rightly notes that the number of suspects in an investigation of course partly depends on the efforts of the police to track down all suspects. In many investigations priority is given to tracking down and prosecuting suspects residing and/or operating in the Netherlands. Suspects who are not in the Netherlands (often procurers) in many investigations remain out of the picture. The suspects that have come into view are moreover not all arrested and not all arrested suspects are ultimately charged with THB. In total in the 81 investigations 364 victims have reported an offence. That is on average over 4 per investigation. In 31 investigations underage victims were (also) involved.

5.3.2 Prosecution

Introduction

To get an idea of the proceeding of cases of THB, analyses have been carried out on the national database of Public Prosecution Service data, in which information on cases and acts from all 19 District Public Prosecution Services are registered. The details in Public Prosecution Service data are moreover reliable, but not always complete, according to Van 't Riet (2000).

Cases of THB: period 1995 up to and including 2000

In the period 1995 to and including 2000 756 criminal cases were registered with the Public Prosecution Service in which (only or also) suspicion of the crime described in article 250ter Penal Code (THB) was involved. The number of cases may be more or less read as the number of suspects. Table 5.2 indicates per year the number of cases and how many of these cases (also) relate to underage victims.

Table 5.2 Number of cases registered with the public prosecution and number of cases that (partly) relate to underage victims, per year

<i>Year</i>	<i>Number of cases registered with the public prosecution</i>	<i>Number of cases that (also) relate to underage victims¹³</i>	<i>Percentage of cases that (also) relate to underage victims</i>
1995	152	16	10%
1996	117	21	18%
1997	116	15	13%
1998	134	17	13%
1999	103	27	26%
2000	134	34	24%
<i>Total</i>	<i>756</i>	<i>130</i>	<i>17%</i>

¹³ This involves both cases with just underage victims and cases with full-age and underage victims.

The number of cases registered varies per year. In the last two years, the number of cases that (also) relate to underage victims has increased.

As indicated at the start of this paragraph, these are cases which involved suspicion of exclusively or also THB. Table 5.3 gives an idea of the (combination of) offences of which the people in question were suspected.¹⁴

Table 5.3 Summary of suspicions in the relevant year in criminal cases registered with the public prosecution

Suspicion	1995		1996		1997		1998		1999		2000		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Only THB	40	26%	42	36%	64	55%	36	27%	37	36%	44	33%	263	35%
THB + criminal organisation	37	24%	11	9%	3	3%	12	9%	14	14%	9	7%	86	11%
THB + violence	33	22%	28	24%	19	16%	27	20%	16	16%	14	10%	137	18%
THB + fraud	1	1%	3	3%	4	3%	4	3%	3	2%	3	2%	18	2%
THB + offence against child	4	3%	-	-	1	1%	2	1%	4	4%	2	1%	13	2%
THB + immigration law offence	1	1%	2	2%	-	-	4	3%	-	-	6	4%	13	2%
THB + one other type of offence	5	3%	5	4%	3	3%	1	1%	2	2%	6	4%	22	3%
THB + several other types of offences	31	20%	26	22%	22	19%	48	36%	25	24%	50	37%	202	27%
Unknown	-	-	-	-	-	-	-	-	2	2%	-	-	2	0%
Total	152	100%	117	100%	116	100%	134	100%	103	100%	134	98% ¹⁵	756	100%

¹⁴ For this the following categories are used: 1) *Only (a form of) THB* (art. 250ter Penal Code); 2) *THB in combination with participation in a criminal organisation* (art. 140 Penal Code); 3) *THB in combination with certain forms of violence*. Counted here are forms of both physical and mental violence, such as intentional unlawful detention, taking of hostages, kidnapping and taking abroad, rape, mistreatment, manslaughter and murder; 4) *THB combined with forms of fraud and racketing*, such as false passport, document forgery and bigamy; 5) *THB combined with offences specifically against children* (with the exception of THB with minors as victims), such as intercourse with children under 16 years of age, using or offering young people for pornography and inciting minors to vice. Looked at in retrospect categories 3 and 5 are unfortunately not clearly enough distinguished: some of the offences of a sexual nature against children are included in category 3, others in category 5; 6) *THB combined with offences that involve immigration law aspects*, such as migrant smuggling; 7) *THB combined with one other type of offence*, not belonging to one of the above-mentioned categories, such as violation of the opium act, theft and illegal entry into a dwelling; and 8) *THB combined with several other types of offences*. This may be a combination of THB with several of the above-mentioned offences, and/or with several other crimes.

¹⁵ Due to rounding the percentages in this table and in other tables do not always add up to 100.

In over a third of the cases only THB was suspected. 38% of the cases involved the suspicion of THB in combination with one other type of offence. This was relatively frequently a form of violence or participation in a criminal organisation. 27% of the cases involved the suspicion of THB combined with several other types of offences.

The suspects

Sex: the suspects are usually men. Per year the proportion of suspects of the female sex varied from 13% (in 1996) to 25% (in 2000).¹⁶

The *age* of the suspects at the time of the first THB act committed of which they are suspected¹⁷, was in over 80% of the cases somewhere between 18 to 40 years and was on average around 30 years.¹⁸ In the years 1995 to 2000 there were 26 underage suspects, of which the youngest (in 1995 and in 2000) at the time of their first THB act committed were 14 years old. The oldest suspect was at that time 73 years.

Over 90% of the suspects *lived* in the Netherlands.¹⁹ Other 'countries of residence' were Germany (in total twelve times), Belgium (in total nine times), Hungary and Slovakia (three times each), as well as the United States, the Ukraine, Greece, France, Czech Republic, Italy and Nigeria (once each). In 20 cases the Public Prosecution Service data contain no information on the country of residence.

The *country of birth* of the suspects was in the majority of cases not the Netherlands. The percentages of suspects born in the Netherlands varied from 22% (in 1998) to 40% (in 1999).²⁰ Countries of birth that *frequently* came up are shown in Table 5.4. Per year of registration the ranking is shown, with only positions 1 to 5 being included.

¹⁶ The percentages were in subsequent years respectively 18, 13, 17, 18, 16 and 25%. One cannot therefore talk of a uniform increase or reduction in the proportion of women among the suspects over the years.

¹⁷ This distinction was made because the same person may be suspected of several THB acts.

¹⁸ They were in subsequent years on average respectively 29, 30, 29, 30, 31 and 31 years old.

¹⁹ The percentages were in subsequent years respectively 91, 94, 91, 92, 90 and 92%. So, a reasonably stable picture.

²⁰ In subsequent years respectively 37,5, 34, 34,5, 22, 40 and 28% of the suspects were born in the Netherlands.

Table 5.4 Ranking of country of birth of suspects by frequency of occurrence, per year of registration

Country	1995	1996	1997	1998	1999	2000	Total N	Total Rank
Netherlands	1	1	1	1	1	1	245	1
Yugoslavia	2	2		2	2		89	2
Turkey	3	5	2	3		4	57	4
Morocco	4	3	3		3	2	63	3
Hungary	5						16	
Soviet Union		4	5				27	
Poland			4				13	
Albania				4			18	
Nigeria				5	4	3	36	5
Bulgaria					5		12	
Romania						5	8	

The summary, in addition to a constant first place for the Netherlands as country of birth and a reasonably stable 'position' of Yugoslavia, Turkey and Morocco, shows certain more time-related developments. Examples of this are after 1997 the - proportionately - less often appearance of Hungary and the (former) Soviet Union as country of birth and the 'rise' of Nigeria as a country of origin of suspects from 1998. For that matter, caution must be used in interpreting this table. A country of origin may score high at a certain time because various people operating separately from one another are arrested, or smaller criminal networks not related to one another are rounded up, in which suspects from certain countries of origin play a part, but also because one bigger network with several suspects from the same country of origin is rounded up. The countries of birth of the underage suspects were the Netherlands (15 times), Morocco (three times) and Albania, Belgium, Ghana, Indonesia, Yugoslavia, the Dutch Antilles, Sudan and the Czech Republic (once each).

A somewhat different view of the backgrounds of the suspects is given in Table 5.5, in which their countries of birth are categorised by region and then shown per year of registration. The categorisation concerns: a) the Netherlands b) Central and Eastern Europe²¹ c) Turkey and Morocco²² d) Africa²³ e) Surinam, the Dutch Antilles and

²¹ These were: Albania, the former GDR, Bulgaria, Hungary, Yugoslavia, Lithuania, Poland, Romania, the former Soviet Union and the former Czechoslovakia.

²² A separate category has been made for these, because in the past the Netherlands recruited a lot of guest workers in these countries.

²³ These were: Angola, Ghana, Gold Coast, Guinea, the Cape Verde Islands, Liberia, Nigeria, Portuguese West Africa, Rwanda, Sudan and Tunisia.

Indonesia²⁴ f) other Europe²⁵ g) Central and South America²⁶ h) Asia²⁷ i) the Middle East²⁸ j) the United States and k) unknown/other²⁹.

Table 5.5 Region of origin of suspects, per year of registration with the public prosecution

Region of origin	1995		1996		1997		1998		1999		2000		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Netherlands	57	38%	40	34%	40	34%	30	22%	41	40%	37	28%	245	32%
Central and Eastern Europe	39	26%	37	32%	27	23%	52	39%	29	28%	24	18%	208	28%
Turkey and Morocco	27	18%	20	17%	16	14%	21	16%	11	11%	25	19%	120	16%
Africa	1	1%	8	7%	9	8%	11	8%	13	13%	30	22%	72	10%
Surinam, Dutch Antilles and Indonesia	10	7%	5	4%	4	3%	6	4%	5	5%	13	10%	43	6%
Europe other	2	1%	4	4%	8	7%	3	2%	4	4%	3	2%	24	3%
Central and S. America	4	2%	-	-	7	6%	3	2%	-	-	-	-	14	2%
Asia	5	3%	2	2%	3	3%	1	1%	-	-	-	-	11	1%
Middle East	1	1%	-	-	1	1%	2	1%	-	-	1	1%	5	1%
US	1	1%	-	-	-	-	-	-	-	-	-	-	1	0%
Unknown/Other	5	3%	1	1%	1	1%	5	4%	-	-	1	1%	13	2%
Total	152	101%	117	100%	116	100%	134	99%	103	100%	134	101%	756	101%

Almost one third of the suspects were born in the Netherlands. More than a quarter originally came from Central or Eastern Europe, 16% from Turkey or Morocco and 10% from Africa. In total 15% of the suspects came from the other regions of origin (rows 5 to 11 in the table). The proportion of suspects from Africa has slowly but surely increased over the years.

Table 5.6 shows how the Public Prosecution Service deals with cases. In the foregoing each time this involved 756 criminal cases registered with the public prosecution over the period 1995 to 2000. Table 5.6 and the following tables concern the 690 cases registered over the period 1995 to and including the first six months of 2000.³⁰ As settlement by the Public Prosecution Service and settlement by the court may have

²⁴ This 'covers' the (former) overseas territories from which suspects came.

²⁵ These were: Belgium, Germany, France, Greece, Italy, Austria, Portugal and Spain.

²⁶ These were: Argentina, Colombia and the Dominican Republic.

²⁷ These were: the Philippines, Pakistan and Thailand.

²⁸ These were: Iraq, Iran, Jordan, Lebanon and Palestine.

²⁹ This includes the category 'international area'.

³⁰ The information on the settlement by the Public Prosecution Service and the settlement by the court of the cases registered in the second half of 2000, was available too late to be included in this report.

taken place in a later year than the year of registration with the public prosecution, the distinction made so far by year (of registration) in the tables relating to settlement, does not make sense and so is no longer used.

Table 5.6 Settlement by the Public Prosecution Service

<i>Settlement</i>	<i>N</i>	<i>%</i>
Summons	489	71%
Unconditional decision not to prosecute	158	23%
Transfer ³¹	8	1%
Conditional decision not to prosecute	5	1%
Joinder of parties	6	1%
Out-of-court settlement	1	0%
Unknown	23	3%
<i>Total</i>	<i>690</i>	<i>100%</i>

Summons is by far the most frequent settlement in cases that (also) relate to suspicion of THB.

The nature of the settlement is particularly interesting seen in relation to the combination of offences of which suspects were suspected. Table 5.7 gives a total overview of the settlement concerning the cases registered in the years 1995 to and including the first half of 2000.

³¹ To another district or abroad.

Table 5.7 Settlement by the Public Prosecution Service by combination of offences

Offence (combination)	Settlement by the Public Prosecution Service by combination of offences															
	Unknown		Summons		Unconditional decision not to prosecute		Conditional decision not to prosecute		Joinder of parties		Out-of-court settlement		Transfer		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Only THB	7	3%	109	45%	109	45%	3	1%	5	2%	1	0%	6	3%	240	99%
THB + criminal organisation	2	2%	63	77%	15	18%	1	1%	-	-	-	-	1	1%	82	99%
THB + violence	1	1%	108	84%	20	16%	-	-	-	-	-	-	-	-	129	101%
THB + fraud	2	12%	14	82%	-	-	-	-	1	6%	-	-	-	-	17	100%
THB + offence against children	-	-	8	73%	1	9%	1	9%	-	-	-	-	1	9%	11	101%
THB + immigration law offence	1	9%	10	91%	-	-	-	-	-	-	-	-	-	-	11	100%
THB + 1 other type of offence	-	-	19	95%	1	5%	-	-	-	-	-	-	-	-	20	100%
THB + several other types of offences	10	6%	158	88%	12	7%	-	-	-	-	-	-	-	-	180	101%
Total	23	3%	489	71%	158	23%	5	1%	6	1%	1	0%	8	1%	690	101%

The table shows that suspicion of only THB (row 1 in the table) just as often led to summons (column 2 of this row) as to a (conditional) decision not to prosecute (see columns 3 and 4 of this row together). When there is also a suspicion of other offences, a summons was usually issued (rows 2 to 8, column 2). In a total of 71% of all cases in which THB (only or also) plays a part, a summons was given (bottom row, column 2) and in around a quarter a (conditional or unconditional) decision was taken not to prosecute (bottom row, columns 3 and 4 together). Information on the type of decision not to prosecute and the reason for deciding not to prosecute is not available at case level, only at act level.³² In a large majority of the cases the reason for deciding not to prosecute is 'no legal evidence', followed some way behind by 'incorrectly reported as suspect' and 'not admissible'. Other reasons that occur are 'small share in

³² That is understandable, because in a case it may be decided not to prosecute various acts on various grounds.

the act' and 'old act'. Furthermore it is true that in by far the majority of these cases a summons was issued because of (only or among other things) THB. In a total of 23 cases, however, this primarily concerned other acts for which charge was brought in the summons. In the following these 23 cases are not taken into account.

Settlement by the court

Table 5.8 gives a total overview of the judgements relating to cases registered over the years 1995 to and including the first half of 2000. This overview concerns only 390 of the total of 489 summonsed suspects from Tables 5.6 and 5.7. The reasons for this are - in addition to the fact that 23 summonses were further left out of account because they only related to other acts - that session dates had not yet been decided, sessions had not yet taken place, or judgements had not yet been pronounced. The judgement is mainly interesting in view of the combination of offences in the charge. This involves only act(s) for which *primary* charges were brought: acts for which subsidiary charges were brought are not included in Public Prosecution Service data. It also happens that of several of the acts for which primary charges are brought, only the first act is registered in the Public Prosecution Service data. Cases where the act of THB is not registered for any reason in the Public Prosecution Service data, can also not be signalled via Public Prosecution Service data.

Table 5.8 *Judgement per offence combination*

Offence (combination)	Judgement									
	Sentence imposed		Acquittal		PPS non-admissible		Joined to court sitting		Acquittal on a point of law or exemption	
	N	%	N	%	N	%	N	%	N	%
Only THB	104	78%	17	13%	6	4%	4	3%	2	1%
THB + criminal organisation	36	88%	5	12%	-	-	-	-	-	-
THB + violence	74	92%	5	6%	1	1%	-	-	-	-
THB + fraud	15	100%	-	-	-	-	-	-	-	-
THB + offence against children	5	100%	-	-	-	-	-	-	-	-
THB + immigration law offence	3	100%	-	-	-	-	-	-	-	-
THB + 1 other type of offence	16	89%	1	6%	-	-	1	6%	-	-
THB + several other types of offences	90	96%	2	2%	1	1%	1	1%	-	-
Total	343	88%	30	8%	8	2%	6	2%	2	0%

In a large majority of the summonsed cases (in total 88%) a sentence was imposed. In 8% of the cases acquittal followed.

Table 5.9 shows by combination of offences what (main) sentences were imposed. Conditional sentences imposed in combination with an unconditional sentence, are subsumed under the unconditional sentence. This is a total overview of the cases registered with the public prosecution in the years 1995 to and including the first half of 2000 that have led to a sentence being imposed by the court (N=343).

Table 5.9 (Main)sentences imposed per combination of offences

Offence (combination)	Unconditional imprisonment		Unconditional imprisonment + unconditional fine		Community service		Unconditional fine		Only conditional		No main sentence		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Only THB	72	69%	4	4%	15	14%	4	4%	5	5%	4	4%	104	100%
THB + criminal organisation	35	97%	-	-	1	3%	-	-	-	-	-	-	36	100%
THB + violence	70	95%	-	-	2	3%	-	-	-	-	2	3%	74	101%
THB + fraud	8	53%	-	-	4	27%	-	-	2	13%	1	7%	15	100%
THB + offence against children	4	80%	-	-	1	20%	-	-	-	-	-	-	5	100%
THB + immigration law offence	3	100%	-	-	-	-	-	-	-	-	-	-	3	100%
THB + 1 other type of offence	12	75%	-	-	4	25%	-	-	-	-	-	-	16	100%
THB + several other types of offences	77	86%	6	7%	6	7%	1	1%	-	-	-	-	90	101%
Total	281	82%	10	3%	33	10%	5	1%	7	2%	7	2%	343	100%

In 85% of the cases in which sentences were imposed, these were imprisonment (in 3% of cases combined with an unconditional fine) and in 10% of the cases this was a

community service sentence. Unconditional fines, only conditional sentence or only additional sentences³³ (or measures) were only imposed occasionally.

To sum up, it can be stated that 71% of the cases were summonsed by the Public Prosecution Service, in 88% of these cases the court imposed a sentence and in 82% of the cases this was imprisonment.

The term of the imprisonment imposed varied from two weeks to ten years. Table 5.10 gives, per offence (combination), an overview of the average number of months of unconditional imprisonment that was imposed.

Table 5.10 Average number of months unconditional imprisonment per offence combination

Offence(combination)	N	Average number of months unconditional imprisonment (rounded to whole months)
Only THB	76	18
THB + criminal organisation	35	25
THB + violence	70	31
THB + fraud	8	18
THB + offence against children	4	32
THB + immigration law offence	3	31
THB + 1 other type of offence	12	19
THB + several other types of offences	83	32

The number of hours community service imposed varied from 60 to the legally permitted maximum of 240 hours.

Confiscation orders

Article 36e Penal Code makes it possible to confiscate illegally obtained benefit from those sentenced for a punishable act, (the 'Plukze regulation'). Often the investigation into the criminal behaviour already shows whether a benefit has been enjoyed and what the extent of this is. If that is not the case, a strafrechtelijk financieel onderzoek (criminal financial investigation - SFO) will be started. This must be started before the trial, but does not yet have to be completed at that time (Jörg & Kelk, 1998). To prevent a suspect channelling off money or goods, upon suspicion of an offence a so-called conservatory attachment can be imposed for the purpose of confiscation.

In 18% of the cases of THB registered in the period 1995 to and including the first half of 2000 in which a summons was issued, a *confiscation order* was brought. That does not at first sight seem often, but information from the Public Prosecution Service data shows that this happened in the same period for infringement of the Opium Act in 11% of cases.³⁴ Furthermore, it is possible, for cases for which the judgement dates from less than two years ago, that an SFO is still underway and that a confiscation order will still be imposed. The outcome of most confiscation orders is not (yet) known; for 21

³³ In accordance with article 9 paragraph 3 Penal Code, the judge may suffice with an 'additional' sentence.

³⁴ Written information from Mr. Groen, SiBa, WODC.

(23%) of the total of 92 confiscation orders it is however. Nine times enforcement of the confiscation measure ensued, five times the order was rejected, also five times this was withdrawn, once transfer of the trial followed and also once a settlement offered was discussed. No further information is known about the level of the confiscated benefit.

Appeal

The above information only concerns settlement in the first instance.

Of a total of 329 cases - with the help of Public Prosecution Service data - it is known whether an appeal was brought against the judgement and, if so, by whom. In 184 cases no appeal was brought, in 145 cases it was. This was done in 65 cases by the suspect (after a sentence was imposed), in 62 cases by both suspect and Public Prosecution Service (in all cases after a sentence was imposed) and in 18 cases by the Public Prosecution Service (14 times after a sentence was imposed, four times after acquittal).

5.4 Key problems and points for attention

Shelved cases

Some cases of THB are shelved by the police. Bureau NRM has not yet been able to carry out any in-depth investigation into the question of how often this happens or the reasons for this. It is, however, clear that a decision to investigate and prosecute in most cases involves weighing up: a - generally difficult and time-consuming - investigation into THB means that other cases are necessarily left. Capacity shortages are mentioned in this context by representatives of both police and the Public Prosecution Service. What possibly also plays a part is the fact that, although internationally there are three 'driving forces' for investigating and tracing THB, namely violation of human rights, organised crime and concern for public decency, in the Netherlands concern for public decency seems to play a prime role. As a result, according to Public Prosecution Service officials, smaller investigations in particular are run on a district or regional level. In case of supra-district cases, attempts to involve other districts in the investigations often have come to nothing, due to the capacity problems already mentioned.

Furnishing proof, victims and witnesses

Although THB is not an offence prosecuted only on a complaint being lodged, practice shows that statements of victims and witnesses are very important for the investigation and prosecution. The readiness of victims to report the offence is however low. Various factors play a part in this. There is for example little confidence in the integrity of the police. Also, often victims are too scared to report the offence or they withdraw their statements, under pressure of threat or blackmail at their address or the address of family members, or submit them in a less incriminating way. Some victims do make a statement or report an offence, but disappear during the B-9 procedure, for example to work, whether or not in prostitution. Furthermore, it is not

always easy to obtain 'supporting evidence'. It is moreover also reported that the Public Prosecution Service puts too much emphasis on the importance of 'reporting an offence'; according to representatives from the police world 'reporting an offence' is for some victims too big a step and it would be less threatening for them to be urged to make 'witness statements'. This does not have to cause problems from a legal point of view, as 'reporting an offence' is a term from practice that does not occur in the Penal Code. It means no more and no less than giving the police information about a punishable act.

The criminal proceedings and the fact that witnesses and victims often are (and must be) heard repeatedly, is very burdensome for them. There is also the fact that cooperation in the investigation and prosecution does not gain those involved much in the longer term: the chance of being allowed to remain in the Netherlands after the end of the criminal proceedings, is very small.

Three other key problems mentioned in relation to victims are: the lack of solicitors for victims, the limited availability of the (reliable) interpreters that are necessary to communicate with victims, and problems regarding arranging accommodation for victims.

(Investigative) powers

Representatives of police and the Public Prosecution Service report restrictions and lack of clarity in (investigative) powers that sometimes hamper investigations. A frequently mentioned problem in this context is the so-called 'ban on letting people through'. On 26 November 1998 a motion (the Rouvoet motion) was adopted by the Lower House. This motion states that letting people through in the sense of allowing the crimes of smuggling migrants, trafficking in women and unlawful detention (that are described as serious crimes in which human dignity is directly at issue), after they have been identified, is not acceptable, not even with a view to serious investigation interests. Where a limited exception option to the ban on letting people through has been left with regard to smuggling of migrants, this ban is formulated in absolute terms with regard to THB. This leads in some cases to having to intervene early or even prematurely, as a result of which wider investigation into organisers, leaders and the method behind this can be frustrated. Another example concerns restrictions relating to being able to register and exchange information on possible perpetrators of THB and on potential victims, obtained at the interface of monitoring and preparatory investigation. Such registration and exchange are very important, also because experience shows that victims often do not work for long in the same place. The national victim follow-up system, recently developed, is expected to provide for a requirement where the registration and exchange of information on possible victims are concerned. It is however not yet known whether this system will function well. There are also practical problems regarding the identification obligation. These relate to the fact that the identification obligation only includes a power to demand evidence of identity, without the obligation to carry or show such identification, so in practice the power does not mean very much. Another objection emerges from De Rode

Draad (The Red Thread) in relation to the identification obligation: this “seems to replace the police registration of the professional group of prostitutes rejected in 1997 by the Registration Chamber.... The new measure is intended as a measure to prevent operators of sex establishments employing illegal migrants, but mainly affects prostitutes” (De Rode Draad, 2001, p. 12). According to the *Coördinatie Positieverbetering Prostituees (Coordination of Improving the Position of Prostitutes)*³⁵ (legal) prostitutes would “out of fear of being faced with a form of police registration not, or no longer, frankly report signs of questionable practices” to the police (Letter among others to the Minister of Justice, dated 26 March 2001).

The text of the law

The Public Prosecution Service found the present wording of the THB article 250a Penal Code to be complicated from the point of view of bringing charges. Unlike under the old article 250ter Penal Code, simple indication of the description ‘trafficking in human beings’ appears to be insufficient. Article 250a Penal Code contains several components that must be included in the charge and explained in the actual description. This leads to very extensive charges. Also, a term such as ‘abuse of domination arising from actual conditions’ requires an explanation of the actual conditions that may make a charge vulnerable from an evidence point of view. It is also not clear whether the wording of article 250a Penal Code still makes it legally possible to bring separate charges for an *attempt* at THB. The article seems to be worded such that, in line with earlier jurisprudence of the Supreme Court, an attempt produces the perpetrated offence. Also, the text in the *Aanwijzing aanpak mensenhandel* of the Board of Procurators-General (1999) builds further on this. In the corresponding Annex 1 it is in fact stated that it is not required for the perpetration of the crime that the victim actually lands in prostitution.

Harmonisation and cooperation

In spite of the efforts to arrive at more mutual harmonisation and uniformity, there are both in the police and in the Public Prosecution Service, big differences in the organisation and method of approach to THB investigations. Cooperation does have a policy priority in many places, but there is room for improvement within and between bodies on many points. At police level there is of course a well-operating consultation of contact officers or corps project managers on THB (namely PPM/DNP) that is generally actively sought, but some regions are almost systematically absent there. Cooperation between, for example, the police and the victim support organisations and between the Public Prosecution Service and the IND is not the optimum: people do not always know how to find one another and usually do not give one another sufficient information. Also, until recently, there was little (structural) exchange of information and experience between the district public prosecutors for THB.³⁶ With

³⁵ Represented here are de Rode Draad, Mr. de Graaf Stichting and the Prostitution Information Centre (PIC).

³⁶ In 2001 this gap was temporarily filled somewhat by the three Public Prosecution Service meetings initiated by BNRM.

the arrival of the national public prosecutor for THB, who has a coordinating role, this will probably change. International cooperation is proceeding with great difficulty. This has partly to do with the fact that the foreign authorities do not always have the same interests as the Dutch. Also the lack of uniform regulations in (Western) Europe in the field of investigative powers plays a part in this. International legal assistance conventions are an important step on the way to harmonisation of police powers, but they do not govern everything. Schalken and Pronk (2001) for example state that the new European Legal Assistance Convention (ERV, 2000) regulates some specific forms of cross-border powers, such as hearing suspects, witnesses and experts (by video or telephone conference), controlled delivery, infiltration and tapping telecommunications, but that many questions, such as deals with criminals, are not standardised at a European level.

Other key problems

Confiscation of illegally acquired benefit is in practice difficult to achieve for various reasons. For the Public Prosecution Service it is in general indeed possible - though often very time-consuming - to find out what amounts are involved, but the proceeds usually disappear immediately abroad, where they are difficult to trace, let alone confiscate. Problems that occur here are limited or lacking powers, lack of clarity about or impossibility of tracing the right people or bodies, lack of cooperation in the country in question and a difficult procedure in rogatory commissions. In some cases, a confiscation order - aimed at the perpetrator - is waived to spare the victim, for example if it is anticipated that this would put extra pressure on and threat to the family of a victim in the country of origin.

The Public Prosecution Service also mentions as a key problem the fact that the B-9 regulation is usually put forward by the defence of people suspected of THB as 'the B-9 sausage', meaning that the facilities offered by the regulation would be so attractive that statements could be 'bought' with it from witnesses.

5.5 International developments

5.5.1 Europol³⁷

Europol is the European law enforcement organisation whose purpose is to promote effective action by, and cooperation between, the competent bodies in the member states of the European Union relating to preventing and suppressing terrorism, illegal trafficking in narcotics and other forms of serious international organised crime. Europol has the task of making a substantial contribution to the law enforcement actions of the European Union against organised crime, in particular as regards the criminal organisations that are involved in these (Europol Information brochure, 2000). Europol has no operational or executive powers (see on this Schalken & Pronk,

³⁷ State of affairs per 1 January 2002.

2001), but functions more often as a collection point and clearing centre for information that it compiles and analyses. Europol supports the national competent bodies in the investigations they carry out. THB, together with among other things illegal immigration, has from the outset been part of the mandate of Europol³⁸ and is approached within the *Illegal Immigration & Human Beings Group*, of which the *Unit Trafficking in Human Beings* forms part. As of 1 January 1999 the originally used definition of THB was extended with child pornography,³⁹ but forced labour other than sexual exploitation does not (yet) form part of the sphere of activity of Europol. It is expected that, partly in view of the developments outside and within the European Union relating to the definition used for THB, this will soon change.⁴⁰ The consent of the European Council is however necessary for this. Europol even hopes in the long term for a general mandate to prevent competence questions. This mandate would have to cover organised crime.⁴¹ Within Europol there are no separate departments involved with THB for sexual exploitation, illegal immigration or child pornography. Separate expert meetings are however organised for each of these matters. For example, each year Europol organises an expert meeting on THB for the purpose of sexual exploitation. The Bureau NRM takes part in the open part of these meetings as an observer. Each year the Unit Trafficking in Human Beings draws up the *Trafficking in Human Beings General Situation Reports (GSRs)* already mentioned earlier in this report. The aim of these GSRs is to lay down knowledge and experience in the field of combating THB in the member states. This is done using general themes of matters to be dealt with that are discussed in the expert meetings. The applicant member states, that are also represented in the expert meetings, make contributions to these GSRs. In 2001 a Crime Assessment was published relating to Trafficking of Human Beings into the European Union (Europol, 2001).

³⁸ Agreement to set up a European Police Service (Europol agreement), OJ C 316, dated 27 November 1995. THB was then defined as subjecting a person to actual and illegal force of other people by using violence or threat of violence or by abusing a position of authority or deception, in particular in order to engage in the exploitation in prostitution of this other person, forms of exploitation and sexual violence with respect to minors or the trafficking in abandoned children.

³⁹ Decision of the Council of 3 December 1998, Official Journal C 026, dated 30 January 1999. To the above-mentioned definition was added: "These forms of exploitation also include the production of, trafficking in and distribution of pornographic material that contains pictures of children."

⁴⁰ According to verbal information from Mr B. Clarberg of the Trafficking in Human Beings Unit.

⁴¹ Europol will in the near future perhaps undergo some changes (see Draft decisions Union Treaty; Europol notice - state of affairs and future expectations, Lower House, meeting year 2001-2002, 23 490, no. 219).

5.5.2 Eurojust

One of the exponents of the previously described policy of the EU to reinforce police and judicial cooperation in criminal cases is the proposed setting up of Eurojust. At the European Council in Tampere (on 15 and 16 October 1999) it was agreed that towards the end of 2001 the 'Eurojust' unit must be set up. This unit is intended to strongly oppose cross-border organised crime in an area in which free circulation applies. Although the precise structure and organisation of Eurojust has not yet been established, and agreement still has to be reached about the specific tasks and powers, a number of contours of this unit have been sketched (Communication from the Commission on the setting up of Eurojust dated 22.11.2000, COM(2000) 746). Clearly, Eurojust must fulfil a central, coordinating role at the level of the national prosecution bodies, in order to increase the suppression of (serious) organised crime. This means that Eurojust must simplify actual coordination between the national investigation bodies and must support criminal investigations in cases of cross-border organised crime. The intention is that this task will go further than just being a documentation and information centre that serves on an abstract level of advice. Eurojust must be able to make an active contribution to individual criminal investigations of the above kind, but without this unit having to have the independent power to carry out investigations or to set up community investigation teams. In addition, Eurojust must have the possibility of making recommendations to the national prosecution bodies, will be able to send them binding requests for information and will be kept informed of the state of affairs in cross-border criminal cases. To be able to carry out its tasks adequately, it is anticipated that Eurojust must have access to national criminal and proceedings registers and must have authority to inspect criminal dossiers. Mutatis mutandis these principles must be applied in the relations of Eurojust with Europol. Eurojust must be regarded as the judicial counterpart of Europol, which means that Eurojust must support the activities of Europol by coordination of prosecution activities. In order to be able to coordinate, Eurojust will have to use data collected and made available by Europol. Because of the nature of its tasks, Eurojust will consist of national public prosecutors, judges or police officers with equivalent powers. They will be subject to the national law of the member state of origin and will derive their powers from the national law. By this arrangement national sovereignty is respected, which, however, also means that the chances of success are reduced. People will in fact again have to rely on the readiness to cooperate, whereas fifteen different systems for investigation and prosecution existing alongside one another, with just as many differences in powers, will doubtless be a hindering factor. Eurojust will have to cooperate with both the *European Judicial Network* and with Europol. Since THB is mentioned in the paragraph relating to the police and judicial cooperation in the Maastricht Treaty, Eurojust will in the long term also play a part in this field. Because this initiative is still in its infancy and requires elaboration, it is not yet possible to see what its effect will be in concrete terms. It is, however, already clear that, in spite of its limitations, Eurojust will be an important

instrument in the fight against THB. The Bureau NRM will also keep up with the developments in this field.⁴²

⁴² In the budget of the Ministry of Justice for the year 2002 it was announced that Eurojust would start in the course of 2002. This also arises from the decision on this during the Justice and Home Affairs council of 27 and 28 September 2001. By decision of the European Council of 28 February 2002 (OJ EC 6.3.2002 L63/1) Eurojust has now been set up. The decision contains among other things the objectives, tasks and powers of Eurojust. Because of the publication date of the Dutch version of this report (March 2002), this information it is not incorporated in this paragraph.

6 Victim support organisations and pressure groups

6.1 Introduction

Victims of THB have often been through a great deal. Most then need psychological and material support. Some victims get help from their immediate environment, from family or friends. Many victims - in particular from abroad - however have no-one to fall back on and are dependent on the professional support circuit. Support for victims of THB requires specific knowledge and skills. There is much common ground with counselling victims of sexual violence, but THB victims form a target group which also has characteristics entirely of its own. For example, most foreign victims are not familiar with Dutch culture, they do not speak the Dutch language, have an uncertain residence status, have no daytime occupation and are not eligible for regular housing. Furthermore, they need legal support because they are victims and because of their possible role as a witness or injured party in criminal proceedings, or in getting compensation.

Victim support includes prevention, reception and guidance in the Netherlands and support in case of return to the country of origin. Various Dutch organisations offer help. The main types of help are: information to at-risk groups (prevention), psychological support, material support, provision of accommodation, health information, health care, legal advice, provision of general information and, finally, support of victims on their return to their country of origin. In this chapter attention is paid to the range of victim support available within the Netherlands for victims of THB.

For the field of THB in general, but for the victim support organisations and pressure groups in particular, quite a lot of changes are taking place. On the basis of for example annual and other reports, this chapter tries to give an accurate picture of the situation. Changes after early September 2001 are not generally taken into account, but it is possible that developments have also taken place before this that are not incorporated in this text.

6.2 The range of victim support available in the Netherlands

6.2.1 The Foundation against Trafficking in Women

Lack of familiarity with the practices of trafficking in women, the absence of an effective suppression policy and the absence of specific help and support facilities for trafficked women, led to the setting up of the Stichting Tegen Vrouwenhandel (Foundation against Trafficking in Women - STV) in 1987. The Foundation was to prompt a good policy for the reception of victims of trafficking in women and for an effective suppression policy (Wijers, 1988). Up to 1992, the most important activities

of the STV were: offering suitable care to (possible) victims of trafficking in women, drawing attention to the phenomenon of trafficking in women, charting the character and scale of this, and promoting social and political awareness in this area (Van Dijk & De Savornin Lohman, 2000).

In 1992 it was decided to integrate victim support as far as possible in regular support provisions. To achieve this, the Foundation has set up regional integration networks. The STV exercised central control, but the reception and support of the victims took place within the integration networks. A number of integration networks have in the course of time undertaken (regional) control themselves.

Since 1999 the STV has been mentioned explicitly in the Vreemdelingen-circulaire (Immigration Law Circular) as the body entrusted with the central reporting, placement and national records of victims of THB.¹ These guidelines oblige police corps to report all (possible) victims of THB they come across to the Foundation. The STV has also reached agreement with non-police bodies, such as victim support organisations, solicitors, Stichting NIDOS² and the integration networks, among other things on reporting and registration of victims. Reports of victims of THB therefore reach the Foundation in different ways.

The STV now focuses in particular on:

- reporting, registration and care coordination;
- activities relating to the integration networks;
- training and information;
- influencing policy;
- international activities.

The STV is (has been) actively involved in the following international projects:

- *La Strada*. La Strada is an international programme, started in 1995, that aims to improve the approach to trafficking in women and assistance to victims in Central and Eastern Europe. For this, together with partners in four countries (Poland, Czech Republic, Bulgaria and the Ukraine) campaigns against trafficking in women are carried out.³ An attempt is also being made to transfer the La Strada model and the specific knowledge and expertise to NGOs in the (19) other countries in Central and Eastern Europe. This is done among other things via training courses;

¹ The STV also provides help and support to male victims of THB.

² Stichting NIDOS is appointed by the Ministry of Justice as a national guardianship organisation for unaccompanied minor asylum-seekers.

³ These were a) press and lobbying campaigns to draw attention to the problem of the trafficking in women and to raise awareness among authorities, media and citizens; b) prevention and education campaigns to warn potential victims of the dangers of trafficking in women and c) victim support campaigns aimed at coordinating the reception and support of victims.

- the *European Network Against Trafficking in Women (EUNATW)*. EUNATW is a network of European NGOs that has existed since 1999. The aim of this network is to promote the implementation of the Hague Declaration of 1997 (see Chapter 3) and the expertise of the members of the network. The basic principle of EUNATW is that THB must be seen in the light of the human rights problems. The STV coordinates the activities of EUNATW. In the year 2000 (among other things) this involved: making contact with the European Parliament and distribution of a brochure setting out the main points from the Hague Declaration to the members of EUNATW. EUNATW also produced a report on the implementation of the Hague Declaration in the different countries, containing recommendations at national and European level;
- the *Human Rights Standards Campaign* (early 1999 - end 2000). This was an initiative of the *Global Alliance Against Trafficking in Women (GAATW)*⁴ for the adoption of minimum standards for treating victims of THB.⁵ The STV has contributed to the development of the project plan and the search for external financiers.

In 2000, the STV merged with the Federatie Opvang (Reception Federation), a national, umbrella organisation for social reception⁶. 2001 was a 'transitional year' for the STV, focussing on the integration of the two organisations. The merger involved the level of management and finance. The terms of reference and content of the work of the STV did not change (so far).

6.2.2 The integration networks

As stated in the previous paragraph, the STV has set up regional integration networks for the reception and support of victims of THB. These networks associate various organisations that offer help to victims of THB, such as reception centres, police, Legal Assistance Bureaus and Gemeentelijke en Gewestelijke Gezondheidsdiensten (Municipal and Regional Medical Services - GGDs). Within an integration network a care coordinator controls the local organisations and coordinates their activities. The care coordinator is also the point of contact for reports of victims. At present, there are ten integration networks in the Netherlands. There are also regions with no integration network. Victims from these regions are usually placed directly, without the intervention of a regional care coordinator, in a reception centre or they go to another integration network, outside the region (Van Dijk & De Savornin Lohman, 2000).

⁴ The GAATW is an international NGO, that has existed since 1994, and that promotes the protection of the rights of victims of THB. The head office is located in Thailand.

⁵ This was with a view to the (then only planned) UN Trafficking Protocol (Van Dijk & De Savornin Lohman, 2000).

⁶ The organisations that are affiliated to the Federatie Opvang offer reception and help to people who, due to psychosocial problems, temporarily have no home or cannot stay in their home environment. The reception consists of four types of work: women's reception, general crisis reception, care of the homeless and evangelical reception.

6.2.3 Support for underage victims

Some organisations focus specifically on the reception or support of *underage* (potential) victims of THB. These bodies are described in the following.

Project 13

The project focuses on girls of 13 to 23 years. Objective of the project is:

- to trace and get out of prostitution underage and young adult victims, to organise reception and initiate and continue assistance;
- the criminal prosecution of the pimps/loverboys (for THB, procurement of minors and removal from authority).

Within the project, support for underage girls is compulsory and for full-age girls is voluntary. Over the period 1997 to 1999, help was provided for 33 girls. Of these 33 girls, 27 are no longer working in prostitution. Some criticism has been expressed at the closed reception of (underage) victims. For example, Terre des Hommes (1999) states that it is wrong to put these girls on a par with delinquent youth. Research shows, however, that the girls have a positive view of Project 13. Those who were placed in closed reception initially did not agree with this, but later stated that it was an effective way of getting them out of trouble (Van Nijnatten & Klein Wassink, 2000).

Asja

Asja is a residential reception facility for girls ages 16 to 23 years, who are at risk of getting into prostitution, or work in it and wish to get out. *Asja* provides 24-hour reception, support, intervention, crisis reception and after care. It is a small scale organisation. The support is on a voluntary basis.

Foundation NIDOS

Stichting (Foundation) NIDOS (previously *De Opbouw*) is a national guardianship organisation for unaccompanied minor asylum-seekers (AMAs) and is responsible for the reception and support of the AMAs under its guardianship. Some of the underage victims of THB enter the Netherlands as AMAs. AMAs that NIDOS knows to be, or knows to be at risk of becoming, victims of THB, are usually placed in a residential project, but they may also be placed in a foster family. On one occasion closed reception was chosen.⁷ The 1999 annual report of *De Opbouw* (*De Opbouw*, 2000) states that young people regularly leave the reception centre for an unknown destination. Not a lot is known about what happens to these AMAs, it is however

⁷ Verbal information from Mr. Verstegen (NIDOS).

known that some of them get into prostitution.⁸ It must also be noted that the large-scale reception of AMAs in centres for asylum-seekers creates risky conditions.

Beauty and the Beast

Beauty and the Beast is a prevention project aimed at girls aged from 13 to 16 years. With the help of information meetings in schools, it tries to make girls aware of relations and sexuality and their own possible choices in this. The project is also used to identify and refer potential victims for example to *Pretty Woman* (Lune, 1997).

Pretty Woman

Pretty Woman focuses on young women and girls who run a high risk of getting into prostitution (mainly in the age category 12 to 18 years), or who are forced to work in prostitution (age category 18 to 23 years). The help offered is on a voluntary basis, 'outreaching' and low-threshold. *Pretty Woman* works from the principles of women's support and the 'relationship addiction theory' of Robin Norwood. The idea is to make girls aware of the psychological factors and mechanisms that mean that they feel attracted to certain friends.

Scarlet Cord

The *Scharlaken Koord* (*Scarlet Cord*) is a Christian organisation, located in the Amsterdam red-light district. The aim of the organisation is evangelisation of and support for prostitutes. The *Scharlaken Koord* has a drop-in centre in Amsterdam⁹ and developed the prevention project *Beware of loverboys*. Staff in the project try to make girls of 13 to 16 years aware of the dangers of loverboys and teach them to set their own boundaries (Scharlaken Koord, 2000). For this they give out information, among other things in schools and in asylum-seeker centres, community centres and girls' hostels. Parents, teaching staff and community workers are also given information.

Humanitas Foundation Rotterdam: Prostitution Social Work

The *Prostitution Maatschappelijk Werk* (*Prostitution Social Work - PMW*) department of the *Stichting (Foundation) Humanitas* in Rotterdam, has since it started 1989 regularly had clients who went to work in prostitution as minors, whether or not forced by others. Because many organisations that come into contact with youth prostitution (police, support services) stated that it is difficult to get young people to discuss the

⁸ A team of two policemen was commissioned by the Ministry of Justice to carry out a 'quick scan' of the AMA problem in the Netherlands. The team investigated, among other things, how the information position of the police can be improved in this field and what can be done to respond in the best way possible in the future to the departure of AMAs for an unknown destination. In addition at the moment, led by the national public prosecutor for migrant smuggling, THB and child pornography, the approach to smuggling and trafficking in AMAs has been examined.

⁹ The drop-in centre offers clothing, information, psychological and social help and/or referral, Dutch language lessons for Spanish-speaking prostitutes and Christian reading material in various languages.

subject, the PMW has developed the brochure *Gevaarlijke Liefde (Dangerous Love)* to inform girls about loverboys.

Safe Haven

Since 1997, it has been reported that Moroccan girls were being exploited in the Den Bosch area by loverboys under coercion as prostitutes. Money was therefore made available in Den Bosch in early 2001 to set up a protected meeting place (Veilige Haven or Safe Haven) for Moroccan girls who (whether or not under coercion) are at risk of getting into prostitution.

In this context the *Handboek aanpak kinderprostitutie (Approach to child prostitution Handbook)*, that was published in January 2002, must be mentioned. The Handbook is one of the initiatives of the *Nationaal actieplan aanpak misbruik van kinderen (National Action Plan to Combat Sexual Abuse of Children - NAPS)*. The aim of the Handbook is to stimulate 'good practices' in the field of reception and support for underage prostitutes (NAPS, 2001).

6.2.4 Other victim support organisations

Esperanza

The *Stichting Esperanza (Esperanza Foundation)* is a European-Colombian organisation that develops activities from Europe and Latin America to prevent and combat international trafficking in women. The Foundation was set up in 1993, and at the time had representatives in three countries: Colombia (Bogota and Cali), the Netherlands (Amsterdam) and Spain (Madrid). By cooperation between countries of origin and transit and/or destination country, (potential) victims are informed, received and supported. The Dutch branch of Esperanza was disbanded in 2000 because of lack of financial resources.

Foundation for Religious Against Trafficking in Women

The purpose of the *Stichting Religieuzen Tegen Vrouwenhandel (Foundation for Religious Against Trafficking in Women - SRTV)* is to make a contribution to the fight against trafficking in women and the forced prostitution resulting from this. A number of members of the foundation have worked in developing countries. Networks built up there are used to give information to potential victims of THB,¹⁰ and for the reception and support of (returning) victims. Furthermore, where possible, the SRTV exerts political pressure and occasionally offers reception and help to victims in the Netherlands (WRTV, 2000).

Nigerian Democratic Movement Netherlands

The *Nigerian Democratic Movement Netherlands (NDMN)* is a national platform of self-help organisations of Nigerian refugees. The NDMN defends the interests of these

¹⁰ By distributing information, warning brochures and video tapes.

refugees and encourages their participation in all facets of the Dutch community (brochure NDMN, 2000). In 1999 the NDMN in cooperation with Terre des Hommes carried out research into the trafficking in Nigerian girls to the Netherlands (Oviawe & Iyare, 1999). One of the conclusions of this research is, that there were at least 400 Nigerian girls, most of which are younger than 18 years old, forced to work in prostitution in the Netherlands. In accordance with one of the recommendations in the research report, in March 2000 the NDMN set up a helpdesk. The objectives of this helpdesk are:

- to combat trafficking in West African women who are in the Netherlands or want to come to the Netherlands;
- to involve the Nigerian community in combating trafficking in West African women.

Staff approach potential victims with an information brochure. There are facilities for telephone consultation for (possible) victims and for supporting victims by contacts with the police, IND and De Opbouw. The NDMN staff regularly act as interpreters.

Project Bonded Labour in the Netherlands

The project *Bonded Labour in the Netherlands* (BlinN) was set up in early 2000, and focuses particularly on the follow-up reception of victims of THB. BlinN tries to offer them a prospect of a better future, based on their needs, interests and abilities, by putting together an individual support package. The ultimate aim of this is to restore the victim's freedom of choice, as a result of which the person involved can herself work further on her future prospects. BlinN has a national and international component.

International Organization for Migration

The *International Organization for Migration* (IOM) was set up in 1951 as an intergovernmental organisation involved in resettling European 'displaced persons', refugees and migrants. The IOM is now active world-wide in the field of migration and there are 91 member states.¹¹ The head office of the IOM in Geneva has a 'Counter-Trafficking Service'. This offers support and protection to victims of THB and ensures the support of IOM field missions and member states in the prevention of THB (IOM, 2000). The Counter-Trafficking Service includes:

- accommodation and support for victims of THB;
- legal and medical support for victims;
- support of victims who want to return to the country of origin. The return journey and support in reintegration are tailored by the IOM;
- information and advice programmes in the countries of origin, transit and destination;
- expertise promotion and training courses (for authorities and NGOs) aimed to combat THB;

¹¹ Furthermore, 36 states are regarded as 'observer states'. This is the situation on 30 November 2001 (www.iom.int).

- the initiation and carrying out of research into THB to get more attention for the subject and to provide authorities and other actors with information necessary to take adequate measures to combat THB;
- the organisation of symposia and so on, with the aim of increasing familiarity with the subject, exchanging experiences, distributing research results, coordinating and harmonising policy advice and measures, and creating formal and informal networks.

At the moment IOM-Netherlands makes no distinction between victims of THB and other immigrants in supporting the return to their country of origin. Victims cannot (yet) be identified as such in the statistics of IOM-Netherlands. That is expected to change in the future. Furthermore, IOM-Netherlands is working on a survey of reintegration projects in the countries of origin of victims of THB.¹²

In addition to the above-mentioned organisations, the Filipino organisation Bayanhin, drop-in projects in the streetwalkers' districts, GG&GD's, Victim Support Bureaus, women's and crisis reception centres and self-help organisations offer help to victims of THB.

6.3 Some results from the BNRM survey

Chapter 4 describes the set-up of the survey carried out by the Bureau NRM among victim support organisations and pressure groups. Table 6.1 states how many of which type of organisations have cooperated in this survey and how many of these organisations had contact with victims of THB in the year 2000.

¹² Verbal and written information from Mrs. Brons (IOM-Netherlands).

Table 6.1 Organisations that filled in the questionnaire and organisations that had contact with victims

Type of organisation	Number of organisations that filled in the questionnaire	Number of organisations that had contact with victims
Reception Centres for Women	17	14
Blijf van mijn Lijf ('Keep your hands off me')	14	12
Crisis reception	13	8
GGD	11	6
Migrants pressure group ¹³	6	5
Maatschappelijk Werk (Social Work)	4	4
Inloop-/huiskamerproject (Drop-in project)	5	4
PMW	2	2
Pressure group ¹⁴	2	2
Other ¹⁵	3	2
Total	77	59

More than three quarters of the organisations that returned the questionnaire had in 2000 had contact with victims of THB.

Table 6.2 shows, in order of reducing frequency, what type of assistance the organisations that were included in the survey provided in 2000 to victims of THB.

Table 6.2 The type of assistance provided

Nature of assistance	Number of organisations (N=59) ¹⁶
Psychological support	41
Provision of accommodation	36
(Other) material support	34
Information, education and advice	24
Health education and care	18
Legal advice	13
Care coordination within an integration network	7
Other ¹⁷	1

¹³ These were the Comité zelfstandig verblijfsrecht vrouwen (the Committee for independent residence right for women - Comité), the Stichting Alleenstaande Minderjarige Asielzoekers Humanitas (Humanitas Foundation for Unaccompanied Minor Asylum-Seekers - SAMAH), the Buitenlandse Vrouwen Centrum (Foreign Women's Centre), the Steunpunt Illegalen (Support point for illegal migrants), the Vrouwen Empowerment Centrum (Women's Empowerment Centre) and the previously mentioned NDMN.

¹⁴ These were the Rode Draad (The Red Thread) and the SRTV.

¹⁵ These were the Steunpunt seksueel geweld (Support point for sexual violence), AMA reception and a meeting centre for allochthonous women.

¹⁶ Because organisations can offer several types of assistance, the data in this table add up to more than 59.

¹⁷ This involves social activation, offered by a meeting centre for allochthonous women.

Psychological support, providing accommodation and (other) material support, are the most frequently mentioned forms of help for victims of THB. Relatively few of the organisations involved in the survey give legal advice to victims.

6.4 Organisations for prostitution questions and pressure groups

In the Netherlands, various organisations are engaged in prostitution questions, or devote themselves to the interests of prostitutes, operators of sex establishments or prostitute's clients. These organisations have in common that they reject forced prostitution and exploitation of minors.

The Mr. A. de Graaf Foundation

The *Mr. de Graaf Stichting (Foundation)* is an institute for prostitution questions. The institute gives advice on prostitution policy, encourages discussion on prostitution, carries out scientific research, carries out projects on behalf of third parties and has an information and documentation centre. The Institute is also engaged in:

- maintaining a network with people involved from the (semi-)state sector, NGOs and the prostitution sector;
- monitoring facets in relation to the new prostitution policy, such as: 'prostitution as work', 'exploitation of prostitution', 'prostitution and crime', 'regulation of prostitution by the government' and 'prostitution and morality';
- putting structural tasks, such as research, information and documentation into context with specific action, such as support, advice and projects.

In addition, the institute pays attention to improving the position of prostitutes, in particular as regards health and safety.

Foundation The Red Thread

Stichting De Rode Draad (Foundation The Red Thread) wants to promote the self-help and emancipation of prostitutes and bring about changes in the social image of prostitution. The objectives of the Rode Draad are:

- to aim for recognition of prostitution as a profession and to defend the interests of prostitutes and ex-prostitutes;
- to carry out the above-mentioned initiatives in the widest sense of the word (Rode Draad, 2000).

These objectives are worked on by providing service to the target group, by providing information and publicity, by defending the position of prostitutes and by attending and actively participating in courses, congresses and other meetings. The Rode Draad is, in consultation with the trade union FNV, engaged in building up a national trade union for self-employed and salaried prostitutes.

The Association of Operators of Relaxation Businesses

The *Vereniging Exploitanten Relaxbedrijven (Association of Operators of Relaxation Businesses - VER)* was set up in 1991 as a result of the intention of the government to change the legislation relating to the ban on brothels. Operators of sex establishments

would have to cope with regulations from the government. They foresaw conflicts from the estimation that the officials involved in regulations and control knew little or nothing about the sector and established operators of sex establishments were not usually accustomed to working in accordance with government rules or with (inspection) officials. The VER wants to solve such conflicts by consultation and information. The intention is to promote workable situations by seeking compromises, but if necessary a confrontation is not excluded. The objective of the VER is 'to defend the interests of the operators of relaxation businesses, both collective and individual, in the widest sense, among other things by carrying out consultation with government and other bodies, taking care of public relations for relaxation businesses in general and bringing about an improvement in the image of such businesses. The members of the VER are operators of relaxation businesses that have or have applied for a licence. Relaxation businesses cover businesses with prostitution as the main activity, businesses where prostitution forms part of other activities (sex shops, amusement arcades, sex shows, video shows, saunas and so on), agency businesses (businesses with escort and sex lines), and massage parlours and dating clubs. Operators of window prostitution and self-employed prostitutes can also be members of the VER. The VER represents around 350 businesses in the Netherlands. Both in its articles of association and in its newsletters the VER stands for a 'legal and clean sector'.

Prostitution Information Centre

The *Prostitutie Informatie Centrum* (*Prostitution Information Centre - PIC*), that was set up in 1994, is located in the Amsterdam red-light district. The centre provides information on prostitution to prostitutes, prostitutes' clients, students, tourists, media and other interested parties.

The Excellent Group

The *Excellent Groep* (*The Excellent Group*) consists of a number of businessmen in the relaxation sector, in particular escort firms and clubs that carry a common quality mark.

The Cooperating Consultation of Operators of Window Prostitution

Window prostitution takes place in twelve Dutch cities (Visser c.s., 2000). In most of these cities, the operators of window prostitution have associated themselves in the *Samenwerkend Overleg Raamexploitanten* (*The Cooperating Consultation of Operators of Window Prostitution - SOR*).

The Man/Woman and Prostitution Foundation

In 1986, a group of men who regularly used the services of prostitutes, set up the *Werkgroep Klant en Prostitutie* (*Client and Prostitution Working Party*) with the aim of opening up discussion on visiting prostitutes. Later on it was decided that the working party would subsequently support all parties involved in prostitution from an emancipation point of view, and the name changed to the *Stichting Man/Vrouw en Prostitutie* (*Man/Woman and Prostitution Foundation*). The Foundation has the general

aim of the emancipation of prostitution and the legal and moral equal treatment of all those directly or indirectly involved in prostitution, in particular the clients of prostitutes. Specific aims are:

- to make prostitution and the use of services of prostitutes more accepted and openly discussible;
- to clarify the role and the rights and obligations of clients and others involved;
- to promote an unprejudiced and fair prostitution policy;
- to protect the interests of clients.

Tampep

Tampep (Transnational STD/AIDS Prevention Among Migrant Prostitutes in Europe) is a European project that combines research and action in the field of prevention of AIDS and other sexually transmissible diseases. The target group consists of migrant prostitutes - women, transvestites and transsexuals - from Eastern Europe, South-East Asia, Africa and Latin America. Tampep started in 1993 as a joint venture between NGOs in the Netherlands, Germany, Italy and Austria. At present the Tampep network covers 19 countries. The head office is established in Amsterdam.

In 1996 Tampep and *Europap* (*European Intervention Project AIDS Prevention for Prostitutes*) harmonised their work with one another. Europap supplied the infrastructure and a network of 'service providers', Tampep acted as expertise centre and 'laboratory' for the development of intervention techniques and material. Specific Tampep-activities are:

- to give information to migrant prostitutes on causes and consequences of HIV and other STDs;
- to promote 'empowerment' among prostitutes;
- to provide information for existing social and medical bodies, so that these can respond better to the needs of migrant prostitutes relating to their health and welfare;
- to monitor migration dynamics;
- research into the living and working conditions of migrant prostitutes.

Terre des Hommes

*Terre des Hommes*¹⁸ is an NGO which was set up in 1965 with the objective: support for the destitute child anywhere in the world, without distinction as to race, faith or political conviction. At present, Terre des Hommes dedicates itself to the rights of children from the point of view that children, among other things are entitled to health care, education, play and above all a future (Terre des Hommes, 1999-2000). Terre des Hommes does this by forcing governments world-wide to comply with these rights. Terre des Hommes also publicly exposes the most serious infringements of children's rights by means of campaigns such as 'Stop child prostitution'. In addition, Terre des Hommes has carried out research into child prostitution in the Netherlands and using

¹⁸ Source: www.terredeshommes.nl.

the corresponding report demanded attention for this phenomenon (Hoogendoorn, 1999).

ECPAT

ECPAT (that since 1996 stands for *End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes*) started its activities in 1990. It has now become a world-wide movement to combat sexual exploitation of children, with groups in more than 30 countries. The head office is located in Bangkok. *ECPAT-Netherlands* (*ECPAT-NL*) has existed since 1995, and is a coalition of various Dutch support and pressure groups. *ECPAT-NL* focuses on information to and the creation of awareness of and involvement among the Dutch population and in particular among travellers, organisations and companies in the travel industry. In addition, it lobbies for adequate and effective legislation and regulations, aimed at preventing sexual exploitation of children, and for prevention and aid projects for children that run the risk of getting into prostitution. *ECPAT-NL* also stimulates and keeps up with research into the part played by Dutch people in commercial sexual exploitation of children.

Defence for Children International

Defence for Children International (DCI)¹⁹ is an independent, international organisation that defends the rights of the child world-wide. DCI was set up in 1979, the International Year of the Child. The Dutch department of DCI (*DCI-NL*) is involved in the Netherlands with information on the rights of children and is active in the field of fund-raising for legal aid projects of DCI branches elsewhere in the world. DCI has a consultative status in the United Nations and in the Council of Europe. *DCI-NL* forms part of the *ECPAT-NL* coalition, with which it dedicates itself to combating sexual exploitation of children. *DCI-NL* is also engaged in research and coordinated for example a research project initiated by the *ECPAT-Europe Law Enforcement Group* into trafficking in children (for sexual purposes) to countries within the European Union. DCI is also working on research into child sex tourism.

6.5 Key problems in victim support and protecting interests

Prevention and information

A good few organisations are of the opinion that in the field of THB too little attention is paid to preventive activities. Both in the Netherlands and outside, more and better information should be given to at-risk groups. In addition it is pointed out that proper account must be taken of the circumstances under which and the motives why potential victims get into prostitution. Deterrence alone, for example by a short film, will not always have the desired effect. The risk is that potential victims assume that what is shown in them will not happen to them. It is also possible that their

¹⁹ Source: www.defenceforchildren.nl.

circumstances and future prospects are so hopeless that, in the search for a better future, they are prepared to take great risks.

Furthermore, as regards the situation in the Netherlands, it is pointed out that prostitutes generally do not know enough about their rights and obligations. This would apply even more for victims of THB who are forced to work in prostitution. They are often isolated and incorrectly informed by the traffickers/exploiters about their position. They usually do not know where to find help, or are not in a position to look for help. Information is therefore considered very important for victims of THB. The approach should have a low-threshold and focus on both Dutch and foreign prostitutes. Account must also be taken of other languages and cultures. In the above it became clear that various organisations are already active in this field.

According to those involved in the field, including representatives of operators of sex establishments, information should not only be aimed at (possible) victims of THB. In their opinion operators in the sex business should be better informed about cases such as (punishable) exploitation of prostitution, signs of THB and the method used by traffickers. Businessmen in this sector should be encouraged to adopt a more active attitude with respect to pointing out possible victims of THB, according to these sources.

Another category of people at whom preventive and information activities should be aimed, according to some key figures, are the clients of prostitutes. This is so as to make them familiar with the phenomenon of THB and to make them aware of the fact that not everyone who provides sexual services for payment is of full age or carries out the work of their own free will.

Reception and provisions relating to the execution of the B-9 regulation

A (possible) victim of THB has three months to decide whether to report THB. During this period, there is a right to reception, a benefit payment and medical insurance. If the victim does not have accommodation of her own, she is allocated reception within the support services. However, in practice it is often difficult to find accommodation for a victim. The most frequently given explanation for this is that in general there is insufficient reception capacity and also there is not always a sufficient idea of places that are available. The lack of reception capacity is partly caused by the poor flow rate through reception. This again has to do with the long duration of investigation and prosecution, the long duration of the application procedure for a permanent residence permit (after the end of the B-9), and the shortage of follow-up reception. Some integration networks state that they themselves, but also the STV, do not function to the optimum due to lack of control and manpower.

Non-Dutch victims cannot make use of social facilities or (residential) assistance if they do not report an offence, if they continue to work in prostitution, or if they stay in the Netherlands without a residence permit. Victims are, however, generally afraid of reprisals by traffickers or their accomplices and often dare not report the offence. It

also happens that, partly because of a debt-bondage, they cannot or do not want to return empty handed to their country of origin and therefore want to continue working in prostitution. Reception centres usually do take a few 'illegal' clients, but cannot afford to take many, because they receive no finance for them. Many of the organisations for victim support are of the opinion that the residence right of and support for victims of THB should not be linked to having to report the offence. Victims who, for whatever reason, do not want to report the offence, should according to this view still be enabled to make use of the Dutch support offered.

A victim can only stay in a reception for a limited period. The limited reception period is inherent in the character of the women's and crisis reception, where most of the (full-age) victims are received. A long-term residence in a residential institution is also not desirable, for it plays into the hands of institutionalisation²⁰. There is also the fact that full-age victims of THB rarely require the 24 hours a day support that is usually offered in residential reception centres. Also, a victim who has independent accommodation receives full benefit from social services. Clients of women's and crisis reception centres do however fall under the so-called *pocket and clothing money scheme*, which means that they receive a small amount per week to spend on themselves; the rest is reserved for the costs of reception.

The already mentioned lack of follow-up reception for victims of THB, such as supported independent living or their own accommodation, is largely caused by municipalities being unfamiliar with the B-9 regulation. The result is that victims of THB cannot register in the population register and do not receive an occupancy permit, assistance payment, medical insurance or settling-in allowance. These are all essential things to which victims are entitled under the B-9 regulation.

The nature of the support

Victims of THB are spread out over the country in reception centres. This has the result that knowledge about and experience with this target group remains limited for each centre. This is shown in particular by the results of the survey of the Bureau NRM. In addition, there is the fact that the regular support facilities and methods are not entirely suited to the problems of victims of THB. This target group is in fact not comparable in every respect with the regular clients that the victim support-workers support day by day, such as victims of domestic violence, people with mental problems, drug addicts and the shelterless and homeless. Problems that one comes up against in the day by day support of victims of THB are for example the language barrier, cultural differences, lack of trust by the victims, the lack of future prospects, the lack of something to fill their days, problems with the day and night rhythm and the lack of a social network. There is also insufficient legal knowledge present among victims and victim support-workers, there is a fear of reprisals, the victims are

²⁰ 'Institutionalisation' means alienation from daily living that can be caused by a stay in a hospital, or a residential home, and is at the expense of the individual's independence and ability to cope.

prohibited from continuing to work in prostitution or elsewhere and victims with a mental health care indication are placed there, something for which the general reception centres are not equipped. A number of organisations state in the survey that they need knowledge and resources to be able to deal with victims of THB better. They plead for more specialised reception for these victims and for additional training.

Also, from all sorts of sides there has been an emphatic reference to the shortage of reception for *underage* victims of THB. For girls there are some projects, but the capacity is not sufficient, for the reception of boys facilities are virtually entirely lacking.

Return

A foreign victim who, whether or not voluntarily, returns without any earnings to the country of origin, often does not have a rosy future. Many victims have in first instance moved to another country because of the poor financial and social prospects in their country of origin. With no money, education, work experience or family to fall back on, it is in many countries (of origin) difficult to build up a new existence. Added to this is the fact that there are often few social facilities. Victims therefore remain vulnerable to the people who recruited them, or who otherwise had a share in trafficking them and who often live in the same region or town or in the same village as the victim. Many victim support-workers in the Netherlands are of the opinion that there must be more opportunities for victims, at the end of the B-9 regulation, to remain in the Netherlands, or feel that at least a more careful look must be taken as to whether the risks for the victim returning are not unacceptably large. Elsewhere in this report attention has already been paid to this key problem. Victims who (must) return to their country of origin are according to the victim support-workers inadequately supported on their return. There is also a need for (better) cooperation with international organisations, so that the victims are received when they return to their country.

Financing of NGOs

The majority of the Dutch NGOs that devote themselves to the victims of THB only receive financial support occasionally, solely on a project-basis or even not at all. This means that within the integration networks the contribution of certain partners sometimes changes due to lack of resources and that NGOs often must invest a lot of time and energy to raising funds. In certain cases government financing is increasingly carried out decentrally, which is also a complicating factor. This is because a project such as for example Asja is located in a particular municipality and in a particular province, but receives victims from all over the country. It is not then not exactly clear who feels or should feel (financially) responsible for the victims.

7 Bureau NRM; a look to the future

7.1 Introduction

The present first report of the Bureau of the Dutch Rapporteur on THB combines information on very many aspects that, in some way or other, relate to the phenomenon of THB. This report does not, however, give a full picture on some points. What is missing is in part information that at the time the report was being written is still being collected in all sorts of research - underway outside BNRM - and which will become available in the short term, and in part information that is not yet available in existing registration systems at the moment. In addition, there are data that BNRM has not (yet) been able to collect, because of the priority in its work that is necessary given the scale and complexity of the field of research. A lot of this information will be included in the next report, which is planned for 2003.

7.2 Planning of BNRM activities in the near future

In the coming period the responses from government, parliament, partners in the chain in preventing and combating THB and others involved to the first report and the possible implementation of the recommendations it contains, are important points for attention. These responses can partly give shape to the proposed activities of the Bureau NRM. Furthermore, BNRM will also in the coming period maintain contact with key figures at home and abroad, collect and study literature relating to THB, fulfil a 'help-desk function', if required cooperate in research in this field¹ and attend and contribute to congresses and symposia. The Rapporteur, when there is reason to do so and the opportunity presents itself, will again try to make adjustments to existing situations. Furthermore the following activities are planned.

In a general sense remain informed of Dutch developments

In order to remain informed of developments, key problems and possible solutions in the field of preventing and combating THB in the Netherlands, legislation and regulations and new initiatives in this will be followed and BNRM staff will also continue to structurally attend certain consultations. Examples of this are the *Monitoringsoverleg (Monitoring consultation)*, the consultation that also has the task of reporting to the Lower House on the (side) effects of lifting the general ban on brothels (see also paragraph 3.6.2) and the meetings of the *Project Prostitutie Mensenhandel van de Nederlandse Politie (Prostitution and Trafficking in Human Beings*

¹ In the form of participation in support commissions, giving feedback to research set-ups or questionnaires, or answering questions from researchers.

Project of The Dutch Police - PPM/DNP),² as well as meetings of the district public prosecutors for THB of the Public Prosecution Service. In addition, it is the intention to occasionally take part in meetings in the field of support for and protection of the interests of victims, such as meetings of regional integration networks. The plan is also in the coming period, in consultation with the relevant 'partners in the chain', to organise four meetings:

- a meeting for coordinators and victim support-workers within the regional integration networks on trafficking in women;³
- a meeting for organisations and people involved in prevention or combating, victim support, or (scientific or investigative) research into trafficking in minors;
- a meeting of bodies and officials who have to execute the B-9 regulation⁴ and
- a meeting for policy makers of the different Ministries that in one way or another are active in the field of preventing and combating THB.

The purposes of these four meetings are many. In the first place they aim to keep BNRM informed of developments and opportunities in the field of preventing and combating THB. They also aim to put various actors within a particular sector (the integration networks, combating trafficking in children, or 'the government') into contact with one another, so that they can exchange information and experience. The meeting for the staff of the different Ministries will finally explore whether there are opportunities for these Ministries to make a contribution to the (following) report of BNRM. This corresponds for example to the way this was done until recently in Belgium in the annual reports of the Centre for Equal Opportunities and the Fight against Racism.

Internationally-oriented activities

Of course supranational and intergovernmental developments, such as those in the field of the *UN Trafficking Protocol* and the *European Framework decision on trafficking in human beings*, will be closely followed. That also applies for developments within the *Organisation for Security and Cooperation in Europe (OSCE)*⁵ and the *Office for Democratic Institutions and Human Rights (ODIHR)*, as well as within the Council of Europe. Partly with a view to this, (further) contact will be sought with the relevant organisations and the specialist departments or officials coming under them. In order to get a better idea of the current legislation and regulations, the policy adopted and the experience in relation to THB in various foreign countries, in the coming period in each case two foreign working visits will be made, namely a visit to Sweden and a visit

² Information from the Operationeel Overleg Mensenhandel (Operational Consultation Trafficking in Human Beings - OOM/DNP) of the Dutch police will in the coming period be an important addition to the PPM/DNP information.

³ This is in conjunction with the Stichting Tegen Vrouwenhandel (Foundation Against Trafficking in Women - STV).

⁴ The exact theme of this meeting will partly depend on the outcome of the revision of the B-9 regulation, which is being worked on at present.

⁵ Of which the Netherlands will provide the presidency in 2003.

to Italy.⁶ In addition, BNRM staff will continue to take part in international forums, such as Europol meetings and the EU prevention forum, and in multi-lateral initiatives, such as missions initiated by the Council of Europe to prepare for and support the implementation of legislation and regulations relating to THB and the work initiated by the *Centre for International Crime Prevention (CICP)* on a 'toolkit' with 'best practices' in the field of the approach to THB. Cooperation in such initiatives is a way of sharing knowledge and expertise acquired with others, but it also provides BNRM with information. Furthermore, in the coming period existing contacts with foreign embassies in the Netherlands will be maintained and foreign delegations will be received.

The collection of data on victims, victim support, investigation and prosecution

Also, over the coming period, information will be collected about victims and assistance to victims, as well as about investigation and prosecution of suspects. This partly relates to a 'repetition' (but up-dated) of the research activities carried out for the first report. As regards victims and assistance to victims again and in a similar way a survey will be carried out among victim support organisations. In addition, the record data of the STV on - as a minimum - the numbers of victims reported there and their origin will again be used.

As regards investigation and prosecution, any future police survey will be studied, and an updated file of Public Prosecution Service data will be analysed in order to generate an updated overview of the THB cases registered with the public prosecution.

Consideration will also be given to what extent some 'new' information sources can be exploited. The possibilities will be identified of obtaining (more extensive) information from the *Onderzoeks- en Beleidsdatabase Justitiële Documentatie (Investigation and Policy Database Judicial Documentation - OBDJ)*. This relates to characteristics of suspects, their 'criminal record' and above all also the 'connection' of THB with other offences and relating to judgements that have become irrevocable. How far the *Herkenningsdienst-systeem (Identification Service System - HKS)* will be able to supply relevant information on victims of THB will be explored and the same applies for the *Slachtoffervolgsysteem (Victim follow-up system)* recently taken into use by the police. Furthermore, the *Vreemdelingen Administratie Systeem (Aliens Administration System - VAS)* of the aliens police will be screened for (numbers of) illegal prostitutes arrested. There will also be further consultation with the IND, in order to analyse and interpret the available records relating to the B-9 regulation (the number of applications and the decisions taken on them) and also to be able to report on them.

⁶ The choice of these two countries is based on the fact that both countries, just like the Netherlands, have made clear policy choices relating to both suppression of THB and the way in which victims are handled. However, the content of the Swedish and Italian policy differs considerably from Dutch policy on certain points.

Also, with the aim of acquiring more in-depth, qualitative information on the offence of THB (such as on the method of procurement, the degree of organisation of the suspects, the method of suppression and exploitation, the financial interests involved in THB), as well as on their investigation and prosecution and on the key problems that occur, some police and judicial dossiers will be subjected to a thorough analysis of their content. In order to gain more understanding of the judicial approach to the phenomenon and the considerations used, jurisprudence on the subject will be studied. Consideration will also be given to whether and how the judicial power can be approached as a direct information source.

The programme set out above and the overview set out in the following paragraph of information anticipated in the next BNRM report, assumes what, in the view of the Rapporteur, should *in any case* be done. The extent to which this can actually be carried out does, however, depend on the manpower available. Recent experience has clearly shown that what is described here can only be fully achieved if the BNRM unit can be extended, and/or the budget increased so that research can also be outsourced.

In addition to the minimum activities considered necessary there are many themes and subjects that in all respects deserve (further) study, but that the rapporteur has provisionally put on a list of possible activities for BNRM sometime further in the future.⁷ These include (in random order):

- survey of prevention activities in general and of initiatives in this matter by Dutch embassies in various foreign countries in particular;
- follow-up research relating to victims who, whether or not voluntarily, have returned to their country of origin. This, in order to get a better idea and to be able to make a more realistic estimate in the future of their chances of reintegration and the risks they run on returning. All this possibly in cooperation with the *International Organization for Migration (IOM)*;
- carrying out some case studies of victims of THB that make use of the B-9 regulation, in order to collect more qualitative information on the ups and downs of these victims and on their stay;
- exploratory research into the character and scale of social abuses, other than exploitation in prostitution, that still fall outside the scope of the Dutch Penal Code article on THB, but which can be regarded as (other) forms of modern-day slavery;
- collection of information on the possibilities and key problems relating to financial investigation in THB cases;
- the collection of more information on confiscation demands;
- the collection of information on joinder of parties as injured party and compensation for victims. The joinder procedure offers victims the possibility of bringing a civil law claim for compensation as an injured party in penal proceedings;

⁷ The list may also be regarded as a list of subjects which it is recommended be taken up by other researchers.

- file examination to study annual reports of the 'predecessor' of BNRM, *the Centrale ter bestrijding van de handel in vrouwen en kinderen en van de handel in ontuchtige uitgaven* (Centre for the combat of trafficking in women and children and the trade in lewd publications).

7.3 Information in the next BNRM report

The next report will be less extensive on a number of points than is the case in this report. What will be found in the next report:

- information on new and revised regulations relating to THB and related fields and crimes;
- an overview of activities carried out by BNRM in the reporting period;
- recent policy developments relating to THB by the Public Prosecution Service and police;
- an updated overview of victim support facilities and initiatives in the Netherlands;
- a description of updated information from Public Prosecution Service data, OBJD, the STV records and the BNRM survey;
- an analysis of jurisprudence relating to THB cases;
- a brief description of the results of external research⁸ that will be completed in the course of 2002. This involves:
 - a) the research into investigations of THB in the period 1997 to 2000, carried out by the Unit Kennis en Onderzoek (Unit Kennis en Onderzoek (Knowledge and Research Unit - UKO) of the Nationale Recherche Informatie (National Criminal Intelligence Service - NRI) The research covers matters such as characteristics of the investigations of THB in the above period, characteristics and level of organisation of the suspects involved in these, *modus operandi*, characteristics of victims and illegally acquired benefit;
 - b) two studies initiated by the *Monitoringsoverleg* (Monitoring consultation). This relates firstly to the *Monitor prostitutiebeleid 2001* (Monitor prostitution policy 2001), a study into the character and scale of involuntary and illegal prostitution in the period after the lifting of the general ban on brothels. This, to gain an idea of any side effects of this change in the law in the sense of possible shift effects.⁹ Secondly this involves the study *De sociale positie van prostituees bij gereguleerde bedrijven* (The social position of prostitutes in regulated businesses). Within this study a picture is sketched of the position of prostitutes within the regulated businesses. Forced prostitution, prostitution by minors and illegal working in prostitution are points of interest in this study;

⁸ BNRM is involved in some of this research in the form of membership of the support or reading commissions (see also Chapter 3 on this).

⁹ This involves for example a shift from prostitution by minors and forced prostitution from brothels and window prostitution to sectors within the sex industry which are more difficult to control, such as the escort sector.

- c) study by the national public prosecutor for THB, smuggling of migrants and child pornography into smuggling of and trafficking in unaccompanied minor asylum-seekers, and
 - d) a survey of reintegration projects in the countries of origin of victims of THB, by IOM-Netherlands.
- a summary and comparative overview of the way in which THB is approached in different European countries visited (Belgium, Germany, France, Sweden and Italy), as regards legislation and regulations, as well as regarding policy and the way in which victims are treated there;
 - a brief description of the 'best practices' in the field of preventing and combating THB that will be included in the 'anti-trafficking toolkit' being developed at the moment;
 - a comparative overview of findings of the 'rapporteurs' in other countries and those of BNRM;
 - an overview of activities planned for the next reporting period;
 - key problems relating to preventing and combating THB and
 - recommendations relating to (changes in) the approach to the phenomenon.

8 Findings, conclusions and recommendations

For this first report information has been brought together in various fields and with respect to various aspects. To do this contact was made and also maintained with many national and (on a still modest scale) international actors. An attempt has been made to give a reliable picture of the situation in the field of legislation and regulations, investigation and prosecution, as well as to provide an overview of bodies and people in any way involved in the many-headed phenomenon of THB. Support for victims and prevention interests are also discussed. What is offered is based on - as thorough as possible - an initial exploration.

This initial exploration makes it clear that a lot is already happening in the Netherlands in the field of preventing and combating THB and in support for victims. In the preceding chapters, however, all sorts of key problems and points for attention also emerged. This last chapter focuses particularly on those points where improvement is feasible. The findings, conclusions and recommendations set out here must be understood in the context of the detailed descriptions in the preceding chapters, as well as in their relation to one another.

- 1) With the development of the UN Trafficking Protocol to supplement the UN Convention on transnational organised crime, the international community has given a strong signal in the fight against THB, seen world-wide, intended as a universal legal instrument, focussing on all aspects of THB. The Protocol is set in the context of organised crime, but cannot be seen separately from the general notion of respect for human rights expressed by the UN. This applies with regard to suspects *and* victims. As such the Convention and Protocol are very important for the international cooperation vital in the field of the approach to THB. This means that developments must be encouraged that will lead to prompt ratification of the UN Convention and the related Protocols, including the one on THB.
- 2) The definition of THB in the UN Protocol is not only aimed at exploitation and abuse in prostitution or in other forms of sexual 'service', but has a wide description and also covers other forms of exploitation, such as forced labour or labour under such conditions that one can talk of modern-day slavery. In this approach the definition also includes slavery-like practices such as the (clearly for purely commercial purposes) removal of (human) organs. In view of the obligation to criminalise all phenomena that can be defined as THB the existing THB article in the Dutch Penal Code (article 250a) must therefore be held up against the light of the text of the Protocol and the national regulation will in any case have to be supplemented with a more comprehensive criminal provision in order to cover these other forms of exploitation. The present, ancient article relating to slave-trading (art. 274 Penal Code) is not sufficient, while also other provisions, such as for example intentional unlawful detention (art. 282 Penal Code) and taking hostage (art. 282a Penal Code), are not tailored

to this specific problem. In criminalising these other forms of exploitation in the case of exploitation in the social-economic sphere under the denominator THB, this will cover excesses involving a serious attack on human dignity and the infringement of basic rights. Although, on the one hand, one must bear in mind that victims of sexual exploitation will continue to deserve legal protection and special treatment, on the other hand an advantage of a broader definition of THB is that victims of sexual exploitation are given a less stigmatising label.

It is high time a better idea was also obtained of these forms of modern-day slavery that still fall outside the scope of the Dutch criminal law article on THB. To do this, a survey is necessary into social abuses in this area. In Belgium, where a wider THB concept has been in use for some time, a quarter of the victims of THB receiving support there can be regarded as victims of social-economic exploitation (other than exploitation in prostitution). A recently published parliamentary study into various forms of modern-day slavery in France produced alarming findings that prompt better statutory measures to be taken. There is little reason to assume that the situation in the Netherlands is any more rosy. Illegal employment, in which exploitation can easily occur, is present on a wide scale in the Netherlands in various market sectors.

- 3) In the suppression of THB the approach of police and the Public Prosecution Service, considerably more than is now done, must be placed in the structure of (transnational) organised crime. It has been found that the approach of THB in the country often still has a predominantly vice law focus. The result of this is that in many regions or districts, Youth and Vice Police departments that do not have sufficient manpower resources and are usually focussed on other types of perpetrator are responsible for THB investigations. These departments do have important specialist knowledge and experience as regards hearing victims of offences against public decency, but as a rule are not equipped for labour-intensive and time-consuming, often cross-region and cross-border, THB cases with organised or network-type perpetrator groups. In the case of an approach aimed more at (transnational) organised crime one should, however, not lose from sight the vice law aspects.
- 4) An inherent feature of the offence of THB is the profit motive through exploitation. The essence of this is that the personal freedom of human beings is under pressure in this exploitation, which goes against the general principles of the constitutional state and human values. Perpetrators have no mission here; profit motives prevail. In the Penal Code moving (the content of) article 250a Penal Code from under the title of crimes against *morality* to under the title of crimes against *personal freedom* would do more justice to this feature. This recommended move is also obvious since including a wider definition of THB in the Penal Code follows the line taken by the Dutch signature of the UN Protocol (see for this under 1 and 2).

- 5) Following the profit motive as a driving force for the crime of THB, it is recommended when investigating and prosecuting suspects that more structural and specific attention be paid to the possibility of confiscating the illegally gained benefit, at home and abroad. That could perhaps prove to be the most effective way of repressing the phenomenon. Also this advocated accent in the repressive approach makes an approach (more) in the context of organised crime appropriate. Cooperation in an international context is also vital here, since profits made in one country (usually the destination country) can be moved to source and other countries. Carrying out an investigation into money flows with a view to this confiscation measure, if necessary by setting up a criminal financial investigation, is already part of the Public Prosecution Service policy described, but the use of the measure is in practice still thwarted by problems in establishing evidence in the main case (i.e. the THB case). In addition, the above Public Prosecution Service policy rightly recommends early financial investigations at the start of the ordinary criminal investigation, partly to prevent the removal of assets by or on the part of the suspect. Data on financial aspects can also be derived from a statement, based on questioning into this, from the victim or from other witnesses. Discovering the financial benefit to the perpetrator can be important for the provision of evidence, but may particularly also relate to supporting claims for compensation on the part of the victim. It is worth recommending in this context that under existing regulations (criminal and civil law) more efforts be made to obtain compensation for victims of THB.
- 6) THB is not an offence that can only be prosecuted on the basis of a complaint being lodged. Strictly speaking a 'report of the offence' (a term not defined in the Code of Criminal Procedure) is not required. In practice a statement from the victim is nevertheless often found to be of great value for a successful prosecution. Because of this finding it is important that victims make themselves known and are prepared to make a statement against their procurers, transporters, traffickers and/or operators and profiteers, not only to the police, but if required also in the preliminary court investigation and/or in the further proceedings. For this a policy is however necessary that aims to increase the readiness and the availability of a victim to make a statement in the various stages of investigation and prosecution. The B-9 regulation is the first step towards this. The regulation does however seem more motivated at making available an illegal alien, who wants to cooperate with the competent authorities in the investigation and prosecution of THB, in an administrative law regulated, legalised situation, than at providing facilities in the area of social and legal assistance that are directly and primarily related to the victimhood of the person involved (see also below under point 10). In the experience of victim support workers this regulation is in many cases not proof against the risks that the victim runs when reporting the crime.

- 7) This leads to the conclusion that on the one hand consideration must be given to how the threshold for making a statement against suspects of THB can be reduced by offering (in addition to the temporary residence permit) facilities, legal assistance and protection to victims (in this context the European Framework decision on the standing of victims in criminal proceedings of 15 March 2001 is of special significance). But on the other hand one must look for ways of more actively investigating cases of THB and also investing more in obtaining information in ways other than just by reporting the crime. Exploratory surveys can be used to prepare for criminal investigation. A more information-oriented investigation is expected to bear fruit in this field. It is, for example, important here that indications of THB, that come to the fore from other investigations, are picked up. Not without reason is it already stated in the current *Aanwijzing aanpak mensenhandel en andere vormen van uitbuiting in de prostitutie (Instruction of approach to trafficking in human beings and other forms of exploitation in prostitution)* of the College van Procureurs-Generaal (Board of Procurators-General) (1999) that an effective approach to THB cannot be made without good exchange of information.
- 8) A community and policy that wants to take combating THB seriously will have to realise that this is centred on the *infringement of human rights*, in a fundamental sense not only of the victim themselves, but also including the community in its totality and solidarity. This accentuation means that a more consistent, decisive and initiative-based search must be made and signs of THB must be responded to. The instruction mentioned above rightly states that the approach begins with an eye open for signs that THB is involved and specifies that signs must in any case lead to investigation and, if at all possible, to prosecution. As long as THB is characterised by high proceeds and low chances of being caught the perpetrators will after all not lack any incentive.
- 9) Police and the Public Prosecution Service do in many cities and regions give priority to tracking down and trying suspects of THB, but must also be put in a position to intensify the approach to THB. Because THB usually does not cause an immediately visible disturbance of public order, there is a risk that when applying the available capacity in a local or regional context, combating THB is pushed into the background in favour of the approach of more open, publicly identifiable and visible, forms of crime. Easy misunderstanding of the possible dimension of organised crime and unilateral location of cases of THB in the vice law angle, also contribute to this. In this field it is therefore recommended that the degree and intensity of approach is not left simply to the local or regional interplay of forces (of administration, police and the Public Prosecution Service), but that these are coordinated centrally and also seized hold of from a national point of view and to this end the required (personnel and equipment) capacity is also made available. It is, after all, unacceptable that data that lend themselves to further investigation and contain an indication of THB are shelved as potential cases for lack of capacity.

- 10) Following what is stated under 6 and 7 it should be pointed out that the B-9 regulation only grants the reflection period of a maximum of three months - within which a decision must be taken whether or not to report THB - to possible victims of THB who work or have worked in prostitution in the Netherlands. Aliens who *have not yet worked in prostitution in the Netherlands, but are possible victims of THB* are excluded from the application of the reflection period. This exclusion demonstrates the prevailing administrative law interest that lies in the regulation. From the point of view of immigration legislation, it is, after all, understandable that an immediate decision by the alien is advocated. However, from the point of view of combating THB, which may be involved even if the alien is not yet working or has not yet worked in prostitution in the Netherlands, it is not logical and not understandable for this category not to be given a more extensive helping hand as a possible victim of THB. If it is considered that victims of acts sexual violence can often not talk about their experience for some time and they are therefore given reflection time, one cannot see why this should not apply for the category of possible victims of THB now excluded. In many cases in fact these victims will already have been faced with actual physical or mental threat and/or physical (sexual) mistreatment. In this respect it is recommended that a clearer indication be given of the circumstances under which and by whom it must be established that a person can be regarded as a possible victim of THB. The censure now included in the B-9 regulation may not be decisive. With regard to possible victims, a restriction is hereby made that is not in line with the scope of the Dutch description of the offence of THB and which did not occur as such in the earlier B-17 regulation. Why the change has been made is not entirely clear. If combating (international) THB is however taken seriously, with the assumption of the notion of infringement of human rights, then the government in upholding its immigration legislation must with respect to the victim give way to the general interest of investigation and prosecution of the possible perpetrators, including recognition of what has been done to the victim.
- 11) To take this approach further, which does not simply - instrumentally - involve cooperation of the victim in the conduct of the case and recognition of their possible part as a witness in this, a larger-hearted government policy is advocated to grant a longer-term or permanent residence permit to the victim on humanitarian grounds at the end of the proceedings. Granting this earlier is not as a rule indicated. It may, after all, considerably complicate the criminal proceedings, since this will certainly be regarded as such a great favour on the part of the government that this may affect the credibility of the witness and the content of the statement they make. The statement then comes into the sphere of being 'bought' with all procedural complications that may result from this. Even now, with a temporary residence permit, such a defence is regularly brought in criminal proceedings. However, when taking account on the one hand of the necessary facility or facilities and on the other hand the gravity of the burden for a victim to have to appear as a witness in a criminal case, this

defence is usually defeated for lack of reality value. Return to the country of origin can and will be appropriate in specific cases, but it can be difficult to accept that the victim runs disproportionate risks in this because of making a statement against for example people who were involved in recruitment and transport and who often come from the same region as the victim themselves. When weighing up whether or not a victim is eligible for a permanent (residence) status, one must look carefully at any risks of returning. Further consideration also needs to be given to using the period for which a temporary residence permit applies to increase the level of education or the work experience and position of the victim with a view to their return on the long term to their country of origin. The victim's 'baggage' should be such that the person involved after their return has a better starting position for getting work in their own country and runs less chance of falling back into the hands of traffickers in human beings. This 'baggage' could also mean that after the proceedings the victim can support themselves better in Dutch society if they were granted permanent residence here. The International Organization for Migration (IOM) is at present looking at whether victims of THB among immigrants can be given separate attention. A check must be made as to whether this organisation and/or other organisations could not do more for the special category of victims of THB in the return and support (also in the homeland), by using their contacts and networks in various countries of origin. It is also important that these countries, where possible, are tackled about the intention manifested by them by usually already having signed the UN Protocol, which also includes minimum guarantees for (returning) victims of THB. It is also worth considering within the framework of development cooperation making extra investments in those regions and/or countries, which investigation has shown must particularly be seen as source countries of victims in the Netherlands.

- 12) In the present B-9 regulation a victim who makes use of the necessary facilities is not permitted to enter the labour process. Because of the long period for which they must be available for investigation and prosecution, this ban, in the experience of victim support workers, has a negative effect for the victim and gives rise to risks of falling back into the old situation. This is increased because the pressure to pay off the debt burden, and the need to earn money for this, often continue to exist. It is worth serious recommendation, therefore, that within the B-9 regulation it is made possible to work, or to offer training facilities and/or other activities to fill the day. Offering a meaningful daily structure is all the more important if it is considered that these may be (seriously) traumatised people. More differentiated reception facilities - after the initial reception - must also be provided during the B-9 procedure.
- 13) Even limited to the category at which the present B-9 regulation is aimed - see for this under 10 - it seems to happen that possible victims of THB are already deported from the country before they are identified and acknowledged as

such. From a humanitarian point of view this is a bad thing, because this ignores the standing of the person involved as a (possible) victim. This can also frustrate investigation and prosecution of suspects, as the details that the (possible) victim could provide on any THB are lost to the national investigating authorities. On this point then better cooperation and concluding agreements between among others the IND, aliens services and criminal investigation departments are very important. Compliance with agreements made in this respect must also be monitored.

- 14) In the draft Framework decision on trafficking in human beings of the Council of the European Union certain aspects of criminal and judicial cooperation have been further elaborated to improve the community approach at the level of the European Union in the field of THB and to fill in gaps within the existing national legislation. This draft Framework decision concerns THB for labour exploitation and THB with a view to sexual exploitation. Article 7 of this draft Framework decision looks to the aspect of protection and assistance for victims. This article is worded remarkably plainly, compared with the way in which the UN Trafficking Protocol describes the rights and position of the victim, partly with a view to effectively combating THB. The reason for this would among other things be that a separate Framework decision (of 15 March 2001) has already come into being on the standing of victims in criminal proceedings. The member states have - so far - not found it necessary, in addition to a general framework for the protection of victims of punishable acts in criminal proceedings, to take extensive and special measures in a specific Framework decision, aimed primarily at the criminal approach to THB, with the focus on perpetrator-related matters. The choice of plain wording for the above-mentioned article therefore seems to be born more out of order than from a difference in approach compared with the UN Protocol. Nevertheless, one must avoid giving this appearance by the wording chosen, especially since the draft Explanatory Memorandum also states that important elements of this protocol are incorporated in the draft Framework decision. A clear reference to the provisions in the UN Protocol on the point of protection and assistance for victims of THB could remove the concerns about this.
- 15) Article 17 of the general Framework decision on the standing of victims in criminal proceedings mentions as the implementation date for example for the guarantee of specific assistance for the victim (including legal assistance) the date of 22 March 2004 at the latest. Within this period each member state will have had to put the statutory and administrative law provisions into effect to comply with these requirements in this Framework decision. It is, however, recommended that the special category of victims of THB, still limited in accordance with article 250a Penal Code to victims of sexual exploitation, be provided as soon as possible and already sooner than 22 March 2004 with statutorily regulated legal assistance in accordance with the provisions in the Framework decision on the standing of victims. Their position is additionally

complicated compared with victims of other criminal acts and when appearing as a witness in the criminal proceedings often not without risks for adverse consequences, manifesting themselves here in the Netherlands or elsewhere (often outside the scope of what a European Framework decision can formally regulate). This latter aspect, as well as a reason for legal assistance, primarily gives a reason for a claim to suitable protection. On this point the above-mentioned article 17 of the Framework decision provides that the majority of the obligations mentioned therein must already have been implemented by the member states by 22 March 2002 at the latest in the national law. These obligations also relate to guaranteeing a suitable level of protection. In view of the very wide definition used in the Framework decision for the term 'proceedings' this obligation commences even upon the first contact with an investigating officer. As far as is known the Netherlands has so far not made a start on revising legislation and/or regulations in this respect. For practice it is, however, of immediate importance that there are clear instructions for the start and scale of protection to be guaranteed to a (possible) victim/witness, while this also applies for the way in which their right to information must be given shape.

- 16) The above makes it clear - and the developments as discussed above under 2 and 14 link in with this - that as soon as possible the most uniform possible regulations and implementation must be aimed for, in any case within the EU, where the member states have committed themselves to a common approach.
- 17) In the field of prevention many initiatives have already been taken and projects started in a European context, in particular in countries seen as countries of origin, to warn of the dangers of THB and to give information on the way in which one can fall into the hands of traffickers. These prevention projects must be continued, intensified and supported financially and otherwise (for example by research). Prevention will primarily be target-group oriented and must be carried out in a realistic way, if possible involving past victims, but public vigilance must also be seen to increase. The latter not only in countries of origin and transit, but particularly also in countries of destination. For example an information campaign can be set up by the government in the Netherlands to make the general public, including potential clients, aware of the phenomenon of THB. Circumstances can then be pointed out that may indicate involuntariness when working in prostitution. This also applies for working with minors in prostitution. Warnings can also be given of the share that clients may have in the continued existence of this form or these forms of prohibited running of prostitution. Although in the Netherlands the client (of full-age prostitutes) is not criminalised, a channelling discouragement policy may be appropriate, in view of the fact that the prostitution market has been split since the ban on brothels was lifted into a legal and a prohibited segment. Encouragement should be given to turning away from prohibited types of running of prostitution in favour of the legal forms regulated by conditions in

licences. At local level municipalities can for example stimulate the use of a special symbol in advertising as a sign of legality, or can specify that advertisements or other public statements indicate that work is carried out under licence. In order to involve the public more in the responsibility that a society has in suppressing THB, it is worth considering - as a trial - setting up a central reporting point, to which suspected phenomena in the area of THB can be reported.

- 18) On the level of prevention Dutch embassies abroad may also play a part, as they may form important interchanges of information in the area of THB. By issuing visas or residence authorisations, they also form an initial control body for the entry of aliens into the Netherlands. Alertness there on suspicion of noteworthy developments of a quantitative or qualitative nature, such as may occur in visa applications, must be encouraged, among other things by giving clear reporting instructions to embassy staff and by providing specific training in this field. Suspicious or noteworthy signs must also be reported quickly to the competent authorities (in the Netherlands and/or elsewhere). Delay in picking up and following up suspicious information must be avoided.
- 19) The field of victim support organisations in the Netherlands is very diversified. Organisations and initiatives come and go. This may be called a positive sign of constantly intervening social involvement, but has the shadow side that the continuity of support is often uncertain. In view of the crucial importance of a professional, well-functioning support, the government will, even more than now, have to invest in structural financing, linked with quality requirements and control, where necessary in conjunction with support in the management and further professionalisation of reception and support.
- 20) Although good reception and support for victims of THB is primarily care-oriented and lies in the field of public health, the law-enforcing authority also has a direct interest in an adequate level of care to victims. The victim's cooperation in the investigation and prosecution of perpetrators is, after all, usually very important, but they must also be mentally and physically up to this, which may require more time than is provided in the B-9 regulation. Weighed against the importance of this cooperation it is worth considering opening an option in the B-9 regulation to being able to extend the reflection period once in appropriate cases. As a result not only will there be more opportunity for care and assistance, but also the possibilities are increased that the victim, aware of the importance of his or her cooperation in the investigation and prosecution, is prepared and also able to withstand the inherent stresses. Taking into account the main line adhered to in the B-9 regulation relating to the context between providing cooperation by the victim in the criminal law process and the offering of certain facilities by the authorities, specific cases may however occur, where the criminal law process, for a reason unrelated to the cooperation of the victim, is not used, for example because the suspect

cannot be found or has since died. The non-application of the B-9 regulation then leads to expulsion and deportation of the victim, while initial reception and assistance may be appropriate for humanitarian reasons. It is recommended for this type of special situations to make an exception to the regulations possible.

- 21) For *underage* victims, including AMAs, care must be taken to extend the reception and support facilities, since there seems to be a great need for this. It is certainly recommended that underage victims be accommodated separately from those of full age, but also as far as possible separately from victims of other (criminal) acts. In this way reception and care can be tailored more specifically to this separate category of underage victims. As regards AMAs among the underage victims, there is the added fact that, even more than their Dutch fellow-sufferers, they are often under physical and mental pressure from their uncertain position and future, both in the Netherlands and in their homeland. The chance that they will as a result again or still be drawn into the prostitution world is very great here.
- 22) Information on the frequently occurring phenomenon of loverboy practices in the Netherlands will have to be intensified and given wide scope. Too much in this field is left to individual and local initiative. For the government there is, however, a task here from the point of view of promoting emancipation to reinforce the defensibility of potential victims, often young (allochthonous) girls. In this context one can think for example of including such information in the regular curriculum of primary and/or secondary education.
- 23) With regard to government action the following can also be stated. Upon the lifting of the general ban on brothels it was decided to regulate legal forms of running of prostitution decentrally by granting licences, in which the municipalities include conditions. Decentral regulations have the advantage that this leaves room for policy, which can be geared to the local situation. Diversity of policy does, however, also increase the need for harmonising regulations and approach. This gets stuck particularly where a difference in policy may lead to risks of cases of THB occurring or being left unhindered. What is meant in particular is the fact that the policy relating to the running of prostitution in the escort sector is not on the same wavelength nationally. By leaving this sector outside the licensing system, it is unhindered by the related administrative control instrument. This provides opportunities for the prohibited forms of running of prostitution to nest in this very sector and is therefore a reason for concern.
- 24) The concept of decentral regulation used by the government, where as a starting point it is maintained that municipalities are the most obvious party for assessing the relation between supply and demand in their municipalities, added to the fact of the general ban on brothels being lifted and the

introduction of a legalised prostitution sector bound by municipal licences, has led to the question whether the categorical ground for refusal, as included in article 3 of the *Uitvoeringsbesluit* (Implementation Decree) for the *Wet arbeid vreemdelingen* (Aliens Employment Act), could still be maintained. As a result of this article, subjects from outside the EU/EEA are not permitted to work in the prostitution sector - not even in the legalised segment - in the Netherlands. The Minister of Social Affairs and Employment, also on behalf of the Minister of Justice, in a reply (on 22 September 2000) to written questions from Parliament however held out the prospect that in the long term the Aliens Employment Act would no longer apply to the prostitution sector and so a work permit would no longer be necessary. It was announced here that, should the occasion rise, consideration was being given to receiving a municipal advice of whether the demand for an intended establishment of new prostitutes fitted within the municipal prostitution policy. If the central government does follow this path, this may lead to a wide range of municipal advises. An increasing demand for people from outside the EU/EEA countries to be permitted to work in the prostitution sector should also be taken into account. However, it is not easy to determine for these people beforehand and from a distance whether they are opting for this work freely and out of a conscious free choice. Because of the need to watch for risks of THB the thus approaching scenario does not look reassuring. A clear and uniform Dutch (national) government policy on this sensitive point is necessary in the light of the international regulations and conditions. The current criminalisation, as a consequence of convention law obligations also laid down in the Dutch regulations (under art. 250a, first paragraph introduction and sub-section 2° Penal Code), of activities that can be regarded as attracting (recruiting) foreign personnel with the purpose of placing these people in prostitution, must also be kept in mind. An advising and facilitating (national or local) authority may be blamed with complicity in this type of offence by intentionally creating the opportunity, resources or information for this.

- 25) An important point of a very different type concerns the ban - in a political sense - pronounced in the Lower House on 'letting people through'. This refers to the acceptance of the so-called Rouvoet motion. This meant that letting people through in the sense of allowing crimes to continue, where human dignity was directly at issue, after they have been identified within the investigation, is not acceptable, not even with a view to weighty interests. With regard to the crime of smuggling migrants, in the interpretation of this motion by the Minister of Justice for the practice of the investigation, situations are still reserved where the interest that is served by not (immediately) proceeding with arrest is more weighty than the interest that is served by (not postponing) arrest. In the investigation of THB, on the other hand, no room is left for interests to be weighed in this way, because human dignity in this offence is directly at issue. Without going back on the accuracy of this starting point and therefore retaining the purpose of the motion, it must nevertheless be noted

that literally following this in the practice of investigation upon suspicion of THB, carried out in an organised (international) context, in some cases leads to forced, immediate intervention, that can be termed premature in that important suspects (for example organisers and leaders) are not caught and an organisation as such cannot be rounded up because an understanding of the structure and method is still missing. The organisation may regard the police intervention in such a case as an incident, close ranks and continue undisturbed on their criminal path, also to the detriment of new victims. The question arises of whether this consequence of the motion must under all circumstances be seen as the most responsible solution for the dilemma posed by the interests of immediate versus (at least in time) delayed action. Where the application of law must in practice be accompanied by any form of weighing up interests, and on this point justification has to be given to the judge, in the wording of the motion the result of this upon suspicion of THB is fixed in advance, while this offence still takes many forms and degrees of severity. In the light of the above it is therefore recommended that the scope and impact of the Rouvoet motion on the judicial practice be given further and wider consideration.

- 26) An important objective of the lifting of the general ban on brothels is to improve the suppression of running of involuntary prostitution. For this criminal context also the objective of protection of minors from sexual abuse is important. These objectives do not, however, directly express the presumption that the phenomenon of THB as such will thereby be reduced. The sixth objective - reduction of the scale of prostitution by illegal migrants - does express a direct expectation of a quantitative result. This category may include victims of THB, because they may be recruited and taken - illegally - over the border to work in prostitution here. Illegality may also encourage a position of dependency, making them susceptible to exploitation in prostitution that cannot be called voluntary and thus must be termed a form of THB. On the question of whether these objectives of the change in the law are already achieved or approached, no reliable statements can (yet) be made. On the one hand, after all, due to (the threat of) the consistent and intensive control of the legalised prostitution sector cases of THB are kept out of the visible sector or are more quickly traced, on the other hand it is, however, estimated that the criminally prohibited forms of running of prostitution do not actually disappear or are suppressed, but only disappear from sight due to the shift of these forms to the sectors (more) difficult to control. From the outset the question of the possible shift effects of the new legislation has kept minds busy. Provision is therefore made for monitoring the consequences of lifting the general ban on brothels by introducing the so-called Monitoringsoverleg (Monitoring consultation). We shall have to wait for the results of this consultation and of the research initiated by this consultation on various fronts. Even now, however, one must face that it will not be possible in the light of what has been measured or could be measured (shortly) before and after the change in the law, to give a clear-cut picture of the effect that the change in the

law has had on the existence of the prohibited forms of running of prostitution, and thus relating to the field of THB in general. This, if only because of the fact that even before 1 October 2000 some municipalities were working with a tolerance policy with annex conditions, while in early 2002 some municipalities were still busy handling licence applications. The date of the lifting of the general ban on brothels thus in essence does not form a clear demarcation. The suppression of exploitation of involuntary prostitution and other forms of THB has, however, with the administrative control instrument of the new legislation, provided it is used persistently and regularly, been given fresh impetus, but of course takes place (due to the coupling with administrative action) in the legalised sector, bound by licences. As regards exploitation of prostitution outside the legal sector a lot will depend on the efforts of police and the Public Prosecution Service, that must be aimed more directly at an active and alert investigation and prosecution of cases of THB. The results of this can of course be measured, but cannot give a definite answer as to the actual extent of the phenomenon of THB.

- 27) The measurability of results assumes that relevant data are available, as well as accessible. This is of eminent importance for each of the actors in the field of combating THB. This requires that the data they generate are systematically registered, in order to be able to exchange information, to be able to relate it to one another and to produce overviews. It has, however, been found that in many fields and by various (umbrella) bodies records are not kept, or not in a structured or uniform way or not computerised. On the one hand this is connected with the fact that there is insufficient understanding of the importance of keeping records, on the other hand a part is played by the fact that on the basis of current legislation and regulations data *may* not always be recorded or that the required technical and financial resources for this lack. The lack of registration, but also the fact that certain data may not be used for a purpose other than the one for which they were originally recorded and (so) cannot be related to one another, in many cases prevents the exchange of data and may also frustrate the progress of tasks and activities. Also for the continuity, transferability and justification of activities, for example in the field of support where many initiatives have appeared and disappeared again, the lack of a (structured) recording of data is a handicap. In the different chapters examples were given of incomplete record (facilities), among others by the STV, the police and the IND. It was also found that information that is available and that in principle can and may also be exchanged, does not always reach the appropriate bodies. Many reasons may be given for this, including the fact that not all actors in the field of combating THB know one another or are aware of one another's existence, tasks and powers and often also unfamiliarity with the existence of the information. Also for the Bureau NRM it has been found to be a handicap that relevant data are not immediately present for its research purposes. Partly for this reason the Bureau NRM has invested in (trying to) improve this situation. Therefore, registration - within the bounds of the

existing statutory options - in a uniform and structural way by in particular those bodies that have umbrella, coordinating or unique tasks and powers relating to prevention and suppression of THB must be encouraged. Any existing financial and/or technical hindrances may not stand in the way of this effort. Furthermore, the (relative) invisibility and secrecy of the phenomenon of THB, for which, after all, even the victims usually would rather not come forward, means that even the most careful and extensive records by the parties mentioned will never give a complete numerical picture of the scale on which this offence occurs. Attention, action and resources aimed at combating THB should not, however, be made dependent on this, but are necessary only because of the severity of the crime.

- 28) According to some sources the identification obligation for prostitutes, added to the fact that one has to inform the tax authorities of one's profession, has led to an outflow of (even Dutch) prostitutes from the regulated prostitution sector. Because new candidates, who want to work in accordance with the current rules, are difficult to find, the temptation would be great to fill these empty places (again) illegally or to turn aside completely into the illegal sector. This possible development underlines not only the importance of constant intensive administrative control of the licences issued, but also illustrates the importance of continuing to talk to this sector, driven by the market of supply and demand, to go on working within the legal framework. From the field the solution put forward for the problem of the outflow is to offer prostitutes from non EU/EEA countries, who voluntarily choose to work in prostitution, (measured) legal and controlled access to the Dutch market. For the risks and objections associated with this, reference should be made to the comments on this under point 24.
- 29) Under this point a further number of subjects and recommendations are summed up, that can be stated without further explanation.
 - a) For victims and witnesses of THB it must be made clearer and easier to know where and to what section of the police they need to go to report an offence or make a statement.
 - b) There is a need for better information on (new) regulations and for a clearer explanation of the (practical) consequences of these for those faced with them (for example prostitutes and operators of sex establishments, but also others involved).
 - c) It is reported that there is a lack of (reliable) interpreters, which affects all fields of intervention and contacts.
 - d) It is recommended that the appointment of national rapporteurs in more countries is promoted, in accordance with the recommendation for this in the so-called Hague Declaration.

In this final chapter it is stressed that efforts in the field of prevention and suppression of THB are very important. However, as long as a gulf between rich and poor

countries continues to exist and as long as (young) people cannot or have difficulty in building up an existence in their own country, the phenomenon of THB will continue to find a rich breeding ground there. It is monetary profit that drives traffickers, while in the people trafficked expectations are often aroused of a better future. It is also true that women and girls in many countries and cultures are still seen and treated as second-class citizens. This increases the risk that they will become victims of THB. Constant attention must be paid to macrofactors of this sort that are difficult to influence. In addition, in prevention and suppression of THB close attention must also be paid to corruption practices that encourage the offence and form an inhibiting factor in unmasking the perpetrators.

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¹ This bibliography contains an overview of the publications studied for writing the Dutch version of this report. Although the English translation is a somewhat abridged version, for the readers information the bibliography is included in its entirety.

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Annex I - Article 250a of the Penal Code¹

Section I

Any person who:

1. by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;
2. recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with a third party for remuneration in another country;
3. induces another person to make him/herself available for performing sexual acts with a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor;
4. wilfully profits from sexual acts of another person with a third party for remuneration, while he or she knows or must reasonably assume that that other person is making him/herself available for performing those acts under the circumstances referred to in paragraph 1;
5. wilfully profits from sexual acts of another person with a third party for a remuneration, if the other person is a minor;
6. forces another person by violence or some other physical act or threat of violence or other physical act or by misuse of authority arising from the actual state of affairs or by deception to benefit him or her from the proceeds of his or her sexual acts with a third party.

shall be guilty of trafficking in persons and as such liable to a term of imprisonment not exceeding six years and a fifth category fine, or either of these penalties.

¹ Non-official translation of 30 January 2001. The amendments in the text of article 250a Penal Code as a result of the *Partiële wijziging zedelijkheidswetgeving* ('Partial amendment of morality legislation'), that came into effect on 1 October 2002, are not included in this translation.

Section 2

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. trafficking in persons by two or more persons acting in concert;
2. trafficking in persons in respect of a person who is under the age of sixteen;
3. trafficking in persons if force or some other physical act as referred to in paragraph 1 results in serious physical injury.

Section 3


Trafficking in persons by two or more persons acting in concert under the circumstances referred to in section 2, paragraph 2 or 3, shall be punishable by a term of imprisonment not exceeding ten years and a fifth category fine or either of these penalties.

Colophon

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