

**Provisions for
Victims of Trafficking
in Bonded Sexual Labour, i.e.
Prostitution
In six European Countries**

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PREFACE

Another research on victims of trafficking? I have stacks of reports on the shelves. How does this one benefit women? This remark was made several times when I began to inquire around the Dutch trafficking network. Whether I spoke to a counsellor, a policy-maker or a police officer, it did not matter, they all had their own ideas about what should change in practice while 'everything' had already been written down several times. After compiling this report I now have my own ideas on what should change and all that had been written down was very useful and interesting. However, this report is not about opinions on what should change but on the possibilities provided by the law.

I am well aware that this report does not present something new. It is merely a compilation of existing information. When I was asked to do this research, I knew little about legislation with regard to the position of trafficked women. In only three months I had to compare the different legislation and policies of six European countries. The enormous amount of reports and information written on the issue made it difficult to extract the little but specific information that was needed. I spent the first month shifting through information, the second accumulating and reading information, and in the last month I began to compile this report. The result is a report that is comprehensive for those familiar with the issue. Hardly any aspect of the crime of trafficking in human beings is detailed in this report and much is left out. Bonded labour is certainly not only about sexual labour, but to limit the extent of this research we only focussed on this type of bonded labour. The report is written to enable a follow-up researcher to investigate good practices within the possibilities of international, European and national legal frameworks with regard to the position of victims of trafficking in countries of destination. It may also be of use for those working with victims and interested in the provisions for victims of trafficking that different European countries have. The report is part of a project financed by the Daphne initiative of the European Union¹.

Unfortunately, I never met a female victim of trafficking personally, but it was not a requirement for writing about the legal framework in which she finds herself. Personally, I prefer to regard her as a woman whose labour and human rights are violated and not 'just' as a victim of a crime. Maybe the best way to describe her is as a survivor of serious human rights violations. I feel strongly about the need for awareness about the provisions applicable to women once they escape their bonded situation and I hope to have provided this insight for those interested in compiling this report.

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¹ This document is a reflection of the author's vision. The European Union is not liable for any use of this document, stemming from this vision.

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INTRODUCTION

Trafficking in human beings is a violation of the trafficked person's human rights. The trafficked person is also the victim of a crime. It is important to identify these peoples as victims under the law and as people whose human rights are violated. National laws should have a legal definition of trafficking as a crime, while at the same time they need to empower the victims to access their rights. Governments have the obligation to protect the human rights of trafficked people by bringing to justice those who have violated their rights, i.e. the traffickers. Legislation in Europe is mainly focussed on the need to protect 'fortress Europe' from unwanted immigration.

Traffickers fill the gap between the demand for migrant labour on the one hand and the diminishing legal channels of migration in most countries on the other. Economic instability and malaise in the countries of origin are the push for many women to leave in search for better economic opportunities. This kind of organised crime, trafficking in human beings, has serious effects on the physical and moral health of victims. They suffer from the worst forms of sexual, physical and psychological violence and run the risks of physical disability and social exclusion. In many countries of destination victims of trafficking still do not enjoy a regulated status. They are often considered illegal immigrants and therefore subject to criminal penalties and deportation. The rights of victims of trafficking to remain in a country and to receive further State assistance is often linked to their willingness to be witnesses in criminal proceedings against traffickers. Obstacles are in place that prevent victims from testifying against their traffickers or even to contact the authorities in the first place. Deportation or illegal status is what is left for those who decide not to press charges.

According to the Council of Europe's Recommendation 1545 (February 2002), 78% of victims of trafficking are exploited in various forms of prostitution. Trafficking in women is a large and growing global business, generating huge profits for traffickers and organised crime. The increasing demand for prostitution in Europe has led to the turnover from this criminal activity reaching third place after drug and arms trafficking. International and national criminal investigation units are generally more interested in the illegal arms and drugs trade than in the trafficking of human beings. Even if the issue 'trafficking of human beings' is high on the political agenda of many States, practical priorities are different. A crime unit that uncovers an organised drugs trade syndicate is considered heroic, the crime unit that uncovers an organised human trafficking syndicate is merely seen as having done a good job.

The difficulty with this issue is the overlap between legal fields and the different interests served. Criminal law and immigration law are intertwined. Co-operation is needed between the different actors in the criminal proceedings. Prosecuting without victims or witnesses appears to be difficult in the trafficking cases. Public prosecutors, the police and immigration officials need to closely collaborate in order to proceed successfully. The victims require that their rights be protected to be able to assist in the proceedings. The interest of the public prosecutor is to proceed against organised crime, the interest of the victims is to be released from their situation of bonded labour and to be given access to their rights. By participating in the court process the victims' identities may become known in their home communities, stigmatising them as having been trafficked into prostitution. No regard to the victims long- term protection, the safety of their families or their economic livelihood is given when the investigative proceedings or trial are over. States are not only accountable for prosecuting the trafficker and liberating the victim, but also for empowering the victim to get access to rights. The question is not if criminal law should provide training and integration to a victim of trafficking. Criminal or penal law is there to fight crime and punish those that commit crimes. Once a woman has chosen to press charges against the person that forced her into bonded labour is liberated from her

bonded situation, criminal law stops providing provisions for that woman, except witness protection. What is the woman left with in that situation?

This report aims to list existing legislative and policy initiatives at international, European, and national levels; initiatives that provide victims of trafficking with protection and assistance once they decide to press charges against the trafficker. We focussed on the provisions in six European countries (Belgium, Germany, Italy, Netherlands, Spain, and the United Kingdom) with regard to national legislation and policies for female victim of 'Trafficking in Human Beings for Sexual Exploitation' that are at least 18 years old. We start from the basic factors defining the status of a victim of trafficking. Is trafficking defined as a crime by law or are legal provisions in place that recognise trafficked people as victims of a crime? From there we try to get an insight in the policies of different States for assisting victims in the investigation and prosecution phases. What social assistance provisions are available in the countries named? Are there any centres that provide assistance to the victims? Do victims get a chance to integrate in the country of destination? These victims are often sent back to their countries of origin after the proceedings. Do States have an obligation to assist victims to return and/or re-integrate in their countries of origin? This paper aims to list the legislative and policy frameworks of the six countries mentioned. The information is compiled from existing reports, research, information web-sites and telephone interviews. The follow-up will be to record good practices in the aforementioned countries and to establish international co-operation contacts.

1. International Initiatives

1.1 International law

In several international treaties the various human rights violations that take place in the context of trafficking are mentioned. Unfortunately, no international instrument exists that effectively addresses all the human rights violations committed in trafficking. Already in 1949 a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was a first attempt of the international community to address the issue.² The adequacy or appropriateness of this Convention for dealing effectively with the modern manifestations of trafficking and the many human rights abuses associated with these practices is highly questionable. The Convention neither empowers the victims of trafficking meaningfully, nor does it take a rights based approach to address the issue.³

Some other relevant instruments include: the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (1984), the Convention on the Rights of the Child (1989), the Slavery Convention (1927), the Convention on the Protection of the Rights of All Migrant Workers and their Families (1990) [adopted by the General Assembly but not yet in force] the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957), and various International Labour Office Conventions.⁴ Specific protective measures for trafficked persons are often not mentioned since the legislation address the protection of human rights in general. States are obliged to respect and protect the human rights of persons within their territorial boundaries. They should also enable people to realise these rights, which includes the concept that human rights encompass not only the obligations of States to respect and protect but also their obligation to provide or make available the means to ensure the realisation of rights possessed by every person. This is derived from the Universal Declaration of Human Rights.

The recommendations of many different human rights groups list human rights standards for the treatment of trafficked persons. Not only those of United Nations institutions or European Union bodies but also those of NGOs. The Human Rights Standards for the Treatment of Trafficked Persons⁵ are drawn from international human rights instruments and formally recognised international legal norms. They aim to protect and promote respect for the human rights of individuals, who have become victims of trafficking, including those who were subjected to involuntary servitude, forced labour and/or slavery-like practices.⁶ A General Assembly declaration reads: 'The gendered nature of trafficking

² Unfortunately, more than 50 years later the convention has been ratified by only 72 states of the UN's 185 member states. It also has very weak implementation mechanisms. There is no mandate for an international authority to monitor its implementation, and so it could be argued that it is little more than an exhortation. Many prominent human rights bodies either call for its radical reform or abolition and re-drafting. Morrison, J., Pre-Publication Edition, 'The trafficking and smuggling of refugees- the end game in European Asylum Policy?', July 2000.

³ E. Pearson wrote that: 'this convention is inherently problematic, in part because it contains no definition of trafficking and simply addresses prostitution and the movement of persons into prostitution. In any case, it provides little or no protection for those it does purport to cover as victims of trafficking. In Preliminary Report: 'Whose Interest served?', Anti-Slavery International, June 2001.

⁴ See for more information about Human Rights law applicable to victims of trafficking:

<http://www.inet.co.th/org/gaatw/SolidarityAction/SMR99.htm>, http://www.osce.org/odihr/attf/attf_refguide.pdf,

⁵ For example: Human Rights Standards for the treatment of trafficked persons by the Global Alliance Against Traffic in Women (GAATW), Foundation Against Trafficking in Women (Dutch STV) and the International Human Rights Group, at <http://www.inet.co.th/org/gaatw/SolidarityAction/SMR99.htm>

⁶ Summary of the Standards, at <http://www.inet.co.th/org/gaatw/SolidarityAction/SMR99.htm>

derives from the universal and historical presence of laws, policies, customs and practices that justify and promote the discriminatory treatment of women and girls and prevent the application of the entire range of human rights law to women and girls⁷. Unfortunately, the protection of those human rights standards is often not integrated in law enforcement with regard to trafficking. This leaves a gap for the victims who need protection and assistance. The legal framework to combat the trafficking of people should not only concern itself with the repression of the crime of 'trafficking' but also with empowering victims to access their rights.

1.2 United Nations Initiatives with regard to victims of trafficking.

The United Nations' Convention Against Transnational Organised Crime opened for signature in Palermo in December 2000 with an additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter 'The Protocol')⁸. In this protocol a definition of trafficking was included. The Protocol is beyond a doubt an important step towards the harmonisation of national anti-trafficking measures. Article 3 of the Protocol reads:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs⁹.

The Protocol is primarily a law enforcement tool obliging States to prosecute traffickers, extradite suspects and share information, but it also takes into consideration some elements of prevention and protection. Unfortunately the provisions for protection and assistance to victims with full respect of their human rights, as mentioned in art. 2 of the Protocol, are discretionary.¹⁰ The actual interests of victims are mentioned in articles 6 and 7 of the Protocol. The language used is quite weak, for example in article 6: "States *shall consider* implementing measures to provide for the physical, psychological and social recovery of victims of trafficking (..)"¹¹. The same language is used in article 7, which mentions a temporary or permanent permit to stay in the territory.¹²

In concluding we can stay that the Protocol leaves States wide discretion to implement its protection and assistance but at the same time it is the first international legally binding instrument that explicitly addresses these measures.¹³

⁷ Declaration on the Elimination of Violence Against Women, General Assembly, A/RES/48/104 (2/23/94)

⁸ and the Protocol Against the Smuggling of Migrants by Land, Sea and Air

⁹ The *travaux préparatoires* should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved. The *travaux préparatoires* should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws. *Travaux préparatoires* are indicated in the Addendum the Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions. Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention and the Protocols thereto, U.N. Doc. A/55/383/Add.1, 3 November 2000

¹⁰ In the trafficking protocol the words: 'States shall' are used for the criminalisation provisions and the words: 'States shall consider', 'to the extent possible', 'in appropriate cases' are used for the protection provisions for the victims.

¹¹ The trafficking protocol, article 6

¹² Article 7 of the Trafficking Protocol: 'each state party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.'

¹³ A state that ratifies an international treaty obliges itself to the text of such treaty. They are obliged to

1.3 European initiatives with regard to victims of trafficking

European Union Legislation

In 1989, the European Parliament adopted a Resolution on the Exploitation of Prostitution and the Traffic in Human Beings. It called on Member States to ensure that victims could lodge a complaint without the fear of immediate deportation.¹⁴ This was followed in 1993 by a Resolution on trade in women, which called for the formulation of a policy to combat illegal immigration and a legal right to residence and protection for migrant women. This protection was supposed to be in place when they are witnesses before, during and after legal proceedings against trade in human beings. Permission for victims of this international trade to remain in the Member States' territory was another issue, especially when their repatriation might pose a threat to their personal safety or expose them to renewed exploitation¹⁵.

In a 1996 Resolution on Trafficking in Human Beings measures were adopted to ensure the safety and dignity of victims in cases where they report their exploiters to the police¹⁶. The right to bring civil proceedings, a temporary residence permit for humanitarian reasons and protection as witnesses, during and after the trial, all featured in this resolution. In the same year, the Commission explicitly referred to the granting of temporary residence permits, in its communication on trafficking in women for the purpose of sexual exploitation. It specifically mentioned "the issue of a temporary permit of stay for victims prepared to act as witnesses in judicial proceedings and ... proper co-ordination between judicial and police authorities to avoid expulsion without consultation."¹⁷ The European Parliament Resolution on the matter listed specific measures to be taken: temporary residence status, social, health and psychological care, work permit and training opportunities during the period of stay, etc.¹⁸

Continuing the approach outlined in its 1996 Communication, the Commission presented another Communication two years later on further actions in the fight against trafficking of women¹⁹. It stressed the close interaction between the need for an immigration policy that dealt with the situation of victims of trafficking and the question of increasing the powers of the courts to sentence traffickers. It also reiterated the connection between improving the prosecution of traffickers and provisions for allowing victims to remain in the host country and receive help there. Citing experience in Belgium, Italy and the Netherlands, the Commission expressed its belief that more should be done in this area by all Member States. They announced that a proposal would be presented for legislation on temporary residence permits for victims prepared to give evidence, drawing on recent experience of national provisions in order to avoid the risk of any future measures being abused. In the 1997 Joint Action adopted by the Council a temporary residence status and appropriate assistance to victims and their families was mentioned²⁰.

implement the human rights standards contained in legally binding international and regional conventions. In general no enforcement system is in place.

¹⁴ Resolution A2-52/89, 14 April 1989, OJ C 120, 16 May 1989, p. 352 ff., in particular point 8.2.

¹⁵ Resolution B3-1264, 1283 and 1309/93, 16 September 1993, OJ C 268, 4 October 1993, p. 141 ff., in particular points 2 and 10.

¹⁶ Resolution A4-0326/95, 18 January 1996, OJ C 032, 5 February 1996, p. 88 ff., in particular point 25.

¹⁷ Commission Communication to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation, 20 November 1996, COM(96) 567 final.

¹⁸ Resolution A4-0372/1997 on the Commission Communication to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation, 16 December 1997.

¹⁹ COM (1998) 726, 9 December 1998.

²⁰ Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of K.3 of the Treaty on European Union action to combat trafficking in human beings and sexual exploitation of children.

Under the Dutch Presidency a Ministerial Declaration was adopted in The Hague on 26 April 1997²¹, which included the idea of temporary residence status among the measures aimed at encouraging victims to go to the police and give evidence. This document was one of the first to identify the need for effective victim and witness protection. Protection was named in order to ensure successful investigations and prosecutions and it addressed measures covering the fair treatment of victims through the criminal justice system and services provision. The declaration urges signatory States to appoint a national rapporteur to report to their respective governments on the scale, nature and mechanisms of traffic in women and on the effects of the policies they pursue. As initiator the Netherlands was the first Member State to appoint a rapporteur.²²

With the Treaty of Amsterdam conferring powers in immigration matters on the Community, the Tampere European Council of 15 and 16 October 1999 set out the measures intended to facilitate the creation of an area of freedom, security and justice. A legislative proposal was announced in a Communication from the Commission on a common policy on illegal immigration²³. Among the measures aimed at preventing and combating illegal immigration, set out here, the Commission indicated that it would present a legislative proposal on short-term residence permits for victims of trafficking who are prepared to co-operate in investigations and criminal proceedings against their exploiters²⁴.

The above mentioned proposed directive and other initiatives to provide victims with assistance are limited to their willingness to co-operate with the authorities. The EU Framework Decision on Combatting Trafficking in Human Beings²⁵, recognises trafficking as constituting a serious violation of human rights, but only focuses on the criminalisation aspect of prosecuting and penalising traffickers and has no substantive provisions for protecting the human rights of victims of trafficking. Although in article 8 says that 'adequate legal protection and standing in judicial proceedings' is ensured there is no mentioning of support provisions.²⁶ According to Anna Diamantopoulou²⁷ there is no need for victim support measures since a Framework Decision is an instrument for approximating laws and regulations.²⁸ Essentially, this Framework Decision sets out to facilitate law enforcement and judicial co-operation by providing a common definition of trafficking and ensuring that trafficking is a criminal offence in all Member States. Surprisingly another Framework Decision was adopted in March 2001 on "the standing of victims in criminal proceedings", which guarantees the rights to protection and compensation, notably the protection of victims of crime and their families in situations where "the competent authorities consider that there is a serious risk of reprisals".²⁹

²¹ The Hague Ministerial Declaration on European Guidelines For Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation , DCE/97-429, 26 April, 1997.

²² Mandate is based on article 250a Penal Code.

²³ COM(2001) 672 final, in particular point 4.7.2.

²⁴ COM(2002) 71 final, Proposal for a COUNCIL DIRECTIVE on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities.

²⁵ 2001/0024 (CNS) in COM (2000) 854 final /2

²⁶ Article 8 of the Proposal for a Council Framework Decision on Combatting Trafficking in Human Beings

²⁷ EU commissioner for Employment and Social Affairs

²⁸ Speech given at the Europe Against Trafficking in Persons Conference, Berlin, 15-16 October 2001.

²⁹ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA). Article 8 (to be implemented from 22 March 2002 onwards) concerns the Right to protection and specifies "1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy". Article 8.4 guarantees that "Each Member State shall ensure that, where there is a need to protect victims - particularly those most vulnerable - from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles". Mike Dotterige from Anti-Slavery International pointed this out at the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001.

The United Nations, in the form of both the High Commissioner for Human Rights and the High Commissioner for Refugees, has suggested that the protection and assistance provisions in the Framework Decision should be at least as strong as those adopted in last year's UN Protocol to Prevent and Punish Trafficking in Persons, Especially Women and Children.³⁰ In particular, they suggested that EU States should "provide for the physical safety of trafficking victims within their territory, counselling and information, as well as basic measures for their physical and psychological recovery". The European Parliament has called on the European Council to include a considerable number of protection provisions, notably suggesting that States must provide, free of charge: accommodation, medical and psychological assistance, financial assistance and assistance in getting vocational training or jobs, and for the safe and voluntary return to the trafficking victim's country of origin.³¹

An additional opinion of one of the Parliament's committees recommended that States should grant "a special permanent residence permit on humanitarian grounds" if called to do so on account of the vulnerability of someone who has been trafficked, or the dangers they are considered to face. We realise, of course, that some EU States currently provide a temporary residence permit to trafficking victims who agree to testify against their traffickers. However, from the human rights viewpoint, this incentive often appears abusive and discriminatory. The practice seems to have been adopted in order to increase the ability of prosecuting authorities to bring charges and to secure convictions, and not because, as a matter of principle, anyone with personal experience of having been trafficked has a right to protection and that this should include regulating their residence status and granting them a residence permit.

Mike Dottridge of Anti-Slavery International spoke about the NGOs' initiatives in calling for protection measures to be included in the Framework Decision: "For the past five years, we have been disappointed both by the failure of the EU's Member States to act unanimously against trafficking and by the apparent failure of those measures that have been agreed to actually benefit the women, children (and occasionally men) whom the measures were ostensibly designed to help. We are concerned that adopting a Framework Decision to agree a common definition of the offence and to standardise penalties, without simultaneously agreeing minimum standards for protection and assistance is, at best, a lost opportunity, and at worst serious negligence. We have heard the explanation that the EU has its particular ways of going about things, and that there may be, or could be, agreement in the future on the various measures needed to protect trafficking victims, but on the whole we are far from convinced by such arguments."³²

In concluding we can say that the regulations and legislation were developed in order to facilitate authorities to prosecute criminals and not from an empowering perspective for victims. Victims are considered to be a tool for the prosecution. After prosecution victims will be subject to Immigration and/or Alien laws in the country of temporary residence. These laws differ extensively among Member States. The minimum standards are at a European and International legislative level but each State has the authority or autonomy to have its own immigration standards. From the many recommendations that are issued we can conclude that there is the political awareness that victim protection is a necessity to combat trafficking in human beings. Efforts by the Council, Parliament, the Commission and European NGOs have at least resulted in a greater awareness of trafficking in women, which is an unacceptable form of the violation of women's human

³⁰ Supplementing the UN Convention against Trans-national Organized Crime (General Assembly resolution 55/25, annex II). Article 6 of the Protocol concerns Assistance to and protection of victims of trafficking in persons.

³¹ European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, 30 May 2001.

³² Mike Dottridge from Anti-Slavery International, United Kingdom at the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001.

rights. This political awareness should result in binding legislative initiatives in the European Union in order to improve situation of women.

Council Joint Actions and Framework Decisions are of a legally binding nature. Directives oblige Member States to obtain the results named in the directive within the set timeframe. Declarations and Recommendations do not create legally but politically binding obligations upon states (soft law), because they are typically statements of principles or goals relating to particular issues.

The Council of Europe³³

Very recently, at a debate of the Parliamentary Assembly of the Council of Europe, recommendation 1545, concerning the Campaign against trafficking in women, was adopted.³⁴ It recommended among other things that Member States adopt measures regarding victims of trafficking.³⁵ It also mentioned Recommendation R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation, in which a common definition was adopted of traffic in women.³⁶ The Recommendation R (2000) 11 includes several measures to protect the rights and interests of victims of trafficking. It mentions the temporary residence permit for victims who act as witnesses, as well as a temporary residence on humanitarian grounds. It 'encourages the establishment or development of reception centres or other facilities where the victims of human trafficking can benefit from information on their rights, as well as psychological, medical, social and administrative support with a view to their reintegration into their country of origin or the host country'.³⁷ Recommendation 1545 mentioned the need to work out a European

³³ Do not confuse the Council of Europe with the European Council. The European Council is an institution of the European Union. It consists of the heads of state, heads of governments of the Member States and the chair of the commission. (Article D of the treaty of Maastricht) The Council of Europe does include the 15 European Union member states. Any other European (geographically) state can become a member provided it accepts the principle of the rule of law and guarantees human rights and fundamental freedoms to everyone in its jurisdiction.

http://www.coe.int/T/E/Communication_and_Research/Public_Relations/About_Council_of_Europe/CoE_Map_&Members/

³⁴ Text adopted by the Assembly on 21 January 2002, 1st sitting. Debate about report of the Committee on Equal Opportunities for Women and Men, see Doc. 9190., opinion of the committee on Legal Affairs and Human Rights, see Doc. 9225. Available via: <http://assembly.coe.int/ta/ta02/errec1545.htm>

³⁵ ix. to adopt the following measures regarding victims of trafficking:

- a. specific protection to victims;
- b. setting up shelters for trafficking victims modelled on those already functioning in Italy, Belgium and Austria;
- c. establishing telephone-hotlines in capitals and in different regions of each country providing information to potential trafficking victims and their families and assisting persons who have fallen victim to trafficking; introducing a right to compensation, insertion and rehabilitation for victims and setting up a support body to help their voluntary return to their countries of origin;
- d. taking all necessary measures to protect victims and witnesses, wishing to testify, and assuring protection for their families in the countries of origin;
- e. increasing state funding of social services specialised in assistance to victims of trafficking and prostitution;
- f. granting residence permits to victims of trafficking, of a permanent nature for those who are willing to testify in court and need protection, and of a temporary but renewable nature for all others on humanitarian grounds;
- g. creating information and consultation services at embassies and consulates of the countries of destination of these women in their countries of origin, where women, who are leaving for abroad could receive necessary information and addresses of embassies and non-governmental organisations in the countries of destination providing assistance to women victims of trafficking;

³⁶ 'trafficking in human beings for the purpose of sexual exploitation includes the procurement by one or more natural or legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, *inter alia* by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability'. Basic principles and notions I. of the Appendix to Recommendation No. R 11

³⁷ Assistance to and protection of victims, 26-35, of the Appendix to Recommendation No. R 11 to

Convention on traffic in women, open to non-member States. This Convention should: 'focus on assistance to and the protection of victims of trafficking, by obliging the State parties to grant legal, medical and psychological assistance to such victims, to ensure their physical safety and that of their families, and to grant special residence permits to victims on humanitarian grounds, and permanent residence permits to those willing to testify in court and in need of witness protection'.³⁸

Organisation for Security and Co-operation in Europe (OSCE)³⁹

The OSCE is the only forum that covers all of Europe. It has been instrumental in developing commitments on a broad range of issues: political, security and economic. The OSCE has two advantages. First, it has a tremendous resource and facility in the form of their institutions, notably the Office for Democratic Institutions and Human Rights (ODIHR)⁴⁰, and especially its missions on the ground. And second, it works together with major international organisations – the UN, the EU, the NATO, and the Council of Europe. They are developing closer links with more specialist organisations like the International Organisation for Migration (IOM).⁴¹

The OSCE Anti-Trafficking guidelines encourage OSCE institutions to develop activities and projects to combat trafficking and mainstream anti-trafficking objectives into their daily routines and activities. On several occasions the OSCE has stressed the importance of action to protect the human rights of trafficking victims. The Ministerial Council's 'Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings'⁴² committed OSCE Participating States to "adopting and implementing legislation to criminalise trafficking in human beings" and stressed that "such legislation should take account *a human rights approach to the problem of trafficking*, and include provision for the protection of the human rights of victims..."⁴³

The mandate of the ODIHR includes assisting participating States to build democratic institutions and implement their human rights commitments. This includes the area of trafficking in human beings. Many ODIHR activities contribute indirectly to the fight against trafficking, by building stronger legal institutions and raising the capacity of the non-governmental sectors to engage their governments on a wide range of concerns. In 1999, an Advisor on Trafficking Issues joined the ODIHR.⁴⁴

A regional initiative was the establishment of two 'Task Forces of the Stability Pact for South Eastern Europe'. The *Stability Pact Gender Task Force* is a forum for regional co-operation between governments, international organisations and NGOs to promote gender equality and women's political participation in South Eastern Europe. The *Stability Pact Anti Trafficking Task Force* also aims to promote regional and international co-

Recommendation R (2000) of the Council of Europe. <http://cm.coe.int/ta/rec/2000/2000r11.htm>

³⁸ Recommendation 1545 (2002) of the Parliamentary Assembly, Council of Europe at <http://assembly.coe.int/ta/ta02/erec1545.htm>

³⁹ OSCE is the largest regional organisation in the world with 55 participating states. <http://www.osce.org/general/>

⁴⁰ <http://www.osce.org/odihr/democratization/trafficking/>

⁴¹ Mircea Geoana, Chairman in Office for the OSCE, Minister of Foreign Affairs of Romania. At the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001.

⁴² OSCE, Ministerial Council Decision No.1, MC98). Dec/1, <http://www.osce.org/odihr/democratization/trafficking/>

⁴³ The July 2001 Organization for Security and Co-operation in Europe Parliamentary Assembly resolution on trafficking expressed concern that the laws in many OSCE States "remain inadequate to deter trafficking, to bring traffickers to justice, and to protect their victims" (para. 10). It urged States "to harmonize their procedures" not only concerning prosecutions, but also as far as the legal, medical, and psychological assistance to victims of trafficking was concerned (para. 15). Mike Dotterige from Anti-Slavery International. At the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001

⁴⁴ <http://www.osce.org/odihr/democratization/trafficking/>

operation on the prevention and awareness raising of trafficking, including addressing the social and economic causes.⁴⁵

Europol⁴⁶

In the field of law enforcement co-operation, the mandate of the Europol Drug Unit (EDU) was extended in September 1996 to include trafficking in human beings⁴⁷ and it was asked also to establish a directory of specialised competence (a list of contact points for law enforcement purposes). Since the establishment of Europol in October 1998, ongoing exchanges of information between liaison officers based in The Hague as well as the analysis of trends and methods have taken place. In addition, Europol is hosting expert meetings and is providing training for law enforcement officers. Also, the STOP Programme has co-financed a number of law enforcement training events and an increase in the involvement of Europol in actions falling under the programme has subsequently been noted.⁴⁸

In their Crime Assessment of October 2001, Europol speaks about 'Push factors' in countries of origin, 'Facilitating factors' in transit countries and 'Pull factors' in countries of destination.⁴⁹ This crime assessment is meant: "to examine the root causes of the trafficking in human beings problem, the means through which the problem is generated and the potential future threat the problem poses in both generic and specific terms"⁵⁰. Its conclusion reads: "The overall law enforcement effort in the EU against Trafficking in Human Beings is inconsistent and ineffective. Legislative, managerial (prioritisation) and investigative problems hamper the fight. Significant, is the apparent absence in most EU member States of a defined strategy to counter trafficking. Likewise the reported level of inter-State co-operation and operations is low".⁵¹ These are strong conclusions for the Member States to be aware of. Surprisingly amongst the 'pull factors' in the destination countries, no mention of a demand for cheap labour or for foreign prostitutes was made.

The European Police Chiefs Operational Task Force aims to exchange, in co-operation with Europol, experience, best practice and information on current trends in cross-border crime and contribute to the planning of operations⁵².

Eurojust

The European Council launched 'Eurojust'⁵³. Complementary to Europol it should be composed of national prosecutors, magistrates, or police officers of equivalent

⁴⁵ Both Task Forces have signed a co-operation agreement, in which they identified possible areas of co-operation, including lobbying with legislators and policymakers to improve existing anti-trafficking policies and their implementation. Or to adopt strong anti-trafficking policies where they do not exist and support networks of elected women politicians working on improving gender equality to advance a strong anti- trafficking agenda in their respective legislatures. The task forces further agreed on a regular information exchange and on the co-operation of their respective national focal points in the region of South Eastern Europe. For further information, please refer to the web sites of the Gender Task Force

(http://www.stabilitypact.org/stabilitypactcgi/catalog/cat_descr.cgi?subcat=1&prod_id=4) and the Anti-Trafficking Task Force (<http://www.osce.org/odihr/attf/>). From 'Reference Guide for Anti-trafficking legislative Review' by Angelika Kartusch, September 2001 at

http://www.osce.org/odihr/attf/attf_refguide.pdf

⁴⁶ <http://www.europol.eu.int/content.htm?facts/en.htm>

⁴⁷ The Europol Convention definition of trafficking in human beings explicitly emphasises the predominantly sexual nature of the exploitation of victims.

⁴⁸ http://europa.eu.int/comm/justice_home/news/8mars_en.htm#a4

⁴⁹ In Europol, Crime Assessment of Trafficking in Human Beings into the European Union, October 2001, Doc. Ref. 2565-43. Pg. 28, 29, 32

⁵⁰ Id. Pg. 4

⁵¹ Id. Pg. 43

⁵² <http://www.europol.eu.int/content.htm?facts/en.htm>,

<http://www.eurunion.org/partner/EUUSTerror/PoliceChiefsTaskForce.htm>

⁵³ The European Council summit in Nice, France on 9 December 2000

competence, seconded by each Member State according to its legal system. This network is to facilitate co-ordination and support criminal investigations in organised crime cases, including trafficking.⁵⁴

The European Forum on Prevention of Organised Crime

The 1997 The Hague Ministerial Declaration on European Guidelines for effective measures to combat trafficking in women for the purpose of sexual exploitation devotes a specific chapter to prevention. Unfortunately, no coherent follow-up has been initiated on the basis of the different elements that were identified by the ministers. The Commission has, however, launched, in November 2000, a Communication on crime prevention in general where it develops an overall strategy against various forms of crime, including trafficking in women. One of the key elements of the strategy is the launching this year of *a European Forum on the Prevention of Organised Crime*. Attention will be given more specifically to the prevention of trafficking in women, both for the purpose of labour exploitation and for that of sexual exploitation. The overall intention behind the Forum is to promote partnerships between and among all the different actors (such as law enforcement, social services, judicial and migration authorities, NGOs, international organisations). A number of projects under the STOP Programme seeking to build partnerships and a European Network have also been supported and they have demonstrated their usefulness, in particular in the field of prevention. Obviously, a number of prevention measures can be considered, ranging from studies looking at a better understanding of the causes of the phenomenon, the detection of trends and the development of research, training, exchange of best practices, to the launching of information campaigns.⁵⁵

⁵⁴ Article 31 of the Treaty of Nice stated: "The Council shall promote co-operation through Eurojust by: promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly organised crime, taking account, in particular, of analyses carried out by Europol:..."

⁵⁵ http://europa.eu.int/comm/justice_home/news/8mars_en.htm#a4

2 Methodology

2.1 Definitions

Trafficking and Smuggling – A Clarification of the difference between the two Crimes

Some of the European legislative documents discussed above provide provisions for victims of trafficking as well as for victims of smuggling. Before continuing we want to clarify the difference to make clear that we only consider *trafficking* in this research.

The reasons why people become involved in trafficking need to be understood by governments if they are to develop effective legislation and policies to combat the crime. The causes for entering into the process determine whether someone is considered trafficked or smuggled.

In general, trafficked people are transported against their will to engage in practices to which they have not consented. They, therefore, do not seek out the services of traffickers. They can also agree to the transport and practices but do not agree to ending up in bonded labour. At the time of agreeing to the journey and/or work, they were unaware of the situation they would end up in. This conceptualisation identifies the need for including a strong protection principle, to ensure that the instrument addresses the needs of victims as well as punishes the perpetrators.

In contrast, the definition of smuggling focuses on the intentional procurement for profit of illegal entry. The migrant is taken to have consented to the process and, therefore, does not deserve or need protection, with the result that a protection principle is not needed. One can assume that the migrant's relationship with the smuggler terminates once the journey is over and that the migrant is not forced into a situation of debt bondage.⁵⁶

Trafficking as a Crime

An important starting point for any anti-trafficking measures is a clear definition of the crime. If the crime is not clearly defined, research into the scale of the problem and the elaboration of solutions on how to deal with it are impossible. Solutions will also vary according to how the problem is defined. Without a clear definition, it is impossible to engage in cross-border co-operation. Until everyone, governments and NGOs, focuses on the same crime and identifies the same set of victims, proposed solutions will lack co-ordination and effectiveness.⁵⁷ In this research we focus on the definition in the UN Protocol.

Criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings. Trafficking is prosecuted under other existing laws or not prosecuted at all. For example, trafficking in women for the purpose of forced prostitution is often prosecuted under provisions for smuggling and prostitution-related crimes, such as pimping or the promotion of prostitution. The limited scope of these laws allows traffickers to receive relatively low penalties that do not reflect the serious and brutal nature of trafficking. Sometimes, the victims are also prosecuted for illegal entry or working illegally, because laws are applied in a mechanical fashion. Moreover, efforts to combat trafficking by using tools for prosecuting prostitution-related crimes imply that

⁵⁶ The EU makes a more specific differentiation. See for example the Council Directive of the European Commission COM(2002) 71 Final which provides a short term residence permit for victims of smuggling and trafficking.

⁵⁷ Kartusch, A. 'Reference Guide for Anti-trafficking Legislative Review', September 2001 at pg. 39 http://www.osce.org/odihr/attf/attf_refguide.pdf

governments equate trafficking with all forms of work in the sex industry, irrespective of whether or not it is about coerced participation. Trafficking encompasses all forms of forced labour, slavery and servitude in all industries, including, for example, the sex industry, domestic labour, manufacturing and agriculture. It is a distinct crime involving severe human rights violations⁵⁸.

Many States that have trafficking as a distinct crime only penalise trafficking into prostitution, leaving out other areas of work or activities where persons are held in forced labour, slavery or servitude. This means that persons trafficked into forced domestic labour or factory labour or into other sexual services, such as pornography, striptease or massage, are not protected by the law, and their traffickers are not punished.

Clearly, differences in the national legislation of the States researched about Trafficking in Human Beings, along with variations in the prioritisation and approach to investigating the crime and in the provision of assistance to victims, makes it very difficult to give accurate and standardised information. In this research we do not wish to elaborate on the definition and the legal aspects and implications of different definitions. Below you will find the definition we tried to hold on to in this research and the basic provisions we found necessary.

Victims of trafficking in this research

In this research the term 'victims of trafficking' refers to female victims of the crime as defined in the UN Protocol, who are over the age of 18. Since the definition of trafficking differs in national laws, if existing at all, we try to list some characteristics. Trafficking occurs if there is a movement of a person, through deception, coercion or other means into a situation of sexual exploitation, i.e. prostitution.

Our characteristics might include the following⁵⁹:

- The woman is actively encouraged through false promises regarding work opportunities, conditions and earnings to come to the country she resides in, regardless if a job in another field was promised her or she was willing to work in prostitution;
- Her identity papers are taken away from her;
- Her earnings are taken away from her;
- She is forced to pay back a debt she never consented to;
- She is forced into prostitution or into giving sexual services;
- She is blackmailed, threatened, humiliated, beaten, raped or imprisoned.

It is irrelevant that the woman has previously worked as a sex worker or she was willing to work as a sex worker, because/while she was misinformed about work conditions and earnings.

2.2 Why Victim Assistance Programmes?

Governments in the countries of destination as well as in the countries of origin should treat trafficked migrants as victims rather than offenders. One way to combat trafficking in human beings is to make it advantageous for victims of trafficking to give testimony against traffickers. However, in most legal frameworks it is not attractive for victims to testify against traffickers, as they face high risks of retaliation against themselves or

⁵⁸ Kartusch, A. 'Reference Guide for Anti-trafficking Legislative Review', September 2001 at pg. 39
http://www.osce.org/odihr/attf/attf_refguide.pdf

⁵⁹ From website: <http://www.femmigration.net>

family members.⁶⁰ Some governments have set up protection programmes for victims and give the possibility to obtain a residence permit in the country of destination when they co-operate with law enforcement bodies and the judicial system. Due to the clandestine and criminal nature of trafficking, victims are often exposed to significant risks to their health and well-being. The fear for deportation and retaliation as well as coercion, exploitation and violence done to them by the traffickers, more often than not pushes victims into marginal and vulnerable situations. In order to contribute to the protection and assistance of victims of trafficking in human beings in a durable and sustainable manner there is a need for integrated policies and programmes aimed at the protection and improvement of their position. Therefore it is advisable to set up victim protection programmes tailored to their individual needs. These programmes should offer a residence status for victims of trafficking alongside services such as protection, socialisation, counselling, psychosocial and medical support, legal assistance, shelter, vocational training, all aimed at providing the woman with a better future perspective.

2.3 Why access to Work?

With the exception of Belgium and Italy, victims are not entitled to take up gainful employment. In Germany and Spain employment is in some cases allowed but with restrictions. This common practice of excluding victims from gainful employment and thus impeding their integration into “normal” every day life restricts their chances of being able to recuperate from the experience of trafficking and to start anew⁶¹. Employment or the right to work is an important aspect also for the effective protection of victims, in terms of ensuring that they do not return empty-handed after a lengthy trial but to actually safe some money during that time.⁶² The chance of gaining work experience and spending the time awaiting trial ‘usefully’ might improve a woman’s chances to not fall back into a bonded labour situation.

2.4 Why access to Education?

Again with the exception of Belgium and Italy, victims do not have organised access to educational facilities. None of the countries researched prohibit education but organised access to educational facilities, existing or especially for victims of trafficking, is very limited. Since most victims are send back to their country of origin when the criminal proceedings or investigation are over, training should be focussed on the woman’s re-integration. Vocational training could be a possibility for her to acquire skills that could help her start a new life and learn a profession other than prostitution. These women might wish to work with NGOs and embassies of countries of destination for prevention programmes and training.

2.5 The role of the Police

The police or other public bodies register a person's unlawful employment or illegal stay for the first time during a raid, for example, and take that person into custody. For the victims of trafficking in women it is of decisive importance in this situation whether the authorities presume a connection with the offence of human trafficking. However, because of their traumatisation and for fear that the offenders may harm them later, the women concerned are often not able to mention the connection with human trafficking themselves. In theory most procedures include the option of a judicial examination. Yet, in practice deportations are executed without delay in a large share of the cases, without

⁶⁰ Slovakia, a source country, has recently enacted legislation making any act deemed to be a reprisal against the family of a trafficked person a specific crime. In Europol, Crime Assessment of Trafficking in Human beings into the European Union, October 2001, Doc. Ref. 2565-43

⁶¹ Niesner, E., Jones-Pauly, C., ‘*Trafficking in Women in Europe*’, pg.194

⁶² E.Pearson of Anti Slavery International, in her presentation at the First Pan-African Regional Conference on Trafficking in Persons, Abuja, Nigeria, 19-23 February 2001.

investigating a connection with human trafficking more closely or calling in counselling services. This neither meets the women's need for protection, nor does it contribute to bringing the offenders to justice in criminal proceedings.

In most countries it is the duty of the police to inform the victims of the existence of support centres and of the possibility to make a formal complaint against the trafficker. Police discretion in these cases should be very limited. Special directives should be developed for the police on how to recognise and handle possible victims. This could limit the power of authority of the police. In a few countries women receive a 'rest period' of several weeks, in which they can decide whether they want to press charges or not. Women were often not informed about this rest period and pushed to press charges. A structural improvement could be the establishment of a central office as the competent co-ordinating office in the fight to suppress trafficking in human beings.

International police co-operation

As a result of the cross-border nature of trafficking, the criminal prosecution of traffickers can not just take place at the national level, but requires bilateral and multilateral co-operation between relevant national law enforcement authorities and also between national authorities and international organisations such as Europol or Interpol⁶³. Law enforcement co-operation covers several aspects, such as the exchange of information, the training of law enforcement authorities, mutual legal assistance (e.g. by taking evidence or statements from persons or providing copies of relevant documents), and joint investigations. Such activities are based on multilateral or bilateral treaties. As the main focus of this reference guide lies, however, with a review of national legislation, it will not provide guidelines for this kind of international co-operation. Nevertheless, cross-border co-operation is a crucial aspect of anti-trafficking measures that deserves further elaboration.⁶⁴

The United Nations Office for Drug Control and Crime Prevention (ODCCP) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) started the 'Global Programme Against Trafficking in Human Beings'. It consists of an integrated package of policy-oriented research and targeted technical co-operation. The programme will bring to the foreground the involvement of organised crime groups in smuggling and human trafficking and promote the development of effective criminal justice related responses. The programme will involve assessing regional and interregional trends, taking stock of promising practices (best practices) world wide, carrying out demonstration projects in selected countries or regions and evaluating the projects based on standardised criteria.⁶⁵

⁶³ Interpol has a working group 'Trafficking in Human Beings'. It issued a very useful handbook on police methods to investigate the crime. It meets twice a year. From 2002 it will meet once a year internationally and once a year regionally.

⁶⁴ Kartusch, A. 'Reference Guide for Anti-trafficking Legislative Review', September 2001 at pg. 56 http://www.osce.org/odihr/attf/attf_refguide.pdf

⁶⁵ The programme will involve assessing regional and interregional trends, taking stock of promising practices (best practices) world wide, carrying out demonstration projects in selected countries or regions and evaluating the projects based on standardised criteria. At various stages of the programme, co-operation will be sought from other United Nations entities, Member States, inter-governmental organisations, including the European Union, the academic community, Non-governmental Organisations and other organisations involved in addressing human trafficking and related phenomena. The end products of the programme will be an overview of some of the most serious manifestations, a database of best practices, which will be accessible through the Internet, and a knowledge-based global strategy, which will be presented at a high-level conference. <http://www.unicri.it/projects/thb/default.htm>

2.6 The role of NGOs

NGOs that specialise in supporting trafficked people play an essential role in ensuring that services are appropriate and trafficked people protected. They are an important source of information on the phenomenon of trafficking and do an enormous amount of work to ensure that the basic needs of victims are met. This critical aspect has so far not been addressed in binding human rights documents, but was included in a number of regional political documents of several regional organisations. Effective and continuous assistance to victims and protection require that States provide relevant NGOs with sufficient resources and training opportunities. Effective assistance to victims and protection also require a well-functioning co-operation between NGOs and State authorities. First, NGOs providing assistance to trafficked people need to be informed by the police of potential trafficking cases in order to prepare services for their clients. Secondly, adequate assistance and counselling by a reception facility contribute to the recovery and stabilisation of a trafficked person and might increase her/his ability and willingness to act as a witness before court.⁶⁶ Later we will see that some States did organise or finance NGOs that have facilities to assist victims of trafficking.

2.7 The role of the State

States have the obligation under international human rights law to act with due diligence in order to prevent, investigate and prosecute cases of trafficking in human beings and to afford remedies and reparation to trafficking victims. Measures to be taken are not only of legal, but also of a political and administrative character. We listed some international and European Union obligations above.

Rights of victims that decide not to press charges against the trafficker, or after the criminal proceedings, are covered by national asylum or immigration laws. There are strong arguments under international law to provide victims of trafficking residence permits on humanitarian grounds or give them asylum.⁶⁷ However we do not include this in our research.

2.8 Steps followed to list support provisions to victims

Steps:

1. Is Trafficking in Human Beings prohibited by National Law? We do not look whether the law prohibits trafficking explicitly for sexual labour. Neither will we list the similarities with smuggling or the penalties. We only look at the possibilities for pressing charges.
2. Is Prostitution prohibited by national law? We do not look at the exploitation of prostitution or the specific prohibition of forced prostitution. We mean the act of prostitution itself, i.e. whether the woman is committing a crime while prostituting herself. Regardless of her status i.e. legal, illegal, work permit or not.
3. Once a victim is discovered or comes forward, does she get a rest period in which to decide to press charges against her trafficker and testify or act as a witness? This is important as the victim needs to recover from her situation and decide whether to pursue criminal proceedings against the trafficker.
4. After this rest period, what happens if she decides to testify (or act as a witness)? For what period of time and under what conditions can she get a temporary residence permit?

⁶⁶ Kartusch, A. 'Reference Guide for Anti-trafficking Legislative Review', September 2001 at pg. 74 http://www.osce.org/odihr/attf/attf_refguide.pdf

⁶⁷ For more information on those possibilities check: Kartusch, A. 'Reference Guide for Anti-trafficking Legislative Review', September 2001. http://www.osce.org/odihr/attf/attf_refguide.pdf

5. After this rest period, what happens if she refuses to testify and act as a witness?
6. During proceedings does she receive assistance from an organisation?
7. Social Assistance⁶⁸?
8. Legal assistance? Is the assistance accessible and paid for?⁶⁹
9. Right to Education? Is there any educational programme organised?
10. Right to work? Can she apply for a work permit?
11. After criminal investigation and/or proceedings, under what conditions can she stay in the country? What type of residence permit will she be entitled to?
12. If not allowed to stay? Are there re-integration programmes to follow? Does she get assistance to return to her country of origin?

⁶⁸ Under Social Assistance we mean: Shelter: a secret and secure residency, Counselling about her rights and possibilities with regard to the procedures to follow, means of subsistence and medical care (not only emergency)

⁶⁹ We choose not to look at provisions of victim/witness protection. This would have made this research too extensive and complex for the limited period in which it was planned.

2.9 Table of Provisions for Victims of Trafficking

	Belgium	Germany	Italy	Netherlands	Spain	United Kingdom
Trafficking in Human Beings Prohibited?	Yes	Yes	Yes	Yes	Yes	Yes
Prostitution Prohibited ?	No	No	No	No	No	No
'Rest Period' ?	Yes, 45 days	Yes, 4 weeks	Yes, i.e. victims are given 6 months	Yes, three months	No	4 weeks, in a pilot project
Victim decides to testify/act as witness	First: 3 than 6 months permit renewable during proceedings	Suspension of Deportation 6 months renewable during proceedings	See above, 6 months	Suspension of deportation 6 months renewable during proceedings	Permit for 3 months	Exceptional leave to stay
Victim refuses to testify/ act as witness	Illegal immigrant after rest period	Illegal Immigrant after rest period	6 months permit	Illegal immigrant after rest period	Illegal immigrant	Illegal immigrant
Assistance of organisation?	Yes, compulsory	Yes	Yes, compulsory	Yes, compulsory	Yes	Voluntarily
Social Assistance?	Yes	Yes	Yes	Yes	Yes	Yes, in pilot project
Legal assistance?	Yes	Yes	Yes	Yes	Yes	Yes, in pilot project
Right to Education?	Yes	Yes	Yes	Yes	Yes	No
Right to Work?	Yes	Yes	Yes	No	Yes	No
After proceedings right to stay?	Case won? Yes Case lost? Perhaps	Apply for permit on humanitarian ground	Permit renewable every two years	Apply for permit on humanitarian ground	Apply for permit on humanitarian ground	Deportation
Permit?	Most cases	Few cases	Yes	Few cases	Not known yet	Case by case basis
Integration program?	Yes already followed	NGOs	Yes already followed	Yes possible	NGOs	?
Re-Integration programme?	NGOs/IOM	NGOs/IOM	NGOs/IOM	NGOs/IOM	NGOs	?

3 Regulations per Country Provisions of Assistance to Victims of Trafficking

3.1 Belgium

3.1.1 Legislation

Trafficking in persons is prohibited by the 1995 law on Trafficking, a circular of 4 July 1994 and by instructions forwarded in 1997 by the Ministers of Justice, Internal Affairs, Employment, Social Affairs. Prostitution is allowed. See attachment II for a listing of Belgian Legislation.

3.1.2 Procedure

Once a woman is found to be a possible victim of trafficking, the following procedure is formally recommended⁷⁰.

First phase

- Delivery of an “order to leave the territory” within 45 days. A 45-days “order to leave the territory” is granted to the victim who leaves the environment that has led to the exploitation and is assisted by a specialised centre. This period allows the victim to decide whether he or she will put down a complaint against the traffickers.
- When the victim puts down the complaint immediately the specialised centre can ask the Foreign Service for an application for the second phase.

Second phase

- Delivery of the “declaration of arrival”. The victim who puts down a complaint within the 45 days period is entitled to receive a declaration of arrival for a three months’ period.
- The victim is under the obligation to be assisted by a specialised centre. One month before the expiry date of this document the Foreign Service requests the Prosecutor’s Office the following information:
 - Is the complaint still part of a judicial investigation?
 - Can the person in the current phase of the investigation be considered a victim of trafficking?

Third phase

- Delivery of a “certificate of registration in the foreigners’ register”.
- If the Prosecutor’s Office replies positively on the above mentioned questions (Phase 2) the victim is granted a 6 months residence document.
- If the Foreign Service has not received an answer from the Prosecutor’s office the declaration of arrival is extended for another three months period.
- If the Prosecutor’s office still has not replied before the extension of the second three months period the Foreign Service will nevertheless issue a 6 months residence document.
- During the whole period the victim is under the obligation to be assisted by a specialised centre.
- The certificate is extended for the duration of the judicial investigation.

⁷⁰ Patty Sorensen explained the Belgian procedure at the ‘Europe Against Trafficking in Persons Conference in Berlin, 15-16 October 2001. Procedure listed in Instructions to the Foreigners Department, the prosecuting authorities, the police and the social law inspection service and social inspection services concerning assistance to victims of human trafficking, January 1997.

Fourth phase

- The victim can apply for a residence permit of unlimited duration from the Foreigners Department:
 - If the complaint or statement of the victim has resulted in court summons.
 - If, even when the accused has not been sentenced for infringements regarding trafficking, the Public Prosecutor has included in his claim against the accused infringements regarding trafficking, or when the complaint had been significant for the whole procedure.

3.1.3 Provisions

a) Social Assistance

Victims are accommodated at special victim support centres. The authorities have set up a victim support centre in each region: 'Payoke' centre in Antwerp, Flanders; 'Pag-asa' in the Brussels-Capital Region; and 'Sürya' in Liege, in the Walloon Region. All three are non-profit making organisations that provide assistance to victims. A victim support centre may also be a local social services that has signed a co-operation agreement –approved by the relevant community or regional minister- with one of the three aforementioned centres⁷¹.

Shelter/accommodation:

The victim support centres are in contact with shelters where women get accommodation for the first three months. After that she has to find her own accommodation. With her social security allowance she can pay the rent.

Counselling:

The support centre takes on board the counselling of the victim or the presumed victim. At that moment it becomes responsible for the administrative follow-up with the Foreigners Department⁷².

Means of subsistence:

From the time when a victim receives a temporary residence permit, from stage 1, she is entitled to social security benefits from the Public Social Assistance Centre (CPAS)⁷³ or through a victim support centre.⁷⁴

Medical Care

Is given through the accommodation centre or shelter the victim lives in for the first period. The CPAS covers for urgent medical care costs. Once the victim is given a 6 months permit (Phase three) she can apply for Public Medical Care.

b) Legal Aid

Legal aid is organised by the victim support centre. It is in contact with the 'Centre for General Welfare'. It provides subsidies for assistance of a lawyer to victims⁷⁵.

c) Right to Education

⁷¹ Instructions to the Foreigners Department, January 1997 at point number 3. See attachment No. II These centres are co-ordinated by the Centre of Equal Opportunities and Action Against Racism

⁷² Instructions at number 4

⁷³ CPAS (Centre Publique d'Assistance Social) provides financial assistance corresponding to the minimal rates granted to Belgian nationals in need, so-called "minimex" (assistance necessary to live in accordance with human dignity). OCMW in Flemish (Openbaar Centrum Maatschappelijk Welzijn)

⁷⁴ Instructions at number 9.

⁷⁵ Telephone conversation with Nancy Timmerman of Payoke. Who explained that the centre often pays the lawyer's fees and reclaims costs at the welfare centre.

Victims can participate in general 'integration' in Flanders together with refugees. They often take Dutch language classes since learning the language facilitates their integration and gives them a greater chance of finding employment and of having their status regularised at the end of the criminal proceedings. The support centres promote this integration effort. There is no special public financing of education.

d) Right to Work

Temporary employment authorisation may be given to victims of trafficking in human beings⁷⁶. In phase 2, the moment the victim is issued a 3 months permit, the victim can apply for a work permit (they can be assisted by the support centre).⁷⁷ The prospective employer has to apply to the Ministry of Labour for a permission to employ a third national and needs to submit a request for a work permit at the competent region.

3.1.4. Future prospects of victims

Victims can live in Belgium for several years, while their trafficking case is pending. During that time a victim has to live in insecure personal circumstances. The victim's residence status is directly dependent on the investigations of the police and public prosecutor. If the proceedings are suspended –when the criminal prosecution authority fails to prove trafficking, for example, because the perpetrator can no longer be apprehended– this has a direct effect on the victim's existential situation⁷⁸. In this case, the victim protection centre⁷⁹ can draw up a social-economic report on that person's situation and present it to the Ministry of the Interior for an individual decision. If the woman has followed integration programmes, speaks the language, found employment, etc. (i.e. lives like an integrated foreigner) many of them are given an unlimited residence permit⁸⁰.

3.1.5. Practices

Co-ordination and monitoring of the policy on action against human trafficking is done by the Centre for Equal Opportunities and Action against Racism, by its "Human Trafficking" Unit. During a telephone interview each of the three centres explained the following practices.

Payoke in Antwerp⁸¹:

- A 3 months permit is often issued immediately. The rest period of 45 days is skipped.
- In Antwerp the procedure to apply for a work permit takes 6 weeks. Not much time is left for the victim to seek work when the permit is valid for only three months. In Gent the application period is in general just 2 weeks.
- Many employers are reluctant to organise a work permit for the women.
- The support centre hands in a social economic report on the victim

⁷⁶ Article 37 of the Royal Decree implementing the Foreign Workers (Employment) Act of 30 April 1999.

⁷⁷ Instructions at number 8.2

⁷⁸ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 64

⁷⁹ Often it is not the Centre that draws up this report but the social worker specialised in helping trafficked women and the local police officer. Most women are long gone from the centre by the time the court decides. Telephone conversation with Ilse Hulsebos of Pag-Asa in Brussel, 3 March 2002.

⁸⁰ By all three centres (Payoke, Pas-Asa and Surya) we were told that if the victim was truly integrated and did make an important contribution to the case and the case was suspended while she was proven a victim, she would get an unlimited residence permit (this is a permit valid for one year, automatically renewable three times, after three years they can apply for the Belgian Nationality)

⁸¹ Telephone conversation with Nancy Timmerman of Payoke in Antwerp, 7 February and 3 March 2002.

Pag-Asa in Brussels⁸²:

- In most cases women are directly given 3 months permits
- The application for a work permit takes 3 weeks in general.
- Most victims stay in the shelter for 6 months. They are guided and counselled and when ready they move to private accommodation.
- Good co-operation between Immigration, Public Prosecutor, Police and Support Centre', which allows victims to be helped according to their needs on an individual basis by people specialised in the field of victims of trafficking.
- Pag-Asa has contacts with 20 lawyers specialised in Aliens law who assist the victims when needed.
- Pag-Asa divides their assistance rather strictly into three different sections to avoid an overlap of interest or confusion of trust-relationships (1. Legal, 2. Social, 3. Shelter)

Surya in Liege⁸³:

- In general victims stay in the shelter for 6 months.
- An application for work permit takes 3-6 weeks in Liege.
- Integration/language courses are organised at Sürya.

⁸² Telephone conversation with Ilse Hulsebos of Pag-Asa in Brussel, 3 March 2002.

⁸³ Telephone conversation with Charlie of Surya in Liege, 3 March 2002.

3.2 Germany

3.2.1 Legislation

The German Criminal Code prohibits trafficking in human beings in article 180b and serious trafficking in human beings in article 181 (see attachment III on German Federal Legislation). Prostitution is not prohibited in Germany but *work permits may not be issued* for this purpose⁸⁴. Germany is a federal republic divided into 16 federal States (*Ländern*). For this reason, laws and especially law enforcement and the discretionary practice of the authorities differ from region to region. How a person is seen to have become a victim of trafficking may differ considerably in this context, depending on the region or the Federal State in which that victim resides⁸⁵. At the level of the federal States, it is up to the competent ministry to enact decrees for a more precise regulation for the prosecution of trafficking and for victim protection. The enacted decrees all recommend that limited rights of residence be granted to victims, whose residence has to be ensured in the interest of the official prosecution.⁸⁶ In addition, many decrees contain directives for improving co-operation between the investigating authorities, the Foreign Nationals Offices and the victim protection institutions. Sometimes the decrees point to existing victim protection institutions and oblige the authorities to inform the women concerned about the possibilities for receiving social support. Some of the decrees regulate socially acceptable return deadlines (voluntary return) for victims of trafficking who are not willing to testify. Most, but not all, of the federal States make use of the possibility of enacting official guidelines on how to deal with trafficking in human beings.⁸⁷ Below you will find an exemplary procedure, once again, this is not applied in all States.⁸⁸

3.2.3 Procedure

Once a woman is found to be a possible victim of trafficking, the following procedure is formally recommended in some States:

First Phase :

- A '*duldung*' (tolerated residence) of four weeks (in some States three months) is given to a suspected victim.⁸⁹ If the authorities identify concrete facts or evidence indicating a connection with the offence of human trafficking, the women concerned are allowed to remain in the country for a period of four weeks to consider whether

⁸⁴ On January 1st 2002, a new law, which aims to eliminate discrimination against sex workers, entered into force in Germany. It will improve sex workers' rights. Sex workers will also be entitled to press charges if the client or their employer does not pay. Unfortunately, migrant sex workers from non-EU countries will hardly be able to enjoy these rights, since their situation in alien law remains the same, i.e. it is almost impossible for them to obtain the necessary residence and work permits.

⁸⁵ For an extensive case study on four different states consult the book of Niesner, E., Jones-Pauly, C., '*Trafficking in Women in Europe*'.

⁸⁶ The authorities responsible for deportation and the temporary stay of deportation orders are the Federal Nationals Authorities which, as part of the police authorities, fall under the competence of the federal states. The Ministers of Interior of the Federal States (Ländern) are responsible for issuing directives for the protection of victims in preliminary investigations and exercising their discretion under the Foreign Nationals Law. §63pp. Ausländern Gesetz (Foreign National Law) Niesner, E., Jones-Pauly, C., '*Trafficking in Women in Europe*', pg. 181-189

⁸⁷ According to the study of Niesner and Jones-Pauly, only 3 of the 16 federal states (Bayern, Bremen and Thüringen) did not use this opportunity. Niesner, E., Jones-Pauly, C., '*Trafficking in Women in Europe*', pg. 190

⁸⁸ Official statistics of the Federal Office of Criminal Investigation show for the year 1998 that the majority, i.e. 41% of victims nation-wide were deported or ordered to leave, 14% returned voluntarily, a toleration was issued for 12%. This means that the most common practice is for the victims, after interrogation by the police or, if possible, by the judiciary, to be deported or ordered to leave the territory without any counselling or support. Federal Office of Criminal investigation, Report on trafficking in human beings.

Wiesbaden 1998, in Niesner, E., Jones-Pauly, C., '*Trafficking in Women in Europe*', pg. 188

⁸⁹ http://www.femmigration.net/victims_germany.html

they want to give evidence as a witness or to prepare for their departure. This 'duldung' has restrictions. The victim is not allowed to leave the city or region.⁹⁰

Second Phase

- The obligation to leave the country is temporarily suspended for persons who are needed as witnesses in criminal proceedings dealing with the offence of human trafficking or who temporarily co-operate with German authorities in the investigation of crimes. They benefit from a temporary suspension of deportation as long as they are involved in the criminal proceedings. This does not mean that they are given a right of residence but the enforcement of the obligation to leave the country is temporarily suspended. This is often for short periods and has to be extended repeatedly.⁹¹

Third Phase

- In a few exceptional cases, women obtain permanent residence on humanitarian grounds. 'If a victim/witness has to fear a substantial concrete danger to her physical integrity, life and freedom in her country of origin as a consequence of her participation in proceedings dealing with organised crime or human trafficking, this may be declared to be an obstacle to deportation. In these cases a longer-term suspension of deportation may be granted. In most cases though it is difficult to establish proof of the existence of such a danger. Only 2 to 3 per cent of witnesses are given this form of protection.'⁹²
- Marriage and political asylum are, amongst other reasons, the reason to allow women to stay in Germany after the criminal proceedings.⁹³

3.2.3 Provisions

KOK is the Federal Association Against Trafficking in Women and Violence Against Women in the Migration Process, Germany. KOK consists of 38 consulting agencies and NGOs in Germany. NGOs are mainly involved in providing accommodation. NGO responsibilities in relation to the accommodation centres differ from *Land* to *Land*. At some accommodation centres the various organisations (the German Red Cross, Caritas, Workers' Samaritan Column, Diakonisches Werk) are represented only by a few points of contact, while in other facilities they provide full board and care to the victims of trafficking. The NGOs work on behalf of the *Land* concerned and are paid accordingly. The managers of the centres, who hold ultimate responsibility, are always public officials of the *Land* concerned. Furthermore, some NGOs offer free educational and other activities for victims of trafficking. This kind of offer varies from *Land* to *Land* and from municipality to municipality.

a) Social Assistance

In most cases contacts between victims and victim support centres are made by the police. In some other cases victims make contact individually or with the support of

⁹⁰ A decree directed by the Federal Ministry of the Interior to the Federal Border Police (Bundesgrenzschutz), is the federal authority responsible for preventing infiltration, provides for a temporary stay of deportation of witnesses in the territory of the Federal Republic of Germany. (Erlass BGS 2 – 645 374/0 (Ro), 6 May 1997. Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 184

⁹¹ Article 5 of the Foreigners Law, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 188-193, http://www.femmigration.net/victims_germany.html, <http://www.victims-of-trafficking.org/UK/allemanne.html>.

The public prosecutor is the key figure, because he/she must inform the border police and the Foreign Nationals Office of the necessity of a stay of deportation in the case of concrete public interest.

⁹² Mathias Kongeter, Office of the Government's Commissioner for Foreign Issues, Germany at the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001

⁹³ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 204

clients, street workers or through the deportation prison.⁹⁴ Investigations into trafficking cases tend to increase in number when protection centres and police resources are available. Therefore, the chances of victims receiving advice and support differ considerably from Federal State to federal State. If such victim protection institutions do not exist, the women are more likely to be interrogated by the judiciary and deported immediately. Committed prosecutors can try to arrange for important witnesses to be allowed to stay in Germany. To achieve this, they also contact victim protection institutions outside their own Federal State.⁹⁵

Shelter/accommodation

Women are often taken to deportation prisons. Other provisional accommodation, like women's refuges and apartments, can be available. This depends on the funds and personnel resources available.

Counselling

In cases where co-operation agreements exist, the women receive support from specialised counselling services from 'phase one' onwards.

Means of subsistence

As long as a victim's deportation is suspended she receives benefits under the Asylum Seeker Benefits Act. A victim can also claim benefits under the Crime Victims Compensation Act, these benefits are reckoned against the social benefits.⁹⁶

Medical Care

Only emergency medical care is taken care of.⁹⁷

b) Legal Aid

In cases of trafficking in human beings, the lawyer's fees are paid by the State.⁹⁸

c) Right to Education

Women who have the assistance of an advisory centre can enrol in language training programmes and some minor vocational training courses.

d) Right to Work

In general there is practically no possibility for the advisory institutions to offer victims the opportunity to find a job or take part in a further training programme. Only in a few cases –e.g. if the victim is integrated into a police victim protection programme– is it possible to obtain have a general working permit. However this permit will only lead to employment if neither a German nor an unemployed person with a special working permit living in Germany applies for the same job⁹⁹.

⁹⁴ According to the study of Niesner and Jones-Pauly, the victim protection centres had neither sufficient personnel nor the appropriate qualifications to be able to care adequately for more than individual cases. They lacked accommodation facilities and even funds for telephone calls, travel expenses, translations, etc. See Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 193 footnote 770. At the time of writing this report an email was sent around through the 'stop-traffic' mailing list that another institution: Amesty4women was likely to close down because of a cutback of government support of 50%.

⁹⁵ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 194

⁹⁶ This is regulated by the Asylbewerberleistungsgesetz, the Asylum Seekers' Benefits Law

⁹⁷ Paragraph 4 Asylbewerberleistungsgesetz.

⁹⁸ http://www.femmigration.net/victims_germany.html

⁹⁹ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 194

3.2.4 Future prospects of Victims

According to Niesner and Jones-Pauly's study, the large majority of victims wishes to return to their country of origin. The few women who stay until the end of a trial have to suffer a waiting period that they regard as senseless. As a rule, their residence status does not allow them to work for their living or undertake training, so that at the end of the trial these victims have to return home without any financial means or vocational qualifications.¹⁰⁰

The advisory centre SOLWODI has access to public funds for a returnee programme (e.g. loans for establishing a living and for further education). SOLWODI was set up in 1992. Its returnee programme aims to help women (who have been living in Germany for at least a year) to return to their home countries, including finding a job or creating living conditions without risking ending up in an economically dependent situation.¹⁰¹

3.2.5 Practices

In 1997 the Nation Wide Working group on Trafficking in Women was founded. It developed multi-disciplinary strategies and measures for working across the relevant authorities, not just for the prevention and combatting of trafficking in women but also for the protection of victims. This group has articulated the concept of co-operation between the specialist advice centres and the police, with the aim of protecting women who are both victims and witnesses of trafficking.¹⁰²

Certain Federal States have set up a special commission to address the problems related to trafficking in human beings (*Fachkommission Frauenhandel*). These bodies bring together NGOs along with members of the police force, the legal authorities and social services departments. Their objectives are to co-ordinate activities related to problems of trafficking in women and to make recommendations to the government.¹⁰³

In the year 2000 in Germany 321 cases of trafficking of human beings were brought, involving 926 victims. Victims came predominantly from the States of Central and Eastern Europe.¹⁰⁴

¹⁰⁰ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 203

¹⁰¹ http://www.femmigration.net/victims_germany.html and letter from Katharina Knaus, Consultant on Combatting Trafficking, 6 March 2002.

¹⁰² Cornelia Sonntag-Wolgast, Parliamentarian State Secretary at the German Ministry of Interior spoke at the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001

¹⁰³ <http://www.victims-of-trafficking.org/UK/allemanne.html>

¹⁰⁴ Cornelia Sonntag-Wolgast, Parliamentarian State Secretary at the German Ministry of Interior spoke at the Conference 'Europe Against Trafficking in Persons' in Berlin, 15-16 October 2001

3.3 Italy

3.3.1 Legislation

Italian law prohibits trafficking (art. 12 Consolidation Act, Italian Penal Code art. 601 and the Merlin law). It has three laws governing trafficking: two in the penal code related to prostitution and slavery; the third is part of the immigration law. Together with article 18 of the aforementioned immigration law, Italy laid down, in a special decree¹⁰⁵, preconditions on which special residence permits are granted for humanitarian reasons. These entitle victims to a wide range of social welfare benefits, if they have been particularly severely exploited, as in the case of victims of trafficking¹⁰⁶. See attachment IV for a listing of Italian law.

3.3.2 Procedure

If the woman is not recognised as a possible victim of trafficking, she will get an order to leave the territory within 15 days when her identity is known. Is she apprehended a second time she will be deported¹⁰⁷.

Once a woman is found to be a possible victim of trafficking, the following procedure is formally recommended:

First phase:

- No rest period needed if the person is recognised as a victim. A 6 months' valid right of abode (similar to temporary residence) is issued.
- The State prosecutor demands for a right of abode for humanitarian reasons if the victim has made a statement within the context of the criminal procedure.¹⁰⁸
- This special right of abode is issued by the police president (*questore*), if information is provided that leads to the conclusion that the respective foreigner was subject to conditions of severe exploitation or exposed to danger to her wellbeing or life. This information is used by: State-run or State-recognised social services, the police investigation, witness testimony in preliminary investigations or during trial, or in an attempt to break free of the criminal association. The right of abode is intended to allow the persons in question to free themselves from the criminal association and participate in programmes aimed at their social integration.¹⁰⁹
- The police president (*questore*) must be given the details of risks and danger the foreigner is subject to, how acute they are, what contribution she can make to fighting the crime and how significant that contribution is. The modalities of the person's participation in the social integration programme must be made known to the mayor.¹¹⁰
- Social Services offices of local governments or any association recognised by the Department of Social Affairs affiliated with the Council of Ministers can present a possible victim to the police president (*questore*). The *questore* will decide whether the victim's attempt to escape from the criminal group placed her in danger.

Second Phase

- The right of abode can be extended for one year and after that every two years for humanitarian reasons. It can be withdrawn, if the person interrupts her participation in the integration programme, or if she continues to work as a prostitute. The complaint

¹⁰⁵ Article 18, Decreto Legislativo, 25.07.1998, Nr. 286 'residence for the social protection of the person'

¹⁰⁶ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 74-75.

¹⁰⁷ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 80

¹⁰⁸ <http://www.victims-of-trafficking/UK/italie.html>

¹⁰⁹ Para. 1 of art. 18 of decree 286, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 75

¹¹⁰ Para. 2 of art. 18 of decree 286, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 76

leading to a withdrawal of the right of abode can be made by the public prosecutor, the responsible social institution or by the police president himself.¹¹¹

- If by the time the right of abode expires the person has found employment under contract, then the right of abode can be prolonged in accordance with the duration of the work contract. In the case of an indefinite employment contract, the modalities for the issuance of residence permits on such grounds shall apply.¹¹²
- If the victim is enrolled in an official educational institution her right to abode can be converted into a residence permit for educational purposes.¹¹³

There is a clear definition of rolls and formal co-operation among NGOs, law enforcement bodies and the judiciary. This is supposed to ensure an appropriate, humanitarian response. There are distinct responsibilities for NGOs and law enforcement bodies, as well as for judicial authorities, defined in the law. In practice there appears to be some discrepancies with the co-operation between immigration and police with regard to the decision on the cases of victims. Other discrepancies exist between NGOs and the police. In practice it appears to happen often that the police does not provide possible victims with the right to abode if she refuses to testify. Victims are more or less forced to co-operate with the proceedings.¹¹⁴

3.3.3 Provisions

In 2000, the Italian government allocated 8 million Euro for the implementation of article 18. A total of 49 projects were financed spread out over 14 regions in Italy. These projects provide for diverse activities and programmes designed to help victims integrate into society.¹¹⁵

a) Social Assistance

The right to abide for humanitarian reasons entails comprehensive social benefits.

Shelter/accommodation

The different social institutions or protection centres provide victims with accommodation. This is often a shelter where several victims stay and follow the integration programme together.¹¹⁶ Some victims stay in private accommodation but they are strictly monitored in order to be certain that they follow the integration programme and don't work in prostitution anymore.¹¹⁷ Women apprehended by the police that do not immediately declare that they are victims, are accommodated temporarily with the aim of establishing their identity. No social workers are employed at these transitional living quarters. Many

¹¹¹ Para. 4 of art. 18 of decree 286, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 76

¹¹² Para. 5 of art. 18 of decree 286, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 76

¹¹³ Para. 5 of art. 18 of decree 286, Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 82

¹¹⁴ Findings of ASI, not formally published.

¹¹⁵ The financial subsidies towards private charitable organisations are regulated in a written agreement between the social organisation and the city. The "implementation ordinance on the legal provisions with regard to immigration and foreign nationals law" regulates the conditions under which the state recognises these private organisations, what is required of the social programmes, and how they are financed. In accordance with art. 42 of decree 286 and with art. 52 of the "Implementation ordinance", the state social services and the state-recognised private organisations, listed according to specific criteria at the social welfare department of the Presidium of the Council of Ministers, are responsible for implementing the integration programme. A "Council" located at the Presidium of the Council of Ministers supervises the activities of the state and private organisations active in the field of the integration of foreigners. This "Council" consists of representatives from the different social interest groups (trade unions, employers, representatives of the state and private social services organisations, representatives of the non-European foreign nationals organisations, representatives of the different state bodies involved).

¹¹⁶ In Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 52

¹¹⁷ Telephone conversation: Unofficial findings of Anti-Slavery International (ASI).

women who potentially might belong to the group of trafficking victims are not recognised as such and are thus deported directly from the centres.¹¹⁸

Counselling

Information on their rights and possibilities of integrating are provided by the social assistance centre. Most centres have staff trained in psychology although severely traumatised people are passed on to specialists.¹¹⁹

Means of Subsistence

Unemployment benefits are paid to the victims.¹²⁰

Medical Care

Included in the package of social benefits is medical insurance.

b) Legal Aid

Women do not need to act as a witness or testify in order to get the right of abode, therefore legal aid is not provided for under the social benefits package.

c) Right to Education

Language training is provided for in the social benefit package. Vocational training and assistance in work experience internships are arranged by the social institution guiding the victim¹²¹.

d) Right to Work

Work permits and enrolment in an employment bureau is arranged.¹²²

3.3.4 Future Prospects of Victims

Italy is the only country, reviewed in this research, that allows victims of trafficking an unlimited right of abode that is not dependent on criminal proceedings or the existence of a particularly threatening situation in the country of origin. A right to abode is granted on the basis of evidence of a successful integration into Italian society.¹²³ Even if a victim decides to participate in court proceedings, the trials often take place when the victim has already completed the social programme and has been able to start a new life.

3.3.5 Practises

The NGO Regina Pacis in Italy assisted 168 victims of trafficking in 2001. Information given by these victims led to the identification of 5 international crime networks and the arrest of 200 people, most of whom were convicted on various charges, including some for slavery.¹²⁴

¹¹⁸ Interviews with representative of Caritas-Milan, published in Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 79-80.

¹¹⁹ Interview with representative of Caritas-Milan, published in Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 83

¹²⁰ Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 76

¹²¹ One problem as regards training, however, is that as a rule the women are interested in earning money (to support family or repay debts) and are not willing to invest a lot of time and energy in vocational training. Niesner, E., Jones-Pauly, C., 'Trafficking in Women in Europe', pg. 83

¹²² Para. 5 of art. 18 of decree 286.

¹²³ Neither the immigration law of 6 March 1998, nor in the addendum (decree 286 of 28 July 1998), nor in the related "Implementation Ordinance" is any reference made to a link between a right of abode and participation in criminal proceedings or the successful conclusion of criminal proceedings. However, not many juridical precedents exist in this connection. Unofficial findings Anti-Slavery International (ASI).

¹²⁴ Don Cesare Lodeserto from Regina Pacis, in Italy spoke at the Conference 'Europe Against Trafficking in

At the end of 2000, a free national help-line (800 290 290) was created in order to respond to calls for help for information.¹²⁵ It appears that not only victims call for advice, also police and assistance centres ask for information.

In Milan, private charitable organisations such as Caritas receive financial subsidies from the City towards integrating foreign prostitutes who have been acknowledged by the police as victims of trafficking. Many women make contact with this centre through clients and friends; the second largest group of women were put in contact with the centre by religious organisations and social workers; the police rank in third place as mediators.¹²⁶

Persons' in Berlin, 15-16 October 2001

¹²⁵ <http://www.victims-of-trafficking.org/UK/italie.html>

¹²⁶ Niesner, E., Jones-Pauly, C., '*Trafficking in Women in Europe*', pg. 78

3.4 The Netherlands

3.4.1 Legislation

The law (article 250a of the Penal Code)¹²⁷ prohibits trafficking in persons for sexual exploitation in commercial sexual services. Prostitution itself and running a prostitution business or brothel by consenting adults is not punishable by law. See attachment IV for the Dutch legislation.

3.4.2. Procedure

Although in the Netherlands trafficking in human beings can be prosecuted without there being a formal complaint, victims and witnesses are important in proving a case. They are important for criminal investigation and prosecution reasons. In this research we focus on the victims who choose to press charges and become witnesses.

Once a woman (or a man) is suspected of being a victim of trafficking, the following procedure (B-9 regulation) is formally applied¹²⁸:

First Phase

- The potential victim is entitled to three months to consider bringing an official accusation (reflection period). During this time the expulsion of the possible victim is suspended¹²⁹.

Second Phase

- When the victim decides to press charges and act as a witness, she may stay in the Netherlands for the duration of the criminal investigation and proceedings.¹³⁰ A temporary residence permit is issued and valid for the duration of the criminal investigation or proceedings. In general it is issued for a period of one year.¹³¹
- Victims who decide against testifying after the three months reflection period are regarded as illegal immigrants and given an order to leave the territory within 28 days.
- The victim can decide to want to leave the Netherlands after pressing charges. The public prosecutor decides whether the victim's testimony is necessary in court. If not, the victim will be assisted by the immigration services to leave the country.¹³²
- The temporary residence permit will be renewable for as long as the criminal investigation and proceedings continue. The sentence by the Court of Justice is the limit.¹³³

¹²⁷ In the period of publishing this document, November 2003, a bill is going to be sent to the Parliament, abolishing Art. 205a Sr., and replacing it by Art. 273a. This is a human trafficking article in a broad sense, in which not only sexual exploitation, but also other forms of exploitation (of labour and organs) will be punishable. In this way, the Netherlands, that has signed the UN human trafficking protocol, and because of EU decision-making around human trafficking, will adapt its legislation to the broad definition of human trafficking adopted in these international agreements.

¹²⁸ B- 9 regulation, SDU uitgevers, ve 2000 (april 2000, aanvulling 0). Slachtoffers en getuige-aangevers van mensenhandel.

¹²⁹ Article 8 onder k, vreemdelingenwet 2000.

¹³⁰ Article 14 Vreemdelingenwet 2000 en art 3.48 Vreemdelingenbesluit 2000.

¹³¹ Article 4.4.3 of the B-9 Regulation

¹³² STV can be contacted to assist the victim with her return to country of origin. This can help her with re-integration and it can help the public prosecutor in keeping in touch with the victim. Article 4.3, B-9 Regulation.

¹³³ Gerechtshof. Article 4.6, B-9 Regulation.

Third Phase

- Once criminal proceedings are over victims can apply for a permanent residence permit, to be issued on humanitarian grounds.¹³⁴ In assessing the application consideration is given to whether the individual will be in danger of reprisals in his or her country of origin, or at risk of prosecution, whether he or she will be adequately received and whether or not children are involved. Unfortunately in practice, different from Belgium and Italy, it is only in exceptional cases that victims are allowed to remain in the Netherlands.
- Should they find a Dutch partner or apply for different reasons to stay (asylum) in Netherlands they must follow regular immigration law procedures.¹³⁵

3.4.3 Provisions

The B-9 regulation provides that, once a possible victim is identified, the chief of police contacts the Foundation Against Trafficking in Women (Stichting tegen Vrouwenhandel, from now on STV) that assists the victim in the procedure. STV is obliged to register all the cases reported to it, which is also for the purpose of informing the National Rapporteur on Trafficking in Human Beings (NRM).¹³⁶

a) Social Assistance

If in the region where the victim resides a 'Care Co-ordinator' (*zorgcoördinator vrouwenhandel*) is appointed, she will be responsible for the victim's care. If there is no 'Care Co-ordinator' STV becomes responsible for the victim's care.¹³⁷

Shelter/accommodation

Accommodation is arranged by the Care Co-ordinator or STV. If the victim chooses to live in private accommodation this is allowed. In arranged accommodation the victim will not receive a means of subsistence directly but it is paid to the shelter that provides the victim with board and lodging. She will be given pocket money.

Counselling

Victims are counselled by the Care Co-ordinator or STV.

Means of subsistence

Social Assistance Benefits are paid during the three months rest period.¹³⁸ Once the victim presses charges she is entitled to Social Welfare paid by the Municipality where she resides.¹³⁹

Medical Care

As part of the Social Assistance Benefits victims get a medical insurance.¹⁴⁰ The Care Co-ordinator assists the victim in accessing medical care. A TBC-check is compulsory when the victim is granted a temporary residence permit.

¹³⁴ If one looks at the text of the B-9 Regulation almost every victim of trafficking would fit the demands necessary to meet for humanitarian status. Article 4.6

¹³⁵ Article 4.6, B-9 Regulation

¹³⁶ Article 3.1.3, B-9 Regulation

¹³⁷ Article 3.2, B-9 Regulation

¹³⁸ Regeling verstrekkingen bepaalde categorieën vreemdelingen- RvB, Article 3.3, B-9 Regulation. Paid by the "Central Organ shelter asylum seekers" (Centraal Orgaan Opvang Asielzoekers - COA).

¹³⁹ Article 4.5.1, B-9 Regulation

¹⁴⁰ Article 3.4, B-9 Regulation

b) Legal Aid

The Care Co-ordinator is responsible for legal counselling. If necessary, a lawyer paid for by the State is contacted.¹⁴¹

c) Right to Education

Victims have the right to education. No public funding is provided for educational programmes. In practice it has proven to be difficult for women to access existing regular education programmes, like language courses or vocational training.

d) Right to Work

To work is forbidden.¹⁴²

3.4.4 Future Prospects of Victims

In general the victim's temporary residence permit is not renewed after the conclusion of the case. The woman gets an order to leave the territory. The International Organisation of Migration can be contacted to assist the victim when she chooses to return to her country of origin.¹⁴³

Since the woman was not allowed to work during her stay in the Netherlands she does not have funds to organise a new life in her country of origin. Educational facilities are scarce, which means that most victims return home without newly acquired skills that could be useful on their return. This makes them vulnerable to being trafficked again, because in the end the reasons for leaving their home in the first place have not changed.

3.4.5 Practices

As mentioned in the section on European Initiatives, the Netherlands is the first country to appoint a National Rapporteur on Trafficking in Human Beings. The rapporteur is required to present an annual report to the government, with facts and figures on:

- The nature, incidence and mechanisms of traffic in persons, including information on offenders, victims and potential offenders and victims;
- Investigations by the police and legal proceedings against offenders (in cases abroad, if relevant);
- Information and assistance to victims and potential victims; repatriation;
- Indications of any change in the nature of traffic in persons or the way it operates which may have implication for the implementation of national, regional or international policy

The national rapporteur's work will give the government a better understanding of the nature and scale of the problem in the country.¹⁴⁴

Apart from the national rapporteur there is the national Judicial Officer on human trafficking and the regional contacts of Judicial Officers on human trafficking. At the Immigration and Naturalisation Services (IND) several contact functionaries work on human trafficking.

¹⁴¹ Article 3.4, B-9 Regulation

¹⁴² Article 4.4.2, B-9 Regulation

¹⁴³ Information on the IOM in the Netherlands, <http://www.iom-nederland.nl/>

¹⁴⁴ Council EG (2000) 2 rev 1 Volume II

The project group on Prostitution and Human Trafficking of the Dutch Police¹⁴⁵ tries to harmonise policy in the different regions of the Netherlands. Unfortunately, there is no structured, periodic contact between the police, immigration and the public prosecution office at the national level.¹⁴⁶

The office of the Procurators-General issued guidelines for investigating cases of trafficking.¹⁴⁷ They identify tell-tale signals that may reveal links to trafficking (see the attachment on Dutch legislation). Apparently these guidelines are not well known with all police units.¹⁴⁸

Although all the above mentioned functionaries have their own internal consultations, there does not exist any structural contact between these different groups.

¹⁴⁵ Projectgroep Prostitutie en Mensenhandel van de Nederlandse Politie (PPM/DNL)

¹⁴⁶ Visit to Ms. Jola Vollenbrecht, CRI in Zoetemeer on 18 March 2002

¹⁴⁷ 'Handleiding aanpak mensenhandel', Aanwijzing aanpak mensenhandel en andere vormen van uitbuiting in de prostitutie, van het College van Procureurs-Generaal, 29-06-1999, inwerkingtreding 01-10-2000. Op <http://www.openbaarministerie.nl/beleidsregels/index.html>

¹⁴⁸ Visit to Ms. Jola Vollenbrecht, CRI in Zoetemeer on 18 March 2002

3.5 Spain

3.5.1. Legislation

The Penal Code prohibits the act of trafficking for the purpose of sexual exploitation but does not define trafficking (art. 188). The article regulating trafficking in persons in general is article 318 bis. It includes the trafficking in persons for the purpose of sexual exploitation. The September 2003 version of both articles is included in attachment V on Spanish Legislation. The victim's position is well regulated in article 59 of the new foreigners law. Prostitution is not prohibited.

3.5.2. Procedure

Once a woman is found to be a possible victim of trafficking, the following procedure is formally recommended:

- No rest period.
- Possible victims get a 'permit for exceptional circumstances'.¹⁴⁹ This is issued by the Central Police Office when the victim reports the case to the authorities, and collaborates and co-operates with them, providing useful information against the trafficker's network.¹⁵⁰ This permit is valid for one year.
- Those women who are unable or unwilling to file complaints do not receive a permit to stay.
- This permit is renewable for as long as the special circumstances do not change (she still is a victim and co-operates with the police). It is renewable irrespective of court proceedings for as long as the victim co-operates. Expectations are that women will be able to apply for a *Permiso B-Renovada*¹⁵¹ (renewed permit) after that first one-year permit. This is hypothetical since the law is very recent and the regulations have only been in place since August 2001. The experience of Proyecto Esperanza (Project Hope) confirms that women were able to renew their permit to stay, based on special circumstances, and got a permit to stay and work *Permiso de Residencia y Trabajo B- Renovado* (renewed residence and work permit).

3.5.3 Provisions

The Spanish government has not set up a special organisation for providing social services. NGOs do most of the work, with government support. We will list the activities undertaken by Proyecto Esperanza, since they appear to be one of the most active in the field of assistance to victims in Spain.

'Proyecto Esperanza' (founded by the Esperanza Foundation and taken over by the Congregation of Adoring Sisters– AASC)¹⁵² aims to develop a comprehensive support programme based on the immediate and continuing needs of trafficked women. This project is co-financed by the European Union's Daphne Initiative.¹⁵³

¹⁴⁹ Permiso de Residencia por Circunstancias Excepcionales

¹⁵⁰ Article 59, Immigration law provides for this right to remain in Spain. Comisaria Central de Extranjeria y Documentacion is responsible for the issuance of the permit to stay.

¹⁵¹ This permit is issued for asylum seekers after their first permit Permiso B-Initial. Expectations are that women victim of trafficking will not need this Permiso B-Initial. The permiso B-Renovada allows the person to apply for family unification as long as she earns sufficient money. Telephone conversation with Martha Gonzales of Proyecto Esperanza on 21 March 2002

¹⁵² Congregacion de Religiosas Adoratrices Escalavas del Santisimo Sacramento y de la Caridad.

¹⁵³ Daphne Report 1999 of Proyecto Esperanza. Project Nr. : 1999/DAP/093/W/ , pg. 3

A telephone help-line was set up. It is often the first contact between the project and a possible victim. Members of the team are trained to fill in a 'call registration' form should a possible victim phone. The majority of victims are referred to the project by the police, organisations associated with the project, NGOs, government bodies and embassies.¹⁵⁴

a) Social Assistance

The social care provided by the project follows primarily the approach of identifying existing resources available with the State or other organisations that may be of assistance to the women. In this way, it has identified those resources that provide services in an appropriate form, with due sensitivity for the specific situation of a woman who has been the victim of trafficking. Similarly, the motivation to utilise these resources for support and supervision during the process forms an important part of these care activities.¹⁵⁵

Shelter/accommodation

Esperanza runs two hostels –an emergency refuge and another hostel where arrangements can be made for victims to remain in Spain. In the initial reception phase a professional initiates an 'orientation' strategy, allowing the woman time for recovery. As the woman adjusts normally to the patterns of communal living in the hostel, a decision-making process begins, in which the woman clarifies her intentions, whether she wishes to stay in Spain or to be repatriated. Should she decide to stay in Spain she is offered support and assistance with the process of integration and, in this case, is transferred to the project's long-term hostel.¹⁵⁶

Counselling

There is a direct response to the psychological situation of a woman that to a greater or lesser extent suffers from the after-effects of having had her most basic human rights violated. This is an indispensable part of a comprehensive and integrated response to that person's needs. In addition to group life in the hostel the team includes two professional psychotherapists that provide specific care. They treat the women in individual sessions held each week or as requested by the woman. The process of reconstructing each woman as a person involves therapeutic care, verbalisation of the situations experienced, incorporation of those experiences into her personal history, and an attempt to find the motivation and strength to enable her to resume her existence as a person.¹⁵⁷

Means of subsistence

No mentioning of financial aid is made in the law. But women can apply for IMI¹⁵⁸ which is a basic salary for 'socially excluded' people in Madrid.¹⁵⁹

Medical Care

Access to public health service (tarjeta sanitaria) is organised by Esperanza. They take advantage of a decree¹⁶⁰ that extends health cover under Social Security to those without adequate financial resources, provided that they are registered at the local authority in the place where they live.¹⁶¹

¹⁵⁴ Id. pg, 27

¹⁵⁵ Id. pg, 32

¹⁵⁶ Id. pg 28

¹⁵⁷ Id. pg. 30

¹⁵⁸ Ingreso Madrileño de Integración - IMI

¹⁵⁹ Telephone conversation with Martha Gonzales of Proyecto Esperanza on 21 March 2002

¹⁶⁰ Royal Decree 1088/89. Daphne Report 1999 of Proyecto Esperanza. Project Nr. : 1999/DAP/093/W/, pg. 33

¹⁶¹ Daphne Report 1999 of Proyecto Esperanza. Project Nr. : 1999/DAP/093/W/, pg. 33

b) Legal Aid

Legal assistance is given by member of Esperanza (it provides information about filing a complaint or pressing charges).¹⁶² In addition to this assistance a woman can apply for a legal aid lawyer should she decide to become a party in the process against the trafficker. This lawyer will be free of charge if she can prove not to have financial means of her own.¹⁶³

c) Right to Education

Education is allowed. NGOs like Esperanza provide assistance to women who wish to follow training courses. The Ministry of Work and Social Affairs organises vocational training courses for the unemployed at the national and regional levels. These courses are for all unemployed people with official papers (unemployed Spaniards, migrants, refugees, immigrants, etc., thus also for victims on a permit under special circumstances).

d) Right to Work

According to the new immigration law¹⁶⁴, victims that co-operate with the authorities and have a temporary residence permit automatically get a work permit, which is issued within a month.¹⁶⁵

Esperanza provides assistance to the women to determine their individual training needs and employment expectations. Its team works in continuous consultation with the associations that arrange integration in the employment process.¹⁶⁶

3.5.4 Future prospects for victims

Esperanza assists women in returning to their country of origin. It has contacts with consulates, embassies and organisations abroad.¹⁶⁷ And it co-ordinates its activities with immigrant repatriation programmes run by other non-governmental organisations (the Spanish Red Cross and the CIPIE (Latin American/European International Research, Advancement and Co-operation Centre).

Spain is a member of the International Organisation for Migration.¹⁶⁸ IOM runs a return programme for migrants in a vulnerable situation in Spain or with integration problems. This also covers victims of trafficking. The programme is in a pilot phase, it started in July 2003 and will continue until December 2003. A continuation of the programme is not yet assured¹⁶⁹. The programme is financed by the Ministry of the Interior and IMSERSO, an agency of the Ministry of Labour and Social Affairs that deals with migration issues and Social services.

3.5.5 Practices

Practices have not yet accumulated as the Spanish legislation is of a too recent date.

¹⁶² Id. pg. 37

¹⁶³ Telephone conversation with Martha Gonzales of Proyecto Esperanza on 21 March 2002

¹⁶⁴ Ley Organica 4/2000, 11 January 2000 and Ley Organica 8/2000 of 22 December 2000

¹⁶⁵ Telephone conversation with Martha Gonzales of Proyecto Esperanza on 21 March 2002.

¹⁶⁶ Daphne Report 1999 of Proyecto Esperanza. Project Nr. : 1999/DAP/093/W/, pg. 34

¹⁶⁷ Between December 1999 and December 2000 they helped 25 women return to their countries of origin.

¹⁶⁸ http://www.iom.int/en/who/main_members.shtml#chap2.

¹⁶⁹ Proyecto Esperanza update e-mail November 10 2003.

3.6 The United Kingdom

3.6.1 Legislation

New measures against trafficking for the purpose of prostitution were introduced in the *Nationality, Immigration and Asylum Act 2002* and came into force on 10 February 2003.

Section 113, 'Traffic in prostitution', covers the offences of arranging or facilitating the arrival into the UK, travel within the UK or departure from the UK of a person so as to exercise control over their prostitution¹⁷⁰. The new Sexual Offences Bill (currently going through Parliament) sets out a wider offence that covers trafficking for sexual exploitation into, within and out of the UK. One problem with the new offence is that it does not describe what trafficking is. No mention is made of coercion or deception. See attachment VII for a list of UK legislation. The government will introduce legislation against the trafficking of people for the purposes of labour exploitation by July 2004¹⁷¹.

The most relevant provisions that have to date been used against traffickers and exploiters are the procurement and pimping offences contained in the Sexual Offences Act 1956.

The Criminal Justice Act 1988 and the Proceeds of Crime Act 2002 may be used to conduct financial investigations into suspected traffickers' financial affairs and to seize assets¹⁷².

3.6.2 Procedure and Provisions

With the new legislation against trafficking it becomes a bit easier for the UK police, recognising a case of trafficking, to enable a victim to stay in the country to ascertain whether or not a case can be brought against the trafficker. In some cases women who decide to be a witness against the trafficker are protected under immigration law and are 'exceptional leave to remain'. This right to stay does not usually take into consideration the special position of the victim of trafficking.

In the UK a unit in the London Metropolitan Police (Club and Vice Unit, CO 14) conducts investigations in, among others, forced prostitution, trafficking in women and organised crime. The primary concern of the unit's investigation is to ensure the safety of victims. Its activities are based on a pro-active approach. Investigations are mainly intelligence-led and do not rely on the victim's testimony.¹⁷³

In March 2003 the Home Office, in conjunction with the NGO Eaves Housing, launched a six-months pilot project to provide adult victims of trafficking with accommodation and access to services when they agree to assist the authorities. The criteria for acceptance into the Pilot are: that she was brought to the UK; that she is working as a prostitute; that she has been forcibly exploited; that she has come forward to the authorities; that she is willing to co-operate with the authorities. The woman will have a four-week rest period in which to decide whether to co-operate. Should she decline she will have to leave the pilot project. Should she agree she will be provided with access to:

- Safe accommodation
- Food/subsistence allowance
- Interpretation and translation services
- Health assessment and services
- Counselling services
- Legal information

¹⁷⁰ Nationality, Immigration and Asylum Bill, Part 7

¹⁷¹ The Government White Paper 'Secure Borders, Safe Havens'.

¹⁷² Policing Organised Crime Unit, *Crime Reduction Toolkit: People Trafficking*, Home Office, 2003.

¹⁷³ Liz Kelly, Linda Regan, Stopping Traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK, Home Office Policy Research Series Paper 125, 2000, pp 32, 33, 431.

Should a woman accepted by the project decide to claim asylum she must leave the project. The government has said that decisions for longer-term residency will be made on a case by case basis, but that there will be no automatic right to remain in the country for those who co-operate with the authorities.

According to Kelly and Regan: “Both police and immigration officers report that most detected trafficked women request to be deported, preferably within 48 hours, as they are fearful that their exploiters will think they have given evidence against them, and carry out the threats made to themselves and their families. Many women are also thought to be ashamed about what has happened to them, and deeply angered by the deception and ways they have been treated. Whilst we have no reason to doubt these accounts, we were not able to check this with the perceptions of the trafficked women themselves. It is an open question as to whether trafficked women would feel the same were it possible to offer them the option of staying under the care and protection of a specialist NGO, since there is currently no such group in the UK. The European experience suggests these organisations can make a significant difference.”¹⁷⁴

¹⁷⁴ *Idem*, pg. 32

4 Return

Most countries of destination do not provide trafficked people with a legal residence status. Consequently, trafficked people are being deported or voluntarily returned to their country of origin, immediately or after the legal process. En route and upon returning home they may face several problems. They often do not have travel or identity documents. They face complications in transit and may also be unable to re-enter their countries of origin. Travelling without an escort, they are especially vulnerable to being recaptured by traffickers. The fear of retaliation by their traffickers to them or their families is often a problem as well. Many trafficked people are heavily traumatised because they were subjected to physical, psychological and/or sexual violence and are in need of medical treatment and psychological counselling. Especially women who have worked in the sex industry fear stigmatisation and rejection by their families and social environment. They have no place to stay and might need accommodation and financial assistance. Furthermore, in order to enable trafficked persons to reintegrate into the labour market, education and vocational training programmes, as well as assistance with finding employment are essential. Some kind of protection against possible retaliation by traffickers is also needed.

4.1 Right to return. International and European standards

United Nations

The Covenant on Civil and Political Rights (ICCPR)¹⁷⁵ prohibits State parties to expel trafficked persons if there is evidence that upon return to their home country their life might be endangered by violent acts of traffickers (non-refoulement principle)¹⁷⁶. According to the Trafficking Protocol, countries of origin are obliged to facilitate and accept the return of trafficked persons with due regard for their safety and without undue or unreasonable delay.¹⁷⁷ Countries of transit or destination ("receiving countries") returning trafficked persons to their country of origin shall ensure that such returns are "with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking." The Trafficking Protocol further states that returns shall "preferably be voluntary", but does not contain provisions regarding the case when a trafficked person is expelled from the country of destination. The Trafficking Protocol also obliges State parties to co-operate in the course of the return procedure.¹⁷⁸

Council of Europe

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) establishes the non-refoulement principle. The Committee of Ministers Recommendation R (2000) 11 encourages countries of origin and countries of destination to conclude co-operation agreements in order to ensure the right to return of trafficked people. The Recommendation further addresses the financial aspects of the right to return and recommends Member States to establish, via bilateral

¹⁷⁵ International Covenant on Civil and Political Rights, UN GA Res 2200A (XXI), 16 December 1966

¹⁷⁶ For example: Geneva Convention Relating to the Status of Refugees. Principle of Non-Refoulement is incorporated in several other international conventions. "No Member State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened."

¹⁷⁷ Article 8, Trafficking Protocol

¹⁷⁸ Article 8 Trafficking Protocol. Upon request of the receiving state, states of origin shall verify whether the trafficked person is a national or had the right to permanent residence at the time of entering the receiving state and, if the person has no proper documentation, issue the necessary travel or other documents to enable the person to travel and to re-enter its territory."

agreements, a system for financing the returns of trafficked people.¹⁷⁹ The Elements for a Regional Plan of Action provides for cross-border arrangements to ensure that victims have the right to safe repatriation to the country of origin and to receive all necessary support before, during and after their repatriation. Further, States should organise deportation procedures respecting basic human rights standards and to ensure minimum conditions of safety.¹⁸⁰

OSCE - Organization for Security and Co-operation in Europe

In the OSCE Ministerial Declaration of 28 November 2000, participating States committed themselves to establish “appropriate repatriation processes for the victims of trafficking, with due regard to their safety, including the provision of documents”.¹⁸¹

4.2 Assistance to Return and Reintegration

The provision of reintegration assistance and support programmes for trafficked people who want to return or have returned to their country of origin or community is essential in order to minimise the problems they face in reintegrating into their communities. Reintegration assistance is essential to prevent or overcome difficulties suffered as a result of the rejection by families or communities, an inability to find viable employment, and harassment, reprisals or persecution from the traffickers and/or the authorities. Reintegration programmes should include education, training for employment opportunities and practical assistance and should not stigmatise or victimise trafficked people. All programmes must guarantee the confidentiality of the trafficked person.¹⁸²

United Nations

Several international conventions to which States are parties oblige them to provide trafficked people with reintegration assistance and support programmes on their return, including access to counselling, medical care, education, vocational training and social security measures.¹⁸³ The Trafficking Protocol obliges States of origin to provide trafficked people with social support on their return, such as housing, information, medical, psychological and material assistance, employment and training opportunities.¹⁸⁴ This provision is applicable to the receiving State until the trafficked person has returned to her/his State of origin, and to the State of origin thereafter.¹⁸⁵

European Union

The The Hague Ministerial Declaration recommends Member States to use the framework of development co-operation to assist countries of origin to organise support facilities for victims who have returned home. Such facilities should be confidential and

¹⁷⁹ Sec. 38f Recommendation R (2000) 11

¹⁸⁰ Elements for a Regional Plan of Action (Sec. 32f). In ‘Reference Guide for Anti-trafficking Legislative Review’ by Angelika Kartusch, September 2001, pg. 92 at http://www.osce.org/odihr/attf/attf_refguide.pdf

¹⁸¹ Article 10, OSCE Ministerial Declaration, 28 November 2000. In ‘Reference Guide for Anti-trafficking Legislative Review’ by Angelika Kartusch, September 2001, pg. 92 at http://www.osce.org/odihr/attf/attf_refguide.pdf

¹⁸² Human Rights Standards for the Treatment of Trafficked Persons by the Global Alliance Against Traffic in Women (GAATW), Foundation Against Trafficking in Women (Dutch STV) and the International Human Rights Group, at <http://www.inet.co.th/org/gaatw/SolidarityAction/SMR99.htm>

¹⁸³ For example: ICESCR and CEDAW, International Covenant on Economic, Social and Cultural Rights Convention on the Elimination of All Forms of Discrimination Against Women. In ‘Reference Guide for Anti-trafficking Legislative Review’ by Angelika Kartusch, September 2001, pg. 92 at http://www.osce.org/odihr/attf/attf_refguide.pdf

¹⁸⁴ This obligation derives from Art 6 para 3 on victim assistance in the Trafficking Protocol. In ‘Reference Guide for Anti-trafficking Legislative Review’ by Angelika Kartusch, September 2001, pg. 93 at http://www.osce.org/odihr/attf/attf_refguide.pdf

¹⁸⁵ Travaux Préparatoires, Sec. 71. Of the Trafficking Protocol. Source see 168

include education and training in order to encourage the victim's economic independence and social reintegration.¹⁸⁶ The proposed Council Directive speaks of assisted return to the country of origin.¹⁸⁷

Council of Europe

The Committee of Ministers Recommendation R (2000) 11 addresses the financial aspects of the right to return and recommends Member States to establish a system to fund the return of trafficked people and to financially contribute towards their reintegration by concluding bilateral agreements.¹⁸⁸ People who have taken out private loans in order to pay for travel costs should be provided with the means to settle their debts, in the form of a compensation scheme or any other suitable systems, that can be based on confiscating the proceeds from trafficking.¹⁸⁹ Furthermore, Member States should "organise a system of social support for returnees to ensure that victims are assisted by the medical and social services and/or their families" and "introduce special measures concerned with the victims' occupational reintegration."¹⁹⁰ The Recommendation also acknowledges the unique role NGOs play in the field of reintegration. Member States should encourage and support the establishment of NGOs involved in the assistance of trafficked people in their countries of origin. Furthermore, States should promote co-operation between reception facilities and NGOs in countries of origin to assist with the return and reintegration process of trafficked people.¹⁹¹ The Council of Europe's Recommendation 1545 urges Member States to establish bilateral agreements between destination countries and countries of origin of victims, that should cover legal and police co-operation and humanitarian aspects, including training programmes and assistance programmes for the rehabilitation of victims.¹⁹²

Individual States

Victims should be provided with shelter, counselling, medical and psychological care, material assistance, as well as skills training and job counselling upon returning to their home countries. For this purpose, countries of origin, transit and destination should enter into co-operation agreements. Destination countries should support efforts of countries of origin to assist and reintegrate trafficked people by means of development co-operation. States should also increase co-operation with specialised victim support NGOs in the countries of origin and destination. Most of the States researched have co-operation agreements with countries of origin but these are all focussed on illegal persons in general. States ought to co-operate in developing protective measures of the rights of trafficked people through bilateral, regional, interregional and international mechanisms. In existing agreements no distinction is made between a victim of trafficking, an illegal immigrant or a rejected asylum-seeker.

¹⁸⁶ Hague Ministerial Declaration (Chapter III.3.4). See also the European Parliament 1996 Resolution (Sec. 8)

¹⁸⁷ Article 15, COM(2002) 71 final, Proposal for a COUNCIL DIRECTIVE

¹⁸⁸ Committee of Ministers Recommendation R (2000) 11 (Sec. 39)

¹⁸⁹ Committee of Ministers Recommendation R (2000) 11 (Sec. 39), Explanatory Memorandum to the recommendation, pg. 20

¹⁹⁰ Committee of Ministers Recommendation R (2000) 11 (Sec. 40f)

¹⁹¹ Committee of Ministers Recommendation R (2000) 11 (Sec. 36f)

¹⁹² Council of Europe Recommendation 1545 (2002) (Sec. 10 viii b)

IOM - International Organisation for Migration¹⁹³

The IOM assists those who wish to return home on a voluntary basis. The IOM seeks to be governments' primary partner in the return process. The organisation offers core-activities in each of the three chronological stages of the return process: pre-departure, transportation and post-arrival. Projects may include information dissemination, counselling, medical assistance, travel allowances, return grants, transport assistance, reintegration and monitoring. Assistance may be available generally or tailored to benefit specific groups. In many cases the IOM provides return services directly to the migrant. In others, the IOM co-ordinates and works with specialised partners, such as NGOs, to supply these services. In countries of origin facing development or reconstruction challenges, it is important to harmonise assisted return activities with other IOM development and reconstruction projects. International co-operation on return and migration is fostered through forum activities and "return diplomacy".¹⁹⁴

An example of IOM's assistance:

The IOM office in Kiev has opened a rehabilitation centre and a shelter to provide protection and support to victims of trafficking. Working with the Ukrainian health authorities, the IOM provides social and psychological counselling, psychiatric care, gynaecological and medical examinations and treatment of victims. All staff working at the centre and shelter has been trained by the IOM. Questions of sensitivity and confidentiality were also addressed in the training sessions. The IOM is working with a Ukrainian network of some 15 NGOs to provide assistance to victims and with the authorities to facilitate their reintegration process. After victims leave the IOM shelter, regular contact is maintained to monitor their reintegration process and to determine whether they or their families have been threatened or harassed. Working with the Ukrainian Government, the IOM works in the fields of prevention to increase public awareness and of protection through the provision of extensive reintegration assistance to victims of trafficking that have returned to Ukraine. The IOM also works with the Ukrainian law enforcement and judicial authorities to allow them too effectively criminalise trafficking and prosecute traffickers.¹⁹⁵

NGOs

Most active in the field of return assistance and reintegration programmes are the numerous NGOs in the countries of origin, transit and destination. Often in co-operation with the IOM or national government authorities, the NGOs provide beneficiaries with services such as vocational training, micro-credit and income generating activities.

A co-project of Novib/Oxfam Netherlands and Humanitas called BlinN (Bonded Labour in Netherlands) assists women, amongst other, with reintegration aid in co-operation with Novib/Oxfam Netherlands partners from all over the world.

SOLWODI, mentioned in the section on Germany, has a returnee programme. The programme aims to help women from Africa, Asia, Latin America, Albania and Romania. Former Soviet States, the Balkans or other East European States are not included in the programme. SOLWODI provides the following:

- financial support for transport costs

¹⁹³ Established in 1951 as an intergovernmental organisation to resettle European displaced persons, refugees and migrants. While not part of the United Nations system, IOM maintains close working relations with UN bodies and operational agencies. IOM has as partners a wide range of international and non-governmental organisations. For their constitution look at: http://www.iom.int/en/who/main_constitution.shtml

¹⁹⁴ http://www.iom.int/en/who/main_service_areas_assisted.shtml

¹⁹⁵ This programme is financed with a US\$ 170,000 funded by the Swedish International Development Cooperation Agency. Vanessa von Struensee from www.brama.com/issues

- financial support during the first three months after returning home
- scholarships for a year for further education in the home country
- part-financing of the work station during the first year
- support of NGOs in the home country for projects to help the women

A joint project of NGOs, in Central and Eastern Europe and the STV (The Foundation Against Trafficking in Women)¹⁹⁶ called 'La Strada'¹⁹⁷, aims to refer victims to support networks and to educate women and girls about the possible dangers of trafficking. STV has another joint project with the Global Alliance Against Trafficking in Women (GAATW). This project is aimed at the international adoption of Standard Minimum Rules for the Treatment of Victims of Trafficking and Slavery-like Practices.¹⁹⁸

The La Strada network¹⁹⁹ was already mentioned in the Dutch section. Through its network it refers victims of trafficking to assistance networks: victims of trafficking in women themselves, their relatives and friends, as well as lawyers, physicians, social workers, psychologists and job trainers.

¹⁹⁶ Stichting Tegen Vrouwenhandel = STV

¹⁹⁷ <http://www.womenbg.org/en/fairplay-jarava/f1998/f1998-2/9.html>, <http://www.brama.com/lastrada/>

¹⁹⁸ STV brochure July 2000

¹⁹⁹ It is an "East-meets-West" and "East-meets-East" project in which the mutual exchange of knowledge and expertise is a crucial element. Professionally established specialised NGOs against trafficking in women in four so-called "core countries" Poland, the Czech Republic, Ukraine and Bulgaria, address the issue of trafficking in women. Apart from these "core countries", la Strada transfers its expertise and know-how to (women's) NGOs in other Central and Eastern European Countries (CEEC) and New Independent States (NIS) through the implementation of made-to-measure training seminars and follow up activities. <http://www.womenbg.org/en/fairplay-jarava/f1998/f1998-2/9.html>

CONCLUSION

Trafficking in women is a phenomenon that is a violation of human rights, of the basic principles of the rule of law and of democracy. The massive increase in the number of victims trafficked in Europe during the last few years demands immediate action from the European countries to stop the spread of this modern form of slavery. Trafficking is a human rights issue: it entails the violation of women's dignity and integrity, their freedom of movement and, in some cases, their right to life. As far as the individual is concerned, it effects the very foundation of human rights: the equal dignity of all human beings. This phenomenon goes hand in hand with migration, many financially vulnerable women from various countries of origin have been displaced by networks of traffickers in order to exploit them in Western Europe. Economic misery and the absence of positive future perspectives are amongst the main 'push-factors' for women to accept the offer of traffickers of a 'better' life in Western Europe. These women are victims of a serious crime against humanity but they are also people with rights, people whose rights are violated. One can see them as survivors who need to be empowered to access their rights. States are obliged to respect and protect the human rights of the people within their borders. Unfortunately, no international instrument effectively addresses all the human rights violations involved in trafficking. Since the Palermo Protocol there is at least a common internationally agreed definition of the crime 'trafficking in persons' (Article 3). Regrettably, the provisions for protection and assistance to victims are discretionary under the Protocol. At the international level no compulsory obligation is found that provide victims of trafficking with the full respect of their human rights.

The European Union recognises trafficking as constituting a serious violation of human rights but limits protection and assistance measures to the willingness of victims to co-operate with the authorities (Framework Decision). The proposed Council Directive would improve the situation of co-operative victims in many European countries that have presently no legislation in place to provide victims with assistance and protection. In addition to a temporary residence permit and social assistance provisions, victims shall have access to the labour market, vocational training and education. This would certainly be an improvement in the situation of many women in European countries of destination. However, from the human rights viewpoint, the Directive appears to have been adopted in order to increase the ability of prosecuting authorities to bring charges and to secure convictions. And not because, as a matter of principle, anyone who has personal experience of being trafficked has the right to protection and that this should include regulating their residence status, granting them a residence permit and offering them new opportunities. The women, victims of trafficking, are considered to be a tool for the prosecution. The Council of Europe urges Member States to adopt measures regarding victims of trafficking. The OSCE stresses that anti-trafficking legislation should take account of a human rights approach. Enormous stacks of beautiful documents are to be found making similar statements. A political priority is not the same as a practical priority. Legislative initiatives and law enforcement do, in general, not include a human rights approach for trafficked women.

Differences in the national legislation of the States researched relating to trafficking in human beings, along with variations of prioritisation and approach to investigating the crime and to provide assistance to victims, makes it very difficult to give accurate and standardised information. In most countries of destination, victims of trafficking that are willing to act as a witness, enjoy a regulated status. The police plays an important role in determining the status of a woman found working in prostitution without identity papers. The women are often considered as illegal immigrants, and therefore subject to criminal penalties and deportation. We propose by the following recognition points for possible victims:

- The woman is actively encouraged through false promises regarding work opportunities, conditions and earnings to come to the country she resides in, regardless of whether a job in another field was promised her or whether she was willing to work in prostitution;
- Her identity papers are taken away from her;
- Her earnings are taken away from her;
- She is forced to pay back a debt she never consented to;
- She is forced into prostitution or into giving sexual services;
- She is blackmailed, threatened, humiliated, beaten, raped or imprisoned.

It is irrelevant that the woman previously worked as a sex worker or that she was willing to work as a sex worker because/while she was misinformed about work conditions and earnings.

Independently of their willingness to become witnesses, and thereby even putting themselves in greater danger, trafficking victims need medical, psychological and social assistance, as well as the opportunity to stabilise their situation before making any further decisions. Unfortunately, in all countries researched, whether it was authorised by the law or not, women were in most cases pressured or even forced to press charges before receiving assistance. Italy follows, by law, a social protection approach while the other countries researched follow a crime control approach. Article 18 of Italy's immigration law provides comprehensive assistance. Whether the victims are willing to act as a witness for the prosecution or not, they receive social assistance and protection. Residence permits are provided for women who choose to leave prostitution. Belgium provides an interdepartmental assistance programme within the judiciary, which specialises in providing social, administrative and legal assistance to victims and prepares for their repatriation, if necessary. Trafficked persons who take part in the programme and especially those who co-operate with the authorities are able to obtain the right to stay for varying periods of time. Women with a regulated status in the Netherlands have no opportunity to earn a living, leaving them dependent on the State, with limited rights. Germany and Spain provide assistance to victims willing to co-operate with the authorities but have no official assistance programmes in place for them. The United Kingdom only recently adopted specific anti-trafficking legislation, but victims of trafficking cannot obtain a legal status.

In concluding we can say that Italy and Belgium have the best assistance programmes. Aspects that are important during a woman's stay are her right to work and education. Or in general, the possibilities to spend usefully her days awaiting trial. Employment or the right to work is an important aspect also for the effective protection of a victim, in terms of ensuring that they do not return home empty-handed after a lengthy trial but to actually save some money during that time. Education too can provide women with new opportunities. In most countries women sit around in their accommodation without any positive future perspectives. States have an obligation to assist these women while making use of their testimonies to prosecute traffickers.

After the often lengthy trial women need to return to their countries of origin. The IOM is the primary partner of governments and of women, helping them in their return. The IOM works in co-operation with NGOs in countries of origin. These NGOs play a unique role in the field of reintegration. Destination countries should support efforts by countries of origin to assist and reintegrate trafficked people through development co-operation. States should encourage and support the establishment of NGOs involved in the assistance of trafficked people in the countries of origin.

Summarised conclusion:

Positive aspects:

- Recovery period in which to decide whether to press charges or not against traffickers in Belgium, Germany, the UK (a bit short only 4 weeks) and the Netherlands.
- Access to full assistance without denouncing criminals; Italy
- Work permit in Italy and Belgium.
- Specialised police units for investigating alleged cases of trafficking. Trained police officers.
- Criteria for identifying a potential victim of trafficking (the Netherlands).
- 24-hours telephone help-line. Information and assistance about and for victims. (Italy)

Negative aspects:

- In most countries permission to stay in the country is only granted for short periods and has to be extended repeatedly. The victims are in a permanent state of uncertainty as regards planning and in conducting their lives.
- Co-operation between police and immigration is not effective and often there are tensions.
- Police investigation teams do not regard traffic in human beings a priority. Their heroism comes from fighting the drugs and arms trade. Advanced investigation techniques should be used in trafficking cases as well.
- Large discretion for police officers whether they identify a woman as a possible victim of trafficking or regard her as 'just another' illegal immigrant.
- Women are often pressured into filing charges. Even in countries like Italy where testifying is not a prerequisite for a right to stay.
- Protection for victims should not end when the trail ends, or when a victim chooses to return home. Particularly considering the nature of organised crime, a trafficked person that does testify against traffickers may still be in danger even when the prosecution is successful in the destination country.
- Where victims return home, there is a need for co-operation in the repatriation process between authorities in countries of destination and origin.

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Ilse Hulsebos, Pag-Asa in Brussel, Belgium

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Veronica Munk of Amnesty for Women, Germany

Elaine Pearson, Anti Slavery International, London, UK

Mevr. Rijken and Dagmar Koster, researchers for the office of National Rapporteur on trafficking in human beings.

Nancy Timmerman, Payoke, Antwerpen, Belgium

Jola Vollenbrecht, Centraal Recherche Instituut, the Netherlands

Attachment I Belgian legislation

Law containing provisions to combat trafficking in human beings and child pornography ¹

13 April 1995

CHAPTER I -Trafficking in human beings

Art. 3. Article 380bis of the same Code is hereby replaced by the following provision:

" Art. 380bis § 1. A punishment of 1 to 5 years' imprisonment and a fine of 500-25,000 Francs shall be imposed on:

1. anyone who, to gratify the passions of another, shall have recruited, enticed, corrupted or held an adult for the purposes of sexual immorality or prostitution, even with the consent of that person (.. .);
2. anyone who shall have kept an establishment for sexual immorality or prostitution;
3. anyone who shall have sold, hired or made available rooms or any other premises for the purpose of prostitution with the aim of an unlawful profit;
4. anyone who shall have, by whatever means, exploited the sexual immorality or prostitution of another .

§2. An attempt to commit the offences referred to in §1 shall be punished by 6 months' to 3 years' imprisonment and a fine of 100-5000 Francs.

§3. Sentences of 10 to 15 years' penal servitude and a fine of 500-50,000 Francs shall be imposed for the offences referred to in § 1, insofar as their perpetrator:

1. makes direct or indirect use of fraudulent practices, violence, threats or any form of coercion;
2. or takes advantage of the particularly vulnerable position in which an individual is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or physical or mental disability .

Art. 4. An article 381bis is hereby inserted in the same Code and worded as follows:

"Art. 381bis. The offences referred to in articles 379 and 380bis, §§3 and 4, shall be punished by 15 to 20 years' penal servitude and a fine of 1000-1 00,000 Francs if they constitute acts of complicity in the principal or consequential activity of an association, whether or not the offender is a leader of such association."

...

Wet houdende bepalingen tot bestrijding van de mensenhandel en van de kinderpornografie. 13 april 1995, Belgisch Staatsblad of 24 april 1995, unofficial translation.

MINISTRY OF JUSTICE, MINISTRY OF THE INTERIOR, MINISTRY OF EMPLOYMENT AND MINISTRY OF SOCIAL AFFAIRS, HEALTH AND ENVIRONMENT

13 JANUARY 1997- Instructions to the Foreigners Department (Office des Etrangers),the prosecuting authorities, the police and the social law inspection service and social inspection services concerning assistance to victims of human trafficking ¹

These instructions are for the practical application of the circular regarding the issue of residence and work permits to foreign nationals who have been victims of human trafficking, published in the *Moniteur Belge* of 7 July 1994. The circular comes under the

implementation of the act of 13 April 1995 (M.B. 24.04.1995) providing for the suppression of human trafficking and child pornography.

3. Victim support centres

In order to ensure that victims of human trafficking receive appropriate support and counselling, the authorities have set up a victim support centre in each region: the "Payoke" Centre in Antwerp, Flanders, "Pag-asa" in the Brussels-Capital Region, and "Siirya" in Liege, in the Walloon Region. All three centres are non-profit making organisations, which provide psychological and social counselling and offer legal aid to victims wishing to defend their interests in the court proceedings. These three centres, like the social welfare organisations already mentioned in the circular of 7 July 1994, are empowered to request residence permits for victims of human trafficking. A victim support centre may also be a local social service, which has signed a co-operation agreement - approved by the relevant community or regional minister -with one of the three aforementioned centres.

4. Efficient collaboration between victim support centres, the police, the social inspection services, the Foreigners Department and the courts

Effective action against human trafficking depends on the development of active co-operation between the victim support centres and the police, the social inspection services and the prosecuting authorities. Complementary action by all the parties involved can only be achieved if the victims OJ presumed victims of human trafficking are put in touch with the support centres. The police or social inspection service must immediately contact the Foreigners Department about any person residing illegally in Belgium, or whose residence status arouses suspicion. All victims or presumed victims, whether legally or illegally resident in Belgium, must be put in contact with a support centre. When a support centre takes on the counselling of a victim or presumed victim, it become responsible for the administrative follow-up with the Foreigners Department. The police unit or social inspection service concerned must inform the Foreigners Department of the intervention of the victim support centre. In the event of a support centre being unable to provide counselling, the police unit or social inspection service concerned must follow the Foreigners Department's instructions, according to the usual procedure.

5. Organising contact with victim support centres

1. If the police or social inspection service has good reason to believe that they are dealing with a victim of human trafficking, they take the necessary measures to ensure that the person is taken in by a victim support centre, and they inform the Foreigners Department of the fact if he or she is an illegal or provisional resident.
2. If the police or social inspection service is not certain whether a person is a victim of human trafficking, the support centre must be given the opportunity to establish contact with this person. This can be done by, for example, inviting a staff member of the support centre to the police station, if the person in question agrees to this.
3. Finally, if there are indications that one or more persons detained are implicated in the organisation or pursuit of human trafficking, and are therefore not victims, they are not to be put in contact with a victim support centre.

Whenever the police or a social inspection service encounter a person who may be a victim of human trafficking, it is their duty to give him or a her the information leaflet about the support centres, which has been produced in different languages by the Centre for Equal Opportunities and Action Against Racism and is available from the organisations mentioned in this circular.

6. Joint supervision

Without upsetting the smooth running of the planned action, it will be advisable, when specific checks are carried out on foreign labour, in particular joint checks carried out by the district inspection units (co-operation agreement between social inspection services of 30 July 1993 and co-operation agreement between the federal government and the

regional governments of 31 March 1995), to ask the victim support centres in advance to stand by with a view to taking in or making contact with any victims of human trafficking.

7. Assistance to victims by the police and the prosecuting authorities

As set out in section 46, paragraph 1, of the act of 5 August 1992 on the functions of the police, as well as in circular *OOP15bis*, it is the duty of the police to refer victims to the most appropriate support facility. The police should also inform victims of the existence of the victim support units set up by the prosecuting authorities. The prosecuting authorities can make a direct request for assistance from the victim support centres both during the investigation, when the victim will be taken in by the support centre, and during the preparation of legal proceedings.

8. Practical application of the circular of 7 July 1994

Residence and work permits are issued to victims of human trafficking in successive stages in parallel to the legal proceedings.

8.1 Stage 1: issue of an order to leave the country within 45 days

This 45-day period should allow the victim who is leaving a human trafficking environment and embarking upon counselling provided by the support centre to recover mental stability. During this period, victims can decide if they wish to make statements concerning the persons or human trafficking networks that exploited them or if they wish to prepare for a return to their native country. Therefore, when the police or a social inspection service encounter a presumed victim of human trafficking, it is important that they establish immediate contact with a victim support centre, following the procedure set out in paragraph 5. The police unit in question must also contact the Foreigners Department and, if appropriate, inform them that the presumed victim has been directed to a support centre. If the victim immediately lodges a complaint or makes a statement, the support centre responsible for his or her counselling can request that the Foreigners Department move on to the second stage.

8.2 Stage 2: issue of a three-month residence permit

A victim who has lodged a complaint or made a statement within the 45-day period will receive a temporary residence permit valid for three months, in the form of a certificate of arrival. During this period, counselling by a support centre is also compulsory. In stage 2, the victim may also be granted a temporary work permit. The Foreigners Department will ask the Crown prosecutor immediately, or no later than a month before the expiry of the three-month period what action has been taken on the victim's complaint or statement, and will indicate the deadline for a reply. The prosecuting authorities must provide two items of information: 1. whether the case concerns human trafficking; 2. whether or not the case is still in progress. At the same time, the Crown prosecutor will communicate this information to the victim. If no reply is forthcoming from the prosecuting authorities, the request for information will be directed to the Principal Crown Prosecutor.

8.3 Stage 3: issue of a foreigner's registration certificate

If the Crown prosecutor answers the two questions in the affirmative, the victim will receive a residence permit valid for longer than three months (usually six months) which may be renewed until the legal proceedings come to an end. Throughout this period, counselling by a victim support centre remains compulsory. The victim may, from this stage, obtain work permit B. Finally, in accordance with the report of the Parliamentary Commission of Inquiry, and in order to ensure the safety of victims, steps may be taken to obtain a residence permit of unlimited duration from the Foreigners Department. A request for such a permit may be made by a victim whose complaint or statement has resulted in a court summons, if the complaint or statement is considered of importance to the proceedings.

9. Social assistance for victims

From the time when a victim of human trafficking receives a temporary residence permit, i. e. from Stage 1, he or she is entitled to social assistance benefits from the CP AS or through a victim support centre (Royal Decree of 13 May 1994).

10. Useful addresses

10.1 Foreigners Department (Office des Etrangers):

Boulevard Emile Jacqmain, 152/1, 1000 Brussels

Tel: -General enquiries: 02/205.54.11 -Head office: 02/205.58.47 -Duty office: 02/205.55.00

10.2 Victim support centres (open 24 hours)

10.2.1 Flemish Region -"Payoke"

Centre Zirkstraat 27, 2000, Antwerp Tel: 03/ 232.24.40 Fax: 03/233.23.24

10.2.2 Brussels-Capital Region -"Pag-asa"

Centre Rue Saint-Christophe 38, 1000 Brussels Tel: 02/ 511.64.64 Fax: 02/ 511.58.68

10.2.3 Walloon Region -"Sürya" Centre

Rue Hors-Chateau 28, 4000 Liege Tel: 041/21.35.57 Fax: 041/23.66.28

10.3 Co-ordination and monitoring of the policy on action against human trafficking:

Centre for Equal Opportunities and Action against Racism, "Human Trafficking" Unit Rue de la loi 155, 1040 Brussels Tel: 02/233.06.11 Fax: 02/233.07.04

1. *Richtlijnen aan de dienst Vreemdelingenzaken, parketten, politiediensten, inspectie van de sociale wetten en de sociale inspectie omtrent de bijstand aan slachtoffers van mensenhandel.* Ministerie van Justitie, Ministerie van Binnenlandse Zaken, Ministerie van Tewerkstelling en Arbeid en Ministerie van Sociale Zaken, 13 januari 1997, B.S. 21.02.1997.

Ministerial circular concerning the granting of residence permits and work permits (work cards) to foreigners who are victims of trafficking in human beings. [1](#)

7 July 1994

(unofficial translation)

Issued by the Minister of the Interior, the Minister for Civil Service and the Minister of Labour and Employment.

Published in the Belgian Official Gazette on 7 July 1994.

Art. M1.1.

An order to leave the territory (45 days) is delivered to persons:

- Who have left the environment in which they were living as a consequence of their being trafficked;
- And who request the assistance of a specialised counselling organisation. A certificate by such organisation (Payoke-Saralek, Le Mouvement du Nid or Espace-P) proving that counselling is being provided, is obligatory.

Persons to whom the order to leave the territory (45 days) has been delivered, are not entitled to work or employment. Demands for extension of the order to leave the territory must be submitted to the Office for Foreigners (Ministry of the Interior).

Art. M2.2.

A declaration of arrival (three months) is granted if, within the period of 45 days, the above mentioned persons file a complaint or statement with the police or public prosecution against their trafficker. A declaration of arrival is also delivered if the complaint or statement is filed with the competent authorities immediately after having left the trafficking environment, on condition that counselling by a recognised organisation is accepted and desired. The Office for Foreigners will be consulted in each individual case. Persons who are in possession of a declaration of arrival, may be employed on a temporary basis. A temporary work permit, comparable to the work permit for candidate

refugees, will be issued to the possible employer by the competent Region. The Office for Foreigners will immediately contact the public prosecutor to be informed of the consequence given to the complaint or declaration.

Art. M3.3.

When public prosecution notifies that criminal proceedings are launched following the complaint or declaration, a residence permit with duration of more than 3 months ("temporary residence") will be delivered, equally after consent of the Office for Foreigners.

A residence permit with duration of 6 months will generally be granted. Also in case of extension of the permit, a residence permit with duration of a further 6 months will generally be granted. The person concerned may submit a request for a residence permit of undetermined duration, when the person against whom he or she has filed complaint, has been summoned to appear before the criminal court. The residence permit of undetermined duration may be granted, if the complaint or declaration of the concerned person appears to be of significant importance to the criminal procedure. Persons who have been granted a residence permit with duration of more than 3 months ("temporary residence") may be employed on the basis of a working card type B, by an employer who has obtained a working permit for them from the competent Region. Should you be informed of negative elements, you are requested to notify the Office for Foreigners, which will give you the necessary guidance. The competent body within the Office for Foreigners is identified on the basis of the language criterion.

Office AF: French language.

Office AN: Dutch language.

An official of the General Direction has been designated as Coordinator.

Signed by the Minister of the Interior, L. Tobback and

The Minister of Labour and Employment, Mevr. M. De Smet.

1. Omzendbrief betreffende de afgifte van verblijfs- en arbeidsvergunningen (arbeidskaarten) aan vreemdelingen, slachtoffers van mensenhandel. B.S. 07.07.1994.

Attachment II

German Legislation

Extract from the Penal Code (unofficial translation)

Trafficking in human beings

180b Whoever intentionally influences another person for economic gain in order to direct this person in knowledge of a situation of force to commence or continue prostitution, will be punished by deprivation of liberty of up to five years or with a fine. Also will be punished anyone who influences another person for economic gain, while exploiting that person's helplessness due to the person's stay in a foreign country, in order to undertake sexual acts with or in front of or by a third person.

With deprivation of liberty from six months to ten years will be punished who intentionally influences

1. another person in knowledge of helplessness due to the person's stay in a foreign country or
2. a person under 21 years of age

in order to direct the person to start or continue prostitution or who gets the person to commence or continue prostitution.

In case of para 2 the attempt is punishable.

181 Whoever

1. directs another person through force, or threats with a considerable abuse, or deception to commence or continue prostitution

2. recruits another person through deception or against his will with force, kidnaps a person through threats with a considerable abuse or deception, in order have the person, in knowledge of the person's helplessness due to the person's stay in a foreign country, undertake sexual acts with or in front of or by a third person, or

3. commercially recruits a person, in order to direct the person, in knowledge of the helplessness due to the person's stay in a foreign country, to commence or continue prostitution, will be punished with deprivation of liberty from one to ten years. In cases of lesser gravity, the deprivation of liberty is six months to five years.

The Criminal Law was amended in 1992 by the outlawing of trafficking in human beings. This amendment improves the protection against sexual exploitation, specifically against the dangers of forced prostitution and trafficking in human beings, that the law, in particular, provides for foreign girls and women.

Moreover, a law was passed for improving the combating of money laundering, which is intended, among other things, to expand the possibilities for confiscating the financial resources of organised traffickers in human beings. In addition, Article 180b of the German Penal code (trafficking in human beings) has been added to the catalogue of offences open to accessory prosecution in art. 395 of the German code of Criminal Procedure, so that the victims can also appear as additional prosecutors with the corresponding right in these proceedings.

The revised articles also apply to criminal acts committed abroad, independently of the law applicable where the offence was committed

Action Plan of the Federal Government to Combat Violence against Women

Trafficking in human beings is an especially heinous form of violence against women, since the vast majority of victims are women. Therefore, combating trafficking in women is one part of the Action Plan of the Federal Government to Combat Violence against

Women which was decreed by the Federal Cabinet on Dec. 1st, 1999. This action plan constitutes a comprehensive overall plan to combat violence against women on all levels.

Working Group on the Traffic in Women

To better combat traffic in women, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has set up the nation-wide working group "Traffic in Women" in which the various federal and Land ministries, the Federal Criminal Police Office as well as the specialised advisory services are involved. It is the task of this working group to:

- ensure the mutual exchange of information among its members concerning measures to combat traffic in women,
- analyse the problems which could stand in the way of effectively combating traffic in women,
- elaborating joint activities and proposals,
- preparing German statements in the context of international measures.

One of the working group's achievements has been the elaboration of proposals concerning the **administrative regulations with respect to the Aliens Act**, which were adopted on Oct. 9th, 2000 and grant victims of trafficking a grace period of at least 28 days, in order to give them time to prepare their return to their country of origin and to decide whether they want to co-operate with the German authorities as a witness for the prosecution. Another achievement is the development of **a co-operation concept for the protection of victim-witnesses** in trials having to do with the traffic in human beings which is currently being discussed in the Conference of Ministers Responsible for Internal Affairs. This special witness protection concept builds on institutionalised co-operation between the police and the specialised advisory services and is therefore an additional example of this type of co-operation.

Furthermore, the Working Group on Traffic in Women has been responsible for deciding on the content of the information material destined for distribution in the main countries of origin (the pamphlets were translated, printed and distributed with the financial assistance of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth) and has discussed the contents of a campaign against traffic in women. On the agenda for the future are topics such as:

- the implementation of the already elaborated witness protection concept, clarification of funding issues,
- the question of job opportunities or training for women who remain in Germany for several years to serve as witnesses,
- the planned law to improve the siphoning-off of extra profits,
- the United Nation's additional protocol on traffic in human beings, especially women and children, which is currently being drawn up,
- issues concerning the new media and the Internet.

In addition, co-ordinated co-operation between the authorities and specialised advisory services at home and abroad is of assistance in ensuring the safe return of foreign women to their home countries.

Attachment III Italian Legislation

The Italian anti-trafficking law

On the 11th of August 2003, the Italian Parliament approved the anti-trafficking law, no. 228/2003, envisaging specific anti-trafficking provisions. The new law represents a milestone in the criminal law responses against trafficking.

The salient points of the new law reflect the most important indications provided by the UNO Protocol (to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime), signed in Palermo in the year 2000 by over one hundred nations, Italy included. Nevertheless, we believe it is essential to wait for the concrete enforcement of the law in the near future; we hope law enforcers and public prosecutors will enforce the new law, principally, against leaders of the transnational trafficking organised crime and not merely against the “minor pimps”.

The main elements of the law are the following:

- 1) the specific crime of trafficking in persons is inserted in the Penal Code
- 2) the law provides a new definition of reduction of slavery
- 3) the law envisages a more severe sentence for the crime of criminal conspiracy (when the crime is committed by more than 3 persons) in case it is aimed at trafficking in persons
- 4) the law extends to the crime of trafficking the procedural provisions and the penitentiary treatment envisages for mafioso-type crimes, and specifically:
 - a) the competence to investigate such crime is attributed to the Anti-mafia District Directorates coordinated by the National Anti-mafia Directorate
 - b) it is possible to implement the more favorable penitentiary treatment and the protection system envisages for the so called mafioso repentant criminals (cooperating with the police) to those traffickers who, opting out of the criminal activity, decide to cooperate with the police
- 5) the law envisages the compulsory confiscation of profits deriving from trafficking

Article 1

(Emendment to article 600 of the criminal code)

Article 600 – Enslavement or holding in slavery or servitude

Whoever exerts powers analogous to those relevant to ownership rights upon a person or compels or holds a person in a state of uninterrupted subjugation by obliging this person to labour or sexual services or begging or to services implying exploitation shall be punished to imprisonment from five to twenty years.

Enslavement or holding in a state of subjugation occurs when such actions are carried out by means of coercion, threat, deception, abuse of power or taking advantage of a condition of physical or psychological inferiority or of a state of need or by means of promise to pay or a payment of money or other benefits to those having authority over this person.

The sentence shall be increased from one-third to one-half when the facts set forth in the first paragraph are committed to the detriment of a person under 18 or when they are aimed at exploiting prostitution or subjecting the victim to removal of organs.

Article 2

(Emendment to article 601 of the criminal code)

Article 601- Trafficking in persons

Whoever engages in trafficking in persons being in the conditions set forth in article 600 or, for purposes of committing the offences set forth in the first paragraph of the same article, induces this person by deception or forces him/her to enter or to reside in or to exit from the domestic territory or to move in it by means of coercion, threat, abuse of power or taking advantage of a condition of physical or psychological inferiority or of a state of need or by means of promise to pay or a payment for money or other benefits to the person having authority over him/her, shall be punished by a term of imprisonment from eight to twenty years.

The sentence shall be increased from one-third to one-half when the offences set forth in this article are committed to the detriment of a person under 18 or when they are aimed at exploiting or subjecting the victim to removal of organs.

Article 3

(Emendment to article 602 of the criminal code)

Article 602 – Acquisition and transfer of slaves

Save for the cases set forth in article 601, whoever acquires or transfers or conveys a person being in either of the conditions under article 600, shall be punished by imprisonment from eight to twenty years.

The sentence shall be increased from one-third to one-half when the victim is under 18 or when the facts set forth in the first paragraph are aimed at exploiting prostitution or subjecting the victim for removal of organs.

MEMORANDUM ON TRAFFIC IN HUMAN BEINGS

The Italian legislation on the trade of human beings contains provisions aimed to protect victims and to integrate them into society as well as provisions, which impose criminal penalties on the people responsible for and the perpetrators of the traffic in human beings.

As regards the first type of law rules, according to **art. 18 of the Consolidation Act of the provisions concerning the regulation of immigration and law rules on the condition of foreigners (Legislative Decree of 25 July 1998, n. 286)**, a special six-month residence permit (renewable for 1 year) is to be issued to foreigners who are victims of the trafficking in human beings if there is proof that they are subject to violence or are living in a situation of severe exploitation.

Law 3/10/1998 n. 269. Rules against the exploitation, the pornography, sexual tourism with detriment of minors, as new form of reduction to slavery, which among other things, introduces special rules for prostitution and trafficking of minors.

The residence permit for the purpose of social protection is granted on grounds that the foreigner is in a situation of danger as a result of his/her attempts to free him/herself from the conditioning and the violence of the criminal organisation that exploits him/her and to allow him/her to have access to assistance and social integration programmes, for which 10 billion are earmarked every year.

The special permit makes it possible to have access to assistance services and to education, as well as to be registered in the employment lists and to work for an employer.

Articles 25 and 26 of the **Rules for the implementation of the Consolidation Act (Presidential Decree of 31 August 1999, n. 394)** sets out the procedures and bodies in charge of allocating the funds for the implementation of the assistance and social integration programmes. The latter are carried out by local bodies or by private entities which have arrangements with the local bodies and are financed 30% with resources of

the local bodies and 70% with state funds allocated by the Department for Equal Opportunities, following an assessment of the programmes developed by the municipalities or by the private entities involved.

The assessment is performed by an interministerial Commission comprised of representatives of the Ministers of Equal Opportunities, of Social Solidarity, of the Interior and of Justice. **Interministerial Decree dated 23 November 1999** sets out the criteria and the methods for selecting the programmes.

To date, the Department for Equal Opportunities has financed 49 programmes. As regards the **criminal penalties** envisaged for the people responsible for trafficking in human beings, one has to refer to various law provisions :

- **Art. 12 of Consolidation Act n. 286/98** which represses clandestine immigration ;
- **Art. 3, n. 6 and 7 of law n. 75 dated 1958** (Abolition of the regulation of prostitution and fight against the exploitation of prostitution) which applies sanctions specifically against the trade of human beings to be exploited for prostitution even where use is not made of violence, coercion or abuse.
- **Art. 600 of the Criminal Code** which applies sanctions against the crime of 'reducing to slavery' (which the Court of Cassation has considered applicable to the trade of human beings, but which in actual fact is enforced only in cases where the victim is a minor, due to the difficulty of proving a condition of subjugation analogous to slavery when the person maintains a certain degree of self-determination).
- **Art. 416 and 416 bis** of the Criminal Code which apply sanctions against the crimes of criminal association and mafia-like association. and come into play when the trafficking in human beings is carried out in an organised way.
- Lastly, **Bill 5839 of the current year** which, introducing art. 602 bis of the Criminal Code, punishes the specific crime of 'trafficking in human beings' where use is made of violence, threat or deceit for the purpose of sexual exploitation or other forms of exploitation such as to reduce the victims to slavery.

Law on immigration

(Decreto Legislativo 25 luglio 1998, n. 286)

Article 18 (Residence permits for social protection grounds)

Unofficial translation

1. Whenever police operations, investigations or court proceedings involving any of the offences set out in art. 3 of Law 75 (1958),²⁰⁰ or in art. 380 of the Code of Criminal Procedure,²⁰¹ or whenever the social services of a local administration,²⁰² in the performance of their social assistance work, identify situations of abuse or severe exploitation of a foreign citizen, and whenever the safety of the said foreign citizen has seen to be endangered as a consequence of attempts to escape from the conditioning of a criminal organisation which engages in one of the a fore-cited offences, or as a consequence of statements made during preliminary investigations or in the course of court proceedings, then the chief of police, also acting on the proposal of the Public Prosecutor, or with the favourable opinion of the same Public Prosecutor, may grant a special residence permit enabling the foreign citizen to escape from the situation of abuse and conditioning perpetrated by the criminal organisation and to participate in a social assistance and integration program.
2. Along with the proposal or opinion specified in the above para 1, the chief of police shall receive notice concerning the elements which support the existence of the above-mentioned circumstances, with special reference to the severity and imminence of the danger to the foreign citizen and the importance of the contribution

²⁰⁰ The law on exploitation of prostitution of others

²⁰¹ Cases in which the police must arrest the offender

²⁰² City Councils or Regions

offered by that foreign citizen to combating the criminal organisation, or to the identification and capture of the perpetrators of the criminal offences set out in para 1. The modalities of the participation of the foreign citizen in a social assistance and integration program shall be notified to the mayor.

3. The implementation regulations shall establish the necessary requirements for the programs to be entrusted other than institutionally responsible for social services in the local administration and also for their related monitoring. The same regulations shall identify the requirements that these subjects shall meet to ensure their competence and ability to promote social assistance and integration, as well as the availability of adequate organisational facilities.
4. The residence permit issued in pursuance to this article has a duration of six months and may be renewed for one year or for a longer period, if required for judicial purposes. Said permit is revoked in the case that the holder drops out from the social programs or engages in behaviour which is incompatible with the program's goals, as reported by the Public Prosecutor or by the local administration's social service, within its sphere of competence, or as ascertained by the chief of police, or in the case that the other conditions that initially warranted the issuance of the residence permit should no longer apply.
5. The residence permit provided for by this article enables access to social services and to educational institutions, as well as enrolment in the Employment Bureau, and the possibility of access to employment, providing that the minimum age requirement is met. Should the holder of the residence permit be employed at the date of expiry, then said permit may be renewed for the duration of the employment contract. In the case of an indefinite employment contract, the modalities for the issuance of residence permits on such grounds shall apply. The residence permit provided for by this article may also be converted into a residence permit for educational purposes, when the holder of said permit is enrolled in an official educational institution.
6. The residence permit provided for by this article hereto may be granted upon proposal of the Public Prosecutor of the Supervisory Judge of the Juvenile Court, following the release from a custodial institution of a foreign citizen who has served a detention sentence for offences committed as a minor, and has given concrete evidence of participation in a social assistance and integration program.
7. The financial burden resulting from the hereto article is estimated as ITL five billion in 1997 and ITL ten billion annually, starting from the year 1998.

Attachment IV Netherlands Legislation

Prostitution

The law on abolition of the ban of brothels was passed on 1 October 2000. The abolition of the ban of brothels is seen as one of the weapons in the fight against trafficking in women. The aim is that by decriminalising prostitution, setting up a licensing system for brothel operators and improving working conditions for prostitutes, the industry will be less susceptible to crime. An important additional advantage is that the licensing system will make the industry more transparent and easier for the police to monitor.

If a brothel owner employs women who do not have valid residence and or work permits, or children, this will affect the licence one needs to operate a brothel, and may in some cases lead to closure of the remises. The introduction of stringent regulations will make it unattractive and largely impossible to employ illegal immigrants as prostitutes, trafficking in women will lose a key market in the Netherlands.

Municipal policy is organised along three lines. Firstly, the municipalities operate a licensing policy to control the number and type of brothels. Secondly, regulations are introduced to govern the construction and design of brothels, for examples as regards hygiene, prevention of sexual transmitted diseases and fire safety. Finally, regulations are introduced to ensure that the way brothels are operated does not adversely affect the position and status of prostitutes. This includes the protection of their mental and physical well being and prohibiting the employment of minors or illegal immigrants.

Article 250a of the Penal Code (non-official, English translation of 1 October 2002)

Section 1

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 or for 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 or for a third party for remuneration in another country;
3. induces another person to make him/herself available for performing sexual acts with or for 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 or for 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 para. 1;
5. wilfully profits from sexual acts of another person with or for 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 or for 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.

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, para. 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.

* A fifth category fine is a fine of maximum € 45,000,-

Signals of trafficking issued by the College of Procurators-Generals of the Dutch Public Ministry:

- somebody else arranged the journey or the visa;
- not having disposal of ones own travel documents
- using false papers, provided by somebody else;
- illegal entrance can, but does not have to be a signal;
- fear of expulsion;
- not having access to medical care;
- having to earn a minimum amount of money per day;
- having to pay off an exorbitant (sometimes rising) travel fare before the victim gains control over her own earnings, or is free to leave prostitution;
- having to hand over a large part of the earnings to the exploiter or to another party;
- receiving a lower percentage of the earnings than a Dutch prostitute;
- the exploiter paid a transfer sum and/or pays a percentage of the earnings to another party;
- limited freedom of movement;
- relatives in the country of origin are being blackmailed or threatened;
- poor economic situation and/or relatives in the country of origin depend on the earnings;
- having to work under all circumstances and for long hours;
- being threatened with violence, or abused;
- the work location varies;
- some-one applies for visas on behalf of many other persons;
- often acting as a guarantor with regard to visa appliances;
- acting as a guarantor for visas in cases of persons who do not all return to their country of origin.

Attachment V Spanish Legislation

These are the legal provisions on trafficking in human beings that the Women's Institute considers relevant for the International Seminar for the establishment of Co-ordinated Action Against Trafficking in Human Beings in South-eastern Europe.

By means of **Organic Act 10/1995 of 23 November** on the Penal Code, which took effect on 25 May 1996, the Spanish State effected a thorough overhaul of earlier Penal Code regulation.

The regulations are forth in Title VIII, Chapter V, of Organic Act 10/1995.s Book I, entitled on prostitution-related crimes, in articles 187 and 189 (the only articles to which this issue is pertinent). They are mainly aimed at differentiating between child prostitution and the prostitution of persons of legal adult age. A more serious penalty is imposed for child prostitution.

Whoever induces, promotes, favours or facilitates the prostitution of a child or a disabled person is punishable under this law with one to four years' of imprisonment and a fine of twelve to twenty-four months.

In the prostitution of persons of a legal adult age, whoever coercively sets out, through deceit or the abuse of a situation of need or superiority, that a person of adult age shall undertakes prostitution or remains in prostitution, can be punished with two to four years' of imprisonment and a fine of twelve to twenty-four months.

In both cases the punishment is made increased to six to twelve years' complete disqualification of public office for anyone convicted of such behaviour using his/her office as a public authority, an agent of public authority or a public functionary.

The **Organic Act of 30 April 1999** amended Title VIII of the Penal Code, establishing a new regulation for it.

The penal Code was changed very recently with regard to regulations on prostitution and trafficking in persons. The law LO 11/2003, form 29th September, amended the Penal Code, changing article 188 and 318 bis. Trafficking for sexual exploitation is not any more regulated in article 188.2 but in 318 bis. The new Spanish text (non-official English translation) of the new article 188 is as follows:

Article 188.

1. He who sets out, through the use of violence, intimidation or deception, or through the abuse of a situation of superiority over or need or vulnerability of the victim, of a person of adult age to undertake prostitution or to make a living out of it, will be punished with imprisonment for two to four years and a fine of 12 to 14 months. The same punishment is incurred by a person that benefits from exploiting the prostitution of another person, even with that person's consent.
2. A corresponding punishment increased by half and a complete disqualification for public office for six to 12 years are imposed on those who behave as described above using their position of authority, as agent of authority or public office.
3. If the aforementioned behaviour is done to a person under age or incapacitated, to introduce him or her or maintain him or her in a situation of prostitution, the highest corresponding punishment from the previous is imposed on the person responsible.
4. The aforementioned punishments are imposed on the respective cases without prejudicing punishment corresponding to aggression or sexual abuse done to the prostituting person.

The article regulating trafficking in persons in general is now article 318 bis. It includes the trafficking in persons for the purpose of sexual exploitation. The penalties have increased. The Spanish text is (non-official English translation):

Article 318 bis.

1. He who, directly or indirectly, promotes, favours or facilitates the illegal trafficking or the clandestine immigration of persons, in transit or with Spain as destination, will be punished with imprisonment of four to eight years.
2. When the purpose of the illegal trafficking or clandestine immigration is the sexual exploitation of the persons, they will be punished with imprisonment of five to 10 years.
3. Those who realise the behaviour described in either of the two previous articles with the goal of profit or through the use of violence, intimidation, deceit, or through the abuse of a situation of superiority over or a special vulnerability of the victim, or when the person is a minor or incapacitated or when the life, health or integrity is placed in danger, will be punished half as much.
4. The same punishments of the previous sections plus the complete disqualification for public office for six to 12 years, are imposed on those who realise these facts using their position of authority, as agent of authority or public office.
5. The highest punishment as described in sections 1 to 4 of this article, for their respective cases, and the special disqualification from the profession, office, industry or trade for the duration of the punishment, is imposed when the guilty person belongs to an organisation or association, including of a transitory character, dedicated to the realisation of such activities. When dealing with the leaders, administrators or officials of said organisations or associations, the punishment imposed is half as much, which can be raised immediately to the highest level. In the provisions foreseen in this section the judicial authority could include, in addition, one or more of the measures foreseen in article 129 of the Code.
6. The courts, taking into consideration the gravity of the fact and its circumstances, the conditions of the offender and the pursued objectives for this, could impose a lesser punishment than those described.

Another law to consider is **Act 35/1995 of 11 December** about assistance to the victims of violent crimes and crimes against sexual freedom. This law regulates economic assistance and help for victims of this type of offence.

Article 2 of this Act identifies the beneficiaries of such assistance. This article is difficult to apply in the case of trafficking in women and girls, because customarily residence is required or they must be natives of countries that recognise aid measures similar to Spain's in their own territory.

Under Spanish penal regulation, various kinds of behaviour infringing on an employee's rights are considered crimes; in this case, the law seeks to correct the especially vulnerable situation in which the victims of trafficking frequently find themselves.

First, the law punishes any person who, through deceit or abuse of necessity, imposes upon the workers in his/her service a set of working or Social Security conditions that harm, restrict or disregard the rights recognised by law, collective bargaining or individual contract.

Second, it punishes the conduct of illegal trafficking in labour and of those persons that employ foreign subjects without working permits in conditions that harm, disregard or restrict the rights recognised by law, collective bargaining or individual contract.

It is also considered a crime to by any means promote or favour clandestine immigration in Spain.

Immigration law

One important development in the trafficking issue is the approval of **Organic Act 4/2000 of 11 January 2000** on the rights and freedoms of foreign citizens in Spain and their social integration. This law is the Immigration law. It was amended by the Organic Law 8/2000 of December 22nd, or the Law Reform on the Rights and Liberties of Foreigners in Spain and their Social Integration.

On this issue, article 59 of the Organic Act 4/2000, which is entitled 'Co-operation with Organised Crime', gives the following provisions:

1. Any foreign citizen who shall have crossed the Spanish border without respecting the proper procedure or without having discharged his or her obligation to declare entry, and who is illegally in Spain or working without a permit, without credentials or with irregular credentials because he or she has been a victim, sufferer or witness of an act of unlawful trafficking in labour or exploitation in prostitution abusing his or her situation of need can be held to be exempt of administrative liability and shall not be deported if he or she reports the perpetrators of or co-operators in such trafficking to the proper authorities or co-operates or collaborates with the police officers in the foreign citizens' service, providing essential information or testifying, if need be, in legal proceedings against the perpetrators.
2. The administrative authorities in charge of investigation prior to the penalising proceeding will submit the appropriate proposal to the deciding authority.
3. Foreign citizens held to be exempt of administrative liability may be facilitated the return to their country of origin or their stay and residence in Spain, plus a work permit and social integration facilities as established in this Act.
4. When the Department of the Public Prosecutor receives information that a foreign citizen against whom a deportation decision has been handed down appears in a criminal procedure as a victim, sufferer or witness, and it considers that foreign citizen's presence vital for the judicial proceedings, it shall notify the proper government authority, which can then consider not enforcing that person's deportation, and should the deportation have already been enforced, the same procedure shall be followed to authorise that persons return to Spain for the time necessary in order to perform the required proceedings, without prejudice of the possibility that some of the measures called for in **Organic Act 19/1994 of 23 December** on witness and expert protection in criminal trials may be taken.

Any foreigner who comes to Spain not as a tourist, but wanting to live and work needs a permit to stay and work in the country. For that purpose people need to enter the country with a visa to stay and work in Spain, otherwise the person is in an illegal situation.

Right to remain in Spain

A new immigration law was passed January 2000. In December 2000 the law was amended and many provisions were changed.

Article, **number 59** of the **immigration law** establishes the possibility for the administration authorities to exempt from administrative responsibility and avoid deportation for those foreigners that are in Spain illegally as a consequence of having been victims of trafficking²⁰³.

²⁰³ Illegal trafficking in persons, illegal immigration, illegal trafficking in workers, trafficking for sexual exploitation.

In addition the authorities can provide them either with a **permit to stay and a permit to work** or **cover the costs of their return** to the country of origin if the person chooses to return.

The Central Police Office (Comisaría Central de Extranjería y Documentación) is responsible for the issue of the Permit to Stay in Spain according to Special Circumstances (Permiso de Residencia por Circunstancias Excepcionales).

This permit to stay is issued for one year. Once the permit to stay has been approved one can apply for an authorisation to work, valid for the same period of time as the permit to stay.

In addition the article says that these persons are entitled to facilities for their social integration in Spain, although it does not define what this means in practice. Furthermore, it explicitly recognises the possibility of applying to these cases the Witness Protection Law.

All these provisions are conditional on reporting the case to the authorities or on collaborating and co-operating with the authorities, facilitating information against the trafficker's network.

Attachment VI

United Kingdom Legislation

LEGISLATION

New measures against trafficking for the purposes of prostitution were introduced in the *Nationality, Immigration and Asylum Act 2002* and came into force on 10 February 2003.

145 Traffic in prostitution

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the "passenger") and-
 - (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
 - (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the "passenger") in respect of whom he believes that an offence under subsection (1) may have been committed and-
 - (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
 - (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the "passenger") and-
 - (a) he intends to exercise control over prostitution by the passenger outside the United Kingdom, or
 - (b) he believes that another person is likely to exercise control over prostitution by the passenger outside the United Kingdom.
- (4) For the purposes of subsections (1) to (3) a person exercises control over prostitution by another if for purposes of gain he exercises control, direction or influence over the prostitute's movements in a way which shows that he is aiding, abetting or compelling the prostitution.
- (5) A person guilty of an offence under this section shall be liable-
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both

Sexual Offences Bill (currently going through Parliament (end 2003))

57 Trafficking into the UK for sexual exploitation

- 1). A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—
 - (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he intends to facilitate the doing of anything to or in respect of B, after B's arrival but in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

58 Trafficking within the UK for sexual exploitation

- 1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—
 - (a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he intends to facilitate the doing of anything to or in respect of B, during or after the journey and in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

59 Trafficking out of the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—
 - (a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he intends to facilitate the doing of anything, after B's departure but in any part of the world, which if done as he intends it to be done or believes that it will be done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

60 Sections 57 to 59: interpretation and jurisdiction

- (1) In sections 57 to 59, "relevant offence" means—
 - (a) an offence under this Part,
 - (b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37),
 - (c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
 - (d) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or
 - (e) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.
- (2) Sections 57 to 59 apply to anything done—
 - (a) in the United Kingdom, or
 - (b) outside the United Kingdom, by a body incorporated under the law of a part of the United Kingdom or by an individual to whom subsection (3) applies.
- (3) This subsection applies to—
 - (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen,

- (e) a person who is a British subject under the British Nationality Act 1981 (c. 61),
- (f) a British protected person within the meaning given by section 50(1) of that Act.

Other measures

Under the Proceeds of Crime Act 1985, it is possible for the courts to confiscate the assets of those found guilty of trafficking.

Soliciting

- S.1 Street Offences Act 1959 - offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution (persistence is required) Max penalty-summary offence, £500 fine, for subsequent offences £1,000 fine.
- S.1 Sexual Offences Act 1985 Kerb crawling of women by men for prostitution. Max penalty summary offence, £1,000 fine.

Living off earnings of prostitution

- S.30 Sexual Offences Act 1956. Offence for a man knowingly to live on the earnings of (female) prostitution. Max penalty either way (c/w) offence, 7 years' imprisonment.
- S.31 1956 Act. Offence for a woman for purposes of gain to exercise control over a (female) prostitute Max penalty-e/w offence, 7 years.
- S.24 1956 Act. Offence for a person to detain a woman in a brothel or other premises Max penalty. Indictable, 2 years' imprisonment.
- S.25/26 1956 Act Permitting girl under 13/16 to use premises for intercourse. Max penalty. Under 13 indictable, life, under 16e/w offence, 2 years' imprisonment.
- S.33, 34, 35, 36 of 1956 Act. Brothel keeping offences Max penalty. Summary offence. Three months imprisonment or level 3 fine or both first offence, 6 months imprisonment or level 4 fine or both, subsequently.

Procuration

Sections 2, 3, 22, 23, 24, 28 of 1956 Act. Procurement of women by threats, false pretences, procuring a girl under 21 to become a prostitute or have unlawful sexual intercourse in any part of the world, detention of a woman in a brothel, causing or encouraging prostitution of girl under 16. Max penalties. All indictable for 2 years.

Other sexual offences

- S.5/6 1956 Act Unlawful sexual intercourse with a girl under 13/16. Max penalty under 13. Indictable life/under 16 either way. 2 years' imprisonment
- S.4 1956 Act. Administering drugs to obtain or facilitate intercourse with a woman Max penalty indictable. 2 years' imprisonment.
- S.17 of 1956 Act. Abduction of a woman by force or for the sake of her property. Max penalty indictable, 14 years.
- S. 20, 21 of 1956 Act . Abduction of girl under 16/18 from parent or guardian. Max penalty, indictable, 2 years.
- S1 1956 Act rape/attempted rape. Non consensual intercourse either vaginal or anal. Max penalty indictable- life imprisonment.
- Indecency with Children Act 1960. Gross indecency with or towards a child under 14. Max penalty e/w offence, 2 years imprisonment.

- S.14 and 15 1956 Act. Indecent assault against woman or man. Max penalty 10 years imprisonment.
- S.12 1956 Act. Buggery Max penalty life, 5 years or 2 years depending on age.
- S.16 1956 Act. Assault with intent to commit buggery Max penalty - indictable 10 years imprisonment.

Abduction offences

- Kidnapping. The taking away of one person by another by force or fraud without the consent of the person so taken or carried away and without lawful excuse. Unlimited penalty.
- S.17 of 1956 Act. Abduction of a woman by force or for the sake of her property. Max penalty indictable, 14 years' imprisonment.
- S.20,21 of 1956 Act. Abduction of girl under 16/18 from parent or guardian. Max penalty indictable, 2 years.

Other relevant English law

Offences of violence (short of homicide)

- Attempted murder. Max penalty life imprisonment.
- S.18 of the Offences against the Person Act 1861. Wounding or causing grievous bodily harm (gbh) with intent. Max penalty life imprisonment.
- S.20 of the Offences against the Person Act 1861. Wounding or inflicting gbh. Max penalty five years imprisonment.
- S.47 of the Offences against the Person Act 1861. Assault occasioning actual bodily harm. Max. penalty 5 years imprisonment.
- Common assault (assault and battery) Max.penalty. 6 months imprisonment and/or level 5 fine (currently £5000).

Part I of the Sex Offenders Act 1997 requires all those convicted or cautioned of sex offences against children, or other serious sex offences, to keep the police informed of their name and address and any changes to either. This came into effect on 1 September 1997.

Part II of the Sex Offenders Act 1997 also enables prosecutions of those who commit crimes against children abroad to take place in the UK providing that the offence concerned is part of the criminal law in both countries.

Sex Offender Orders, which came into force on 1 December 1998 under the Crime and Disorder Act, enable the civil courts, in order to protect the public from serious harm, to take an order against someone previously convicted of a sex offence against a child and whose behaviour causes concern that children are at risk. The orders ban specific acts, such as loitering near school playgrounds. Breach of an order is a criminal offence carrying a serious penalty.

The Criminal Justice (Terrorism and Conspiracy) Act 1998 makes it an offence for a person to conspire to commit an offence outside the UK, provided the substantive offence constitutes an offence under the law in the UK and under the law in the country in which the act is committed.

Immigration

Racketeers and facilitators controlling women are charged under the Immigration Act with facilitating illegal entry and under legislation to suppress vice-related criminal offences of living off immoral earnings, influencing the movements of prostitutes, etc. Foreign women

found working as prostitutes in the UK are removed under administrative powers as illegal entrants. They are not normally charged with any criminal offences. Facilitating illegal entry carries a maximum sentence of 10 years imprisonment. The penalty was raised from 7 to 10 years under the Immigration and Asylum Act 1999

Attachment VII European Union Directive

2002/0043 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities. Source:

Chapter I: General provisions

Article 1

Purpose

The purpose of this Directive is to introduce a short-term residence permit for third-country nationals who are victims of offences constituted by the action to facilitate illegal immigration or by trafficking in human beings (hereafter referred to as "victims") who cooperate in the fight against the perpetrators of these offences.

Article 2

Definitions

For the purposes of this Directive:

(a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the treaty, including stateless persons;

(b) "action to facilitate illegal immigration" means the offences defined in Articles 1 and 2 of the Council Directive .../.../CE [on defining the facilitation of unauthorised entry, transit and stay];

(c) "trafficking in human beings" means the offences defined in Articles 1, 2 and 3 of the Council Framework Decision of [...] [on combating trafficking in human beings];

(d) "measure to enforce an expulsion order" means any measure taken by a Member State to

enforce the decision of an administrative authority ordering the expulsion of a third-country national;

(e) "short-term residence permit" means any permit or authorisation issued by a Member State in accordance with its legislation, allowing a victim to reside in its territory in order to cooperate with the competent authorities.

Article 3

Scope

1. This Directive shall apply to victims, as referred to in Article 1, having reached the age of majority.

2. Member States may decide to apply the provisions of this Directive to minors who fulfil certain conditions laid down in their national law.

Article 4

Safeguard

This Directive shall be without prejudice to the protection extended to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.

Article 5

Non-discrimination

Member States shall apply this Directive without discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief,

political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation.

Article 6

More favourable provisions

The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.

Chapter II: Procedure for issuing the short-term residence permit

Article 7

Information given to the victims

Persons who are identified by the competent authorities as victims within the meaning of Article 1 shall immediately be informed of the possibility of obtaining the short-term residence permit provided for by this Directive. The information shall be provided by the authorities responsible for the investigation or prosecution, an association or a non-governmental organisation.

Article 8

Reflection period

1. Victims shall be granted a reflection period of 30 days to take the decision to cooperate with the competent authorities. This period starts from the moment they sever relations with those suspected of committing the offences referred to in Article 2(b) and (c).
2. During this period and while awaiting the decision of the authority responsible for the investigation or prosecution in accordance with article 10(1), they shall have access to the assistance and care referred to in Article 9 and it shall not be possible to enforce any expulsion order against them.
3. The reflection period shall not create any entitlement to residence under this Directive.
4. The State may at any time terminate the reflection period if the person has renewed contact with the authors of the offences referred to in Article 2 points b) and c) or for reasons relating to the protection of public order and national security.

Article 9

Assistance and care

1. Without prejudice to the application of measures relating to the protection of victims and witnesses, Member States shall ensure that victims have access to suitable accommodation, emergency medical and psychological treatment and medical care that cannot be postponed, and to the necessary support in the form of social welfare and means of subsistence if they do not have sufficient resources. They shall attend to the special needs of the most vulnerable.
2. Member States shall provide victims with free legal aid and translation and interpreting services.

Article 10

Issue and renewal of the residence permit

1. The authority responsible for the investigation or prosecution shall decide on the following matters, at the latest ten days after the expiry of the 30-day reflection period:
 - (a) whether the presence of the victim is useful;
 - (b) whether the victim has shown a clear intention to cooperate substantiated, for example, by an initial, material declaration to the authorities responsible for the investigation or prosecution, or the lodging of a complaint, or any other act provided for by the Member State's legislation;
 - (c) whether the victim has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2.
2. The short-term residence permit shall be issued if:

(a) the authority responsible for the investigation or prosecution rules favourably on the criteria listed in paragraph 1;

(b) there are no objections on the grounds of the protection of public order and national security.

3. The short-term residence permit shall be valid for six months. It shall be renewed for periods of six months if the conditions set out in paragraph 2 continue to be satisfied.

4. When Member States grant a short term permit to a person identified as a victim of one of the offences referred to under article 2 (b) and (c) with member of his/her family or persons treated as members of his/her family, they shall take this element into account when examining the possibility of granting them a residence permit on humanitarian grounds.

Article 11

Format of the residence permit

The short-term residence permit may be issued in the form of a sticker or a separate document. It shall be issued according to the rules and standard format laid down in Council Regulation No .../... [laying down a uniform format for residence permits for third-country nationals].²⁵ Under the heading "Type of permit" Member States shall enter the words "Shortterm residence permit".

Chapter III: Conditions of residence

Article 12

Work, training and education

The Member States shall authorise the holders of a short-term residence permit to have access to the labour market, vocational training and education.

Article 13

Medical and psychological care

1. Member States shall ensure that holders of a short-term residence permit have access to primary medical care, in addition to the assistance and care referred to in Article 9.

2. Member States shall meet to the special needs of victims, such as pregnant women, the disabled or victims of rape or other forms of sexual violence and, if Member States take advantage of the option provided in Article 3(2) , minors.

Article 14

Victims who are minors

If Member States take advantage of the option provided in Article 3(2), the following provisions shall apply:

a) Member States shall take due account of the best interests of the child when applying the provisions of this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.

b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

c) Besides, in the case of victims who are unaccompanied minors, Member States shall take the necessary steps to establish their identity and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary.

Article 15

Rehabilitation programmes for victims

Member States may make the issue of short-term residence permits conditional upon the victims' participation in a programme aimed either at their integration in the host country

and, where appropriate, vocational training, or their assisted return to the country of origin or another country willing to accept them.

Chapter IV: Non-renewal and withdrawal

Article 16

Non-renewal

1. The short-term residence permit shall not be renewed if the conditions of Article 10(2) cease to be satisfied, if a judicial decision has terminated the proceedings or, if relevant, the beneficiary does not take part in the rehabilitation programme referred to in Article 15.
2. When the short-term residence permit expires ordinary aliens law shall apply. If victims submit an application for another type of residence permit, Member States shall take account of their cooperation when considering their applications.

Article 17

Withdrawal

The short-term residence permit may be withdrawn at any time:

- (a) if the holder has renewed contacts with those suspected of committing the offences in question, or
- (b) if the judicial authority considering the case believes that the victim's cooperation or complaint is fraudulent or wrongful, or
- (c) for reasons relating to the protection of public order and national security.

Chapter V: Final provisions

Article 18

Penalties

Member States shall determine the system of penalties applying to violations of the national provisions enacted pursuant to this Directive and shall take all necessary measures to ensure the implementation of these provisions. The penalties envisaged must be effective, proportionate and deterrent. Member States shall communicate these provisions to the Commission at the latest by the date specified in Article 21. Any later amendment affecting these provisions shall be communicated without delay.

Article 19

Exchange of information

Every year the Member States shall communicate up-to-date information to the Commission on the following:

- (a) the number of short-term residence permits issued, the proceedings initiated and their outcome;
- (b) the rehabilitation programmes referred to in Article 15, together with an assessment of their effectiveness in rehabilitating victims.

Article 20

Report

1. No later than 30 June 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.
2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

Article 21

Transposal

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 June 2003. They shall immediately inform the Commission accordingly. When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference when they are officially published. The precise nature of such a reference shall be decided by the Member States.

Article 22

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

Attachment VIII Ratification's of the Palermo Protocol

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Entry into force: 25 December 2003, in accordance with article 17.

Status: Signatories: 117, Parties: 45 (November 2003)

Text: Doc.A/55/383.

Note: The Protocol was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations. In accordance with its article 16, the Protocol will be open for signature by all States and by regional economic integration organisations, provided that at least one Member State of such organisation has signed the Protocol, from 12 to 15 December 2000 at the Palazzi di Giustizia in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Afghanistan		
Albania	12 December 2000	21 August 2002
Algeria	6 June 2001	
Angola		
Argentina	12 December 2000	19 November 2002
Armenia	15 November 2001	01 July 2003
Australia	11 December 2002	
Austria	12 December 2000	
Azerbaijan	12 December 2000	30 October 2003
Bahamas	09 April 2001	
Barbados	26 September 2001	
Belarus	14 December 2000	25 June 2003
Belgium	12 December 2000	
Belize		26 September 2003a
Benin	13 December 2000	
Bolivia	12 December 2000	
Bosnia and Herzegovina	12 December 2000	24 April 2002
Botswana	10 April 2002	29 August 2002
Brazil	12 December 2000	
Bulgaria	13 December 2000	5 December 2001
Burkina Faso	15 December 2000	15 May 2002
Burundi	14 December 2000	
Cambodia	11 November 2001	
Cameroon	13 December 2000	
Canada	14 December 2000	13 May 2002
Cape Verde	13 December 2000	
Chile	08 August 2002	
China		
Colombia	12 December 2000	
Congo	14 December 2000	
Costa Rica	16 march 2001	09 September 2003
Côte D' Ivoire		
Croatia	12 December 2000	24 January 2003
Cuba		

Cyprus	12 December 2000	06 August 2003
Czech Republic	10 December 2002	
Denmark 1	12 December 2000	30 September 2003
Dominican Republic	15 December 2000	
Ecuador	13 December 2000	17 September 2002
Egypt	01 May 2002	
El Salvador	15 August 2002	
Equatorial Guinea	14 December 2000	07 February 2003
Estonia	20 September 2002	
Ethiopia		
European Community	12 December 2000	
Finland	12 December 2000	
France	12 December 2000	29 October 2002
Gambia	14 December 2000	05 May 2003
Georgia	13 December 2000	
Germany	12 December 2000	
Greece	13 December 2000	
Guatemala		
Guinea-Bissau	14 December 2000	
Haiti	13 December 2000	
Honduras		
Hungary	14 December 2000	
Iceland	13 December 2000	
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)		
Ireland	13 December 2000	
Israel	14 November 2001	
Italy	12 December 2000	
Jamaica	13 February 2002	
Japan	09 December 2002	
Kazakhstan		
Kuwait		
Kyrgyzstan	13 December 2000	
Lao People's Democratic Republic		26 September 2003 a
Latvia	10 December 2002	
Lebanon	09 December 2002	
Lesotho	14 December 2000	24 September 2003
Libyan Arab Jamahiriya	13 November 2001	
Liechtenstein	14 March 2001	
Lithuania	25 April 2002	23 June 2003
Luxemburg	13 December 2000	
Madagascar	14 December 2000	
Malawi		
Mali	15 December 2000	12 April 2002
Malta	14 December 2000	24 September 2003
Mauritius		24 September 2003 a
Mexico	13 December 2000	04 May 2003
Monaco	13 December 2000	5 June 2001
Morocco		
Mozambique	15 December 2000	
Namibia	13 December 2000	16 August 2002
Nauru	12 November 2001	
Netherlands	12 December 2000	
New Zealand 2	14 December 2000	19 July 2002

Nicaragua		
Nigeria	13 December 2000	28 June 2001
Niger	21 August 2001	
Norway	13 December 2000	23 September 2003
Pakistan		
Panama	13 December 2000	
Paraguay	12 December 2000	
Peru	14 December 2000	23 January 2002
Philippines	14 December 2000	28 may 2002
Poland	04 October 2001	26 September 2003
Portugal	12 December 2000	
Republic of Korea	13 December 2000	
Republic of Moldova	14 December 2000	
Romania	14 December 2000	04 December 2002
Russian Federation	12 December 2000	
Rwanda	14 December 2000	26 September 2003
Saint Vincent and the Grenadines	20 November 2002	
San Marino	14 December 2000	
Saudi Arabia	10 December 2002	
Senegal	13 December 2000	27 October 2003
Serbia and Montenegro	12 December 2000	6 Sep 2001
Seychelles	22 July 2002	
Sierra Leone	27 November 2001	
Singapore		
Slovakia	15 November 2001	
Slovenia	15 November 2001	
South Africa	14 December 2000	
Spain	13 December 2000	01 march 2002
Sri Lanka	13 December 2000	
Sudan		
Swaziland	08 January 2001	
Sweden	12 December 2000	
Switzerland	02 April 2002	
Syrian Arab Republic	13 December 2000	
Tajikistan		08 July 2002 a
Thailand	18 December 2001	
The former Yugoslav Republic of Macedonia	12 December 2000	
Togo	12 December 2000	
Trinidad and Tobago	26 September 2001	
Tunisia	13 December 2000	14 July 2003
Turkey	13 December 2000	25 March 2003
Uganda	12 December 2000	
Ukraine	15 November 2001	
United Kingdom of Great Britain and Northern Ireland	14 December 2000	
United Republic of Tanzania	13 December 2000	
United States of America	13 December 2000	
Uruguay	13 December 2000	
Uzbekistan	28 June 2001	
Venezuela	14 December 2000	13 May 2002
Vietnam		
Yemen		
Zimbabwe		

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, acceptance, approval or accession.)

Belgium

Upon signature:

Declaration:

The French, Flemish and German-speaking Communities and the Regions of Wallonia, Flanders and Brussels-Capital are also bound by this signature.

Source: http://www.undcp.org/crime_cicp_signatures_trafficking.html

Colophon

BLinN
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