

## **Positie van slachtoffers van mensenhandel 1e trendrapportage 2006**

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## Summary

### *Background*

The objective of the Monitor Trafficking in Human Beings is to periodically assess the position of the victims of trafficking in the Netherlands. It is also the basis for providing the Lower House of Parliament (*Tweede Kamer*) with relevant information. One government objective is to offer better protection for the victims of human trafficking, to strengthen their position, and to improve their perspectives for the future (see, amongst others, the 2004 National Action Plan to Combat Trafficking in Human Beings). In order to formulate measures to improve their position, more insight is required into the position of trafficking victims, and into current developments. However, there was no instrument to assess the position of victims that focused on their access to the rights and provisions they are entitled to. The Scientific Research and Documentation Centre (WODC) of the Dutch Ministry of Justice (Department of Immigration Affairs) requested Adviesbureau Van Montfoort and the Verwey-Jonker Institute to develop a monitor to evaluate the position of trafficking victims. The monitor focuses exclusively on the victims of trafficking in the sex industry.

### *Design*

The monitor presents a picture of the position of (alleged) victims on seven different themes: (1) Identification, (2) Access to and use of the B9 regulation<sup>1</sup> and the accompanying rights and provisions, (3) Legal assistance and criminal proceedings, (4) Shelter/housing, (5) Access to healthcare, (6) Income and education, and (7) Permanent residency and return. Several indicators are used for every theme. The key figures are collected by analysing data from existing registration systems from the Police, the Prosecution Service (OM), the Immigration and Naturalisation Service (IND), the Central Authority for the Reception of Asylum Seekers (COA), the Councils for Legal Aid, the International Organisation for Migration (IOM) and the Foundation against Trafficking in Women (STV). The data from these systems were linked in order to collect information. Secondly, questionnaires were distri-

<sup>1</sup> The specific policy on victims of trafficking is laid down in Chapter B9 of the Aliens Circular.

buted among victims, the coordinators for human trafficking working for the Police, the Bureau of Youth Care (BJZ), the NIDOS, the Municipal Health Services (GGDs), the Prostitution Social Work Agencies (PMW) and lawyers. An expert meeting was then held for experts from the field to discuss the data in order to interpret the outcomes. In addition, case law between 2004 and 2006 was also analysed.

This report describes the outcomes of the first ever application of the Monitor, the so-called "zero measurement". All figures relate to 2006. It was not always possible to disaggregate the figures relating to victims of trafficking in the sex industry and in other forms of exploitation. However, the number of victims of other forms of exploitation is very low and has little or no effect on the outcomes and trends.

### *Outcomes*

In 2006, the police received reports of approximately 3000 (possible) victims. Some 30 percent of these involved (possible) victims under 18 years of age. These reports involve both 'hard' and 'soft' information. Further investigation led to the conclusion that one third of the cases did, indeed, concern a (possible) victim of trafficking. Therefore, a total of approximately one thousand (possible) victims of trafficking in human beings in 2006 were involved.

The field experts indicate that the authorities miss a number of reports about (possible) victims. In particular, this is true for (possible) victims in the asylum procedure and in detention centres for aliens. And in this respect, unaccompanied minor asylum seekers are particularly vulnerable group. This is confirmed by the case law analysis. The identification of (possible) victims in detention centres for aliens is hampered by the fact that the Service for Detention Centres (Dienst Justitiële Inrichtingen: DJI) of the Ministry of Justice is reluctant to admit outsiders to the detention centres involved.

In 2006, 580 victims of trafficking were reported to the Foundation against Trafficking in Women (STV). Almost one fifth of them were under 18; 5 percent of the victims are male. Not all the identified victims are reported to the Foundation against Trafficking in Women (STV). There is no waterproof registration of all identified victims. About 400 of the 580 victims who reported to the Foundation against Trafficking in Women, are staying in the Netherlands illegally or applied for asylum at the same time as they reported to the Foundation. If there is any indication that trafficking is the case, then the police must allow the victims a reflection period of a maximum of three months to make an informed decision about whether or not to press charges. If they decide to press charges, they are entitled to a temporary residence permit based on the B9-regulation. This regulation entitles them to specific provisions. In 2006, there were 180 applications for a B9-residence permit and 150 applications were granted. Eighteen percent of those concerned are minors. The total number of (possible) victims of trafficking that applied for a B9-residence permit as well as the total number of applications that were granted is higher than in 2005.<sup>2</sup> Assuming that the number of victims has not structurally increased, this

<sup>2</sup> In 2005, 77 people applied for a B9-residence permit and 61 applications were granted.

indicates that the identification of (possible) victims and the implementation of the B9-procedure have improved compared with 2005.

The following bottlenecks are identified in relation to the access of (possible) victims to the B9-procedure:

- The reflection period is not offered univocally and little use is made of it. Only a quarter (98) of the around 400 victims who are reported to the Foundation Against Trafficking in Women (STV) and who have no legal residence status or who have applied for asylum, make use of the reflection period.
- Undocumented migrants who have not yet been admitted to the Netherlands and who might be the victims of trafficking, e.g. unaccompanied Nigerian minors who enter through Schiphol, are not entitled to the reflection period. The experts consider this to be a bottleneck. Fear of the consequences of pressing charges is also an issue for this group.
- Cases are regularly dismissed very quickly, or the informative interview with the victim is incorrectly used as though it were an official complaint.<sup>3</sup> Based on the informative interview the victim is, for example, advised not to make an official complaint, because the case will be dismissed immediately. Consequently, the victim is excluded from the rights attached to pressing charges and the B9- procedure. If the case is dismissed immediately or within a day, the Immigration and Naturalisation Service (IND) will reject the application for a B9-residence permit. This is not in compliance with the official policy: also in this case the victim should be granted a B9-residence permit, even if only for one day. Rejection of the B9-application causes problems for the victim when trying to find shelter and when filing a complaint against the decision to dismiss the case. It also deprives the victim of the possibility to apply for permanent residency on humanitarian and compassionate grounds. If the residence permit is granted and subsequently withdrawn, the consequences are less far-reaching insofar as the victim then has all the legal remedies attached to a rejection.
- More than 80% of the decisions on an application for a B9-residence permit do not comply with the B9- norm of 'a decision within one working day'.
- There is a relatively high number of witness-informers registered with the Central Authority for Reception of Asylum Seekers (COA). These numbers are not reflected in the records of the Immigration and Naturalisation Service (IND). This might be due to shortcomings in the COA registration, but may also indicate that victims are incorrectly labelled as witness-informers, i.e. third parties who are not a victim themselves but who were witness to the crime. The legal position of the latter is weaker than that of victims as their residence permit is dependent on the judgment of the prosecutor. A more general bottleneck mentioned by the (field) experts is the lack of clarity as to whether a victim, who does not want to or who dare not press charges, but who does make a statement to the police (i.e. who cooperates with the authorities) falls under the rules for victims or for witness-informers.

<sup>3</sup> Before pressing charges the police must have an informative interview with the (possible) victim during which they are told about the consequences of pressing charges and their rights.

A question raised in case law, is whether or not the (possible) victim should be informed about the B9- regulation before he or she is put in aliens' detention. According to the Council of State (Raad van State), this is not obligatory: when an alien meets the conditions for aliens' custody he or she can be put in detention, no matter if there are indications that she or he is a victim of trafficking. This is not in conformity with the B9- regulation and the *Instruction on trafficking in human beings* of the Prosecutors-General.

Following closer investigation of reports of trafficking, around 1000 (possible) victims of human trafficking were identified by the police in 2006. According to police records, 75% of them decide to press charges. It is not possible to follow how individual victim reports are handled, since the Prosecution Service (OM) does not register the number of individual complaints, but only the number of criminal cases. One criminal case may involve several victims.

In 2006, 200 criminal cases were referred by the police to the Prosecution Service (OM); 216 criminal cases were dealt with, 173 of which resulted in a summons. The number of cases sent to the Prosecution Service (OM) and the number of criminal proceedings against perpetrators is higher than in preceding years. Victims can claim material and immaterial damages by linking a claim for compensation as a civil action to the criminal proceedings. A total of 33 victims did so, 23 of whom were awarded compensation. This number has remained constant over the last couple of years.

The position of victims of human trafficking is laid down in the *Instruction on trafficking in human beings* of the Prosecutors-General (Aanwijzing Mensenhandel) and the *Instruction Investigation and Prosecution in cases of sexual abuse* (Aanwijzing Opsporing en vervolging inzake seksueel misbruik). The instructions state, among other things, that the victim should be carefully informed. On this issue, the results of the questionnaire among victims show a mixed picture. More than 50% of victims state that they are satisfied with the information given by the police. On specific items, such as information about the reflection period, the consequences of pressing charges and the B9-procedure, 25 to 50% of the victims questioned state that they were insufficiently informed. The police coordinators for combating trafficking in human beings, state that they almost always follow the instructions. The various police districts have some 150 detectives, half of whom are female, who are specially trained (qualified) to interview victims of trafficking. Two police districts state they do not have qualified female detectives.

With regard to the theme of 'legal assistance and criminal proceedings', there are a number of improvements to make. One of them is the information given to the victim about the reflection period, pressing charges and the consequences thereof. An obvious bottleneck is the information victims receive about the progress of the criminal proceedings. Victims are informed poorly or not at all by the Prosecution Service (OM) when their case has been dismissed. In practice, many

victims only learn that their case has been dismissed because their application for renewal of the B9-residence permit is rejected. The rejection is often based on information given on the phone from the Prosecution Service (OM) to the Immigration and Naturalisation Service (IND), a formal decision on paper of the dismissal (including its reasons) is lacking, and/or it is not clear when the decision was taken. This causes the victim a problem when she or he wants to file a complaint against the decision to dismiss the case (art. 12 Code of Criminal Proceedings). In general, the communication between the Prosecution Service (OM) and the Immigration and Naturalisation Service (IND), the police and the victim can be improved on these specific points.

Specialised lawyers are important for ensuring the quality of legal assistance to victims of trafficking. In 2006, 67 lawyers attended the special course on trafficking in human beings.

The outcomes on the themes 'shelter/housing', 'income and labour' and 'health-care' are less reliable; there are no 'hard' figures for these themes. Nevertheless, some trends can be identified by comparing percentages with data from previous years. The registration of the Foundation Against Trafficking in Women (STV) shows that, at the time they are reported to STV, victims to whom the B9-regulation applies tend to be found more often in detention centres and shelter homes, than victims with a legal status. In 18 of the 25 police districts, the police participate in networks for assistance and victim support; 23 police districts have a protocol for referral and victim support. The accessibility of assistance services in the eastern region of the Netherlands is seen as a bottleneck by the experts. Based on the STV figures, hardly any victims are referred to specialised forms of medical or psycho-social care. However, at this point the registration of the Foundation Against Trafficking in Women (STV) is incomplete.

Victims of trafficking are entitled to a COA-benefit for the 3 month reflection period. Witness-informers have this right during the period the Prosecution Service (OM) is deciding whether or not their presence is required for the criminal investigations. After being granted a B9-residence permit, victims and witness-informers are entitled to a social assistance benefit from the municipality in which they are staying. In 2006, the COA provided 163 benefits to victims and witness-informers of trafficking. The transition from the COA-benefit to a social assistance benefit still causes problems. The COA-benefit regularly stops before the social assistance benefit has been arranged, for example because the victim does not have a passport or other official documents.

Following completion of the criminal proceedings, a victim in the B9-regulation can apply for a permanent residence permit on humanitarian grounds. When a victim wants to or must return to his or her country of origin, he or she can receive support from the International Organisation for Migration (within the framework of the REAN-procedure). In 2006, 34 victims applied for permanent residence on

humanitarian grounds. This number is relatively low. Of these applications, 17 were granted and 17 were rejected in 2006. All victims whose application was rejected, appealed against the decision. In 2006, 48 victims returned to their country of origin with assistance from the International Organisation for Migration and the REAN-procedure. Among them were 8 minors.

A serious problem is the burden of proof when the victim applies for a residence permit on humanitarian grounds: the victim needs to prove that he or she risks reprisals when returning to the country of origin and that her or his own government is not able or willing to provide protection. In practice this appears to be extremely difficult. The stringent distinction between 'asylum' and 'regular' procedures also presents problems, particularly when humanitarian and asylum related circumstances intermingle. A last bottleneck is the passport requirement: many victims do not have a passport and the authorities of the country of origin are often not very cooperative when it comes to issuing a new one.

### *Conclusion*

This first trend report on the position of victims of human trafficking in the Netherlands is a first measurement. The purpose was not to draw any conclusions about positive or negative changes in the position of victims. In order to be able to do so, the first measurement needs to be repeated after a certain period of time.

Nevertheless, due to previous reports from the National Rapporteur in particular on human trafficking, it is possible to make some comparisons with figures from years prior to 2006. It then shows that more victims are reported to the Foundation Against Trafficking of Women (STV) and that more applications for a B9-residence permit are filed and granted. Assuming that the number of victims did not rise, this seems to indicate an improvement in the identification of victims and the implementation of the B9-regulation. With regard to 'Legal assistance and criminal proceedings' it is difficult to draw any conclusions. In 2004, there were more criminal proceedings against suspects of trafficking than in 2006. However, 2006 shows an increase in criminal cases compared with 2002, 2003 and 2005. The number of victims that linked a civil claim for compensation to the criminal procedure and the number of claims for compensation that were awarded, show little change compared with 2004 and 2005. An increase in the number of victims that joins a civil claim for compensation and the number of claims awarded would indicate an improvement of the position of these victims. In this respect the position of the victims did not improve in 2006.

A two-yearly measurement was envisaged in the design of the Monitor. However, before carrying out the monitor again a substantial investment needs to be made to improve data collection in the next couple of years. Shortcomings in the registration of data also complicate the interpretation of the data. Another issue is whether it would be possible for the National Rapporteur to include a number of the (reliable) indicators in its annual reports.

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