

HUMAN TRAFFICKING IN THE NETHERLANDS: THE PROTECTION OF AND ASSISTANCE TO VICTIMS IN LIGHT OF DOMESTIC AND INTERNATIONAL LAW AND POLICY

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I. Introduction

Human trafficking¹ is an unfortunate, but frequent fact of life in the Netherlands. Given its illegality and the international attention afforded this crime, the issue ranks high on the Dutch political agenda. This paper will provide insights into the Dutch policy regarding the protection of and assistance to victims of human trafficking, starting with an analysis of their treatment and legal rights.

Human trafficking is a complex problem warranting thorough examination. Without question, it constitutes a serious violation of human rights. For this reason alone, it is the author's hope that this paper will raise awareness as to the problem of human trafficking in Dutch society and provide support for effective policies to fight against the spread of this crime against human dignity.

After detailing Dutch domestic policies, this paper will compare the protection and assistance provided to victims of human trafficking in the Netherlands with two established international policy frameworks, which serve as important elements in the fight against

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¹ Although the majority of trafficked persons are female, there are also male victims of human trafficking. For this reason, this paper will use the sex- and age-neutral term "human trafficking." Usage of such terminology corresponds with the OSCE Action Plan and the Trafficking Protocol. BUREAU NRM, TRAFFICKING IN HUMAN BEINGS: FIRST REPORT OF THE DUTCH NATIONAL RAPPOORTEUR 1 (The Hague, Nov. 2002) [hereinafter Bureau NRM].

this global scourge. The first framework in the fight against trafficking is the Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children (“Trafficking Protocol”).² This United Nations document is an instrument that establishes legally binding obligations for every ratifying state.³ The second framework is the Organization for Security and Co-operation in Europe’s Action Plan to Combat Trafficking in Human Beings (“OSCE Action Plan”).⁴ Although the OSCE Action Plan is not a legally binding instrument, it does provide recommendations for effective legislation and counter-trafficking action.⁵

Part I of this paper thus provides general information regarding human trafficking in the Netherlands. Descriptions of the varying aspects of trafficking, including a statistical analysis, is derived from such sources as the National Rapporteur,⁶ the Dutch legislation on human trafficking, and the B9 regulation.

Part II presents a case study. This study provides insight into the activities and the role of the Regional Prostitution Control Team (RPCT). This case study also develops several problems relating to human trafficking in Dutch society.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (nov. 15, 2000) [hereinafter Trafficking Protocol]; 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, U.N. GAOR, 55th Sess., U.N. Doc A/55/383/Annex II (2000), available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/.

³ ANN D. JORDAN, THE ANNOTATED GUIDE TO THE COMPLETE UN TRAFFICKING PROTOCOL 4 (International Human Rights Law Group 2002) [hereinafter Jordan 1].

⁴ Organization for Security and Co-operation in Europe, *OSCE Action Plan to Combat Trafficking in Human Beings*, Decision No. 557 by the Permanent Council (July 24, 2003), available at http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf [hereinafter OSCE Action Plan].

⁵ Organization for Security and Co-operation in Europe, *Trafficking in Human Beings: Implications for the OSCE*, Office for Democratic Institutions and Human Rights (ODIHR) Background Paper, Review Conference (Sept. 1999).

⁶ Justitie, *Persberichten 2000*, <http://www.justitie.nl/pers/persberichten/archief/2000/index.asp?file=pb0557.htm> (January 27, 2000) (last visited Feb. 15, 2006).

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Part III of this paper discusses the Trafficking Protocol and the OSCE Action Plan and their recommendations for enforcement mechanisms. First, the Trafficking Protocol is examined by outlining its objectives, as well as recommendations for protection and assistance of human trafficking victims on a national level. Second, the objectives of the OSCE Action Plan are examined, resulting in a comprehensive comparative analysis of both the Trafficking Protocol and the OSCE Action Plan. In addition, a most recently adopted legal instrument, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings⁷ (herein after called the “European Convention”), is introduced. Special attention is paid to its measures concerning the protection of and assistance to human trafficking victims.

Part IV presents an analysis of the problems presently facing the protection of and assistance to human trafficking victims in the Netherlands. This analysis utilizes the frameworks of the OSCE Action Plan and the Trafficking Protocol, and the practical data gathered and presented in parts, Parts I, II, and III of this article.

Finally, Part V of this paper presents the conclusions drawn from the analyses of Parts I through IV, including recommendations to the Dutch government.

II. Human Trafficking in the Netherlands

Human trafficking in the Netherlands can be divided into human trafficking on a national level and human trafficking crossing borders. In the first case, recruitment occurs in the Netherlands, and the recruited individuals are forced into prostitution by using different methods of coercion.⁸ In many cases, recruitment and coercion

⁷ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series no. 197, Warsaw, May 16, 2005, at 1 and 7, available at <http://www.coe.int/trafficking>.

⁸ Dijk, E. van, *Mensenhandel in Nederland 1997-2000*, Korps Landelijke Politiediensten, Zoetermeer, 2002, at 31 [hereinafter Dijk]; Bureau NRM, *Trafficking in Human Beings: Supplementary Figures*, Second Report of the Dutch National Rapporteur, The Hague, 2003; available at <http://www.victimology.nl/onlpub/national/NL-NRMEngels2.pdf>.

takes place through the so-called “loverboy” method; young Moroccan and Antillean pimps mainly utilize this method.⁹ It is called a method because these pimps proceed with the deliberate intention of recruiting, and eventually exploiting, young women of any vulnerable age bracket.¹⁰ First, the “loverboys” make contact with these vulnerable girls.¹¹ Then the “loverboys” make sure the girls fall in love with them by using several seduction techniques, like giving the girls lots of compliments and showering the girls with attention and presents.¹² The pimps make the girls increasingly emotionally dependent.¹³ After the pimps accomplish all this, they proceed to the next step, incorporating the girls into prostitution.¹⁴ Incorporating a seduced woman into prostitution is accomplished through the use of several techniques, like demanding repayment for the presents.¹⁵ This method is accompanied by coercion, (the threat of) violence, rape, and social isolation.¹⁶ This ensures that the girls remain emotionally dependent upon the pimps.¹⁷ Finally, at some point, most of the girls actually contribute to the maintenance of their situation.¹⁸ This maintenance is accomplished through the fear of violence and the threat of letting the girls’ parents know that the girl works as a prostitute.¹⁹

⁹ Bureau NRM, *supra* note 1, at 63.

¹⁰ Bullens, R.A.R. & J.E. van Horn, “Daad uit ‘liefde’: Gedwongen prostitutie van jonge meisjes,” 26(6) JUSTITIËLE VERKENNINGEN 25-26 (Gouda, Quint, 2000) [hereinafter Bullens], available at http://www.wodc.nl/images/jv000_Volledige_tekst_tcm11-4450.pdf.

¹¹ *Id.* at 26.

¹² *Id.* at 30-31.

¹³ *Id.* at 31, 33.

¹⁴ A. van den Borne & Theo Noten, *Trafficking in children for sexual purposes*: Update Country Report: The Netherlands at 8, available at <http://www.ecpat.nl/ariadne/loader.php/nl/ecpat/Rapporten/Traffick2/NETHERLANDS.pdf>. See generally Bureau NRM, *Trafficking in Human Beings*: Third report of the Dutch National Rapporteur, The Hague, 2005 at page 54; available at <http://www.victimology.nl/onlpub/national/NL-NRMEngels3.pdf>. See also Bullens, *supra* note 10, at 31-32.

¹⁵ Bullens, *supra* note 10, at 31-32.

¹⁶ *Id.* at 32-34.

¹⁷ *Id.* at 33.

¹⁸ *Id.* at 32-34.

¹⁹ *Id.*

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The second form of human trafficking is border crossing. The victims of border-crossing human trafficking are recruited abroad, generally by the promise of good earnings, and use both legal and illegal methods of border crossing.²⁰ These victims of border-crossing human trafficking are then imported into the Netherlands.²¹ Most victims become prostitutes, and prostitution is not always mentioned to them in advance. Once in the Netherlands, the victims become dependent on their trafficker(s) through different methods of coercion. The victims are made to hand over a majority of their earnings to these traffickers.²² Practically, the victims always owe the trafficker(s) an exorbitant amount of money, because the traffickers have arranged and paid for the victim's travel expenses, travel documents, and living expenses.²³ This method of creating victim dependence is labelled "debt bonding,"²⁴ resulting in debt bondage.

The victims of border-crossing human trafficking come from all parts of the world.²⁵ However, based on data provided by the Dutch Foundation Against the Trafficking of Women (STV), which keeps records of human trafficking victims in the Netherlands, a distinction is made between the areas from which the victims originate.²⁶ Throughout the last decade, a majority of the victims originate from Central and Eastern Europe.²⁷ A smaller number of people originate from Latin America, mainly from the Dominican Republic and Colombia.²⁸ However, an increasing number of victims are beginning to originate from Asia.²⁹ In the early 1990s, victims of bor-

²⁰ Dijk, *supra* note 8, at 31.

²¹ *Id.* at 35.

²² Bullens, *supra* note 10, at 26.

²³ Venicz, Liesbeth & Ine Vanwesenbeeck, *Aard en omvang van (gedwongen) prostitutie onder minderjarige (allochtone) meisjes*, Nederlands Instituut voor Sociaal Seksuologisch Onderzoek (NISSO), 1998 at 29 (hereinafter Venicz); *see also* Bullens, *supra* note 10, at 26.

²⁴ Venicz, *supra* note 23. *See also* Bullens, *supra* note 10, at 25-26.

²⁵ *See* <http://www.fo-stvkennisnet.nl> (last visited Mar. 18, 2006) [hereinafter STV].

²⁶ *Id.*

²⁷ *Id.* *See also* Bureau NRM, *supra* note 1, at 74-75.

²⁸ STV, *supra* note 25.

²⁹ *Id.*

der-crossing human trafficking were primarily from Thailand and the Philippines, but the modern trend suggests an increasing number of victims coming from China.³⁰ Also, there is a notable increase in the trafficking of Africans, especially Nigerians.³¹ Excluding the increasing number of persons trafficked from abroad, there is an increasing number of Dutch citizens who are trafficked in the Netherlands.³² The reason for this is the growing “loverboy” phenomenon, and unless effectively addressed, human trafficking, either nationally or through border crossing, will become an even larger problem in the near future.³³

A. Statistical Scope of Human Trafficking in the Netherlands

Determining the exact number of international trafficking victims is difficult.³⁴ The Netherlands faces the same difficulty in determining the exact number of internal trafficking victims.³⁵ There is always an unknown number of victims and offenders who never come to the attention of assistance organizations and official agencies.³⁶ Furthermore, there are some victims and offenders who come to the attention of assistance organizations and official agencies but who are not registered.³⁷ In order to trace and prosecute human trafficking offenders the victim must give a statement or report must be given to the police.³⁸ Without this statement, the assistance organizations and official institutes do not register the known victim or identified offender.³⁹

In 2003, the Foundation Against Trafficking of Women (STV) registered 257 cases of human trafficking. Of these 257

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Venicz, *supra* note 23, at 54-55. See also “Een Loverboy dwingt zijn vriendin tot prostitutie,” available at: <http://www.lover-boy.nl>. (last visited Mar. 16, 2006). See also <http://www.bewareofloverboys.nl>. (last visited Mar. 16, 2006).

³⁴ STV, *supra* note 25.

³⁵ *Id.*

³⁶ Bureau NRM, *supra* note 1, at 98.

³⁷ *Id.*

³⁸ *Id.* at 98-99. See also STV, *supra* note 25.

³⁹ Bureau NRM, *supra* note 1, at 98-99.

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cases, only 41 victims were granted the three months reflection delay required under the Trafficking Protocol and the OSCE Action Plan as further explained in sub-section D and Part III.⁴⁰ However, 84 victims gave statements or reported their captors to the police.⁴¹ These statistics show that only a small percentage of all the registered victims actually make statements or report their captors to the police. Additionally, an even smaller percentage is granted the reflection delay required under the Trafficking Protocol and the OSCE Action Plan or receives the necessary assistance and protection.⁴² These facts alone show that despite the numerous steps taken to combat the problem of human trafficking, the problem still exists and is very difficult to cope with.⁴³ These statistics are only the tip of the iceberg.⁴⁴

The developments in human trafficking, with regard to the nature and scope of internal human trafficking in the Netherlands, are recorded by a specially appointed Rapporteur.⁴⁵ Sub-section B explains the role and duties of this special Rapporteur.

B. National Rapporteur on Trafficking in Human Beings

On April 1, 2000, the Netherlands appointed a National Rapporteur on Trafficking in Human Beings (NRHT), Mrs. A. G. Korvinus.⁴⁶ The Netherlands is one of the few European countries to create such an institution.⁴⁷ The NRHT heads the Bureau National Rapporteur Human Trafficking (BNRHT).⁴⁸ The BNRHT enables the NRHT to fulfil her duties by assisting the NRHT in the execution of tasks designed to combat human trafficking.⁴⁹

⁴⁰ STV, *supra* note 25.

⁴¹ *Id.*

⁴² *Id.*

⁴³ T.L. Weiss, *Stop Child Trafficking: Modern-Day Slavery – “Overview of trafficking in persons with special reference to trafficking in children-Context, Date, Solutions.”* Conference in Helsinki, June 2003.

⁴⁴ Bureau NRM, *supra* note 1, at 34.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 45-46.

⁴⁸ *Id.* at 34-35.

⁴⁹ *Id.*

The Dutch NRHT collects information – facts, figures, results, and ultimate effects of the Dutch policy designed to combat human trafficking – and reports this data to the Dutch government.⁵⁰ The BNRHT compiles annual reports that provide an overview of the characteristics and the scale of the human trafficking phenomenon in the Netherlands. The data in these annual reports is gathered using qualitative and quantitative research among all Dutch institutions, organizations, and governmental bodies that face the problem of human trafficking.⁵¹ These reports then provide conclusions and recommendations that criticize the Dutch approach to the human trafficking problem and the Dutch policies intended to combat the human trafficking problem.⁵² Because the BNRHT's status is independent of the Dutch government, they can provide the most effective critique of the overall effectiveness of the Dutch approach and policies intended to combat human trafficking.⁵³

C. Dutch Legislation on Human Trafficking

In the Netherlands, human trafficking relates mostly to exploitation in the sex industry because prostitution is one of the most common forms of trafficking.⁵⁴ In order to exercise more control over this industry, act upon sexual violence, and prevent the abuse of prostitutes, the Dutch government has decided to lift the governmental prohibition on brothels by changing the laws governing prostitution in the Netherlands.⁵⁵ Since October 2000, the Netherlands has

⁵⁰ *Id.* at 35-36.

⁵¹ *Id.* at 35-37.

⁵² *Id.* at 35-36. See also A.G. Korvinus, *The Dutch policy and experience: European Conference on women trafficking – “Turn the spotlight on trafficking in women,”* Siracusa, Italy, (Dec. 5-6, 2002) [hereinafter Korvinus]; available at www.europa.eu.int/comm/employment_social/news/2003/jul/korvinus_en.pdf.

⁵³ Bureau NRM, *supra* note 1, at 37-38.

⁵⁴ Korvinus, *supra* note 52, at 1.

⁵⁵ Bureau NRM, *supra* note 1, at 14-15. See also L. Butt & J. Salazar, *Lifting the Ban: The “Oldest Profession” Becomes the Newest Market*, Humanity in Action, 2004; available at www.humanityinaction.org/publications/2004/salazar.pdf.

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legalized prostitution for persons who are at least 18 years of age.⁵⁶ The laws that legalize prostitution in the Netherlands also require that a person working as a prostitute be free from any form of coercion.⁵⁷ Additionally, the sex industry's activities must comply with the customary regulations.⁵⁸ These customary regulations require that all sex institutions be registered and licensed.⁵⁹

To enforce this requirement, article 250(a) of the Dutch Criminal Code (DCC) was adopted.⁶⁰ It states that it is no longer an offence to operate a brothel, but it does recognize the following acts as offences:⁶¹

- i) forcing another person to engage in prostitution; ii) inducing a minor to engage in prostitution; iii) recruiting, abducting or taking a person to engage in prostitution in another country; iv) receiving income from prostitution involving a minor or a person forced to engage in prostitution; v) forcing another person to surrender income from prostitution.⁶²

The Netherlands defines human trafficking in this statute as “involuntary coercion or exploitation in the sex industry.”⁶³ Whenever any of these offences are at issue, charges against the offenders can be pressed. Because of its restriction to prostitution, this pre-

⁵⁶ *Dutch Policy on Prostitution: Questions and Answers*, Foreign Information Division, Netherlands Ministry of Foreign Affairs in association with the Ministry of Justice, 2004.

⁵⁷ *Id.*

⁵⁸ Interview with F. Egelmeer and T. Heijnen, Regional Prostitution Control Team (RPCT), Ettenleur, The Netherlands, July 8 2004 [hereinafter Interview 1]. The interview was held July 8, 2004 in the Netherlands. The interview was translated and summarized from Dutch to English July 9, 2004.

⁵⁹ *Dutch Policy on Prostitution: Questions and Answers*, Foreign Information Division, Netherlands Ministry of Foreign Affairs in association with the Ministry of Justice, 2004.

⁶⁰ Korvinus, *supra* note 52, at 2.

⁶¹ *Dutch Policy on Prostitution: Questions and Answers*, Foreign Information Division, Netherlands Ministry of Foreign Affairs in association with the Ministry of Justice, 2004.

⁶² *Id.*

⁶³ Dutch Criminal Code, Art. 250(a), available at http://www.osce.org/documents/odihr/2002/09/1745_en.pdf. (last visited Mar. 18, 2006).

scription does not comply with the policies on human trafficking of many other countries.⁶⁴ However, as of January 1, 2005, the Netherlands has adopted a new law, laid down in article 273(a) of the DCC, entitled "Exploitation."⁶⁵ Article 273(a) covers more than just "trafficking for sexual purposes."⁶⁶ It includes all forms of socio-economic exploitation of human beings through coercion, deceit, and violence; it also includes provisions for organ trafficking, which will become a punishable offence.⁶⁷

Beside the adjustments in the Dutch law against human trafficking, there must also be more severe penalties for human trafficking offenders. Under Article 273(a) of the DCC, all human trafficking offences will carry a minimum penalty of six (6) years and, depending upon aggravating circumstances, a maximum penalty of twelve (12) years.⁶⁸ In addition, if a human trafficking offence is proved to have caused a death, the penalty can increase to a maximum of fifteen (15) years.⁶⁹ The provisions of the existing Article 250(a) of the DCC are interweaved into draft Article 273(a) and are

⁶⁴ *Trafficking in Persons Report*, U.S. Department of State (2004), at 160.

⁶⁵ Dutch Criminal Code, Art. 273(a) [hereinafter art. 273(a)], available at <http://www.wetboek-online.nl/wet/Sr/273a.html>. (last visited Mar. 30, 2006); see also www.europol.eu.int/publications/Other/Reports%202005/IIS%20and%20THB%20legislation%20ANNEX%20I%20Public.pdf (last visited Mar. 18, 2006).

⁶⁶ EUROPOL PUBLIC INFORMATION, ANNEX I, COMPARISON OF THE RELEVANT LEGISLATION ON TRAFFICKING IN HUMAN BEINGS (PENALTIES AND AGGRAVATING CIRCUMSTANCES) 40-41, Europol, 2005. Specifically, this article allows up to 6 years imprisonment of a person who, through coercion, force, or other act of violence or through the threat of force or other act, extortion, fraud, deception, or who abuses a situation of dominance, through abuse of a vulnerable situation, or through the giving or receiving of payments or benefits in order to obtain the consent of a person who possesses control over another, transports, delivers, accommodates, or takes in another person with a view to exploiting said person or removing said person's organs; recruits, takes with him, or kidnaps another person with a view to take said person to another country to be available for sexual services.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

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abrogated since the draft Article 273(a) has been formally adopted by the Dutch government.⁷⁰

In addition, since December 10, 2004, the Dutch government has also adopted a National Action Plan on Human Trafficking (NAPHT).⁷¹ This Action Plan is a government response to the recommendations of the National Rapporteur on Trafficking in Human Beings, who recently presented her third report on human trafficking in the Netherlands.⁷² Through this Action Plan the government wants to provide information to improve the prevention of human trafficking.⁷³ The measures of the Action Plan serve as a basis for possible future discussions with Parliament about the progression and implementation regarding actions in the field of human trafficking.⁷⁴ The main measures of the Action Plan concern (inter)national legislation, prevention of human trafficking, aiding victims of human trafficking, investigation and prosecution of human trafficking, and research and registration.⁷⁵

The Netherlands signed the Trafficking Protocol on December 12th, 2000, and accepted it on July 27, 2005.⁷⁶ Thus, the Netherlands is now bound by the provisions of the Trafficking Protocol.⁷⁷ It is also in compliance with this international treaty, having enacted Article 273(a) in place of Article 250(a) of its criminal code and having established its National Action Plan on Human Trafficking.⁷⁸

D. B9 Regulation

⁷⁰ Dutch National Action Plan on Human Trafficking, December 10, 2004, available at http://www.justitie.nl/Images/Nationaal%20Actieplan%20Mensenhandel%20versie%20TK%20_2__tcm74-102699.pdf.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See http://www.unodc.org/unodc/en/crime_cicp_signatores_trafficking.html (last visited Mar. 19, 2006).

⁷⁷ "Acceptance" of a treaty, just as ratification and accession, establishes a State's consent to be bound under Articles 11 and 14 of the 1969 Vienna Convention on the Law of Treaties and corresponding customary international treaty law.

⁷⁸ Korvinus, *supra* note 52, at 2-3.

Besides the restricted laws on human trafficking, the Netherlands have developed and adopted, in accordance with former Article 250(a) of the DCC, a policy that traces and prosecutes human trafficking offenders.⁷⁹ This policy also provides victims of human trafficking with specific rights. This policy is published in a circular intended for immigrants.⁸⁰ This regulation is entitled the B9 regulation and it grants temporary residency rights to victims of border-crossing human trafficking.⁸¹ Next to facilitating investigation of human trafficking offences and prosecution of human trafficking offenders, the B9 regulation's aim is to offer assistance and protection to the victims of human trafficking.⁸²

The B9 regulation offers a (suspected) victim of human trafficking a three-month reflection delay.⁸³ This reflection delay is an important period for victims of human trafficking because it provides the victims an opportunity to reflect upon their situation and make a decision as to whether they should make a statement and report their captors to the police.⁸⁴ This reflection delay is also important for the Dutch police because it presents them with the opportunity to gain the confidence of the suspected victim by talking to the victim, explaining to the victim their rights, and presenting to the victim their options. Gaining the confidence of the victim is vital because many victims do not trust the police because many victims suffer from bad experiences with the police forces of their home country.⁸⁵ According to a police officer of the Regional Prostitution Control Team (RPCT), who worked for the Severe Criminality Unit (SCU), "it normally is a wearisome road before victims decide to make a statement or report to the police. There is no victim who says immedi-

⁷⁹ Bureau NRM, *supra* note 1, at 24; *see also* Elaine Pearson, HUMAN TRAFFIC, HUMAN RIGHTS: REDEFINING VICTIM PROTECTION 66 (Anti-Slavery International, 2002) [hereinafter Pearson].

⁸⁰ Bureau NRM, *supra* note 1, at 24.

⁸¹ *Id.*

⁸² *Id.*; *see also* Pearson, *supra* note 79, at 66.

⁸³ Bureau NRM, *supra* note 1, at 24.

⁸⁴ *Id.*

⁸⁵ Interview 1, *supra* note 58.

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ately: ‘I am a victim of human trafficking, and I would like to do business with you.’⁸⁶

If the victim has decided not to make a statement or report the offence to the police at the expiration of the reflection period, deportation proceedings begin and the victim is sent back to their country of origin.⁸⁷ In contrast, a victim who decides to make a statement or report the offence to the police is provided with a temporary residence permit for the duration of the investigation and possible court proceedings.⁸⁸ The victim is also provided with safe shelter, medical treatment, psychological and legal assistance, insurance, and income in the form of unemployment benefits.⁸⁹ However, when the judicial proceeding or investigation is complete, the victim loses the rights and benefits provided by the Dutch government, their residence permit is withdrawn, and they are asked to leave the Netherlands.⁹⁰

In spite of the rights that assist and protect the victims of human trafficking, the B9 regulation does have some notable limitations. First, after the expiration of the victims’ temporary residency permit, victims rarely receive a permanent residency permit, not even on humanitarian grounds, because it is difficult for the victim, or Dutch authorities, to provide evidence that risks of reprisals or intimidation exist when the victim returns home.⁹¹ Second, obtaining the victim’s assistance during the police investigation and the testimony during the subsequent court proceedings remains very difficult.⁹² An unconditional guarantee of the victim’s full cooperation is never assured because of the prospects of receiving permanent residence permit and the regular fear of reprisals and intimidation often influence the victims’ decision not to press charges.⁹³

In March 2005, an important development took place for the benefit of the rights of human trafficking victims. From this time on

⁸⁶ *Id.*

⁸⁷ Bureau NRM, *supra* note 1, at 73.

⁸⁸ *Id.* at 25; *see also* Pearson, *supra* note 79, at 67.

⁸⁹ *Id.* at 24-25; *see also* Pearson, *supra* note 79, at 78.

⁹⁰ Korvinus, *supra* note 52.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

human trafficking victims with a B9 status are allowed to work and/or to follow an education/course/training.⁹⁴ This might help them to find a job after returning to their home country. It is also an important measure to prevent them from working in prostitution or getting re-trafficked. Furthermore, offering work or education opportunities to victims might increase the willingness of victims to report and testify in court against their offenders.

*III. The Role of the Regional Prostitution Control Teams in the Protection of and Assistance to Human Trafficking Victims*⁹⁵

A. Composition and Goal of the RPCT

After the ban on brothels was lifted,⁹⁶ all twenty-six (26) Dutch police corps established Regional Prostitution Control Teams (RPCT).⁹⁷ Most of these teams are multi-disciplinary and are composed of people from the following police units: the Severe Criminality Unit (SCU), the Sex Crime Squad (SCS), and the Aliens Police Unit (APU).⁹⁸ Each unit has its own specialty: the SCU is responsible for initiating and conducting investigations;⁹⁹ the SCS's is responsible for recognising, identifying, and providing initial assistance to potential victims of human trafficking;¹⁰⁰ and the APU is responsible for checking the statuses of resident aliens.¹⁰¹ The multi-disciplinary background of these teams is essential for an adequate and comprehensive approach to the human trafficking problems presented by prostitution.¹⁰² Also, because most prostitution-related

⁹⁴ National Action Plan on Human Trafficking, *supra* note 70, at 22.

⁹⁵ Interview 1, *supra* note 58.

⁹⁶ The ban was lifted on 1 October 2000. See *Ban on Dutch Brothels Lifted for Tax Purposes*, <http://archives.cnn.com/2000/WORLD/europe/10/01/netherlands.prostitutes.ap/index.html> (last visited Mar. 18, 2006).

⁹⁷ Interview 1, *supra* note 58.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Netherlands Policing Institute, *Policing in the Netherlands*, [http://www.politie.nl/Overige/Overdepolitie/watdoetdepolitie/specialistische taken/vreemdelingenpolitie.asp?ComponentID=5387&SourcePageID=5366](http://www.politie.nl/Overige/Overdepolitie/watdoetdepolitie/specialistische%20taken/vreemdelingenpolitie.asp?ComponentID=5387&SourcePageID=5366) (last visited Mar. 16, 2006).

¹⁰² Interview 1, *supra* note 58.

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human trafficking involves women, both sexes are represented in these law enforcement units.¹⁰³

The primary purpose of the RPCT is to inspect sex clubs for illegal prostitution, involuntary prostitution, prostitution of minors, and human trafficking.¹⁰⁴ The RPCT strives to inspect all sex institutions at least six (6) times per year.¹⁰⁵ If the sex institutions fail to comply with the established operating regulations, it is in violation of the law and subject to the statutory sanctions, and, in the worst cases, possibly can lose its license to operate.¹⁰⁶

If the RPCT finds a prostitute who possesses false documents, or is classified as an illegal alien during their standard inspection of a sex institution, the prostitute is detained and interrogated.¹⁰⁷ During this interrogation, the interrogator attempts to find evidence that indicates human trafficking.¹⁰⁸ If evidence of human trafficking exists, the RPCT begins a formal investigation of the situation.¹⁰⁹ They are obligated to investigate and eventually prosecute the suspected offender(s).¹¹⁰ Every year, the RPCT teams encounter numerous victims of human trafficking; however, only a few of these victims eventually press charges.¹¹¹ This remains the biggest obstacle for the RPCT because the police cannot act upon a human trafficking violation without the victim making a clear statement or filing a report with the police.¹¹²

B. The Role of the RPCT in Protecting and Assisting Victims

The RPCT has to report suspected victims of human trafficking to the Foundation Against Trafficking of Women (STV).¹¹³ The

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Bureau NRM, *supra* note 1, at 70.

¹¹¹ *Id.* at 98.

¹¹² *Id.*

¹¹³ *Id.* at 106.

STV has regional integration networks for victims receive the appropriate assistance and protection.¹¹⁴ The STV provides the victim with a temporary “safe shelter” somewhere in the Netherlands.¹¹⁵ The RPCT also immediately contacts the Public Ministry whenever there is evidence of human trafficking.¹¹⁶ These organizations closely cooperate and coordinate their investigations and prosecution of the offenders in these cases.¹¹⁷ The RPCT must first take the victim’s statement or report before they may start their investigation of the case.¹¹⁸ During their investigation, the RPCT stays in close contact with the victims and keeps them informed of the investigation’s progress.¹¹⁹ The role of RPCT in protecting and assisting the victims of human trafficking is small. The primary role of the RPCT remains focused on locating and prosecuting the human trafficking offenders.¹²⁰ Once the victims receive their temporary residency permits, they are free to live and do as they please.¹²¹ The victim may desire to keep in contact with close friends or even with the trafficker during this period.¹²² However, returning to their home country or reinitiating contact with their trafficker can have significant negative consequences, like falling back under the trafficker’s control and risking their further exploitation at the hands of their traffickers.¹²³ “The safety of the victims is dependent on their own behaviour.”¹²⁴ The RPCT does not, and cannot, control the actions of the victims.¹²⁵ In addition to the RPCT’s role in protecting victims during their investigation, the RPCT teams may also attempt to protect the victims by preventing them from being summoned to court.¹²⁶ However, this can only be accomplished when a victim files a very detailed state-

¹¹⁴ *Id.* at 107.

¹¹⁵ *Id.*

¹¹⁶ Interview 1, *supra* note 58.

¹¹⁷ Dijk, *supra* note 8, at 40.

¹¹⁸ Interview 1, *supra* note 58.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Bureau NRM, *supra* note 1, at 79.

¹²⁴ Interview 1, *supra* note 58.

¹²⁵ *Id.*

¹²⁶ *Id.*

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ment or report with the RPCT.¹²⁷ When this is the case, the Investigating Magistrate, before the beginning of the court proceedings, may hear the victim's testimony.¹²⁸ On this occasion, the offender's attorney also receives the opportunity to question the victim.¹²⁹ This special procedure prevents the victim from going to court, and thereby the victim does not need to face the trafficker.¹³⁰ The victim may also avoid seeing any other people involved in the trafficking offence in this manner because human trafficking lawsuits are open to the public, and the people involved in the trafficking could be present.¹³¹ Being present in the same room with the offender, and possibly other persons who were involved in the crime can impose pressure on the victim, or theoretically influence the court proceedings negatively.¹³² Preventing human trafficking victims from going to court is not a regular occurrence, but the modern trend suggests this option is taken into consideration more often.¹³³

C. Making a Statement or Reporting to the Police

According to the B9 regulation, human trafficking is not a complaint offence only.¹³⁴ This means that human trafficking is a crime that may be prosecuted regardless of whether a victim files a complaint.¹³⁵ Whilst the law states that a victim's complaint is not a necessity to prosecute trafficking offenders, both the police and prosecutors agree that a victim's statements and/or reports are necessary to insure a successful investigation and more successful court proceedings.¹³⁶ For the victims, however, there is hardly any difference between making a statement and filing an official report, because in both cases they need to speak up and tell their story.¹³⁷ Fur-

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Pearson, *supra* note 79, at 74-75.

¹³⁴ Bureau NRM, *supra* note 1, at 129; *see also* Pearson, *supra* note 79, at 69.

¹³⁵ Pearson, *supra* note 79, at 69.

¹³⁶ *Id.*

¹³⁷ Interview 1, *supra* note 58.

thermore, a victim divulges their identity when making a statement or reporting the crime.¹³⁸ The police cannot guarantee them anonymity, because according to the Dutch law every offender has the right to know what the accusation contains and who made the accusation.¹³⁹ This may be a major factor leading to the victim's unwillingness to report the crime.

D. Education and Priorities

In order to join a RPCT a person must complete an official course on morals and sexual offences.¹⁴⁰ Furthermore, new members of a RPCT team are encouraged to complete a course on Prostitution and Human Trafficking.¹⁴¹ This recently added course focuses mainly on learning how to identify evidence that indicates possible cases of human trafficking because the police need to be trained on this subject with regard to managerial knowledge and skills, and also practical knowledge and skills on dealing with human trafficking victims.¹⁴² Contrary to the official course on morals and sexual offences, the Prostitution and Human Trafficking course is not compulsory.¹⁴³ However, according to a member of the RPCT of Ettenleur, it should be compulsory because it provides important information about inspecting sex institutions and managing human trafficking cases.¹⁴⁴ Above all, making the Prostitution and Human Trafficking Course a compulsory course may lead to less ambiguous national judicial and law enforcement policies regarding human trafficking.

The inspections of sex institutions are an important instrument in fighting human trafficking; however, there are no guiding principles for a uniform approach among the RPCT because, according to the RPCT of Ettenleur, "each police corps has different staff capacities and different priorities."¹⁴⁵ If a RPCT team comes upon a

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

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suspected human trafficking case, the question remains whether the team has to the capacity to deal with this case as well as its current cases.¹⁴⁶ Thus, there is always the possibility that a human trafficking case will be postponed and temporarily set aside, or in some cases, not investigated at all.¹⁴⁷ In their research, Luykx and Van Soest have also pointed out this discrepancy in regional RPCT team priorities in research.¹⁴⁸ Luykx and Van Soest state that in fifteen (15) police regions human trafficking has a high priority, in six (6) police regions human trafficking has an average priority, and in four (4) police regions human trafficking has a very low priority.¹⁴⁹

E. The Effect of RPCT on Illegal and Involuntary Prostitution

Regulation of sex institutions makes it possible for the RPCT to inspect these institutions throughout the Netherlands regularly.¹⁵⁰ This policy has proven to be effective, because the RCPT no longer encounters many illegal, involuntary, or underage prostitutes in the sex institutions.¹⁵¹ This is primarily a result of the owners' reluctance to endanger or lose their license.¹⁵² Yet, although the prostitution in sex institutions seems to be more or less under control, there has been a negative outcome. Because of the regulation of the sex industry, illegal prostitution has presumably shifted to other non-regulated forums such as escort services or other illegal sex branches because these forums are less controllable.¹⁵³ Thus, illegal prostitution has disappeared further from legitimate sex industries but continues in other illegal and unregulated circuits.¹⁵⁴ For the RPCT these forums are harder to act upon because it is very difficult to

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ F. LUYKX & S. VAN SOEST, INVENTARISATIE PROSTITUTIE EN MENSENHANDEL IN NEDERLAND (Zoetermeer: CRI, 1999).

¹⁴⁹ *Id.*

¹⁵⁰ Foreign Information Division, Netherlands Ministry of Foreign Affairs in association with the Ministry of Justice, *Dutch Policy on Prostitution: Questions and Answers*, 2004.

¹⁵¹ Interview 1, *supra* note 58.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

trace who operates the escort services. But, the RPCT is becoming more active in pursuing prostitution into this illegal forum by gathering information about who operates the escort services and performing so-called "hotel checks."¹⁵⁵ The RPCT rents a hotel room and orders a woman from an escort service, and when the woman arrives at the hotel room, the RPCT questions her.¹⁵⁶ These steps are important because of the increased possibility of encountering illegal persons and suspected victims of human trafficking.¹⁵⁷ Unfortunately, these actions are time consuming. They need thorough planning and are only carried out occasionally, and with the permission of the Ministry of Justice.¹⁵⁸

In summary, legalization of sex institutions is a step forward in the prevention of human trafficking because the sex industries are effectively under the control of the RPCT inspections.¹⁵⁹ While the shift towards other forms of prostitution is becoming visible, it is likely that this shift will remain a long-term concern. Should the Dutch government choose to legalize the escort services there will most likely be a shift in illegal prostitution and human trafficking to another sector of society that presents less risk of exposure for the traffickers, like the Internet or Turkish coffee houses.

F. Recommendations Concerning the Future of the RPCT

Three recommendations concerning the future of the RPCT must be made. First, most RPCTs are pilot programs, which means they are only appointed for limited periods of time.¹⁶⁰ It remains doubtful whether the government will decide to keep the RPCT.¹⁶¹ Opposition in the government argues that the RPCT is no longer necessary because the sex institutions are under control and no longer a contributor to illegal prostitution and human trafficking.¹⁶²

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

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However, the sex institutions are only under control because of the RPCT inspections. If a regional RPCT is not allowed to continue its work, the sex industry of that region will become once again an attractive target for illegal prostitution and human trafficking, and the cessation of RPCT inspections will allow illegal prostitution and human trafficking to re-enter and re-take the legalized sex industry. The Dutch government should allow the RPCT to continue working with a fixed team indefinitely. The RPCT ensures that the sex institution regulations are enforced and is an integral part of the Dutch efforts to combat human trafficking. Having a complete understanding of the human trafficking problem is impossible, but refusing to act because the symptoms of the human trafficking problem are no longer visible is irresponsible. The RPCT has effectively addressed the symptoms of human trafficking in legal Dutch society, but without diligent efforts by the RPCT and increased efforts by the Dutch government to combat human trafficking the cause of this social disease in the Netherlands will never be effectively addressed.

Second, developing vocational and educational courses concerning prostitution and human trafficking and making these courses compulsory for anyone who works, or may work in the fields of prostitution and human trafficking, are an essential step towards eliminating illegal prostitution and human trafficking from the Netherlands. Human trafficking is an especially delicate problem, and it is necessary that this problem be handled with professional care. Moreover, increased education will contribute to less ambiguous national, judicial, and law enforcement policies regarding human trafficking.

Finally, the Dutch privacy law is an impediment for conducting investigations.¹⁶³ The Dutch privacy laws do not allow organisations and institutions to provide the RPCT with information that could be essential for an effective investigation.¹⁶⁴ Frequently, a lot of time is spent on research while the information needed is readily available somewhere else but inaccessible to the RPCT because of

¹⁶³ *The Law for Privacy*, available at www.justitie.nl/Images/302_tcm35-5235.pdf. (last visited Mar. 18, 2006).

¹⁶⁴ Interview 1, *supra* note 58.

the Dutch privacy laws.¹⁶⁵ Therefore, it would be advisable for an adjustment to the Dutch privacy laws that would allow the RPCT access to all the information available.

IV. The UN Trafficking Protocol and the OSCE Action Plan

A. The Objectives of the Trafficking Protocol

The Trafficking Protocol, also called the “Palermo Protocol,” is a supplement to the Convention Against Transnational Organized Crime (“CATOC”), which was adopted by the United Nations in 2000.¹⁶⁶ CATOC and the Trafficking Protocol are intended to stem the enormous growth of transnational organized crime,¹⁶⁷ with the Trafficking Protocol focusing on the crime of human trafficking.¹⁶⁸ CATOC and the Trafficking Protocol are inextricably intertwined. In fact, the Trafficking Protocol requires all countries to sign CATOC before signing the Trafficking Protocol.¹⁶⁹ As a result, a majority of countries worldwide have signed and ratified both the Trafficking Protocol and CATOC.¹⁷⁰

In general, the official State act of signing a convention shows that particular State’s general support for the objectives and provisions of the convention. In addition, a State’s role as signatory exhibits the State’s intention of becoming a partner in the future support of the convention.¹⁷¹ If a State ratifies or accepts a convention, as the Netherlands has done, it thereby agrees to be legally bound by the convention’s provisions and must therefore comply with the ob-

¹⁶⁵ *Id.*

¹⁶⁶ *See supra* note 2.

¹⁶⁷ Jordan 1, *supra* note 3, at 2.

¹⁶⁸ JANICE RAYMOND, GUIDE TO THE NEW UN TRAFFICKING PROTOCOL 3, (2001), available at http://action.web.ca/home/catw/attach/un_protocol.pdf (last visited Feb. 15, 2006) [hereinafter Raymond].

¹⁶⁹ *See supra* note 2, at Article 1; Jordan 1, *supra* note 3, at 2; Bureau NRM, *supra* note 1, at 29.

¹⁷⁰ The list of signatories and states parties is available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty13.asp> [hereinafter Signatories] (last visited April 6, 2006).

¹⁷¹ Bureau NRM, *supra* note 1, at 29.

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ligations set forth in the convention.¹⁷² It is generally accepted that a head of state, or an authorized government agent acting in the official capacity of the State, may ratify a convention.¹⁷³ As for the Trafficking Protocol, it has been signed by one hundred-seventeen States and ratified by forty-six.¹⁷⁴ It entered into force on December 25, 2003.¹⁷⁵ As stated above, the Netherlands has signed and accepted the Protocol, which obligates it to fulfil all of its provisions.¹⁷⁶

The Trafficking Protocol categorizes all forms of national and international human trafficking as forced labour, slavery, or servitude.¹⁷⁷ Furthermore, it emphasizes the importance of recognizing the individual's rights as well as the individual needs of trafficking victims.¹⁷⁸ These unique characteristics make the Trafficking Protocol the first universal instrument to address all aspects of human trafficking.¹⁷⁹ Corresponding with these objectives, the goal of the Trafficking Protocol is to undertake effective legal action that works to not only prevent and fight human trafficking, but also protect victims and punish trafficking offenders.¹⁸⁰

The Trafficking Protocol is divided into the following sections: (1) general provisions, (2) obligations concerning the protection of victims of trafficking in persons, (3) prevention, (4) cooperation and other measures, and (5) final provisions.¹⁸¹ Although each section is essential to effectively combating human trafficking, this paper will concentrate primarily on the victim protection measures of the Trafficking Protocol.¹⁸²

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Signatories, *supra* note 170.

¹⁷⁵ *Id.*

¹⁷⁶ *Cf.* Article 11 of the Vienna Convention on the Law of Treaties, reflecting customary international law.

¹⁷⁷ Jordan 1, *supra* note 3, at 3.

¹⁷⁸ *Id.* at 3-4.

¹⁷⁹ Trafficking Protocol, *supra* note 2, at 1.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 1-11.

¹⁸² Trafficking Protocol, *supra* note 2, at 3.

B. Victim Protection Provisions of the Trafficking Protocol

With regard to rendering protection and assistance to victims of human trafficking, the Trafficking Protocol consists of three articles for States parties to base their legislative action upon.¹⁸³ In particular, the granting of residency permits and the repatriation of victims constitute the most important aspects of the Trafficking Protocol.¹⁸⁴

This first measure of victim protection requires States parties to implement measures that provide medical and social assistance to victims, including, but not limited to, psychological assistance, providing information about the legal rights available to victims of human trafficking, and ultimately offering educational and training opportunities to victims.¹⁸⁵ In addition to assistance, however, the physical protection of victims is also necessary. This protection is accomplished by providing appropriate housing, which must be designed to protect the privacy, and, in some cases, the identity of the victims.¹⁸⁶ This attention to identity protection is especially pertinent in cases involving criminal court proceedings.¹⁸⁷ Non-governmental and other relevant organizations must be included in cooperation in execution of these principles.¹⁸⁸ In addition, these actors should consider measures to ensure that the victims remain in the receiving country, either temporarily or permanently,¹⁸⁹ including the option of granting asylum.¹⁹⁰ Finally, if necessary, the receiving country and the country of origin should cooperate in order to facilitate the safe repatriation of trafficking victims.¹⁹¹

Some specific terminology in the Trafficking Protocol has given rise to debate among commentators.¹⁹² While a majority of

¹⁸³ *Id.* at 3-5.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*, at 3-4.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 5.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Jordan 1, *supra* note 3, at 7.

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terms used in the Trafficking Protocol are defined by other international instruments,¹⁹³ there are two specific terms that are not defined by the Trafficking Protocol or by any other international document.¹⁹⁴ These terms are “exploitation of the prostitution of others” and “sexual exploitation.”¹⁹⁵ Following lengthy discussions, the drafters of the protocol had been unable to agree on how to define adult prostitution, and whether to include the term under the category of human trafficking.¹⁹⁶ In a compromise, the delegates included the terms “exploitation of the prostitution of others” and “sexual exploitation” in the Trafficking Protocol, but left the two terms undefined.¹⁹⁷ This is explained in the following United Nations Interpretative Note¹⁹⁸, which states:

The *travaux préparatoires* should indicate that the Trafficking 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 are not defined in the Trafficking Protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws.¹⁹⁹

The delegates recognized that many countries have different laws and policies regarding adult sex, and even with the goal of maximizing the number of States signing and ratifying the Trafficking Protocol, the treaty was not designed to obligate countries to change their current domestic laws regarding prostitution.²⁰⁰ Thus,

¹⁹³ The International Labor Organization Convention Concerning Forced Labor No. 29, <http://www.unhchr.ch/html/menu3/b/31.htm> (last visited February 21, 2006); the United Nations Slavery Convention, <http://www.unhchr.ch/html/menu3/b/f2sc.htm> (last visited February 21, 2006); the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *available at* <http://www.unhchr.ch/html/menu3/b/30.htm> (last visited February 21, 2006).

¹⁹⁴ Jordan 1, *supra* note 3, at 8.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*; *see also* Raymond, *supra* note 168, at 4-6.

¹⁹⁷ Jordan 1, *supra* note 3, at 8.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

in order not to undermine national law, which, under international law principles, is subordinated to international law,²⁰¹ and to avoid the pitfalls of invalidating certain national laws defining prostitution, the dilemma was evaded by keeping the definition intentionally vague.²⁰²

States parties to the Trafficking Protocol are obligated to enforce the principles of the Trafficking Protocol in their domestic law.²⁰³ With regard to the definition of human trafficking, however, the participating States may, however, still choose whether to include the terms “exploitation of the prostitution of others” and “sexual exploitation” in their domestic law.²⁰⁴ Countries that decide to use these two terms in their domestic law must comply with the obligation to define them.²⁰⁵ Defining these terms is an exceedingly difficult, if not impossible task because of the vastness and breadth that characterize both of these concepts.²⁰⁶ I would define human trafficking as follows: a practice within which many forms of “sexual violence,” including the use of force and exploitation, take place. Although the term “sexual violence” falls within the circle of “sexual exploitation,” and is also quite broad, there is an international legal definition available. In *Akayesu*, the International Criminal Tribunal for Rwanda defined “sexual violence.”²⁰⁷ However, the line between

²⁰¹ Philip Allott, *The Concept of International Law*, 10 EUR. J. INT’L L. 37-38 (1999).

²⁰² Jordan 1, *supra* note 3, at 8-9.

²⁰³ See <http://www.amnesty.org.uk/torture/cat.shtml> (last visited Mar. 12, 2006).

²⁰⁴ Jordan 1, *supra* note 3, at 8.

²⁰⁵ *Id.* (“Every element of a criminal prohibition must be clearly stated so that the public is given notice about the prohibited activity, and judges and juries will be able to determine guilt or innocence”).

²⁰⁶ Jordan 1, *supra* note 3, at 8-9.

²⁰⁷ Prosecutor v. Akayesu, ICTR-96-4-1 (Sept. 2, 1998); Human Rights Watch, *VII. International Legal Protections against Gender-based Violence*, http://www.hrw.org/reports/2003/sierraleone/sierleon0103-08.htm#P1137_256310. (last visited February 23, 2006). The ICTR states the following: “Rape [is] a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” The Tribunal considers sexual violence, which includes rape, as “any act of a sexual nature which is committed on a person under circumstances which are coercive.” Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical

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sexual exploitation and sexual violence is thin, and therefore sexual exploitation cannot be properly defined.

Another comment with regard to the Trafficking Protocol concerns the detailed description of the nature of human trafficking crime and the methods used to obtain the consent of the victim.²⁰⁸ The definition states that trafficking is conducted 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.”²⁰⁹ The descriptions of the means by which people are trafficked contain many elements that prosecutors must prove, and thus can be discussed or questioned openly by the defending party.²¹⁰ Herein I agree with Jordan:²¹¹ The elements used to move someone into a trafficking situation are not as essential as the overall process of moving people within or across borders and the forced labour or slavery in which the victims are entangled.

C. The Objectives of the OSCE Action Plan

The OSCE Action Plan was established primarily out of concern for the tremendous increase in the number of victims of human trafficking incidents. A secondary reason for the Plan’s establishment was the realization of the extent of the criminal networks supporting trafficking, and their access to sophisticated techniques and

contact. The incident described by Witness KK in which the Accused ordered the Interahamwe [Hutu militia] to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitutes sexual violence. The Tribunal notes in this context that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.

²⁰⁸ Jordan 1, *supra* note 3, art. 3 at 7.

²⁰⁹ Trafficking Protocol, *supra* note 2, art. 3(a) at 2.

²¹⁰ M. Ditmore & M Wijers, *The Negotiations on the UN Protocol on Trafficking in Persons*, NEMESIS, 2003, no.4, at 83, available at <http://www.nswp.org/pdf/NEMESIS.PDF>.

²¹¹ Jordan 1, *supra* note 3, art. 3 at 7-8.

resources. Finally, the OSCE Action Plan was designed to address the root causes of human trafficking.

In the eyes of the Plan's creators, modern laws combating human trafficking insufficiently address these root causes, and as a result, there are obstacles to preventing the problem.²¹² The OSCE acknowledges that the main responsibility for preventing and combating human trafficking rests with the participating countries. However, it is also recognized that regional and international cooperation is a fundamental requirement in dealing with this global phenomenon.²¹³

According to the OSCE Action Plan, transnational policies, as well as legislation, are needed to combat the global issue of human trafficking.²¹⁴ The OSCE Action Plan approaches human trafficking multi-dimensionally by covering the following issues: the protection of victims; the prevention of international human trafficking; and the prosecution of those who facilitate or commit such crimes.²¹⁵ In addition, the OSCE Action Plan provides recommendations for member States to implement those policies on a national level as well.²¹⁶ These actions include implementing domestic law, domestic prevention, domestic protection, and domestic assistance.²¹⁷

The main goal of the OSCE Action Plan is to assist member States in their implementation of counter-trafficking policies.²¹⁸ In order to incorporate this goal, member States can address the OSCE's Platform for Co-operative Security ("PCS"). The aim of the PCS is, "[to create] a flexible coordinating framework to foster cooperation

²¹² See e.g., OSCE Action Plan, *supra* note 4.

²¹³ *Id.* at 2(e) – (j).

²¹⁴ *Id.* at 1.

²¹⁵ *Id.* at 1.

²¹⁶ *Id.* at 1.

²¹⁷ *Id.* at 1.

²¹⁸ Organization for Security and Co-operation in Europe, *Supplementary Human Dimension Meeting on Trafficking in Human Beings, Final Report*, HELSINKI MONITOR, Vienna, Jul. 19, 2000, no. 4, at 107.

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through which various organizations can reinforce one another drawing on their particular strengths.”²¹⁹

In further support of the OSCE Action Plan to Combat Human Trafficking, the PCS has assigned a Special Representative for this problem, former Austrian Cabinet member Dr. Helga Konrad.²²⁰ Through her contacts and meetings, Dr. Konrad works through the OSCE to assist member States and increase the national and international understanding of the trafficking phenomenon.²²¹ Despite the efforts of Dr. Konrad and the OSCE, it is important to emphasize that the OSCE Action Plan consists only of recommendations, and therefore is not legally binding on member States.²²²

As previously mentioned, the OSCE Action Plan includes recommendations on three levels.²²³ Although domestic law and prevention are important components of the fight against human trafficking, analysis of these components is beyond the scope of this paper.²²⁴ The next sub-section, however, focuses primarily on the recommendations of the OSCE as they pertain to the goals of providing better protection and assistance to human trafficking victims.

D. Recommendations of the OSCE Action Plan

With regard to the level of protection and assistance provided to victims of human trafficking, the OSCE Action Plan makes ten recommendations to member States for action at the national level.²²⁵

²¹⁹ Organization for Security and Co-operation in Europe, ISTANBUL DOCUMENT 1999, http://www.osce.org/documents/mcs/1999/11/4050_en.pdf. (last visited Mar. 18, 2006).

²²⁰ *Id.*

²²¹ *Id.*

²²² OSCE Action Plan, *supra* note 4, at 1-2.

²²³ Anti-Slavery International (ASI), NGOs Statement on Protection Measures for Trafficked Persons in Western Europe, 2003, at 2, <http://www.antislavery.org/homepage/resources/WetraffickingNGOstatement2003.pdf> (last visited Mar. 18, 2006).

²²⁴ European Commission, *EU action against trafficking in human beings and the sexual exploitation of children*, http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm. (last visited Mar. 18, 2006).

²²⁵ OSCE Action Plan, *supra see* note 4, at 1-2.

The most important of these recommended actions are listed as follows: *i) adopting national legislation, ii) combining efforts of law-enforcement bodies and other relevant civil society institutions, iii) providing shelter and social assistance, and iv) introducing a reflection delay during which a residence permit will be provided.*²²⁶

The first recommended action encourages member States to take legislative measures to adopt domestic laws that take into account the numerous dimensions of providing protection for, and assistance to, victims of human trafficking.²²⁷ This recommendation is vitally important to the extent that it directs the member States to enact legislation that extends government action beyond the realm of law enforcement. Unfortunately, it is often the case that States remain committed to tracing and prosecuting trafficking offenders, while neglecting their obligations to protect and assist victims.²²⁸

Trafficking in human beings is unquestionably a violation of human rights.²²⁹ Therefore, laws designed from a human rights perspective are essential in promoting the treatment of victims with respect and dignity.²³⁰ In addition, proper attention must be paid to establishing an effective legal basis for obtaining appropriate protection and assistance for victims, especially during subsequent pre-trial investigations and court proceedings.²³¹

Second, according to the OSCE, when member States adopt legal measures, the contemporaneous creation of a supervisory apparatus must also occur, which must be designed to oversee the cooperative efforts of the member State, civil society institutions, and the

²²⁶ *Id.*, at section V paragraphs (respectively) 2, 3.3, 4 and 6, and 8.

²²⁷ *Id.* at 13-14.

²²⁸ Ann D. Jordan, *Human Rights or Wrongs? The struggle for a rights-based response to trafficking in human beings*, 10(1) GENDER & DEV. 28, 33 (Mar. 2002) [hereinafter Jordan 2].

²²⁹ Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, *Trafficking in human beings: a new form of slavery*, European Women Lawyers Association Congress, Helsinki, June 7, 2003.

²³⁰ Global Alliance Against Traffic in Women, Foundation against Trafficking in Women & International Human Rights Law Group, *Human Rights Standards for the Treatment of Trafficked Persons*, 1999, at 3.

²³¹ OSCE Action Plan, *supra* note 4, at 13.

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other private actors.²³² In fact, the OSCE emphasizes that it is the responsibility of all committed actors combating the problem of human trafficking to monitor the implementation of these domestic counter-trafficking policies.²³³

Third, as denoted by the OSCE, meeting the direct needs of human trafficking victims requires a participating state to enact domestic measures that provide what is informally known as a “safe and secret shelter.”²³⁴ This term, “safe and secret shelter,” encompasses access for victims to independent advice, medical and psychological assistance, health care, and long-term educational opportunities and vocational re-training.²³⁵ Such measures may require that the native language of the victim be taken into account.²³⁶

It cannot be overstated that providing safe shelter and social assistance is significantly important for the victims of human trafficking.²³⁷ Victims live under extraordinary circumstances while being trafficked. The criminals responsible for such exploitation utilize a number of illicit tactics to maintain an environment of dominance over their victims. Such factors may include using the victim’s inability to speak the local language as a way to ensure their helplessness and the traffickers’ subsequent profitability.²³⁸ As a result, many victims experience an intense fear of their offenders and once separated, victims require adequate time and space in order to regain their senses, self-confidence, and strength.²³⁹ The provisions provided by the OSCE correspond with the important aspect of providing protection and assistance, in light of these harsh experiences.

²³² *Id.* at 14.

²³³ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*, 2004, 50-52. available at http://www.osce.org/documents/odihr/2004/05/2903_en.pdf.

²³⁴ OSCE Action Plan, *supra* note 4, at 14.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Florida State University Center for the Advancement of Human Rights, *FLORIDA RESPONDS TO HUMAN TRAFFICKING* 132-33 (Florida 2003).

The OSCE Action Plan recommends the introduction of a “reflection delay.”²⁴⁰ A reflection delay is a specified period of time during which the trafficking victim is provided with time to decide whether to make a statement or official report to the police.²⁴¹ During this period, which may include the criminal investigation and court proceedings, participating States may consider giving victims temporary or permanent residency status, while taking into account possible threats to the safety of victims who cooperate with authorities.²⁴²

E. Comparative Analysis of the Trafficking Protocol and the OSCE Action Plan

According to the Trafficking Protocol and the OSCE Action Plan, transnational policies and legislation are needed to fight the global traffic in human beings.²⁴³ Therefore both documents established an integral policy to cooperate and jointly combat all forms of human trafficking.²⁴⁴ Both documents are good initiatives; both endeavour to cooperate on the international level and combat human trafficking. Their contents are, for the greater part, in accordance with one another. However, some principal differences can be discerned.

First, the OSCE Action Plan only makes recommendations regarding actions taken by member States on a national level.²⁴⁵ These actions include the implementation of the OSCE Action Plan in domestic law, prevention of human trafficking, and the protection of and assistance to the victims of human trafficking.²⁴⁶ The Trafficking Protocol, on the other hand, is a legally binding mecha-

²⁴⁰ OSCE Action Plan, *supra* note 4, at 15.

²⁴¹ Anti-Slavery International (ASI), *NGOs Statement on Protection Measures for Trafficked Persons in Western Europe*, 2003, at 3, <http://www.antislavery.org/homepage/resources/WetraffickingNGOstatement2003.pdf>. (last visited Mar. 18, 2006).

²⁴² OSCE Action Plan, *supra* note 4, at 15-16.

²⁴³ *Id.* at 1-3.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 1

²⁴⁶ *Id.* at 2-17.

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nism.²⁴⁷ All the states that ratified the Trafficking Protocol must ensure that their national policies and practices are fully compliant with the Trafficking Protocol.²⁴⁸

Second, while ratifying a Convention or Protocol is legally binding upon States, practice shows that the Conventions or Protocols rarely have a monitoring or an implementing mechanism, for example, a committee that oversees the adopted legislation concerning human trafficking in participating States and another committee to which participating States must report. Human trafficking is a difficult issue to address on a national and an international level; a committee is necessary in order to effectively address the problem of human trafficking. The OSCE Action Plan, on the other hand, establishes its recommendations using the Trafficking Protocol; however, contrary to the Trafficking Protocol, the OSCE Action Plan appointed a Special Representative to assist and monitor the national policies of member States.²⁴⁹ Unfortunately, cooperation with this Special Representative is not compulsory, because the Office of the Special Representative is not a binding mechanism.²⁵⁰ The future will show whether the approach taken by the OSCE Action Plan is effective.

Third, although the OSCE Action Plan utilizes the content of the Trafficking Protocol, it supplements the Trafficking Protocol with more articles and sub-articles regarding the protection and assistance granted to the victims of human trafficking. In addition, the OSCE Action Plan describes its recommendations in more detail. For the most part, the OSCE Action Plans recommendations are recorded very clearly; however, because of its detailed descriptions, the OSCE Action Plan is, at times, repetitive. For example, the OSCE Action Plan mentions psychological assistance and the reflection delay twice in different paragraphs.²⁵¹ The result is superfluous

²⁴⁷ Bureau NRM, *supra* note 1, at 29.

²⁴⁸ Jordan 2, *supra* note 228, at 33.

²⁴⁹ Presidency Statement, on behalf of the EU, on the appointment of Ms. Helga Konrad as the OSCE Special Representative for Human Rights made in the Permanent Council of the OSCE, May 13, 2004, http://www.eu2004.ie/templates/news.asp?sNavlocator=66,402,404&list_id=74. (last visited Mar. 18, 2006).

²⁵⁰ OSCE Action Plan, *supra* note 4, at 1.

²⁵¹ *Id.* at 13-14.

text and confusion. The OSCE Action Plan could have avoided this by formulating their recommendations in a shorter, more concise way.

Fourth, the Trafficking Protocol has integrated measures intended to protect and assist victims of human trafficking by incorporating their internationally recognised human rights.²⁵² The provisions concerning the protection of and assistance to victims contain weak enforcement language,²⁵³ such as “in appropriate cases,” “to the extent possible” and “each State Party shall consider.”²⁵⁴ Most other provisions in the Trafficking Protocol contain strong mandatory language, such as “State Parties shall apply” or “shall adopt.”²⁵⁵ Despite its efforts to include human rights, the Trafficking Protocol remains a law enforcement, not a human rights instrument.²⁵⁶

Finally a comment on the OSCE Action Plan and the Trafficking Protocol with regard to the protection of human trafficking victims.²⁵⁷ Both documents recommend that participating States provide to victims, in appropriate cases, with a permanent residence permit, or with the possibility to apply for asylum.²⁵⁸ This is not a realistic measure because in many countries victims can apply for asylum, but only on political, or, in some cases, on humanitarian grounds.²⁵⁹ Hardly anybody from amongst the victims of human trafficking can be granted asylum on these grounds.²⁶⁰ Legislation

²⁵² Jordan 1, *supra* note 3, at 2-3.

²⁵³ Anne Gallagher, *Trafficking, Smuggling and Human Rights: Tricks and Treaties*, 12 FORCED MIGRATION REV. 25, 27 (2002).

²⁵⁴ Jordan 1, *supra* note 3, at 19-20; *See also* J. Brown, *Global Human Trafficking: An International Human Rights or Law Enforcement Struggle?*, Centre d'Études sur le Droit International et la Mondialisation, 2004, at 10-11, available at <http://www.cedim.uqam.ca/articles/Trafficking-Brown.pdf>.

²⁵⁵ Jordan 1, *supra* note 3, at 14 (law enforcement provisions throughout the Trafficking Protocol are mandatory (“shall adopt”).

²⁵⁶ *Id.* at 2; *see also* Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 990, 991 (2001).

²⁵⁷ Trafficking Protocol, *supra* note 2, at 3-5; *see also* OSCE Action Plan, *supra* note 4, at 13-14.

²⁵⁸ *Id.*; *see also* OSCE Action Plan, *supra* note 4, at 15-16.

²⁵⁹ Pearson, *supra* note 79, at 73.

²⁶⁰ *Id.*

needs to be changed dramatically before asylum is reliably granted to victims of human trafficking.

*F. New Developments in the European Framework
on Counter-Trafficking*

The Council of Europe²⁶¹ has developed a treaty that is called the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.²⁶² This treaty was signed on May 16, 2005, and will enter into force upon ten (10) signatory states expressing their consent to be bound.²⁶³ For the development of the European Convention, the Council of Europe took the Trafficking Protocol and other international legal instruments relevant to counter-trafficking into account.²⁶⁴ With this new convention, the Council of Europe “seeks to strengthen the protection afforded by those instruments and to raise the standards which they lay down.”²⁶⁵ In addition, its main goal is to comprehensively enhance the protection of and the respect towards the human rights and human dignity of trafficked persons, guaranteeing, inter alia, gender-sensitiveness.²⁶⁶

Like the Trafficking Protocol, the European Convention is a legally binding instrument. With regard to the protection of and assistance to human trafficking victims, the European Convention has integrated, among others, the following additional measures: the au-

²⁶¹ The Council of Europe is an intergovernmental organization that was founded to “defend human rights, parliamentary democracy and the rule of law.” See Draft European Convention against Trafficking in Human Beings, News Release Issued by the International Secretariat of Amnesty International, Sept. 27, 2004, <http://www.socialrights.org/spip/article768.html>. (last visited Mar. 18, 2006).

²⁶² Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series no. 197, Warsaw, May 16, 2005, at 1 and 7, <http://www.coe.int/trafficking> (last visited Mar. 19, 2006).

²⁶³ Art. 42(3).

²⁶⁴ *Id.* at 27.

²⁶⁵ *Id.* at 27.

²⁶⁶ *Id.* at 7, 28. See also *Draft European Convention against Trafficking in Human Beings*, International Secretariat of Amnesty International, Sept. 27, 2004, <http://www.socialrights.org/spip/article768.html> (last visited Feb. 23, 2006).

thorization of victims to have access to the labor market and education;²⁶⁷ unconditional assistance to possible victims of human trafficking whether a victim is willing to act as a witness;²⁶⁸ providing a recovery and reflection period for all possible human trafficking victims that endures at least one month;²⁶⁹ and issuing a renewable residence permit.²⁷⁰

With regard to this last mentioned measure, the European Convention states that residence permits should be issued in one or both of the following situations: first, during investigation or criminal proceedings, a measure that already exists;²⁷¹ or when “the competent authority considers that their stay is necessary owing to their personal situation,” a new measure.²⁷² Both measures are very important with regard to the protection of human trafficking victims. Unfortunately, it remains questionable as to whether they are of added value, because of the use of the word “considers.” Through the use of this word, the responsibility for granting (temporary) residence permits to human trafficking victims still rests in the hands of national governments and their policies. For the benefit of human trafficking victims, each government should promise that each personal situation of human trafficking victims will be examined thoroughly. Based upon each personal situation a decision should be made whether to grant (temporary) residence permits.

In general, the European Convention contains stronger mandatory language compared to other international legal counter-trafficking instruments. This language is beneficial. So far, twenty-six (26) European States have signed the European Convention.²⁷³ However, none of the signatures has yet been followed by ratifica-

²⁶⁷ *Council of Europe Convention on Action Against Trafficking in Human Beings & Explanatory Note*, art. 12.4, <http://www.conventions.coe.int> (last visited Feb. 15, 2006).

²⁶⁸ *Id.* art. 12.6.

²⁶⁹ *Id.* art. 13.1.

²⁷⁰ *Id.* art. 14.1.

²⁷¹ *Id.* art. 14.1.B.

²⁷² *Id.* art. 14.1.A.

²⁷³ See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=4/13/2006&CL=ENG> (last visited Apr. 13, 2006).

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tion.²⁷⁴ The Netherlands signed the Convention on November 17, 2005.²⁷⁵ The future will show whether this new European Convention contributes to the protection, assistance, and respect towards the human rights and human dignity of human trafficking victims. The European Convention is another step in the right direction, providing more balance between matters concerning human rights and prosecution. However, there is a long road ahead.

V. Comparison of Dutch Law with the UN Trafficking Protocol and the OSCE Action Plan

The Trafficking Protocol and the OSCE Action Plan have framed, respectively, legal enforcements procedures and recommendations that would provide assistance and protection to victims of human trafficking on a national level in an effort to establish an integrated international approach for fighting human trafficking.²⁷⁶ This section discusses the extent that the policy on human trafficking regarding the assistance and protection of the victims in the Netherlands is or is not in accordance with the frameworks of the Trafficking Protocol and the OSCE Action Plan.

As stated above, in the Netherlands human trafficking legislation was strictly limited to exploitation of victims in the sex industry, an offence established first by Article 250 (a) of the Dutch Criminal Code (DCC).²⁷⁷ Yet, the Dutch government has accepted the Trafficking Protocol and thus is bound by its objectives and provisions.²⁷⁸ In pursuance of its signature, the Dutch government has conformed its domestic law to the provisions of the Trafficking Protocol in order to ratify the Trafficking Protocol.²⁷⁹ The result is the recently adopted Article 273(a), which encompasses all forms of

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ OSCE Action Plan, *supra* note 4, at 13; *see also, e.g.*, Trafficking Protocol, *supra* note 2.

²⁷⁷ Dutch Criminal Code, Art. 250(a), http://www.osce.org/documents/odihr/2002/09/1745_en.pdf. (last visited Mar. 18, 2006).

²⁷⁸ Trafficking Protocol, *supra* note 2.

²⁷⁹ Korvinus, *supra* note 52, at 2-3.

human trafficking such as forced labour, slavery, and servitude.²⁸⁰ Nevertheless, despite these adjustments, the aim of the law remains focused on tracing and prosecuting the offenders without adequately taking the rights of the victims into consideration.

As mentioned in Part I section D, the Dutch government has introduced the B9 regulation, which enumerates the basic rights of victims of human trafficking. This regulation provides victims with temporary residency permits, protection, and assistance.²⁸¹ With this regulation, the Netherlands already complies with some of the recommendations and requirements of the OSCE Action Plan and the Trafficking Protocol in that it provides victims with safe shelter, medical and psychological assistance, and health care, and provides information with regard to the victims' legal rights.²⁸² This regulation, however, did not undergo any changes with the new Article 273(a). Nevertheless, there should be consideration of several shortcomings in the regulation.

First, most of the victims are sheltered in places where they are unfamiliar with the environment or far from any people close to them. Further, the victims only receive a small allowance for living expenses, which acts as a financial barrier preventing the victims from pursuing educational opportunities open to the public or traveling to see people close to them. This means that the victims do not have any concrete daily activities.²⁸³ These policies can deter victims from making a statement or filing a report with the police, taking into consideration that the average time needed for an investigation and prosecution varies between two months and two years.²⁸⁴ In the worst case scenario, the victims cannot continue to live the impoverish lifestyle provided by the regulation and they disappear.²⁸⁵

²⁸⁰ Dutch Criminal Code, Art. 273(a) *available at* www.europol.eu.int/publications/Other/Reports%202005/IIS%20and%20THB%20legislation%20ANNEX%20I%20Public.pdf. (last visited Mar. 18, 2006).

²⁸¹ Bureau NRM, *supra* note 1, at 24; Pearson, *supra* note 79, at 66.

²⁸² OSCE Action Plan, *supra* note 4, at 13-17; *see also* Trafficking Protocol, *supra* note 2, at 3-5.

²⁸³ Bureau NRM, *supra* note 1, at 132.

²⁸⁴ Interview 1, *supra* note 58.

²⁸⁵ *Id.*

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The victim's disappearance presents significant negative consequences for the investigation and court proceedings.

Another shortcoming recently has been adjusted to allow human trafficking victims with a B9 status to work and/or study.²⁸⁶ This is an important step in fighting human trafficking. This measure will hopefully assist in breaking the cycle of human trafficking by educating victims as to other paths their life may take, and thus prevent the victim from returning to prostitution or getting re-trafficked. It would provide the victims with some degree or skills, and thereby, would facilitate their reintegration into their home country and provide the victim with an alternative to the "loverboys" in the future by helping them find a job. Education of vulnerable persons is an important step in combating human trafficking.²⁸⁷

Second, during court proceedings a majority of the victims are not protected from meeting face to face with their captors.²⁸⁸ Only extremely detailed statements or reports of victims may be used as written statements so that victims do not need to appear in court.²⁸⁹ Ensuring that victims are not summoned into court not only benefits the physical and mental health of victims, but also benefits the court proceedings.²⁹⁰ If the police could guarantee all the victims, in advance, that they would not be compelled to testify in court, then the number of victims willing to make a statement or file a report may increase.

Third, the victims of human trafficking in the Netherlands have the right to a reflection delay, and should they decide to make a statement or report to the police, within or after this three-month period, they would receive assistance and protection for as long as the investigation and the court proceedings last.²⁹¹ In addition, the vic-

²⁸⁶ *Programme Bonded Labour in Nederland*, <http://www.blinn.nl> (last visited Mar. 18, 2006).

²⁸⁷ Interview 1, *supra* note 58.

²⁸⁸ Pearson, *supra* note 79, at 75.

²⁸⁹ Interview 1, *supra* note 58.

²⁹⁰ *Id.*

²⁹¹ Bureau NRM, *supra* note 1, at 24-25; *see also* Pearson, *supra* note 79, at 66-67.

tims are entitled to a temporary residency permit.²⁹² However, as soon as a verdict is passed, their case is closed and they are obligated to return to their home country.²⁹³ It hardly ever happens that a victim receives a permanent residency permit, even when the victims' health and safety may be endangered when returning home.

The Dutch government needs to reconsider the possibility of providing permanent residency permits to victims, on a case-by-case basis, taking into account factors that may endanger the safety of a victim. Having a slim chance of remaining in the Netherlands could also increase the victim's willingness to make a statement or file a report with the police.

Presently, a visible gap exists between the numbers of victims registered annually with the STV and the number of victims who actually make a statement or file a report with the police.²⁹⁴ This is an obstacle to combating human trafficking in the Netherlands. In order to effectively address human trafficking, this procedural hurdle must be removed. If the Dutch policy of protecting and assisting victims of human trafficking offers nothing more than temporary residency, and eventually guaranteed deportation in exchange for the victims court testimony, the victims' willingness to make a statement or file a report with police will remain low. Without statements or formal reports, the police and the Public Prosecutor cannot effectively catch and prosecute human traffickers. Therefore, it is extremely important that Dutch authorities give more weight and consideration to a victim's situation before making.

While the Dutch government acknowledges that human trafficking is a serious problem in the Netherlands, the government is a long way off from improving its policy to effectively address the issue. There is much work still to be done. If the Dutch government legitimately wishes to combat human trafficking in the Netherlands, they must strike a better balance between focusing on investigation and prosecution and protecting and assisting the victims.

²⁹² *Id.* at 25; *see also* Pearson, *supra* note 79, at 67.

²⁹³ *Id.* at 74-75.

²⁹⁴ *Id.* at 98; *see also* STV, *supra* note 25, at 12.

Finally, the Trafficking Protocol is primarily a law enforcement tool.²⁹⁵ Its use of weak enforcement language in the provisions addressing the protection and the assistance of victims is not representative of the importance of enforcing human rights and is a primary cause of the difficulties encountered in domestic forums. States should not blindly adopt the weak language of the Trafficking Protocol when writing and enacting domestic human trafficking policies. Each State should decide for itself what enforcement language to use in its domestic laws. However, whatever language a State chooses to use, it should be not use weaker language than the one used in the Trafficking Protocol. The Trafficking Protocol should be viewed, internationally, as the lowest acceptable standard a State may take when combating human trafficking.

V. Conclusion and Recommendations

A. Conclusion

While tracing and prosecuting human traffickers is essential,²⁹⁶ addressing the entire victim protection and assistance cycle is key to the solution of the problem. So long as the Dutch human trafficking policy remains as it is now, victims will remain reluctant to make a statement or file a report with police. Without providing a victim with high quality protection and assistance, only the tip of the human trafficking iceberg will become visible. In order to effectively combating human trafficking in the Netherlands, the Dutch government must seriously consider adjusting its existing policy regarding the protection of and assistance provided to victims of human trafficking.

There is no quick or easy solution to this problem. However, counter-trafficking efforts taken to combat human trafficking will not be effective without a holistic, interdisciplinary, and long-term approach. This approach must address all aspects of the human trafficking problem. Human trafficking is a complex issue that spans the scope of international and national law and clearly establishes that

²⁹⁵ *Id.* at 29; *see also* Jordan 1, *supra* note 3, at 2.

²⁹⁶ *Id.* at 24; *see also* Pearson, *supra* note 79, at 66.

human rights law is not limited to the international arena.²⁹⁷ Human rights should serve as the foundation and reference point for all efforts taken to combat human trafficking.

B. Recommendations

The Dutch government should provide human trafficking victims who are enrolled in the B9 regulation the right to seek work or to pursue an education.²⁹⁸ This will help them find a job after the Dutch government deports them back to their home country. It is also an important measure that will assist in breaking the cycle of human trafficking by educating victims of other paths their life may take, and thus prevent the victim from returning to prostitution or getting re-trafficked. Furthermore, offering victims work and educational opportunities would increase their willingness to make a statement or file a report with police, and may even overcome the victims' fear of testifying in court and facing the person who enslaved them. Now it is essential that the government provide information, assistance and opportunities for the victims in order to really find adequate work or get educated.²⁹⁹

The Dutch government must increase the protection mechanisms for victims by finding alternative ways for victims to testify in court. If a victim is credibly guaranteed that they will not be summoned to court, the victim's physical and mental health will benefit greatly. In addition, this guarantees that the Dutch government, courts, prosecutors, and law enforcement will benefit from the victims willingness to make a statement, file a report, and eventually see their traffickers fully punished.

The Dutch government must consider, on case-by-case basis, the value of providing permanent residency permits to victims of human trafficking where a victim's safety is potentially endangered if they are returned to their country of origin. This is not only in the best interests of victims, whose safety may be in endangered, it will also positively influence the fight against human trafficking, primar-

²⁹⁷ *Id.* at 127, 130; *see also* Jordan 1, *supra* note 3, at 2-3.

²⁹⁸ *Id.* at 132.

²⁹⁹ National Action Plan 2004, *supra* note 70, at 23.

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ily because the number of victims that will be willing to make a statement or file a police report will increase.

Effectively combating human trafficking in the Netherlands also requires the police to change their priorities in a manner that would increase their capacity to manage human trafficking cases. The best solution is creating permanent Regional Prostitution Control Teams in every regional police corps.

The police must focus on learning how to pick up signals of and how to deal with human trafficking cases by making courses on “Prostitution and Human Trafficking” obligatory for all police officers who work in this field. This will contribute to a higher awareness of human trafficking among police officers and to a more uniform approach by Dutch law enforcement agencies responsible for combating human trafficking throughout the country.³⁰⁰

Dutch privacy laws must be changed in order to allow relevant assistance organizations and institutions to provide the RPCT with valuable information that is essential for human trafficking investigations. Police frequently waste valuable time and limited resources researching for needed information, usually unavailable to them, that other organizations and institutions already have and would willingly give to the police.³⁰¹ The Dutch government must consider adjusting its privacy laws so that police are allowed to utilize these resources to gain access the information yet not available to them.

Finally, the Dutch government must, on behalf of the victims, appropriate more money to the assistance organizations and institutions that are actively offering adequate protection and assistance to victims of human trafficking.³⁰² This will allow these organizations and institutions to maintain and improve the assistance they provide, and positively influence the victim’s decisions during the investigation and prosecution process.

³⁰⁰ Bureau NRM, *supra* note 1, at 130,136.

³⁰¹ Interview 1, *supra* note 58.

³⁰² Bureau NRM, *supra* note 1, at 135.