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Thematic Study on Child Trafficking

Rick Lawson
Tom Barkhuysen, Janneke Gerards,
Maarten den Heijer, Rikki Holtmaat
and Nelleke Koffeman

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Executive Summary

- [1]. Discussions on child trafficking often tend to focus on ‘cross-border situations’, whereby victims are transferred from one country to another. It is however important to realise that child trafficking may also have a ‘purely internal dimension’. In the Netherlands this internal dimension primarily concerns the so-called ‘loverboys’; pimps who use seduction techniques to draw – mostly minor – girls into prostitution. Under Dutch law loverboys are classified as human traffickers if their victims are minors.

General anti-child trafficking framework

- [2]. The Netherlands is a party to most of the international instruments that are relevant in the area of child trafficking. Since the Netherlands’ constitutional system departs from a relatively ‘monist theory’ of international law, most international guarantees binding upon the Netherlands automatically and directly filter into the national legal system.
- [3]. The central provision on trafficking in human beings in domestic law is Article 273f Penal Code. This Article envisages the criminalisation of excessive abuse of individuals in an employment or service provision relationship, as well as criminalisation of all conduct amounting to putting anyone into such a position. If a minor is exploited a maximum sentence of 8 years imprisonment or a fine of 74,000 euros can be imposed. A policy of non-criminalisation of child victims of trafficking is pursued in the Netherlands.
- [4]. Since 2004, the *National Action Plan against Trafficking in Human Beings: additional government measures on combating trafficking in human beings in the Netherlands* is in force. In 2006 this Action Plan was supplemented with an addendum on child trafficking, which contains measures related to the identification, repatriation and safety of victims, training of stakeholders and the creation of a National Information Centre on Youth Prostitution.
- [5]. On the basis of an *Instruction for the public prosecutors’ service and the police on investigating trafficking in human beings* (in force since 2006), cases of child trafficking have absolute priority for police and prosecution services.
- [6]. On 1 April 2000 a National Rapporteur on Trafficking in Human Beings was appointed for the first time. The Rapporteur’s main task is

to independently report to the Dutch government on the nature and extent of human trafficking in the Netherlands, and on the effects of the anti-trafficking policy pursued.

- [7]. Several institutions collect and exchange data on child trafficking, namely: (a) the Dutch Coordination Centre on Trafficking in Human Beings (*Comensha*), financed by the Ministry of Health, which coordinates the collection and registration of data of (possible) victims of trafficking; (b) the National Expertise Centre on Youth Prostitution, financed by the Ministries of Justice and Health, which is an information desk, where research, data collection, good practices and policy development are brought together and (c) the National Expertise Centre on Human Trafficking and Migrant Smuggling, set up by the Dutch National Investigation Service, where information and best practices against human trafficking and migrant smuggling are collected and made available to investigation services.

Prevention of child trafficking

- [8]. Various campaigns to raise awareness of trafficking in human beings are initiated by Dutch NGO's, frequently with financial support from a Ministry like the Ministry of Health, Welfare and Sport. Some of these campaigns are directed at raising awareness of the issue in general, others focus on the adult clients of child prostitution. In particular a considerable number of (state funded) campaigns are aimed at raising awareness among minors of the problem of loverboys, e.g. by means of making interactive teaching materials available at schools.
- [9]. The Dutch government has developed several policies to prevent that vulnerable children become a victim of child trafficking. Examples are (a) the quick appointment of a legal guardian to unaccompanied minor asylum seekers, (b) policies to prevent unaccompanied minor asylum seekers from disappearing from asylum seekers' centres, and (c) the pilot *Snelle Actie Teams* [Quick Action Teams] which aims at preventing possible victims of trafficking from travelling from Nigeria to the Netherlands by airplane.

Appointment of legal guardian

- [10]. Under Dutch law, the *Nidos* Foundation appoints a legal guardian to any unaccompanied minor entering the Netherlands, including children identified as being a victim of trafficking. The legal guardian coordinates all the different aspects involved in the development of

the child: shelter and housing, education, police protection and legal representation.

Coordination and cooperation

- [11]. On 27 February 2008 a national Task Force against trafficking in human beings was established in order to provide a new stimulus in the fight against human trafficking, focusing not only on tackling and punishing traffickers but also introducing permanent deterrents to human trafficking. The Task Force is chaired by the Public Prosecution Service and consists of the National Rapporteur on Trafficking in Human Beings, as well as representatives of several Ministries, the police, local authorities and the judiciary. The Task Force will maintain close contact with NGO's in the field.
- [12]. The Netherlands actively cooperates with countries outside and within the European Union in the fight against trafficking in human beings, e.g. through Twinning programmes, the European Union's STOP II programme, the AGIS Programme and Daphne II.

Care and protection

- [13]. Under the so-called B-9 Regulation (Chapter B-9 of the Aliens Circular), foreign nationals (adults and minors) who are or might be victims or witnesses of trafficking in human beings are entitled to a reflection period of maximum three months. If the reflection period results in a report to the police or cooperation with the police and prosecution service, this is *ex officio* accepted as an application for a temporary residence permit. This permit is granted for a duration of one year and can be annually renewed. It is valid as long as the process of investigation and prosecution lasts and ends in principle when this process has been terminated.
- [14]. After termination of the temporary residence permit under the B-9 Regulation, the victim or witness of (child) trafficking may apply for a continued residence permit on the basis of the so-called B-16 regulation (Chapter B-16 of the Aliens Circular). If no other ground for refusal of the permit is applicable, the permit will be granted if (a) information on trafficking provided by a victim ultimately results in conviction of the suspect in relation to that trafficking or (b) if at the time of the judgment (whether a conviction or not) the victim or witness who did cooperate with investigation and prosecution has been legally residing in the Netherlands on the basis of a temporary B-9 residence permit, for a period of three year, or (c)

if three years have passed since the temporary B-9 residence permit was awarded and the case is still pending before a criminal court.

- [15]. Even if the results of the criminal proceedings do not constitute a ground for an application for continued residence, victims (not witnesses) of trafficking may apply for continued residence on humanitarian grounds. This application will only be approved if it cannot be required that the alien leaves the Netherlands because of special individual circumstances.
- [16]. Several possibilities for sheltering of (possible) victims of child trafficking exist. The *Nidos* Foundation places unaccompanied minors either in foster families (under 12 years old), in small-scale reception units (12 to 15 years old), or in large scale shelters (15 to 18 years old). Unaccompanied minor aliens who belong to a group that is considered to be at high risk of becoming a victim of trafficking (presently Nigerian girls and Indian boys), are placed in so-called '*besloten opvang*' [enclosed care institutions]. Child victims of loverboys of 16 years and older can be placed in 24-hour shelter at women's shelter *Asja*. This shelter, of which the exact location is secret, offers accommodation for a maximum of ten girls from 16 to 23 years old. In addition, a child that needs protection against him- or herself, or against others – including child victims of loverboys – can be placed in a designated closed care institution, in which different levels of freedom restricting measures can be imposed. Authorisation of the juvenile court is required for such placement .
- [17]. Under Dutch law *unlawfully* residing minor aliens are entitled to education, medically necessary care, medical care that may prevent situations that would jeopardize public health, youth care and legal assistance. Lawfully resident child victims of trafficking are furthermore entitled to health insurance and regular medical care; accommodation and housing benefits; employment; and legal assistance.

Best interests determination and durable solutions, including social inclusion/return

- [18]. Under the B-9 Regulation and the B-16 Regulation, all (child) victims of trafficking who cooperate with the police or prosecution are entitled to legal residence. Should it nevertheless occur that a child victim of trafficking returns to his/her country of origin, the Immigration and Naturalisation Service has to ensure that in this repatriation process the best interests of the child are safeguarded.

- [19]. In their integration in Dutch society, victims of trafficking in human beings are usually supported by NGO's which often receive financial funding for specific projects from relevant Ministries. The foundation *BLinN* for example has initiated buddy projects, in which a victim of trafficking is matched to a Dutch person of the same age with whom he/she may undertake enjoyable activities.

Prosecution

- [20]. The *Aanwijzing Mensenhandel* [Instruction Trafficking in Human Beings] contains provisions on child-sensitive procedures in court in cases of trafficking in human beings. For example, the Instruction stipulates that child victims may be heard without the suspect being present.
- [21]. Various ways exist in which (child) victims of trafficking can obtain compensation. This may concern damages – for example resulting from loss of property, medical costs or loss of income – and emotional injury, for example damages for pain and suffering. Victims may receive compensation either from the perpetrator or from a government indemnity payment.

Miscellaneous

- [22]. Two issues regarding child trafficking are currently under debate. Firstly, the Ministry of Health, Welfare and Sport and the Ministry of Justice are working on the development of new shelter possibilities, the so-called *categorale opvang* [categorical shelter] for (minor) victims of trafficking during the first three months after they have been identified as a (possible) victim. The second issue concerns the critique that thus far hardly any impact assessment or effect studies concerning the Dutch fight against trafficking in human beings as laid down in legislation and policy documents have been carried out.

Good practice

- [23]. Dutch legislation and policy on the fight against trafficking in human beings show several *good practices*: (a) the appointment of the National Rapporteur on Trafficking in Human beings and the establishment of the supporting Bureau (BNRM); (b) the registration of data of (possible) victims of trafficking in human beings by *Comensha* and the Expertise Centre for Youth Prostitution; (c) the

Dutch policy on protection and fight against loverboys; (d) the contribution of Dutch NGO's to raising awareness of child trafficking, developing policies to fight child trafficking and providing sufficient care for child victims; (e) the so-called '*ketenaanpak*', the fact that all relevant actors (such as police and prosecution offers, care providers and legal guardians) cooperate intensively in the fight against trafficking in human beings.

A. General anti-child trafficking framework

A.1. Ratification of international legal instruments

The Netherlands is a party to most of the international instruments that are relevant in the area of child trafficking:

- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) ratified on 23 August 2005.
- UN Convention against transnational organised crime ratified on 26 May 2004.
- Palermo Protocol to prevent, suppress and punish trafficking in persons (2000) ratified on 27 July 2005.
- ILO Convention Nr. 182 on the worst forms of child labour (1999), ratified on 14 February 2002.
- CoE Convention on Action against trafficking in human beings (2005), signed on 17 November 2005.¹
- CoE Convention on the protection of children against sexual exploitation and sexual abuse (2007), signed on 25 October 2007.²

¹ The bill for the Act approving the Convention is pending in the Dutch Lower Chamber of the States-General since 17 April 2008. *Parliamentary Documents of the Dutch Lower Chamber of the States-General, 2007-2008*, no. 31429, online at www.overheid.nl.

² The bill for the Act approving the Convention will be on the agenda of the Council of Ministers by the end of August 2008. Information obtained from a representative of the Ministry of Foreign Affairs.

A.2. Dutch Anti Trafficking Law

A.2.1. Scope of the Dutch criminal law on (child) trafficking

- [24]. On 1 January 2005 a new Article 273f³ replaced the previous Article 250a *Wetboek van Strafrecht* [Penal Code], with the purpose to implement UN and EU legislation, in anticipation of the (proposed) ratification and implementation of these documents in Dutch legislation.⁴ In essence, Article 273f Penal Code envisages the criminalisation of excessive abuse of individuals in an employment or service provision relationship, along with all conduct amounting to putting anyone into such a position. The offence of trafficking in human beings also encompasses profiting from such circumstances and forcing someone to surrender income from sex work or from the removal of organs.⁵ The Article does not cover *all* wrongs in an employment or service provision relationship; only insofar as there is *excessive* abuse this provision is applicable.⁶
- [25]. In her 2007 Annual report the Dutch National Rapporteur on trafficking in human beings (who will be introduced in section A.4.1. below) stated: ‘When assessing whether or not there has been excessive abuse, the determining factors are the circumstances in which the victim finds himself or herself, and under which he or she is

³ First the new article was numbered 273a Penal Code, but by law of 1 September 2006, the article was renumbered without any substantive alteration to the text, to Article 273f. For an English translation of Article 273f, see Annex 3.

⁴ The final date for implementation of the EU Council’s Framework Decision on combating trafficking in human beings of 31 July 2004 was not achieved since Article 273a Penal Code entered into force on 1 January 2005. However, from the Annex to the Report from the Commission to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings ((SEC(2006) 525 (Brussels 02.05.2006)), one may conclude that with the new Article 273f, the Framework Decision was implemented. The same goes for the Council Framework Decision on combating the sexual exploitation of children and child pornography which was even implemented in time (final date for implementation was 20 January 2006). See also Fifth report of the National Rapporteur on Trafficking in Human Beings, The Hague, 2007, p. 10 of the English version and pp. 17-18 of the Dutch version, online at www.bnrm.nl.

⁵ Thereby the new provision entails a significant extension of the conduct criminalised as trafficking, as the old provision criminalised sexual exploitation only.

See Fifth report of the National Rapporteur on Trafficking in Human Beings (*English version*), The Hague, 2007, p. 12, online at www.bnrm.nl.

⁶ Other wrongdoings are covered by other legal provisions but as such do not constitute trafficking.

put to work. The nature of the forced work is also relevant. In light of international legislation, it is important whether the fundamental human rights of the victim have been violated (or are under threat of violation) by the conduct in question. If that is the case, then there is excessive abuse which can be classified as exploitation within the meaning of trafficking in human beings.⁷ According to the National Rapporteur the nature of forced work in the sex industry means that exploitation comes about readily, since physical integrity is at stake by definition. The same applies to forced organ removal.⁸

- [26]. Article 248b of the Penal Code penalises the clients of children between the ages of 16 and 18 who are exploited in prostitution (for the sentences that may be imposed see section A.2.1.1). The criminalisation of child prostitution, in combination with the quote of the National Rapporteur given above, allows for the tentative conclusion to be drawn that child prostitution by definition constitutes excessive abuse within the meaning of article 273f Penal Code. The same conclusion can be drawn as regards forced organ removal from children.
- [27]. As regards exploitation in other sectors, the Rapporteur has stated that a more detailed definition of ‘exploitation’ (or ‘excessive abuse’) is required.⁹ According to the Rapporteur, ‘in order to describe a situation as excessive, there has to be at least an obvious excess or an accumulation of lesser wrongs, such as underpayment, irregular payment, long working hours, being forced to work under a different identity, confiscation of a passport, or threats of dismissal if the person fails to do what he/she is told to do. Factors such as gravity, duration, scope and the economic benefit obtained also play a part here. The single or cumulative excess should, in principle, be considered objectively; according to the current standards of Dutch society and the Dutch legal system. Fundamental human rights again play a central part here. To be classified as exploitation, the determining factor is not therefore whether the victim regards himself or herself as having been exploited; though the victim’s subjective experience may play a part in assessing whether he or she could have escaped from the exploitative situation.’¹⁰

⁷ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 14, online at www.bnrm.nl.

⁸ *Idem*, p. 13.

⁹ *Idem*, p. 13.

¹⁰ *Idem*, p. 13.

- [28]. Although criminalised, illegal adoption as such is not classified as trafficking under Dutch law, except if the adoption is carried out for the very purpose of exploitation.¹¹
- [29]. Forced marriages may not necessarily be concluded with a view to exploitation. However, if there is payment of a consideration in money or in kind, it may be regarded as a practice akin to slavery in the UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. As slavery is one of the forms of exploitation specified in Article 273f, paragraph 2, forced marriages may be considered trafficking under Dutch law too.¹²

A.2.1.1. Sentencing

- [30]. The sentence for trafficking without any aggravating circumstances is set at a maximum of 6 years' imprisonment or a fine of 74 000 euros. However, if any form of trafficking is 'committed in relation to a victim below the age of 16', this is seen as an aggravating circumstance and the sentence may reach a maximum of 8 years' imprisonment. This implies that when the victim is between 16 and 18 years old, the maximum sentence is still 6 years' imprisonment.¹³ This may only be different if another aggravating circumstance such as 'committed in association'; 'resulting in serious bodily harm'; 'threatening the life of another person' or 'resulting in death' applies.¹⁴ In these circumstances the maximum sentence may amount to 8, 12, respectively 15 years' imprisonment. If trafficking is

¹¹ Illegal adoption concerns the situation in which a child is adopted, or offered for adoption, outside official channels. The rules on international adoption are included in the *Wet opnemng buitenlandse kinderen ter adoptie* [Act on the Placement in the Netherlands of Foreign Children with a View to Adoption]. This Act criminalises any adoption that is not in accordance with the current rules and procedures. It only constitutes trafficking if a child is adopted with the intent of exploiting that child. See Fifth Report BNRM, p. 10 and Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 4. See www.kinderrechten.nl.

¹² Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 11, online at www.bnrm.nl.

¹³ The Kinderrechtencollectief and ECPAT International are of the opinion that the increased penalty should also be applicable to cases concerning the exploitation of minors aged sixteen and seventeen. ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. The Netherlands*, 2006, p.22. See www.ecpat.net ; Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 4. See www.kinderrechten.nl.

¹⁴ Article 273f par. 3-5 Penal Code.

committed in relation to a victim below the age of 16 *and* in association, the sentence adds up to 10 years' imprisonment. Although the length in years of the imprisonment may differ for all the trafficking crimes, irrespective of possible applicable aggravating circumstances, the alternative maximum fine is 74 000 euros.

- [31]. Article 273f Penal Code specifies that Article 251 Penal Code is to apply *mutatis mutandis*. On the basis of these combined articles the court may deprive individuals of certain rights – for instance the right to hold a public office or to join armed forces – and stop them from exercising certain professions in case of conviction for trafficking of human beings.

A.2.2. Direct applicability of international standards

- [32]. Since the Netherlands' constitutional system adheres to a relatively 'monist theory' of international law, most international guarantees binding upon the Netherlands automatically filter into the national legal system.¹⁵ In case of a conflict between a norm of domestic law and a directly applicable rule of international law, the latter will prevail. In practice the Dutch courts apply international standards – especially the European Convention of Human Rights (ECHR) – very frequently.

A.2.3. The internal dimension of trafficking: Loverboy issues

- [33]. Although discussions on child trafficking often tend to focus on 'cross-border situations', whereby victims are transferred from one country to another, it is important to realise that child trafficking may have a 'purely internal dimension' as well. In the Netherlands this internal dimension concerns primarily the so-called 'loverboys'; pimps who use seduction techniques to draw girls into prostitution. Most victims are minors. If these 'loverboys' draw minors into prostitution, they are classified under Dutch law as human traffickers.¹⁶ Although pursuant to the 2002 Act *Lifting the Restriction on Brothels*, the way has been cleared for running prostitution as a legal business, the prostitution of minors has been made explicitly illegal, both for

¹⁵ Articles 93 and 94 of the *Grondwet* [Dutch Constitution].

¹⁶ Article 273f Penal Code. See also Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.67, online at www.bnrm.nl.

those who exploit the minors, and for the clients of children exploited in prostitution.¹⁷

- [34]. The ‘loverboys’ phenomenon is primarily tackled at the local level.¹⁸ The National Rapporteur of Trafficking in Human Beings – who will be introduced in section A.4.1. below – indicates in her annual report of 2007 that ‘various municipal authorities now have juvenile prostitution projects and plans of approach to address the loverboy problem. Generally speaking these sorts of projects combine a reporting centre for loverboy problems with arrangements for an integrated and systematic approach, with the aim of preventing minors from being drawn into prostitution (e.g. as loverboy victims), preventing boys from becoming loverboys, providing adequate reception and assistance for victims and investigating and prosecuting suspects. In addition to local authorities, the participating organisations usually include Juvenile Care Bureaus, the police, the public prosecution service, the Child Protection Agency and local projects, including those for sheltering victims.’¹⁹

A.3. National Action Plan against trafficking in human beings

- [35]. On 20 December 2004, the Dutch Government presented the *National Action Plan against Trafficking in Human Beings: additional government measures on combating trafficking in human beings in the Netherlands* to the Dutch Parliament.²⁰ The Plan was a response to recommendations made by the National Rapporteur on Trafficking in Human Beings and to the fact that the Ministers of Justice, Foreign Affairs and the Interior had identified the investigation and prosecution of trafficking in human beings as priority issues.

¹⁷ Articles 248 and 273f Penal Code. For more information see ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 21. See www.kinderrechten.nl.

¹⁸ For instance the *Vereniging Nederlandse Gemeenten* (VNG) [Association of Netherlands municipalities] has developed an information file on loverboys for local authorities, online at: www.vng.nl/smartsite.dws?ID=37114.

¹⁹ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 68, online at www.bnrm.nl.

²⁰ *Nationaal Actieplan Mensenhandel* [National Action Plan on Trafficking in Human beings] in Dutch online at www.minjus.nl/images/Nationaal%20Actieplan%20Mensenhandel%20versie%20TK%202_tcm74-102699_tcm34-3245.pdf. Letter from the Minister of Justice to the President of the Dutch Lower House of the States-General, 20 December 2004, *Parliamentary Documents* 2004-2006, 28 638, no. 13 online at www.overheid.nl.

- [36]. After the National Action Plan had entered into force the Government recognized that minors (in particular unaccompanied asylum seeking minors and minor victims of ‘loverboys’) are specifically at risk, and that supplementary measures were required for them. Therefore, in February 2006 the Ministry of Justice published an addendum to the National Action Plan.²¹ This addendum contains measures related to the identification, repatriation and safety of victims, training of stakeholders and setting up a national information centre on youth prostitution.²²
- [37]. The National Action Plan did not set an overall time limit, which means that in principle the Action Plan is still in force. The document did however set separate time limits (the latest deadline was set for 1 January 2007) for each of the 68 actions described in the plan. Each action was assigned to one or more of the participating Ministries.
- [38]. The Action Plan did also not provide for an evaluation or impact assessment mechanism. According to representatives of the Ministry of Justice, the detailed reporting on the progress made as provided for in the Action Plan, was perceived as too ambitious; it is no longer performed.²³ As regards its content however, the Action Plan is still in force.
- [39]. In 2006 the National Office of the Public Prosecution Service issued a new Instruction for the public prosecutors’ service and the police on investigating trafficking in human beings. The instruction addresses child trafficking and prostitution of minors (the content of the Instruction will be discussed in several sections below).²⁴

²¹ Addendum to the National Action Plan *Parliamentary Documents II*, 2005-06 28638, No. 19, online at www.overheid.nl.

²² Addendum to the National Action Plan *Parliamentary Documents II*, 2005-06 28638, No. 19, online at www.overheid.nl. See also ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 14-15. See www.ecpat.net. And Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 9. See www.kinderrechten.nl.

²³ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

²⁴ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings] *Staatscourant* [Government Gazette] 2006, 58, online at www.overheid.nl. The instruction will be in force from 27.11.2006 to 31.03.2010. See also ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 14-15. See www.ecpat.net.

A.4. Monitoring mechanisms

A.4.1. National Rapporteur on Trafficking in Human Beings

- [40]. Since 1 April 2000 there has been a National Rapporteur on Trafficking in Human Beings in the Netherlands. The Rapporteur is assisted by six staff members who together constitute the Bureau of the Dutch Rapporteur on Trafficking in Human Beings [in Dutch: *Bureau Nationaal Rapporteur Mensenhandel*, or BNRM]. The Rapporteur's main task is to independently report to the Dutch government on the nature and extent of human trafficking in the Netherlands, and on the effects of the anti-trafficking policy pursued. The Rapporteur is not a complaints body and has no power of criminal investigation. The present Rapporteur was a senior judge prior to her appointment as Rapporteur; her predecessor was a senior member of the Dutch Prosecutor's Service.
- [41]. The reports of the Rapporteur contain information on relevant regulations and legislation, as well as information on prevention, criminal investigations regarding human trafficking, prosecution of perpetrators and victim support. Furthermore, in her reports the Rapporteur gives policy recommendations aimed at improving the fight against human trafficking. The Rapporteur and her staff have access to criminal files held by police and judicial authorities.²⁵ The reports of the Rapporteur are public and can be found on the website of the BNRM: <http://english.bnrm.nl/>.²⁶ In these reports often explicit attention is paid to minor victims of trafficking.

A.5. Data collection mechanisms

- [42]. In addition to the Dutch National Rapporteur on Trafficking in Human Beings, the following organisations have a data collection function.

²⁵ Website Bureau National Rapporteur on Trafficking in Human Beings; <http://english.bnrm.nl/> (English version) and www.bnrm.nl (Dutch version).

²⁶ See this website for the reports or for more general information on the Bureau National Rapporteur on Trafficking in Human Beings.

A.5.1. *Comensha*

- [43]. The *Coördinatiecentrum Mensenhandel* [Dutch Coordination Centre on Trafficking in Human Beings] *Comensha* coordinates the collection and registration of data of (possible) victims of trafficking.²⁷ It has to be stressed that this concerns victims who are reported to *Comensha* by all possible official and non-official reporters. This registration is not restricted to those victims that can be regarded ‘recognised victims’ on the basis of official criteria. In addition, not all victims are notified and not all (notified) victims are reported. Furthermore, because *Comensha* depends on the information of third parties and says to have insufficient capacity for the collection of data, the cases it registers are not reported in great detail.²⁸ As emphasised in the 2005 Addendum to the National Action Plan against trafficking in human beings it is difficult to obtain reliable information on the phenomenon of child trafficking, in particular of youth prostitution. It is often argued that in reality the numbers must be much higher than registered. On the other hand it is improbable that while clients of child prostitutes are able to get in contact with the children, police and care providers would hardly or not at all be able to trace them. Therefore it is possible that the available statistics indeed do come close to reality.²⁹

A.5.2. National Expertise Centre on Youth Prostitution

- [44]. The *Landelijk Expertisepunt Jeugdprostitutie* [National Expertise Centre on Youth Prostitution],³⁰ created in February 2005 and financed by the Ministries of Justice and Health, is an information desk, where research, data collection, good practices and policy development are brought together. It is aimed at stopping the prostitution of minors, at rehabilitation of victims and at persecution of offenders. It supports aid workers, policy makers, police and justice

²⁷ Dutch Coordination Centre on Trafficking in Human Beings, *Comensha*, website www.comensha.nl or www.mensenhandel.nl. (last accessed on 22.07.2008). *Comensha* was formerly known as Stichting tegen Vrouwenhandel (STV) [Foundation against Trafficking of Women], which was established in 1987, but its mandate has been widened to other victims of trafficking in 2007.

²⁸ Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p. 7, currently available in Dutch only at www.bnrm.nl.

²⁹ Addendum to the National Action Plan, *Parliamentary Documents II*, 2005-06 28638, No. 19, online at www.overheid.nl.

³⁰ Website of the *Landelijk Expertisepunt Jeugdprostitutie* [National Expertise Centre on Youth Prostitution] www.jeugdprostitutie.nu (last accessed 01.08.2008).

in addressing and preventing youth prostitution.³¹ The Centre seeks to identify trends; it is not meant to receive individual complaints. Whenever victims approach the Centre, they will be referred to other services, including the local police department.³²

A.5.3. National Expertise Centre on Human Trafficking and Migrant Smuggling

[45]. In May 2005 the Dutch National Investigation Service set up the *Nationaal Expertise Centrum Mensenhandel en Mensensmokkel (EMM)* [National Expertise Centre on Human Trafficking and Migrant Smuggling], where information and best practices against human trafficking and migrant smuggling are collected and made available to investigation services.³³ The centre is under the supervision of the national coordinating public prosecutor entrusted with smuggling and trafficking in human beings³⁴ of the national Office of the Public Prosecutor. The Centre brings together law enforcement agencies such as the National Police Service (KLPD), the Criminal Investigation Unit, the Royal Netherlands Military Constabulary (KMar), the Immigration and Naturalization Service (IND) and the Social Intelligence and Investigation Service (SIOD) to collectively address the issue of improving cooperation.³⁵ The Centre has been established to inform administration, police and justice, but also concerned citizens.³⁶

³¹ *National Expertise Centre on Youth and Prostitution (Expertisepunt Jeugdprostitutie)*. Website: <http://www.jeugdprostitutie.nu/engels> (last accessed on 30.06.2008).

³² Letter of the State Secretary of Justice in response to parliamentary questions concerning Dutch loverboys in Antwerp, Belgium, letter of 10 April 2007, reference numbers 5474545/07 and *Parliamentary Papers II* 2006-2007 09540, online at www.overheid.nl.

³³ News report on the website of the Dutch Ministry of Justice, online at: <http://www.justitie.nl/actueel/nieuwsberichten/archief-2008/80227nb-bestrijding-mensenhandel-krijgt-nieuwe-impuls.aspx?cp=34&cs=578> (last accessed 06.08.2008).

³⁴ Next to the national public prosecutor on trafficking in human beings, in all public prosecutors' offices public prosecutors are appointed holding the portfolio trafficking and smuggling of human beings. *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings] under 2.2.

³⁵ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], under 2.1. See also News report on the website of the Dutch Ministry of Justice, online at: <http://www.justitie.nl/actueel/nieuwsberichten/archief-2008/80227nb-bestrijding-mensenhandel-krijgt-nieuwe-impuls.aspx?cp=34&cs=578> (last accessed 06.08.2008).

³⁶ Speech of the Minister of Justice, Zwolle, 28 June 2006, online at the website of the Dutch Ministry of Justice:

A.6. National referral mechanism

- [46]. *Comensha* functions as a referral centre for victims of trafficking. *Comensha* is the first in place to be contacted by police if a (minor) victim of trafficking applies for the B-9 Regulation (which is introduced in section E.1. below). *Comensha* is furthermore coordinator of the *La Strada Programme* with partner organizations in Central and East Europe.³⁷ For child victims in general, the Youth Care Office is the gateway to social services, and their staff determines the kind of assistance that is required and find ways of providing it.
- [47]. By virtue of the *Instruction on Trafficking in Human Beings* for the public prosecution service and the police, any organisation involved in monitoring, investigation and assistance in trafficking situations that discerns a serious signal of trafficking in human beings, has to inform the competent public prosecutor and to notify the National Expertise Centre on Human Trafficking and Migrant Smuggling (EMM) of the National Investigation Service (see section A.5.3). If the EMM has received additional signals of other agencies, it may verify, analyse and bundle the information it has received and transmit this to the competent public prosecutor who has supervision over the criminal prosecution. The EMM is responsible for providing all relevant actors with operational and strategic analyses and information.³⁸

A.7. Designated budgets

- [48]. It has turned out to be impossible to obtain information regarding the overall budget that is designated in the Netherlands for anti trafficking measures or research on child trafficking in general. First of all, anti trafficking measures are taken at several levels and by divergent actors and thus financed by divergent budgets. Furthermore the different annual budgets of the relevant Ministries do not give exact amounts of budgets designated for anti trafficking measures or research on child trafficking. Although an annual budget of a Ministry may include a reference to the fight against trafficking in human beings, this budget is often mixed with or part of other budgets. Furthermore, there is no obligation by law for any specific amount to be spent on the fight against trafficking in human beings; each Ministry has the power to

<http://www.justitie.nl/actueel/toespraken/archief2006/Themadag-mensenhandel-mensensmokkel.aspx>. (last accessed 06.08.2008)

³⁷ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings] under 3.2.6.

³⁸ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], under 2.1.

determine within the budget of the respective budget items the apportionment of the budget over the different sub-budget items.

- [49]. For instance, the 2008 Budget of the Ministry of Justice contains Budget Item 13.3 *Handhaving en vervolging* [Law enforcement and Prosecution] with a total budget of 630.211.000 euros. Among many other objectives this post includes a *Trendrapportage positie slachtoffers mensenhandel* [Reporting on the position of the victims of trafficking in human beings] and a *Proces- en effectmeting programmatische aanpak mensenhandel* [Proces and effect measurement of the programmed fight against trafficking in human beings], both to be performed by the *Wetenschappelijk Onderzoek- en documentatiecentrum (WODC)*³⁹ [Research and Documentation Centre of the Ministry of Justice].⁴⁰
- [50]. The Police and the Public Prosecution Service do not have fixed budgets for the investigation and prosecution of cases of trafficking in human beings; the investigation and prosecution of these cases are simply part of their job description.
- [51]. Further incidental amounts that may express, in financial terms, the importance the Dutch government attaches to the fight against trafficking, are the following: (a) the Ministry of Justice has reserved a budget of 4 million euros per year for the two-year-pilot enclosed care [*Pilot besloten opvang*] which started in January 2008 (see section E.4.2. below);⁴¹ (b) since 2002, the Ministry of Health, Welfare and Sport has been paying an annual amount of 454.000 euros to the women's shelter *Asja* (see section E.3.2.1. below).⁴²

A.8. Best interests of the child

- [52]. The Dutch Constitution contains no specific legal provision – comparable to Article 3 of the Convention on the Rights of the Child (CRC) – that establishes the principle of best interests of the child as a primary consideration in all actions (and decisions) affecting children, including trafficked children. However, as was mentioned above, the

³⁹ Website of the Research and Documentation Centre of the Ministry of Justice: www.wodc.nl.

⁴⁰ See the official website on the State budget: http://www.rijksbegroting.nl/2008/begrotingsvoorstel_behandeling/begroting.kst108426_b_8.html (last accessed 31.07.2008).

⁴¹ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

⁴² Written reply of a representative of the Ministry of Health, Welfare and Sport, 17 July 2008.

Netherlands' constitutional system adheres to a 'monist theory' of international law (see section A2.2.2). Thus in 1997 a Dutch District Court recognised for the first time that Article 3 CRC has direct effect, which means that any one can bring a claim before the Dutch courts that is based on the principles laid down in this provision.⁴³

A.9. Training strategies

[53]. On the basis of the above-mentioned Instruction on trafficking in human beings for the public prosecution service and the police (see section A.3. paragraph 35 above) police and prosecution officers are only to deal with cases of trafficking in human beings and to hear possible victims, if they hold a certificate.⁴⁴ These certificates can be obtained after successful completion of the course on trafficking in human beings named 'Prostitutiecontrole en intake en aangifte mensenhandel' [*Inspection of brothels and intake and report of cases of trafficking in human beings*]. This course is included in the standard training programme of police officers as offered by the Dutch Police Academy.⁴⁵ This training lasts twelve weeks and includes (among other things); the inspection of sex clubs; the recognition of signals of trafficking in human beings; the training (with actresses) of an intake conversation when a person is identified as a possible victim of trafficking; the reporting of trafficking and an examination through a role play with possible victims of trafficking.⁴⁶ The Police Academy offers these trainings also to officers of the Royal Constabulary, the Dutch Training and Study Centre for the Judiciary and lawyers who assist victims that apply for the so-called B9-regulation (which is introduced in section E.1. below).⁴⁷

⁴³ District Court Utrecht 26 March 1997 and 10 December 1997, *NJ* 1999/462, online at www.rechtspraak.nl. Nevertheless Unicef and Defence for Children are of the opinion that the CRC is ignored all too often in legal practice. See Unicef and Defence for Children International, Annual Report Children's rights in the Netherlands [*Jaarbericht Kinderrechten 2008, Kinderrechten in Nederland*], 2008, p. 4, online at: www.kinderrechten.nl.

⁴⁴ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter IV under 3.

⁴⁵ This specific module on trafficking in human beings is offered since 2002.

⁴⁶ In 2005, a workshop on children's issues was held by ECPAT Netherlands during a police expert training seminar on trafficking in human beings at the Dutch Police Academy. In 2006, ECPAT was invited to join similar training sessions in order to determine the gaps in addressing trafficking in minors in such training. ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 25. See www.ecpat.net.

⁴⁷ Telephone interview with Ms. Goutbeek of the Dutch Police Academy on 8 July 2008.

- [54]. In cooperation with *Comensha*, the post-graduate legal studies Institute OSR has offered courses on legal assistance for victims of trafficking since 2005.⁴⁸ The courses are open to lawyers and employers of the Immigration and Naturalization Service who wish to extend their knowledge on the subject-matter. Employees of the Central Agency for the Reception of Asylum Seekers and of the Repatriation Service of the Immigration and Naturalization Service regularly receive training to recognise signals of trafficking in human beings.⁴⁹
- [55]. For information on training of legal guardians see section C.6.

A.10. Policy of non-criminalisation of children victims of trafficking

- [56]. As elucidated above, exploitation of minors, including youth prostitution, is criminalised under Dutch law (see section A.2.1.). Child prostitution is by definition regarded as forced prostitution; the child victims are not punishable.
- [57]. If a child victim of trafficking applies for the so-called B9-regulation (see section E.1.) the so-called public order exception cannot be not held against the victim. This means that for instance the possession of false documents cannot be a ground for refusal of application of the B9-regulation.⁵⁰

⁴⁸ See the website of *OSR Juridische Opleidingen* [post-graduate legal studies Institute OSR]:

http://www.osr.nl/00/OSR/nl/0/courses/VREE/76/Rechtsbijstand_aan_slachtoffers_van_mensenhandel:_Verdieping.html. The care coordinators of *Comensha* were informed which lawyers in their region had taken the course. Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 57-58, online at www.bnrm.nl. The National Rapporteur has pointed out that there are not many specialist lawyers, and one of the problems is that they are generally under considerable time pressure. Therefore attempts are being made to circumvent this in Utrecht, Amsterdam, The Hague and occasionally elsewhere by working (in collaboration with BLinN) with voluntary legal support. Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 58, online at www.bnrm.nl.

⁴⁹ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

⁵⁰ B-9 Regulation (Aliens Circular, Chapter B.9) under 2.

B. Prevention of child trafficking⁵¹

B.1. Awareness-raising campaigns

B.1.1. General awareness of trafficking in human beings

- [58]. In 2006 the *Stichting M.* [Foundation *M.*] started the campaign ‘*Schijn bedriegt*’ [‘Appearances are deceptive’] offering the possibility to report forced prostitution anonymously.⁵² The campaign has been prolonged and is still running. Foundation *M.* functions as an intermediary; it may forward information received to its partners, among which are all Dutch police departments.⁵³
- [59]. Several NGO’s have joined forces in the campaign ‘People are no commodities’ (‘Mensen zijn geen handelswaar’).⁵⁴ On 18 October 2007 the organisations involved presented a petition to the State Secretary of Justice, asking entitlement to care, support and protection for all victims of trafficking in human beings, not for merely those

⁵¹ The authors of this report wish to acknowledge with gratitude Ms. Sarah Spronk for her contribution to this chapter.

⁵² <http://www.meldmisdaadanoniem.nl//Article.aspx?id=228>. For numbers of anonymous reports of trafficking in human beings see: <http://www.meldmisdaadanoniem.nl//ArticleSub.aspx?id=105> (last accessed: 10.07.2008).

⁵³ Other partners are: the Dutch Association of Insurers [Verbond van Verzekeraars]; the Royal Netherlands Military Constabulary; the Fiscal Intelligence and Investigation Service and Economic Investigation Service [FIOD-ECD]; the General Intelligence and Security Service [AIVD]; the Ministry of Social Affairs and Employment; the National Police Internal Investigations Department [Rijksrecherche]; the Ministry of Housing, Spatial Planning and Environment; the Netherlands Competition Authority [Nederlandse Mededingingsautoriteit]; Essent Network [Essent Netwerk] and the General Inspection Service [Algemene Inspectiedienst].

⁵⁴ http://www.mensenzijgeenhandelswaar.nl/wat_doen_wij.html. NGO’s involved are: *Comensha*; *Bonded Labour in Netherlands (BlinN)*; *De Stichting Religieuzen Tegen Vrouwenhandel (SRTV)*; *La Strada International*; *ECPAT*; *CMC Mensen met een Missie*; *CORDAID*; *Kerk in Actie* and *ICCO*.

who have reported the trafficking to the police. As a result the so-called B9-Regulation (see section E.1.) was slightly amended.⁵⁵

- [60]. ECPAT Netherlands is involved in the awareness raising of child prostitution in the Netherlands. For this purpose, it publishes quick scans and formulates challenges and improvements.⁵⁶

B.1.2. Awareness directed to adults

- [61]. The Multi Stakeholder *Initiatiefgroep Duurzaam Uitgaand Toerisme* (IDUT) [Initiative on Sustainable Outbound Tourism] is active since 1996. The main aim of this initiative is to promote sustainable tourism and to diminish the negative effects of outgoing tourism, including sex tourism. ECPAT Netherlands, other NGO's, travel agencies and Ministries are the stakeholders of this platform.⁵⁷ ECPAT Netherlands is also partner to the International Code of Conduct for travel agencies, airline companies and other institutions active in the tourist industry.⁵⁸ In addition, ECPAT Netherlands gives trainings about sexual exploitation of children in tourist area for tourist guides and students in tourism. The training materials are available in Dutch, English, Spanish and German. ECPAT also maintains contacts with NGO's and youth care institutions abroad and functions as an intermediary for travel agents who have been confronted with child exploitation.⁵⁹

B.1.3. Awareness directed to children

- [62]. In the Netherlands several campaigns to raise awareness of loverboys among minors, are initiated by NGO's, frequently with financial support from a Ministry like the Ministry of Health, Welfare and Sport. Numerous campaigns both on national and local level have taken place in the past decade. The following two campaigns will be discussed below in more detail.⁶⁰

⁵⁵ Letter of the State Secretary of Justice to the President of the Dutch Lower House of the States-General, 18 October 2007, *Parliamentary Documents* 2007-2008, 19 637, no. 1174, online at www.overheid.nl.

⁵⁶ www.ecpat.nl (last accessed 05.08.2008).

⁵⁷ www.idut.nl (last accessed 05.08.2008).

⁵⁸ www.thecode.org (last accessed 05.08.2008).

⁵⁹ www.ecpat.nl (last accessed 05.08.2008).

⁶⁰ The website www.ppsi.nl (ppsi stands for project on prevention of sexual intimidation) (last accessed 31.07.2008), part of the *Centrum School en Veiligheid* [Centre for School and Safety] that is financed by the Ministry of Education, Culture and Science, contains comprehensive information (issued by the government) on

- [63]. *Lang Leve de Liefde* [*Long life to love*] is a project, implemented by the SoaAids Foundation and the municipal health care (*Gemeentelijke Gezondheidsdienst* (GGD)) and financed by the Ministry of Health, Welfare and Sport, that focuses on the prevention of sexual abuse and exploitation. This school program for adolescent children (12-16 yrs) focuses on healthy sexual behaviour and relationships. An additional teaching package focuses on loverboys. The package consist of teenage magazines on the topic and the video clip ‘Love’r boy’ that has been shown in 300 high schools. The clip can also be found on the public websites www.youtube.com and www.safesex.nl. In 2006, a theatre production complemented the class materials. The school program is carried out by fifty per cent of the municipal health care offices.⁶¹
- [64]. The foundation *Scharlaken Koord* [the Scarlet Cord], based in the Amsterdam Red light district, provides a refuge for girls and women who work(ed) in the prostitution. The Foundation also gives preventive workshops on secondary schools, asylum centres and in other places where young girls are gathered. The project ‘love limits’, with psychosocial themes and self-defence activities focuses on adolescent girls who run a particular risk on the basis of their negative self-image, home situation, educational level, past, friends or other activities. The website www.bewareofloverboys.nl hosted by ‘Scharlaken Koord’ together with the foundation ‘Tot Heil des Volks’,

loverboys. *Proceedings of the Dutch Lower House of the States-General*, Appendix, 2006-2007, no. 2070, p. 4385-4386, online at www.overheid.nl.

Examples of other projects are: (a) the informative campaign ‘Dangerous Love’ [‘Gevaarlijke liefde’] by foundation *Humanitas* that ran from November 2005 up until January 2007, see [www.humanitas](http://www.humanitas.nl) and (b) the project ‘Pretty Woman’ run by Foundations *Stichting Stade* and *De Rading* in cooperation with the Youth Care Office in Utrecht. This project aims to assist both girls who may become victim of a loverboy and girls already exploited in prostitution. ‘Pretty Woman’ offers individual and group assistance and provides information to schools, community centres, referrers, etc. See <http://www.stichtingstade.nl/Over-Pretty-Woman-119.html> and <http://www.rading.nl/> (both last accessed 04.08.2008). See also ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 24. See www.ecpat.net.

⁶¹ See

[http://www.ggdhm.nl/client/1/?websiteid=1&contentid=517&hoofdidi=31&pagetitle=Lang leve de liefde_ZHN](http://www.ggdhm.nl/client/1/?websiteid=1&contentid=517&hoofdidi=31&pagetitle=Lang%20leve%20de%20liefde_ZHN) and <http://www.schoolpost.nl/soa-aids/> (last accessed on 10.07.2008). In 2002 the *Rutgers Nisso Groep* [Rutgers Nisso Group] (www.rutgersniso.nl) the Dutch Expert Centre on Sexuality has evaluated the effectiveness of the teachings materials positively. *Proceedings of the Dutch Lower House of the States-General*, Appendix, 2006-2007, no. 2070, p. 4385-4386, online at www.overheid.nl.

supports the program. On the website of ‘Tot Heil des Volks’ teaching materials can be ordered.⁶²

B.2. Direct participation of children, relevant NGO’s and minority groups

- [65]. As discussed above (see the previous section B.1.) a considerable number of NGO’s participates in the development, implementation and evaluation of awareness-raising efforts concerning (child) trafficking. It is less evident that children structurally participate directly in the development of preventive efforts. However, as shown above, those campaigns that are targeted at children do require active participation of children, for instance by means of the teaching materials provided to them.
- [66]. Although no direct evidence of participation of local communities and/or minority groups in the development of preventive efforts against child trafficking was found, there are signs that could substantiate the claim that this could be useful. The most recent report of the National Rapporteur shows that of the 101 child victims of trafficking, of whom age and nationality are known to *Comensha* (see section A.5.1.) 35 have Dutch nationality. The report does not specify the ethnic background of these minors.⁶³ A 1998 research of the *Rutgers Nisso Groep* [Rutgers Nisso Group]⁶⁴ the Dutch Expert Centre on Sexuality however, shows that among the victims of loverboys Moroccan girls are overrepresented.⁶⁵ Furthermore it is suggested in some research reports that many loverboys themselves

⁶² www.totheildesvolks.nl, (last accessed 23.07.2008).

⁶³ The most recent report of the National Rapporteur shows that of the 101 child victims of trafficking, of whom age and nationality are known to *Comensha* (see section A.5.1.) 35 have Dutch nationality, 32 Nigerian nationality, 6 Chinese, 6 de Sierra Leonean, 5 Bulgarian and 4 Romanian. The other minors have the nationality of 13 different countries, namely Congo, Morocco, Surinam, Armenia, Italy, Lithuania, Mongolia, Russia and Turkey. Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p. 10, currently available in Dutch only at www.bnrm.nl.

⁶⁴ Website of the *Rutgers Nisso Groep* [Rutgers Nisso Group] the Dutch Expert Centre on Sexuality www.rutgersnisso.nl (last accessed 30.07.2008).

⁶⁵ L. Venicz and I. Vanwesenbeeck, *Aard en omvang van (gedwongen) prostitutie onder minderjarige (allochtone) meisjes*, [Research on the nature and scale of (forced) prostitution among minor (immigrant) girls], Nederlands Instituut voor Sociaal Sexuologisch Onderzoek [Dutch Expert Centre on Sexuality] 1998, p. 25, online at: http://www.rutgersnissogroep.nl/downloads/Publicaties/rng_aard_en_omvang_prostituitie_minderjarig_meisjes.pdf (last accessed 30.07.2008).

belong to minority groups.⁶⁶ General integration programmes for minority groups address the different morality that is at the basis of the problem of loverboys.

B.3. Protection of vulnerable children

B.3.1. Pilot *Snelle Actie Teams* [Quick Action Teams]

[67]. In order to identify minor aliens who may be or may become victim of trafficking in an earlier stage and to prevent them from coming to the Netherlands, in January 2008 the pilot *Snelle Actie Teams* (SAT) [Quick Action Teams] was launched by the government. The pilot was a response to the alarming number of Nigerian minors disappearing from asylum seekers' centres and was therefore focused on Nigerian cases of trafficking in human beings. The primary goal of this pilot is to prevent possible victims of trafficking and others without documents or with false documents from travelling from Nigeria to the Netherlands by airplane. A team of employees of the Royal Netherlands Military Constabulary and a representative of the Immigration and Naturalisation Service [IND] collects information about vulnerable groups en fraud with identity and travel documents and screens passengers coming from Nigeria to the Netherlands on the basis of risk-profiles. In June 2008 the Minister of Justice informed Parliament that a tentative conclusion is that – by frustrating the activities of a large-scale Nigerian criminal network of traffickers in human beings – the Action Teams have contributed to the reduction of illegal entry from Nigeria. On the basis of a final evaluation of the pilot it will be examined whether the use of the Action Teams will be continued in Nigeria and/or other countries.⁶⁷

⁶⁶ In their book *Loverboys Feiten en Cijfers, een quick scan* (2005), p. 53-57 L. Terpstra and A. van Dijke, give a profile of loverboys. They allege that loverboys have Dutch nationality and belong to a minority group. Not seldom they do have an Islamic background. See also <http://www.jeugdprostitutie.nu/slachtoffersendaders/daders> (last accessed 30.07.2008) on this site one can download the result of an expert meeting on a method of dealing with offenders *Expertmeeting daderaanpak*. A news report on the website of *Comensha* states that 40 per cent of the loverboys is of Moroccan origin. See www.comensha.nl/.

⁶⁷ Letter from the Minister of Justice to the President of the Dutch Lower House of the States-General, 17 June 2008, reference number 5549786/08, online at the website of the Dutch Ministry of Justice www.justitie.nl.

B.3.2. Other policies to protect vulnerable children

- [68]. The quick appointment of a legal guardian to minor asylum seekers who arrive in the Netherlands without an adult family member or guardian, can also be regarded as a policy to prevent that vulnerable children may become victims of child trafficking upon their arrival in the country. See the following chapter for more information on this guardianship.
- [69]. In 2003 a consultancy agency carried out a research into the safety of women and girls in asylum seekers centres. The agency concluded that unaccompanied minor asylum seekers are most vulnerable to become victims of trafficking.⁶⁸ For policies that have been introduced to prevent these unaccompanied minor asylum seekers from disappearing, see section E.4.1.
- [70]. As such it can be said that the B9-Regulation (see section E.1.) has a preventive effect; its extensive measures regarding care and prosecution are expected to deter traffickers in human beings from using the Netherlands as their ‘market’.⁶⁹

⁶⁸ A. van Burik and R. van Vianen, *Veilig verblijf. Een onderzoek naar de veiligheid van vrouwen en meisjes in de asielzoekerscentra*, Adviesbureau Van Montfoort, Woerden 2003, p. 86, online at:

<http://www.coa.nl/NED/cms/data/attachments/25/download/veiligverblijf.pdf>

(last accessed 29.07.2008).

⁶⁹ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

C. Appointment of legal guardian⁷⁰

C.1. The Nidos Foundation

[71]. On the basis of the *Wet op de Jeugdzorg* [Youth Welfare Act] *Stichting Nidos* [the *Nidos* Foundation] is the national guardianship and family supervision organisation for unaccompanied minor asylum-seekers and refugees as of the 1st of January 2001.⁷¹ *Nidos* is subsidised by the Ministry of Justice (see also section D.2.2.).⁷²

[72]. Under Dutch law, a minor is defined as someone under the age of eighteen who neither is nor has been married or involved in a registered partnership,⁷³ and who has not been declared to have attained the age of majority by a judge.⁷⁴ As a rule, a legal guardians is appointed to any unaccompanied minor entering the Netherlands, including children identified as being a victim of trafficking.⁷⁵

C.2. Procedure of appointment of a guardian

[73]. A legal guardian (whose mandate and tasks are discussed in the next section) is appointed for every unaccompanied minor arriving in the Netherlands. The purpose is to do so in the fastest and most effective possible way. Until 2005, a considerable amount of time would pass before a legal guardian was actually appointed to a newly arrived child. The child would be transferred from the police to a shelter before the guardian came into picture. In 2005, *Stichting Nidos* started the so-called Schiphol project. A team based at Schiphol national airport (Amsterdam) provides unaccompanied minors with temporary guardianship within several hours, i.e. almost immediately after the unaccompanied minor has entered the country. This is a great improvement, since it decreases the risk of children disappearing (see

⁷⁰ The authors of this report wish to acknowledge with gratitude Ms. Merel van Zweeden for her contribution to this chapter.

⁷¹ *Aanvaardingsbesluit* [Order] of the Minister of Justice of 12 January 2005, *Staatscourant* [Government Gazette] 17 January 2005, nr 11, p. 12, online at www.overheid.nl.

⁷² Website Dutch Ministry of Justice: <http://www.justitie.nl/onderwerpen/jeugd/jeugdbescherming/alleenstaandeminderjarige> (last accessed 26.06.2008).

⁷³ Article 1:233 of the Dutch Civil Code.

⁷⁴ Article 1:233 j. Article 1:253ha of the Dutch Civil Code.

⁷⁵ Article 1:253r of the Dutch Civil Code.

also section E.4.1.). The legal guardian will remain active until it is clear what is to happen to the child.⁷⁶ Today the organisation is based in eight major cities,⁷⁷ and at Schiphol airport.

- [74]. The legal representation of the guardian automatically ends when the minor turns eighteen, or when the child returns to his/her home country.⁷⁸ Although there is an attempt to keep contact with the child by e-mail and telephone when he or she has left the country, in practice there is meagre response to this on the side of the child.

C.3. Tasks of the legal guardian

- [75]. A full-time legal guardian working for *Stichting Nidos* has an average of 24 children under his or her care.⁷⁹ The task of the legal guardians is to stimulate the development of the unaccompanied minors, so that when they have reached the age of eighteen, they are able to function independently in society.⁸⁰ They coordinate all the different aspects involved in this development: housing, education, police protection and legal representation (lawyer). The legal guardian ensures that the shelter or foster home (see section E.3. on shelter) is adequate and that the child's education is appropriate, and he/she keeps contact with the police officers and the Criminal Investigation Department who are involved in the child's trafficking case.⁸¹
- [76]. Initially, a lawyer is assigned by way of a code of distribution on the basis of the *Wet rechtsbijstand* [Legal Aid Act]. However, in a later phase it is possible for the guardian to choose a different lawyer, e.g. one who is specialised in victims of prostitution or other forms of trafficking in human beings. It is the task of the guardian to ensure that the lawyer is correctly fulfilling his or her task (e.g. keeping within the legal time-limits).⁸²

⁷⁶ Annual Report of Stichting Nidos [the Nidos Foundation] 2007, p. 5-6. Not yet online available.

⁷⁷ The main office is situated in Utrecht; the remaining offices are to be found in Arnhem, Assen, The Hague, Haarlem, Deventer, Eindhoven, Roosendaal and Rotterdam.

⁷⁸ Annual Report of Stichting Nidos [the Nidos Foundation] 2007, p. 15.

⁷⁹ Information obtained from an interview with Mr. Verstegen, director of *Stichting Nidos*, Utrecht, 24 June 2008.

⁸⁰ G. van der Veer, *Voogdijmaatschappelijk Werk en Gevluchte Adolescenten*, 1996, p. 8 (N.B. new version being worked on).

⁸¹ This contact between the legal guardian and the police is essential for tracing suspects in the child trafficking business.

⁸² Information obtained from an interview with Mr. Verstegen, director of *Stichting Nidos*, Utrecht, 24 June 2008.

[77]. As a rule, the legal guardian is expected to see each child in person at least once a month. These meetings take place at the residence of the child, in a shelter or in a foster home. This gives the legal guardian the opportunity to see by him- or herself the conditions in which the minor is living.⁸³

C.4. The Collarbone method

[78]. When a person arrives in the Netherlands without legal documents or with false identification, it is often difficult to establish his/her genuine age, and thus to identify minors. Therefore an x-ray is made of the collarbone of the person in question.⁸⁴ If the collarbone is not entirely full-grown, this person is accepted to be less than 20 years old. In such cases, the asylum-seeker or refugee is given the benefit of the doubt and considered to be a minor. The opinions on how adequate this method is, differ.⁸⁵

C.5. Education and training of legal guardians

[79]. All legal guardians are obliged to have completed higher vocational education in social work and social services [*HBO-opleiding Maatschappelijk Werk en Dienstverlening*].⁸⁶ *Stichting Nidos* provides the legal guardians with an additional training from the moment they are employed. According to Mr Versteegen - director of *Stichting Nidos* - there is no separate training for guardians representing child victims of trafficking. All guardians are trained in such a way that they are able to help every child.⁸⁷

⁸³Information obtained from an interview with Mr. Versteegen, director of *Stichting Nidos*, Utrecht, 24 June 2008.

⁸⁴ An Age Assessment Committee is charged with the supervision of the quality and methods used in the age assessment, Article 2 *Besluit Commissie leeftijdsonderzoek* [Age assessment Committee Decree].

⁸⁵ Website Immigration and Naturalisation Service (Immigratie en Naturalisatiedienst), http://www.ind.nl/nl/Images/Rapport%20Commissie%20Leeftijdsonderzoek%20jan06_tcm5-105707.pdf (last accessed 26.06.2008)

⁸⁶ This higher vocational education is equivalent to a Bachelors degree.

⁸⁷ Information obtained from an interview with Mr. Versteegen, director of *Stichting Nidos*, Utrecht, 24 June 2008.

D. Coordination and cooperation⁸⁸

D.1. Task Force on trafficking

- [80]. On 27 February 2008 a national Task Force against Human Trafficking was established.⁸⁹ This Task Force is to provide a new stimulus in the fight against human trafficking. Judicial authorities not only focus their attention on tackling and punishing traffickers but also introduce permanent deterrents to human trafficking. Adequate barriers should prevent others from quickly taking over the traffickers' roles.⁹⁰
- [81]. The diversity of the Task Force allows for an integrated approach to the problem of human trafficking. The Task Force is chaired by the Public Prosecution Service and consists of the National Rapporteur on Trafficking in Human Beings, as well as representatives of the Ministries of the Interior, Social Affairs, Health and Foreign Affairs, the police, local authorities and the judiciary. The Task Force will maintain close contact with NGO's in the field such as *Comensha* (*Coordination Centre for Human Trafficking*, the Dutch member of the La Strada Network (see section A.5.1.)).⁹¹
- [82]. The aim of the Task Force is to identify problems quickly and at the proper level and to recommend solutions. The Task Force has the following tasks: (a) identifying bottlenecks; (b) setting up an agenda to address or resolve these bottlenecks⁹²; (c) sharing best practices; (d)

⁸⁸ The authors of this report wish to acknowledge with gratitude Ms. Tulika Bansal for her contribution to this chapter.

⁸⁹ *Staatscourant* [Law Gazette] 2008, 47.

The decree establishing the task force is online available at:

<http://www.justitie.nl/onderwerpen/criminaliteit/mensenhandel/#paragraph5>.

⁹⁰ Press Release on the website of the Dutch Ministry of Justice, *New Impetus to Fight Human Trafficking*, 27 February 2008, online at:

<http://english.justitie.nl/currenttopics/pressreleases/archives-2008/80304new-impetus-to-fight-human-trafficking.aspx?cp=35&cs=1578> (last accessed: 26.06.2008).

⁹¹ Press Release on the website of the Dutch Ministry of Justice, online at:

<http://english.justitie.nl/currenttopics/pressreleases/archives-2008/80304new-impetus-to-fight-human-trafficking.aspx?cp=35&cs=1578> (last accessed: 26.06.2008). The fact

that NGO's do not officially take part in the Task force is criticised by the National Rapporteur on Trafficking in Human Beings in her most recent report. Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p.15, currently available in Dutch only at www.bnrm.nl.

⁹² The participants contribute to the solution of problems from their own responsibility and keeping in mind the social need for a common approach to the phenomenon.

supporting a programmatic approach and (e) informing the Minister and State Secretary of Justice on the progress of the work of the Task Force, annually before 1st of September.⁹³

D.2. Cooperation agreements

D.2.1. Cooperation Agreements between different relevant Ministries

[83]. The above-mentioned *National Action Plan against Trafficking in Human Beings* and the installation of the Task Force Trafficking in Human Beings are good examples of cooperation instruments between different Ministries. At interdepartmental level, consultations take place on a regular basis, for instance on the ratification of the CoE Convention on Action against trafficking in human beings.⁹⁴

D.2.2. Cooperation Agreements between state agencies and non-state actors

[84]. *The National Information Centre on Youth Prostitution* (see section A.5.2. above) is financed by the Dutch Ministry of Justice and the Ministry of Health. The Ministry of Health also finances foundation *Comensha* (see section A.5.1. above), which closely cooperates with care and assisting agencies, police and judiciary and the national and municipal governments.⁹⁵ Furthermore, the Dutch government funds the *Nidos Foundation* (see section C.1. above), which employs approximately 250 people and costs approximately 25 million euros a year.⁹⁶

⁹³ *Staatscourant* [Government Gazette]: *Instellingsbesluit Task Force Aanpak Mensenhandel*. 27 February 2008, online at: <http://eb.sdu.nl/sduwebdata/op/SC84760.pdf> (last accessed: 26.06.2008).

⁹⁴ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

⁹⁵ Parliamentary Questions to the Minister of Justice on youth prostitution, 20 February 2008, *Proceedings of the Dutch Lower House of the States-General*, Appendix, 2007-2008, 2324-2325. Online at:

http://www.justitie.nl/images/jugdprostitutie_9862_tcm34-104394.pdf?cp=34&cs=2098 and www.overheid.nl.

⁹⁶ Article in *The Guardian*, 18 May 2008, online at: <http://www.guardian.co.uk/society/2008/may/14/childprotection.ukcrime> (last accessed 16.06.2008)

- [85]. The Ministry of Economic Affairs, *Meldpunt Kinderporno* [Notification Centre Child Pornography] and *ECPAT Netherlands* work together with Internet service providers (ISPs), chat service providers and portals in a multi-stakeholder platform on child safety on the Internet. Their work included the publication of guidelines for chat service providers in 2005.⁹⁷
- [86]. The Dutch Ministry of Agriculture, Nature and Food Quality and the State Secretary of Economic Affairs support the Multi Stakeholder Initiative on Outbound Sustainable Tourism (IDUT) (see section B.1.2.).⁹⁸

D.2.3. Monitoring of data protection of trafficked children

- [87]. In general the *College Bescherming Persoonsgegevens* [the Dutch Data Protection Authority supervises the fair and lawful use and security of personal data to ensure privacy today and in the future.⁹⁹ The storage of data concerning trafficking falls under the Police Registry Act. In the Police Register *Signalen van Mensenhandel* [Signs of Human Trafficking] data of perpetrators, police officials, reporters of trafficking, witnesses, victims and criminal investigators are recorded.¹⁰⁰ A Model Regulation *Reglement Politieregister* [Regulation Police Registers] has been established to ascertain the privacy of data with regard to the Police Register *Signs of Human*

⁹⁷ *ECPAT Netherlands, Global Monitoring Report on the status of action against commercial sexual exploitation of children, The Netherlands*, ECPAT International, 2006, p. 16. See also <http://www.chatinfo.nl/richtlijnen.htm> (last accessed 08.07.2008).

⁹⁸ Letter of the Minister of Agriculture, Nature and Food Quality and the State Secretary of Economic Affairs to the President of the Dutch Lower House of the States-General, 10 July 2006, online at the website of the Dutch Ministry of Economic Affairs: <http://www.ez.nl/dsresource?objectid=150771&type=PDF> (last accessed 09.07.2008). See also the website of the Multi Stakeholder Initiative: www.idut.nl (last accessed 06.08.2008).

⁹⁹ *Dutch Data Protection Authority*. Website: <http://www.dutchdpa.nl> (last accessed on 21.06.2008).

¹⁰⁰ *Korte toelichting op het Modelreglement Mensenhandel en ontucht* [Brief explanatory note about the Model Regulation trafficking in human beings and lewdness] online at: http://www.cbweb.nl/downloads_modelreglementen/toelichting_mensenhandel.pdf?refer=true&theme=purple (last accessed on 06.08.2008).

Trafficking.¹⁰¹ Those who have been authorized by this regulation have direct access to the Register *Signs of Human Trafficking*.¹⁰²

D.2.4. Cooperation agreements between the Netherlands and countries outside the EU

[88]. An example – not necessarily the only example – of a cooperation agreement between the Netherlands and a country outside the EU concerns the active collaboration of the Netherlands with *The National Agency for Prohibition and Trafficking in Persons and Other Related Matters (NAPTIP)* in Nigeria in the areas of information sharing and prosecution of human traffickers (see also section B.3.1. on the Pilot Quick Action Teams).¹⁰³

D.2.5. Support programmes in countries of origin of trafficked children

[89]. The Netherlands has contributed to several European programmes and projects such as the Twinning programmes, the European Union's STOP II programme, the AGIS Programme and Daphne II. The following projects are worth being mentioned in particular.

[90]. As a result of the fact that the subject of trafficking in human beings formed one of the spearheads during the Dutch chairmanship of the EU in 2004, the Netherlands, the Czech Republic and the UK

¹⁰¹ Article 2 of this Model Regulation stipulates that the goal of the register is the providing of information to carry out the mandate of the Police Law 1993 with regard to (a) the registration of signs of human trafficking and (b) the tracing of probable perpetrators and victims of offences of human trafficking and related criminal acts.

¹⁰² Data from the Register can be used for internal affairs, internal management and internal development of policies relating to the implementation of the policing task. Data from the Reference Index may also be used for interregional and national affairs, management, development of policies and with respect to the justification for the National Rapporteur on Trafficking in Human Beings. Model Regulation for the Police Register *Signs of Human Trafficking* online at the website of the Dutch Data Protection Authority:

http://www.cbweb.nl/downloads_modelreglementen/signalen_van_mensenhandel.pdf?refer=true&theme=purpe (last accessed 30.06.2008).

¹⁰³ The National Agency for Prohibition and Trafficking in Persons and Other Related Matters, Country Presentation on Child Trafficking, slide 33, online at www.naptip.gov.ng/presentations/babandede.ppt (last accessed 30.07.2008).

collaborated in the fight against trafficking in human beings in the so-called PHARE Twinning project.¹⁰⁴

- [91]. The Dutch Ministry of Foreign Affairs and the Swedish International Development Cooperation Agency funded the project "Combating Trafficking in Human Beings through Legal Assistance to Trafficked Persons and Enhanced Judicial Cooperation" to fight human trafficking and protection of victims in Turkey. The aim of the project was to increase the prosecution of traffickers in Turkey as well as to ensure that human rights of trafficked person are upheld through a full access to justice. The project funds a comprehensive capacity building activity in the field of legal assistance for trafficked persons in Turkey as well as in selected countries of the Black Sea region.¹⁰⁵
- [92]. In March 2004 the United Nation Development Programme (UNDP) launched "the Anti-Trafficking Programme: Capacity Building Support and Victims Assistance" in Armenia. A two-year programme implemented under the auspices of UNDP, in cooperation with UMCOR and IOM, and funded by the governments of the Netherlands and Norway, has three components: a) capacity building framework for institutional strengthening and policy elaboration; b) awareness raising and c) victims' assistance.¹⁰⁶
- [93]. In a project that ended in the summer of 2005, the Dutch Embassy in Macedonia supported assistance to the victims of trafficking by supporting the activities of a Transit Shelter Centre.¹⁰⁷
- [94]. The ECPAT Europe Law enforcement Group, coordinated by ECPAT Netherlands, did a research called "Joint East West Research on Trafficking in Minors for Sexual Purposes in Europe: the Sending

¹⁰⁴ For general info on the Twinning programme: *European Commission Enlargement*. Website: http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/institution_building/twinning_en.htm. For info on the specific PHARE project, see the website of the *Netherlands Centre for Police Cooperation (NCIPS)*. News posted on 29.07.2004; <http://www.ncips.nl/ncips-en/index.html> (last accessed 30.06.2008).

¹⁰⁵ News from *IOM Turkey*, online at: <http://www.countertrafficking.org/news.html> (last accessed 06.08.2008).

¹⁰⁶ UNDP, Europe and the CIS, Bratislava Regional Centre, *Trafficking in Human Beings, A Guidance Note*, September 2004, online at: http://europeandcis.undp.org/files/uploads/Gender%20CoP%20Istanbul%20January2005/Human%20Trafficking_Nadja_text_30March.pdf (last accessed 06.08.2008).

¹⁰⁷ Dutch Embassy in Skopje, *Good Governance*, online at: http://www.nlembassy.org.mk/programmes_in/good_governance (last accessed 30.06.2008).

Countries”. The research was co-funded by the European Commission STOP II Programme.¹⁰⁸

¹⁰⁸ *ECPAT Netherlands*, Press Releases. Website:
<http://www.xs4all.nl/~ecpat/Persberichten.htm> (last accessed 01.08.2008).

E. Care and protection

- [95]. On the basis of the *Aanwijzing Mensenhandel* [Instruction Trafficking in Human Beings] cases of child trafficking have absolute priority for police and prosecution services. This instruction furthermore explicitly states that in cases of trafficking in human beings the utmost care must be exercised. By virtue of the instruction every (possible) victim of trafficking in human beings must be informed about:
- a. The right to be kept informed of the investigation and the prosecution of his/her case, through the intervention of the acting investigating officer or the Public Prosecution Service;
 - b. The provisions of the B9-Regulation (see the following section);
 - c. The provision of practical care, emotional care and legal assistance by *Bureau Slachtofferhulp* [Victim Support Netherlands], *Comensha*, trade unions and confidential doctors (see sections E.3. and E.5.);
 - d. The possibility to claim compensation, whether or not in the course of criminal proceedings (see section G.2.);
 - e. The possibility to lodge a complaint on the basis of article 12 of the *Wetboek van Strafvordering* [Code of Criminal Procedure], after a decision of Public Prosecution Service not to prosecute.

E.1. The B-9 Regulation; right to residence and reflection period

- [96]. Under the so-called B-9 Regulation (Chapter B-9 of the Aliens Circular),¹⁰⁹ foreign nationals (adults and minors) who are or might be victims or witnesses of trafficking in human beings are allowed to reside legally in the Netherlands on a temporary basis during the investigation and prosecution of their case. This B-9 Regulation also contains guidelines for the provision of care for and the protection of these victims and witnesses. In the following paragraphs, various elements of the B-9 Regulation and its interrelationship with the asylum procedure will be discussed.

¹⁰⁹ There is even a website, hosted by Ministries and NGO's who deal with trafficking in human beings, on this regulation only: www.b9-regeling.nl.

E.1.1. Period of reflection

- [97]. When there is an indication of trafficking, the police ought to inform any foreign national who might be a victim of trafficking, of the rights described in the B-9 regulation. In addition the police must offer the victim a period for reflection, giving him/her a maximum period of three months to decide whether or not he/she wants to report the criminal offence or whether or not he/she wants to cooperate with the police and the prosecution service. During the reflection period the expulsion of the victim from the Netherlands is suspended. The victim can legally reside in the country on the basis of Article 8(k) Aliens Act.¹¹⁰
- [98]. The reflection period will be offered once-only and cannot be prolonged. The reflection period is terminated if: (a) the victim or witness has left with an unknown destination, (b) the victim or witness decides not to report the case or not to cooperate in the investigation and prosecution or (c) the victim or witness has applied for a residence permit on another basis than the B-9 Regulation.¹¹¹
- [99]. When a victim or witness reports a case of trafficking or cooperates in the investigation and prosecution of a trafficking case, the reflection period is automatically ended. A report to police or cooperation is *ex officio* taken up as an application for temporary residence (see the following section).
- [100]. In 2005 the B-9 Regulation was opened up to foreign nationals already in the Netherlands who might have been victims of trafficking outside the Netherlands but have not (yet) been exploited in the Netherlands.¹¹² Foreign nationals who did not yet have access to the Netherlands, but who might be victims of trafficking, are afforded the opportunity of reporting the crime. If they do so, they will be admitted

¹¹⁰ In 1988 a temporary residence permit for victims of trafficking in human beings who reported their case to police, was introduced for the first time. As of 1991 victims can be granted a reflection period. Until 2005, the opportunity to have a reflection period was offered to victims of sexual exploitation only. In connection with the amendment of Article 273f Criminal Code in November 2005 however, it was extended to victims of all forms of exploitation. *Staatscourant* [Government Gazette] 2005, 220, online at www.overheid.nl.

See www.comensha.nl and Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 15, online at www.bnrm.nl.

¹¹¹ B-9 Regulation (Aliens Circular, Chapter B.9), under 3.3.

¹¹² B-9 Regulation (Aliens Circular, Chapter B.9), under 3.2.

to enter the country. They are not, however, entitled to the reflection period.¹¹³

- [101]. *Amnesty International* and the Dutch foundation *Bonded Labour in Nederland* (BLinN)¹¹⁴, a programme from *Humanitas* and *Oxfam Novib* (see also section F.5.), have pointed out that many victims are afraid of reporting to or cooperating with police, as a result of intimidation by perpetrators, fear for a corrupt police and fear for reprisals.¹¹⁵

E.1.2. Temporary residence during the investigation and prosecution

- [102]. A report to the police or cooperation with the police or prosecution service is *ex officio* taken up as an application for a temporary residence permit.¹¹⁶ The acting police officer has to send a fax to the IND, which has to decide on the application – save exceptional circumstances – within 24 hours after the fax has been sent.¹¹⁷
- [103]. The temporary residence permit is granted for a duration of one year and can be annually renewed. The permit is valid as long as the process of investigation and prosecution lasts and ends in principle when this process has been terminated.¹¹⁸ After termination of the temporary residence permit, the victim may however apply for a continued residence permit (which is in fact a permanent residence permit; see the following section).¹¹⁹

¹¹³ B-9 Regulation (Aliens Circular, Chapter B.9), under 2. See Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 15-16, online at www.bnrm.nl.

¹¹⁴ Dutch foundation *Bonded Labour in Nederland* (BLinN), website www.blinn.nl.

¹¹⁵ Letter of *Amnesty International, the Netherlands* to the State Secretary of Justice of 17 July 2007, online at:

http://www.amnesty.nl/documenten/landenbrieven/mensenhandel_en_asiel_170707.pdf and interview with a representative of BLinN on

<http://www.durftedenken.nl/post/?p=128>. See also <http://www.blinn.nl/?c=project8> (last accessed 21.07.2008).

¹¹⁶ B-9 Regulation (Aliens Circular, Chapter B.9), under 4.1 *juncto* Article 3.48 *Vreemdelingenbesluit* [Aliens Decree].

¹¹⁷ B-9 Regulation (Aliens Circular, Chapter B.9), under 7.1.

¹¹⁸ B-9 Regulation (Aliens Circular, Chapter B.9), under 8.

¹¹⁹ The criteria for continued residence after expiry of a residence permit on the basis of the B-9 Regulation were amended with effect from 14 August 2006. Letter dated 14 August 2006 (*Parliamentary Papers II* 2005/06, 28 638, no. 26, online at www.overheid.nl) resulting in an Amendment to the *Vreemdelingencirculaire* [Aliens Circular] (2006/36A) dated 8 November 2006, *Staatsblad* [Law Gazette] 2006, 225.

- [104]. When a temporary residence permit is granted to a reporting or cooperating victim, the acting co-ordinator of care (in case of child victims often *Stichting Nidos* (see chapter B.1.)) has to ensure the continuation of this person's sheltering.¹²⁰

E.1.3. Continued residence after investigation and prosecution (B-16 Regulation)

- [105]. Under the so-called B-16 regulation (Chapter B-16 of the Aliens Circular) victims and witnesses of trafficking may apply for (permanent) continued residence after termination of their temporary residence permit on the basis of the B-9 Regulation.
- [106]. If information on trafficking provided by a victim ultimately results in conviction of the suspect in relation to that trafficking, the Minister will henceforth assume that this implies in law that returning the victim to his or her country of origin involves risks. If the victim makes an application for continued residence in these circumstances, it will be approved on these grounds.¹²¹
- [107]. Furthermore, the applications for a continued residence permit of reporting victims, or victims who did cooperate with investigation and prosecution in cases that in the end have not resulted in a conviction at the time of the judgment, will be approved if the victims have been legally residing in the Netherlands for a period of three years on the basis of a temporary B-9 residence permit.¹²²
- [108]. If three years have passed since the temporary B-9 residence permit was awarded and the case is still pending before a criminal court, the victim can also apply for a continued residence permit. If no other ground for refusal of the permit is applicable, the permit will be granted.¹²³
- [109]. Victims (not witnesses) of trafficking who cannot apply for a permit for continued residence on the basis of the results of the criminal

¹²⁰ B-9 Regulation (Aliens Circular, Chapter B.9), under 4.2.2. With effect from 1 July 2005, victims of trafficking are exempted from the fees for applications for provisional residence permits and regular residence permits. This exemption also extends to their underage children coming to the Netherlands in the context of family reunification. *Staatsblad* [Law Gazette] 2005, 124, online at www.overheid.nl and Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p. 15, online at www.bnrm.nl.

¹²¹ B-16 Regulation, (Aliens Circular, Chapter B.16), under 7.

¹²² B-16 Regulation, (Aliens Circular, Chapter B.16), under 7.

¹²³ B-16 Regulation (Aliens Circular, Chapter B.16), under 7.

proceedings, may nevertheless apply for continued residence on humanitarian grounds after the B-9 regulation expires. They may do so if they have reported the offence, but the case is dismissed by the prosecution and no appeal against that decision was lodged or this appeal was dismissed. They may also apply for continued residence when the case resulted in acquittal of the suspect within three years since the B-9 residence permit was awarded and no further appeal is possible against the verdict. The Minister will only approve this application, when he/she is of the opinion that because of particular individual circumstances it cannot be required that the alien leaves the Netherlands, thereby taking account of the risk of reprisals and opportunities for reintegration.¹²⁴ The National Rapporteur has remarked that ‘it is not easy to substantiate this type of application, because in practice the burden of proof is largely imposed on the victim. The various institutions (often many of them) that the victim will have been involved with during his or her stay in the Netherlands may have all sorts of relevant information in this context. The victim and his or her lawyer must be able to get hold of this information for the application for continued residence. In 2005, the STV (currently *Comensha*) and a range of cooperating partners developed a *Checklist for Continued Residence in Human Trafficking Cases*.’¹²⁵

E.1.4. Number of children being granted temporary stay on grounds of trafficking (2000-2007)

- [110]. The Annual Reports of the National Rapporteur on Trafficking in human beings provide information on the number of applications for the B-9 Regulation by minors and the number of temporary residence permits granted to them. As the statistics in Annex 1 show, the number of applications (and proportional thereto the number of permits granted) – apart from a slight fallback in the year 2005 – has steadily increased over the past seven years. However, it has to be noted that these statistics may incidentally and mistakenly include minors who applied for or were granted a temporary permit because they are the minor children of victims of trafficking who themselves

¹²⁴ In his/her judgment the Minister takes into consideration (1) the risk of reprisals against the person concerned or his/her family and the extent to which they are protected by the authorities of the country of origin against that risk (2) the risk of persecution in the country of origin (3) the possibilities for social reintegration in the country of origin. B-16 Regulation (Aliens Circular, Chapter B.16), under 7.

¹²⁵ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.63, online at www.bnrm.nl.

applied for or were granted a temporary residence permit under the B-9 Regulation.¹²⁶

- [111]. In 2007 the *Kinderrechtencollectief* [Dutch Collective of NGO's on Children's rights]¹²⁷ has pointed out that in practice too little use is made of the B-9 Regulation by child victims of trafficking in human beings. According to the *Kinderrechtencollectief* this is due to the fact that the B-9 Regulation offers very little protection and care and child victims of trafficking show little inclination to report the offences (see also section E.1.1. paragraph 97).¹²⁸

E.1.5. Interaction between B-9 Regulation and the asylum procedure

- [112]. Not all child victims of trafficking immediately apply for the B-9 Regulation in the first instance; it may be that these children first apply for asylum. If they do so and only at a later stage they decide to cooperate with the police, they will changeover to the procedure of the B-9 Regulation and their cooperation with or report to the police will be *ex officio* considered to be an application for continued residence. In that case their application for asylum will automatically be rejected without substantive review of the reasons for one's request for asylum.¹²⁹ If the procedure under the B-9 Regulation is terminated within three years, it is possible to lodge a new application for asylum, although in principle a second application for asylum is always rejected.
- [113]. If the child victim decides to cooperate with police but does not wish to transfer to the procedure under the B-9 Regulation, the application for asylum is maintained and the child victim is not entitled to invoke any rights under the B-9 Regulation.¹³⁰ In these circumstance the

¹²⁶ This is possible on the basis of the B-9 Regulation under 12. Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p.15, currently available in Dutch only at www.bnrm.nl.

¹²⁷ www.kinderrechten.nl (last accessed 30.07.2008).

¹²⁸ Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p.13, referring to R. Vianen, G. Maaskant, M. Wijers and S. ter Woerds, *Positie van slachtoffers van mensenhandel. 1^e trendrapportage*, Utrecht 2007: Adviesbureau van Montfoort en Verweij-Jonker Instituut, in Dutch online at: www.verweij-jonker.nl/doc/vitaliteit/Monitor%20Mensenhandel_1141.pdf (last accessed 06.08.2008).

¹²⁹ Article 30, under b, *Vreemdelingenwet 2000* [Aliens Act 2000].

¹³⁰ Any asylum seeking minor is entitled to the benefits all asylum seekers are entitled to such as education, medically necessary care, medical care that may prevent situations

police nevertheless needs to contact the contact person trafficking in human beings of the IND, by means of the *Notice report/cooperation criminal investigation trafficking in human beings in the asylum procedure* [*Kennisgeving aangifte/verlenen medewerking aan strafrechtelijk onderzoek mensenhandel gedurende de asielprocedure*]. If the child victim at a later date – for instance after unsuccessful completion of the asylum procedure – indicates that he/she wishes to apply for the B-9 Regulation, the abovementioned notice will be *ex officio* considered to be an application for continued residence.

- [114]. The above shows that it may be difficult for a victim of trafficking to decide what procedure to apply for, the B-9 Regulation or the asylum procedure. The B-9 Regulation provides better arrangements but also has more insecurities, such as the risk of a decision not to prosecute. *Amnesty International* has urged the State Secretary of Justice to consider to amend the asylum procedure by opening it up for victims of trafficking.¹³¹

E.2. Family tracing programme

- [115]. The Dutch Ministry of Justice does not pursue a specific family tracing policy for child victims of trafficking. However, if the return of an unaccompanied child to his/her country of origin is intended, the *Dienst Terugkeer en Vertrek* (DT&V) [Return and Departure Service] of the *Immigratie en Naturalisatie Dienst* (IND) [Immigration and Naturalisation Service] has to examine whether the child can be adequately sheltered and cared for in the country of origin. For the purpose of this examination the DT&V will trace the parents and other family members of the child and it will verify whether they will be able to provide adequate care for the child.¹³²

that would jeopardize public health, youth care and legal assistance. Article 10 par. 2 Vreemdelingenwet 2000 [Aliens Act 2000].

¹³¹ Letter of Amnesty International, the Netherlands to the State Secretary of Justice of 17 July 2007, online at:

http://www.amnesty.nl/documenten/landenbrieven/mensenhandel_en_asiel_170707.pdf

¹³² Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

E.3. Shelter for trafficked children

E.3.1. Shelter for unaccompanied minor aliens

[116]. The Nidos Foundation accompanies unaccompanied minor children (including possible victims of child trafficking) and supports them in finding a place to stay. This is achieved through collective contracts with youth care institutions. Young children (under 12 years old) are placed in foster families. Children from 12-15 years old are placed in small-scale reception units.¹³³ In these centres, the conditions are made as safe and stable as possible and child care workers are available 24 hours a day to help the children to overcome the daily challenges. Elder children (15-18 years old) are placed in large scale shelters, mostly campuses for unaccompanied minor aliens.¹³⁴ In the campuses, there is also 24 hour care available for the children. As discussed below in detail (see section E.4.2.) the Pilot ‘enclosed care’ entails that child victims of trafficking of certain high risk groups may also be placed in enclosed care institutions.

E.3.2. Shelter for child victims of loverboys

E.3.2.1. Women’s reception centre *Asja*

[117]. Child victims of loverboys can be placed in 24-hour shelter at *Asja*, part of Fryslân Women's Reception.¹³⁵ This shelter, of which the exact location is secret, offers accommodation for a maximum of ten girls from sixteen to twenty-three (nine permanent places and one emergency place). The National Rapporteur on Trafficking in Human Beings writes in her report of 2007 about *Asja*: ‘This shelter facility operates on a voluntary basis. The support aims at building up a new future. (...) The ‘Learning House’ – which is a stage between reception and an independent existence – is where residents gradually develop their own independence. They learn how to get a grip on their own situation and learn to be responsible in how they deal with freedoms

¹³³ Either *Kinderwoongroepen* [child living groups] or *Kleine wooneenheden* [small living units].

¹³⁴ Information obtained from an interview with a representative of the Dutch Ministry of Health, Welfare and Sport, The Hague, 17 July 2008.

¹³⁵ Website www.asja.nl. (last accessed 01.08.2008)

and risks, primarily those to do with relationships, sexuality, alcohol, drugs and money.’¹³⁶

- [118]. The *Asja* shelter is primarily an adult women’s shelter. Female child victims of loverboys younger than 16 years old cannot be placed in this shelter. Furthermore, both the Dutch Collective of NGO’s on Children’s rights [*Kinderrechtencollectief*] and *ECPAT International* have pointed out that no special care facilities for minor boys who are victims of sexual exploitation exist. They often end up at centres for the homeless or judicial juvenile institutions.¹³⁷ The new closed youth care institutions – that will be discussed in the following section - may foresee in these needs.

E.3.2.2. Closed Youth Care

- [119]. Minor victims of loverboys are difficult to help if they are on the street or in an open accommodation, as they are often devoted to their loverboys. This is why, for their own protection, there is a legal possibility to take child victims off the circuit by placing them in a closed institution. Until 2008 children who needed protection against themselves or others – thus including child victims of loverboys, but also children with severe behavioural problems – could be placed in a judicial juvenile institution. However, as these judicial juvenile institutions are primarily established for juveniles who have committed an offence, the government acknowledged that children who need protection against themselves or others do not belong in these institutions.
- [120]. Therefore, as of the first of January 2008 the *gesloten jeugdzorg* [Closed Youth Care] was introduced:¹³⁸ after authorisation of the court, a child that needs protection against him- or herself, or against others, can be placed in a designated care institution in which different levels of freedom restricting measures can be imposed. For this placement a *machtiging gesloten jeugdzorg* [authorisation from the court for closed youth care] has to be granted by the juvenile court.

¹³⁶ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.71, online at www.bnrm.nl.

¹³⁷ Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 10 and ECPAT International, *Global Monitoring. Report on the status of action against commercial sexual exploitation of children. Netherlands*, 2006, p. 24.

¹³⁸ *Wijzigingswet Wet op de jeugdzorg, enz. (gesloten jeugdzorg)*, [Amendment Act on Youth Care etc. (Closed Youth Care)], 20 December 2007, *Staatsblad* [Law Gazette] 2007, 578-579, online at www.overheid.nl.

The care providing institution where the child will be placed has to make an assistance plan in consultation with the child.¹³⁹

- [121]. The period 2008-2010 is a transition period for the closed youth care to build up its capacity.¹⁴⁰ Because at present the capacity is not yet sufficient, until 2010 it still may be necessary to place minors with an authorization of the court in closed youth care, in a judicial juvenile institution. However, the National Youth Care Offices and the Custodial Institutions Agency of the Ministry of Justice have agreed that the placement of children under 12 years and child victims of trafficking will be given priority.¹⁴¹

E.3.3. Development of categorical shelter

- [122]. The Ministry of Health, Welfare and Sport and the Ministry of Justice are currently working on the development of new shelter possibilities, the so-called *categorale opvang* [categorical shelter].¹⁴² This project is aimed specifically at sheltering (minor) victims of trafficking who

¹³⁹ Articles 29a to 29y of the *Wet Jeugdzorg* [Youth Welfare Act], online at www.wetten.overheid.nl. See also Brochure *Gesloten jeugdzorg* [Closed Youth Care], online at the website of the Dutch Ministry of Youth and Families: <http://www.jeugdengazin.nl/folders/2007/factsheets-gesloten-jeugdzorg.asp> (last accessed 29.07.08).

¹⁴⁰ As of 1 January 2008 juveniles can be placed in the following closed youth care institutions: [Rentray](#) in Eefde; [Rentray Moeder&Kindhuis](#) in Zutphen; [Ottho Gerhard Heldringstichting](#) in Zetten; [Icarus](#) in Cadier en Keer; [Harreveld, Alexandra](#) in Almelo; [Het Poortje](#), [De Waterpoort](#) in Groningen; [Horizon](#) in Rotterdam with and expertise in care for children younger than 12 years old; [De Koppeling](#) in Amsterdam; [Hand in Hand](#) in Harreveld and Alphen aan de Rijn; [De Hoenderloo Groep](#) in Deelen; [Jeugdformaat Jutters Combinatie](#) in Den Haag; [Paljas Plus](#) in Oosterhout and Deurne. In 2009 this list will be extended with: [De Heuvelrug](#) location *Lindenhorst* in Zeist; [Den Engh](#) in Ossendrecht and Den Dolder with an expertise in care for mentally disabled children. In 2010 the following shelter will be made available: [De Sprengen](#) in Wapenveld. Furthermore the Ministry of Youth and Families has the intention to extend the current locations and to build new locations for closed youth care in the regions Zuid-Holland, Haaglanden, Limburg, Noord-Brabant and Noord-Holland.

¹⁴¹ Website of the Dutch Ministry of Youth and Families: <http://www.jeugdengazin.nl/folders/2007/factsheets-gesloten-jeugdzorg.asp> (last accessed 29.07.08).

¹⁴² In 2007 the National Rapporteur on Trafficking in Human Beings had recommended to explore the possibilities of this categorical shelter. 35th recommendation in the Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.281, online at www.bnrm.nl.

have applied for the B-9 Regulation during the first three months after they have been identified as a (possible) victim of trafficking.¹⁴³

E.4. Children who leave shelters with unknown destination

E.4.1. Statistics and policies to prevent disappearances

- [123]. Official records are kept of the number of minors disappearing with unknown destination from asylum seeker's centres (see Annex 2, table B). The Dutch Collective of NGO's on Children's rights [*Kinderrechtencollectief*] has called the disappearance of a large proportion of the minors from asylum centres alarming.¹⁴⁴ Also the State Secretary of Justice herself has acknowledged the number of unaccompanied minor aliens disappearing from asylum seekers centres with unknown destination, is high. For instance in 2005 a total of 283 unaccompanied minor aliens between 0 and 17 years old left asylum seekers centres, out of which 84,3 % minors disappeared with unknown destination.¹⁴⁵ Relatively more boys than girls disappear; their age and nationalities differ widely.¹⁴⁶
- [124]. In the 2006 Addendum to the National Action Plan the Minister of Justice has alleged that at that time there was no concrete information known to *Comensha*, the National Rapporteur Trafficking in Human Beings, nor to the police, that showed a clear link between the result of the asylum procedure (namely minor asylum seekers who have exhausted all legal means) and trafficking in human beings. Although the risk that children in a vulnerable position are susceptible to exploitation may not be trivialized, according to the Minister the main problem was how to trace the children who leave asylum seekers centres with unknown destination.

¹⁴³ Information obtained from an interview with a representative of the Dutch Ministry of Health, Welfare and Sport, The Hague, 17 July 2008.

¹⁴⁴ Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 12. see www.kinderrechten.nl.

¹⁴⁵ Letter of the (then) Minister of Alien Affairs and Integration to the President of the Dutch Lower House of the States-General, 11 December 2006, *Parliamentary Papers II* 2006-07 27 062, no. 57, online at www.overheid.nl.

¹⁴⁶ Letter of the (then) Minister of Alien Affairs and Integration to the President of the Dutch Lower House of the States-General, 11 December 2006, *Parliamentary Papers II* 2006-07 27 062, no. 57, online at www.overheid.nl.

- [125]. In a report of 2007, the *Kinderrechtencollectief* has argued that ‘it is often unclear who bears the responsibility to take action when unaccompanied minor aliens disappear from the centres. *Nidos*, in its role as a guardianship organization, has an important duty in this respect. The guardian responsible for a child must report the disappearance of the unaccompanied minor foreign national from the asylum centre. However, as a result of their high caseload the guardians often do not have daily contacts with their pupils, and their ability to take rapid action on the disappearance of a minor is dependent on their contact with the staff of the asylum centre who have daily contact with the children and young people. Consequently, in practice the large caseload of *Nidos*’ guardians greatly complicates rapid action in the event of disappearances. On occasion children disappear from the asylum centres even before a guardian has been appointed for them; in a formal sense no-one is then responsible for the child. Sometimes minors who have not yet been assigned a guardian are not even reported as missing.’¹⁴⁷
- [126]. Several protective measures to prevent these disappearances have been undertaken. A clear example concerns the more rapid assignment of guardians (see section C.2.). In addition, a *Protocol Vermissing AMA* (‘Missing Unaccompanied Minor Alien Protocol’) was drawn up in 2003 which lays down the actions the authorities involved in the reception of unaccompanied minor foreign nationals are required to take, for example: at the beginning of the asylum procedure the IND lifts the minor’s fingerprints and immediately after arrival in a reception centre location for unaccompanied minors the Central Agency for the Reception of Asylum Seekers (COA) fills out two forms needed in case of disappearance and adds a picture of the minor to the form.¹⁴⁸ As of the first of January 2008 a pilot has started in order to decrease the risk of disappearances of unaccompanied foreign minors. This pilot will be discussed in detail in the following section.

¹⁴⁷ Kinderrechtencollectief, *First NGO report on the implementation of the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in the Netherlands*, July 2007, p. 12. See www.kinderrechten.nl.

¹⁴⁸ Letter of the (then) Minister of Alien Affairs and Integration to the President of the Dutch Lower House of the States-General, 11 December 2006, *Parliamentary Papers II* 2006-07 27 062, no. 57, online at www.overheid.nl.

E.4.2. Pilot ‘besloten opvang’ [enclosed care]

- [127]. From 1 January 2008 to 31 December 2009¹⁴⁹ the pilot ‘besloten opvang’ [‘enclosed care’]¹⁵⁰ runs, creating the possibility to shelter unaccompanied minor aliens of high-risk-groups in an enclosed/secured care institution in order to protect them and to prevent them disappearing.¹⁵¹ In these enclosed care institutions an intensive counselling process, including assertiveness training, is initiated. It is expected that this will reduce the risk of disappearances substantially.¹⁵²
- [128]. The Royal Constabulary uses a general list of indicators in order to determine whether a group is at high risk of being or becoming a victim of trafficking in human beings. The Smuggling in Human Beings Information Group [*Mensensmokkel Informatiegroep*] of the Immigration and Naturalisation Service (IND) publishes quarterly reports on new high-profile-risk-groups. At individual level the risk is *inter alia* estimated on the basis of interviews with *Nidos* at Schiphol airport (see section C.2.). Other information, for instance from the IND or employees of COA on the basis of individual signals, can also lead to reception in the enclosed care. At present two groups of unaccompanied minors are considered to be at high risk and receive so-called categorical protection: Nigerian girls and Indian boys. Signals that Guinean children are at high risk as well are currently investigated.¹⁵³
- [129]. Placement in such enclosed care institutions requires authorisation from the Court and the institutions in which children are placed under

¹⁴⁹ A progress report is anticipated by the end of 2008. Letter of the Dutch State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 26 May 2008, reference number: 5545662/08 and 19637/1145, online at the Website of the Dutch Ministry of Justice: www.justitie.nl.

¹⁵⁰ The pilot is also often referred to as the Pilot ‘beschermde opvang’ [secured or protected care]. In this report it will be referred to as ‘besloten opvang’ [enclosed care].

¹⁵¹ Before the official pilot was launched, the *Nidos* Foundation ran a pre-pilot without clear policy, by arranging small-scale care for children of high-risk-groups. Furthermore incidentally authorisation for placement of an unaccompanied minor alien in judicial juvenile institutions was requested. Another option was to place the minor in an alien detention centre, on the basis of his/her abuse of the asylum procedure. In the current official pilot the care is provided by the Central Agency for the Reception of Asylum Seekers (COA). Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

¹⁵² Letter of the Dutch State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 26 May 2008, reference number: 5545662/08 and 19637/1145, online at the Website of the Dutch Ministry of Justice: www.justitie.nl.

¹⁵³ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

the pilot, are not fully closed (as this could raise an issue under Article 5 ECHR). For that reason the pilot is called ‘enclosed care’ [‘besloten opvang’] instead of ‘closed care’. This entails among other things that the minors are sheltered in separate units, they can only go outside after permission thereto and they go to school with a private bus. A minor will be placed in enclosed care for approximately half a year. During that period gradually more freedoms will be given to the minor. The exact method to be applied under the pilot however has not yet been developed nor laid down in policy documents or legislation.¹⁵⁴ The budget for the pilot is 4 million euros per year.¹⁵⁵

- [130]. In May 2008 45 minors were sheltered under the pilot.¹⁵⁶ In a letter of that month the State Secretary of Justice informed Parliament that – although it would be premature to yet assess whether the pilot had led to a reduction of the number of disappearances – a positive trend as regards the prevention of disappearances of minor boys from India and minor girls from Nigeria was noticeable.¹⁵⁷

E.5. Access to health care, education and legal assistance

- [131]. On the basis of the so-called *Koppelingswet* [1998 Benefit Entitlement (Residence Status) Act] every person legally residing in the Netherlands – irrespective of the legal basis for that legal residence – is entitled to a range of benefits on the same footing as Dutch

¹⁵⁴ According to a representative of the Bureau of the National Rapporteur on Trafficking in Human Beings a training institute *Pro Education* is currently working on the development of a method. Information obtained from a written reply (email) from a representative of the Bureau of the National Rapporteur on Trafficking in Human Beings, 12 August 2008.

¹⁵⁵ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

¹⁵⁶ Letter of the Dutch State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 26 May 2008, reference number: 5545662/08 and 19637/1145, online at the Website of the Dutch Ministry of Justice: www.justitie.nl. An extension from 48 to 58 places is anticipated. Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

¹⁵⁷ In January-May 2006 21 Indian boys and 7 Nigerian girls disappeared, against 10 Indian boys and 7 Nigerian girls in the same period in 2007. Letter of the Dutch State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 26 May 2008, reference number: 5545662/08 and 19637/1145, online at the Website of the Dutch Ministry of Justice: www.justitie.nl.

nationals.¹⁵⁸ Child victims of trafficking who are granted temporary residence under the B-9 Regulation or continued residence under B-16 Regulation, are legally residing in the Netherlands and thus entitled to benefits that will be discussed in more detail below. Only during the reflection period a different benefit regime is in force, which will be discussed first.

- [132]. Before these benefits of legal residence (whether or not under the B-9 or B-16 Regulation) are discussed in more detail, it has to be stressed that under Dutch law, even *unlawful* residing minor aliens are entitled to medically necessary care, medical care that may prevent situations that would jeopardize public health, youth care and legal assistance.¹⁵⁹ Furthermore, all persons residing in the Netherlands, whether illegally or legally, are entitled to primary, secondary and vocational education (for minors) as well as adult education and student finance (for adults).¹⁶⁰ Educational institutions are not allowed to refuse pupils on the basis of their residence status.¹⁶¹

E.5.1. Rights during the reflection period

- [133]. By virtue of Article 11 paragraph 2 under c of the Aliens Act, during the reflection period victims and witnesses of trafficking in human beings are entitled to and need to be properly informed¹⁶² about their entitlement to the following social services: shelter and accommodation;¹⁶³ maintenance payments, including health insurance;¹⁶⁴ medical care and legal assistance on the basis of finance by the Legal Aid Council.¹⁶⁵

¹⁵⁸ *Wijzigingswet Vreemdelingenwet en enige andere wetten (koppeling aanspraak van vreemdelingen jegens bestuursorganen op verstrekkingen, voorzieningen, uitkeringen, ontheffingen en vergunningen aan het rechtmatig verblijf van de vreemdeling in Nederland)* [(1 July 1998) Benefit Entitlement (Residence Status) Act], *Staatsblad* [Law Gazette] 1998, 204, online at www.overheid.nl.

¹⁵⁹ Letter of the State Secretary of Justice to the President of the Dutch Lower House of the States-General, 20 June 2008, *Parliamentary Papers II 2007-2008*, 19 637, no. 1207, online at www.overheid.nl.

¹⁶⁰ Article 10 par. 2 *Vreemdelingenwet 2000* [Aliens Act 2000].

¹⁶¹ Letter of the State Secretary of Justice to the President of the Dutch Lower House of the States-General, 20 June 2008, *Parliamentary Papers II 2007-2008*, 19 637, no. 1207, online at www.overheid.nl.

¹⁶² *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings].

¹⁶³ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], under 3.2.7.

¹⁶⁴ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], under 3.2.8.

These maintenance payments are granted on the basis of the *Regeling verstrekkingen bepaalde categorieën vreemdelingen*.

¹⁶⁵ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], under 3.2.9.

E.5.2. Rights on the basis of continued residence

- [134]. In addition to the rights during the reflection period, persons who are granted temporary or permanent continued residence under the B-9 Regulation are considered ‘regular migrants’ and are thus entitled to health insurance and medical care; accommodation and housing benefits; employment and legal assistance.¹⁶⁶

E.5.3. Statistics on number children receiving services

- [135]. As this is neither officially registered by any Dutch state authority, nor by any NGO, it is impossible to give any statistics on the number of child victims of trafficking that receive health care services, education and/or legal assistance.¹⁶⁷

E.6. Detention pending deportation

- [136]. By virtue of Article 56 Aliens Act the Minister of Justice may order to detain aliens, including minors, who are unlawfully resident in the Netherlands. Article 59 of this Act creates a legal basis for administrative detention pending deportation. Starting point however, is that the detention of minor aliens must be precluded as much as possible.¹⁶⁸ In accordance with Article 37 of the UN Convention on the Rights of the Child (CRC) administrative detention of minors shall be used only as a measure of last resort and for the shortest appropriate period of time. The detention circumstances must meet the criteria of humanity and need to be suitable for children.¹⁶⁹
- [137]. An order depriving a person of his liberty can only be imposed at an individual basis and primarily to asylum seekers who have exhausted all legal means, for whom repatriation is of significant importance in

¹⁶⁶ *Wijzigingswet Vreemdelingenwet en enige andere wetten (koppeling aanspraak van vreemdelingen jegens bestuursorganen op verstrekkingen, voorzieningen, uitkeringen, ontheffingen en vergunningen aan het rechtmatig verblijf van de vreemdeling in Nederland)* [(1 July 1998) Benefit Entitlement (Residence Status) Act], *Staatsblad* [Law Gazette] 1998, 204.

¹⁶⁷ Information obtained from an interview with a representative of the Dutch Ministry of Health, Welfare and Sport, The Hague, 17 July 2008.

¹⁶⁸ Letter of the Minister and State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 29 January 2008, *Parliamentary Papers II* 2007/08, 29 344 en 19 637, no. 66, online at www.overheid.nl.

¹⁶⁹ Letter of the Minister and State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 29 January 2008, *Parliamentary Papers II* 2007/08, 29 344 en 19 637, no. 66, online at www.overheid.nl

order to prevent that this person end up in illegality, for instance families and minors.¹⁷⁰

- [138]. If considered necessary, pending their deportation unaccompanied minor aliens will be detained in judicial juvenile institutions.¹⁷¹ In these institutions the minor has the freedom to manifest one's religion or beliefs (Art. 46 Young Offenders Institutions (Framework) Act [*Beginselenwet justitiële jeugdinrichtingen*]) and is entitled to medical care (Art. 47); social care and counselling (Art. 48); food, necessary footwear and clothing; and sufficient financial means (Art. 49). The minor is under an obligation to be at school or take part in other educational activities (Art. 52 Young Offenders Institutions (Framework) Act [*Beginselenwet justitiële jeugdinrichtingen*]).
- [139]. If the minor is accompanied by his/her family, the forced repatriation of this family will in principle be realised from a location that does not deprive the family of its freedom, i.e. a shelter location. As an alternative to freedom depriving measures (art 56 Aliens Act) for the entire family, only one parent can be administratively detained,¹⁷² or freedom restricting measures, like an intensive duty to report¹⁷³, can be imposed to members of the family.

E.7. Instruments to report exploitation of trafficked children

- [140]. As of 1 September the national 116 000 hotline to report missing and sexually-exploited children is operational in the Netherlands.¹⁷⁴ In

¹⁷⁰ Letter of the State Secretary and Minister of Justice to the President of the Dutch Lower House of the States-General, 24 June, Parliamentary Documents II 2008 2007-2008, 29 344, no. 67, p. 15, online at www.overheid.nl.

¹⁷¹ Article 9 of the *Beginselenwet justitiële jeugdinrichtingen* [Young Offenders Institutions (Framework) Act]. The policy on (administrative detention of) unaccompanied minor aliens who have exhausted all legal means will be reassessed. Letter of the State Secretary of Justice to the President of the Dutch Lower House of the States-General, 20 June 2008, *Parliamentary Papers II* 2007-2008, 19 637, no. 1207, online at www.overheid.nl.

¹⁷² Letter of the Minister and State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 29 January 2008, *Parliamentary Papers II* 2007/08, 29 344 en 19 637, no. 66, online at www.overheid.nl.

¹⁷³ Article 54 *Vreemdelingenwet 2000* [Aliens Act 2000].

¹⁷⁴ See the website of the International Child Abduction Centre in the Netherlands <http://www.kinderontvoering.org/116000.php> (in Dutch) and <http://www.childabductioncentre.org/116000.php> (in English). According to this website after Greece and the Czech Republic, The Netherlands is the third country within the European Union which operates the number 116000.

addition, the Dutch Red Cross has a free phone number (0800-83 76 478) offering help in case of missing persons, and hosts a website to report or read about missing persons: www.vermistepersonen.nl. Another interesting website is www.missingkids.nl. This site takes part in the global website network of the *International Center for Missing and Exploited children* (USA).

- [141]. Similar instruments to report other situations of exploitation of trafficked children are (a) the phone number of *Comensha*¹⁷⁵ (b) a Website of Dutch Police to report Cyber crime, explicitly including child pornography¹⁷⁶ and (c) the national phone number 0800 7000 to anonymously report crime. The latter phone number is hosted by *Stichting M.* [*M* foundation], who functions as an intermediary to police and other investigation services. *Stichting M.* also runs a campaign to make the public aware of trafficking in human beings and to call on the public to report trafficking (see section B.1.1.).¹⁷⁷

¹⁷⁵ Phone number +31 33-4481186, online at www.comensha.nl.

¹⁷⁶ Website www.meldpuntcybercrime.nl (last accessed 01.08.2008).

¹⁷⁷ Website www.meldmisdaadanoniem.nl(last accessed 01.08.2008).

F. Best interests determination and durable solutions, including social inclusion/return

F.1. Durable solutions in case of return

- [142]. It should be emphasised that all child victims of trafficking who cooperate with the police or prosecution are entitled to temporary residence under the B-9 Regulation and may apply for continued residence under the B-16 Regulation. Nevertheless there are two possible scenarios of a child victim of trafficking in human beings returning to his/her home country, namely (a) if the child explicitly wishes to do so or (b) if it is not known that the child is a victim of trafficking and he/she has exhausted all legal means in the asylum procedure. The following paragraphs will discuss the regulation of these scenarios.
- [143]. The *Dienst Terugkeer en Vertrek* (DT&V) [Return and Departure Service] of the IND [Immigration and Naturalisation Service] coordinates the return of unaccompanied minor aliens. DT&V holds interviews with the individual minor, in order to set up a tailor-made repatriation scheme. In facilitating the return of a minor, DT&V closely cooperates with *Stichting Nidos*; the legal guardian can attend the return interviews. Before the actual return, the International Organisation for Migration (IOM) offers counselling. During the actual return at Schiphol national Airport, IOM accompanies the minor to the plane. Dependent on the age of the child, a special escort may be provided for. After arrival in the country of origin, IOM employees take care of the child and guide them through custom formalities. Should family be known, the DT&V will inform them of the arrival of the child and the child may be handed over to them. If no family is known, the child will be sheltered in an adequate shelter location, for instance a shelter with which IOM has made contractual formalised arrangements. DT&V has to ensure that no child may leave the Netherlands before actual access to an adequate shelter in the home country is arranged.¹⁷⁸

¹⁷⁸ Letter of the State Secretary of Justice to the President of the Dutch Lower House of the States-General, letter of 13 July 2007, *Parliamentary Papers II*, 2006–2007, 27 062, no. 59, p. 2, , online at www.overheid.nl.

- [144]. Very recently in July 2008, IOM started with the implementation of the UAM (Unaccompanied Minors) project. The project aims, in collaboration with *Stichting Samah* [The Samah Foundation]¹⁷⁹, to work with young migrants, who have no chance to obtain legal residence in the Netherlands, by accompanying them in a humane, orderly and sustainable voluntary return to their country of origin. Furthermore the IOM performs a few country-specific projects to stimulate the reintegration of persons returning to their country of origin, for instance Nigeria.¹⁸⁰
- [145]. Furthermore IOM, *Bonded Labour in Nederland (BLinN)* (see section F.5.), the *Stichting Religieuzen tegen Vrouwenhandel (SRTV)* [Foundation of religious against trafficking in women], *La Strada* and *Comensha*, have made arrangements, set out in a Covenant, to optimise assistance for victims of trafficking in human beings who are returning to their countries of origin.¹⁸¹

F.2. Participation of the child in relevant procedures

- [146]. In several relevant procedures, child victims of trafficking may actively participate. For instance under the *Wet op de Jeugdzorg* [Youth Welfare Act], the care providing institution where a child will be placed in closed care has to make an assistance plan in consultation with the child (see section E.3.2.2.).¹⁸² Furthermore when a minor is traced as a possible victim of trafficking, the child takes part in an informative interview with an investigative officer, before he/she may decide to report the case to the police.¹⁸³ Another example is that child victims have a right to speak in court or to submit a written statement

¹⁷⁹ *Stichting Samah* [The Samah Foundation] is a National interest group for unaccompanied minor aliens. Website: www.samah.nl (last accessed 01.08.2008).

¹⁸⁰ See the website of *IOM-Nederland* [IOM – The Netherlands] http://www.iom-nederland.nl/english/Programmes/Return/Departure_projects/Country_specific_reintegration_projects/Return_to_Nigeria (last accessed 01.08.2008).

¹⁸¹ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.65, online at www.bnrm.nl

¹⁸² Articles 29a to 29y of the *Wet Jeugdzorg* [Youth Welfare Act], online at www.wetten.overheid.nl. See also Brochure *Gesloten jeugdzorg* [Closed Youth Care], online at the website of the Dutch Ministry of Youth and Families: <http://www.jeugdengazin.nl/folders/2007/factsheets-gesloten-jeugdzorg.asp> (last accessed 29.07.08).

¹⁸³ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter IV under 6.

in criminal proceedings concerning cases of trafficking (see section G.1.).¹⁸⁴

F.3. Children with special needs

- [147]. As discussed above, (see section A.8.) Article 3 of the Convention on the Rights of the Child (CRC) – which establishes the principle of best interests of the child as a primary consideration in all actions (and decisions) affecting children, has been given direct effect in the Netherlands¹⁸⁵ and thus must be applied to all (trafficked) children with special needs as well.
- [148]. In all relevant procedures (interviews with the IND, police and *Nidos*, in shelters and during criminal proceedings), child victims of trafficking are entitled to translation, should a language barrier occur.¹⁸⁶ Furthermore, NGO's like *BLiNN* (see section F.5.) provide relevant information in English.¹⁸⁷
- [149]. The Ministry of Justice strives to take the interests of all children coming from different ethnic backgrounds fully and in all possible procedures into consideration, but it acknowledges that this is sometimes difficult as a result of budgetary restrictions. It has to be underlined that the Ministry is constantly developing its policies; looking for new measures that best safeguard the child's interests.¹⁸⁸

¹⁸⁴ Article 302 Code of Criminal Procedure and *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Annex 2 under 7.

¹⁸⁵ Rechtbank [District Court] Utrecht 26 March 1997 and 10 December 1997, *NJ* 1999/462, online at www.rechtspraak.nl. Nevertheless *Unicef* and *Defence for Children* are of the opinion that the CRC is ignored all too often in legal practice. See *Unicef and Defence for Children International, Jaarbericht Kinderrechten 2008, Kinderrechten in Nederland* [Annual Report Children's rights in the Netherlands], 2008, p. 4, online at: www.kinderrechten.nl.

¹⁸⁶ For instance Art. 191 *Wetboek van Strafvordering* [Code on Criminal Procedure] and Articles A3.8; A.7.9.3 and C. 3.1.1 *Vreemdelingencirculaire 2000* [Aliens Circular 2000]. The latter Article provides for the possibility of appointment of a female translator, if the alien so desires.

¹⁸⁷ For instance the *BLiNN leaflet You have Rights!* online at www.blinn.nl/?c=publicaties3 (last accessed 01.08.2008).

¹⁸⁸ Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

F.4. Asylum and subsidiary protection for child victims of trafficking

- [150]. As elucidated above, (child) victims of trafficking may apply for continued residence on humanitarian grounds after expiry of the B-9 Regulation¹⁸⁹ (see section E.1.3.). Such residence is not only granted to victims who have reported their case if the criminal proceedings have resulted in a conviction, but may also be granted if the Minister of Justice is of the opinion that because of particular individual circumstances it cannot be required that the alien leaves the Netherlands, thereby taking account of the risk of reprisals and opportunities for reintegration.¹⁹⁰

F.5. Integration programmes

- [151]. (Child) victims of trafficking in human beings are usually supported in their integration in Dutch society by NGO's like *Humanitas* and the Dutch foundation *Bonded Labour in Nederland (BLinN)*.¹⁹¹ These NGO's often receive financial funding for specific projects from relevant Ministries, such as the Ministry of Health, Welfare and Sport. *BLinN* supports victims indifferently of their residence status; every trafficked person can apply for support. *BLinN* has initiated buddy projects for victims of trafficking in human beings in the cities of Amsterdam, Rotterdam, Utrecht and Leeuwarden. In this project a victim of trafficking is matched to a Dutch person of the same age, mostly students. Together, the victim and the buddy may undertake enjoyable activities, such as talking, walking, visiting museums and cooking. Apart from migrant victims, the buddy project is also open to Dutch young girls who have become victims of forced prostitution (loverboys).

¹⁸⁹ *Vreemdelingencirculaire 2000* [Aliens Circular 2000], chapter B.16 under 7 and Article 13c *Vreemdelingenwet 2000* [Aliens Act 2000].

¹⁹⁰ In his/her judgment the Minister takes into consideration (1) the risk of reprisals against the person concerned or his/her family and the extent to which they are protected by the authorities of the country of origin against that risk (2) the risk of persecution in the country of origin (3) the possibilities for social reintegration in the country of origin. Aliens Circular, Chapter B.16, under 7.

¹⁹¹ 'The programme Bonded Labour in the Netherlands (BLinN) is a joint initiative of *Humanitas* and *Oxfam Novib*. It was set up in 1999 to support persons (mainly women) affected by trafficking in human beings in the Netherlands. The programme aims to structurally offer these women a better future. Based on their individual needs, interests and capabilities, a support plan is elaborated. BLinN aims to provide the women with instruments to rebuild their future in the way they want, in the Netherlands or in their country of origin.' www.blinn.nl (last accessed 31.07.2008).

- [152]. If a child victim has been granted a continued residence permit for an indefinite period and turns eighteen, he/she will receive counselling from the municipality where he/she will take up residence.¹⁹² NGO's like the Dutch Refugee Council [*Vluchtelingenwerk Nederland*]¹⁹³ often give assistance in this integration process.
- [153]. For access to full health care, education and vocational training see section E.5.

¹⁹² Information obtained from an interview with two representatives of the Immigration Policy Department of the Dutch Ministry of Justice, The Hague, 18 July 2008.

¹⁹³ <http://www.vluchtelingenwerk.nl/> (last accessed 31.07.2008).

G. Prosecution

[154]. For the number of final convictions based on child trafficking per year for the period 2000-2007, see Annex 1.

G.1. Child-sensitive procedures

[155]. The *Aanwijzing Mensenhandel* [Instruction Trafficking in Human Beings] contains provisions on the procedures in court in cases of trafficking in human beings.¹⁹⁴

[156]. In principle the suspect has the right to have witnesses (including the victim) heard. Thereby a balance has to be struck between the protection of the private life, the safety and the health of the victim, and the right of the suspect to have witnesses heard. The Public Prosecution Service may propose to have the victim/witness heard without the suspect being present. The Public Prosecutor may also oppose to hearing a minor victim in court. To compensate the loss of a direct questioning of the victim/suspect in court, the *rechter-commissaris* [delegated judge] may hear the victim/witness; a tape with the incriminating statement of the victim/witness in front of the police may be played in court; or reporting officers that interviewed the victim/witness may be heard in court.¹⁹⁵ In all cases involving a minor victim of trafficking, sexual exploitation or the removal of organs, the recording of the statement on a sound or image carrier is strongly recommended in the Instruction on Trafficking in Human Beings.¹⁹⁶

[157]. Exceptionally the victim/witness may take part in a witness protection programme.¹⁹⁷ The victim may be qualified as a threatened witness and be heard anonymously by the *rechter-commissaris* [delegated

¹⁹⁴ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter V under 3.

¹⁹⁵ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter V under 3. See also *Hoge Raad* [Supreme Court] 12 October 1999, *NJ* 1999, 827, online at www.rechtspraak.nl.

¹⁹⁶ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter IV under 7. Footnote 17 of this Instruction announces a new Instruction on the aural and audiovisual restriction and hearing of victims, witnesses and suspects that may also apply in cases of trafficking in human beings. At present however this Instruction is not yet in force.

¹⁹⁷ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter V under 3.

judge].¹⁹⁸ However, due to the risk of the discovery of the victim's identity, this statement cannot be very detailed.

- [158]. Victims need to be informed of their right to have an interview with the Public Prosecutor. Furthermore victims need to be informed of their right to speak in court (ex article 302 Code of Criminal Procedure) and the opportunity to submit a written statement.¹⁹⁹

G.2. Right to compensation

- [159]. Various ways exist in which (child) victims of trafficking can obtain compensation. This may concern damages – for example loss of property, medical costs or loss of income – and emotional injury, for example damages for pain and suffering.²⁰⁰ Victims may receive compensation either from the perpetrator or from a government indemnity payment.
- [160]. All victims can submit a claim for civil damages by joining in the criminal procedure as adversely affected parties. The victim's civil claim is then dealt with at the same time as the criminal case.²⁰¹
- [161]. In addition to awarding the civil claim, the court can impose an order for compensation. The victim can ask for such a sanction, but it can also be imposed *ex proprio motu*. The most important distinction between this and a claim as a disadvantaged party is that collecting the claim is taken out of the victim's hands and passed to the Central Judicial Collection Agency.
- [162]. Even if the victim did not join in the criminal proceedings as a disadvantaged party, when passing a suspended sentence a court can impose a special condition to the effect that the accused should pay a specific amount to the victim; to the Violent Offences Compensation Fund [*Schadefonds Geweldsmisdrijven*] or to some other institution protecting the interests of victims of criminal offences. This condition

¹⁹⁸ Art. 226a to 226f Code of Criminal Procedure.

¹⁹⁹ *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Annex 2 under 7.

²⁰⁰ The information given in this section is based on information from the Fifth Report of the National Rapporteur Trafficking in Human Beings (2007). Hence, for an extensive discussion of the possibilities to claim compensation for victims of trafficking, see Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.58-60, online at www.bnrm.nl.

²⁰¹ Article 51a Code of Criminal Procedure and *Aanwijzing mensenhandel* [Instruction Trafficking in Human Beings], Chapter VI.

is primarily of interest if there is no demonstrable victim, or if a victim does not wish to obtain compensation.²⁰²

- [163]. Anyone who has sustained serious physical or mental injury as a result of an intentional violent offence committed in the Netherlands, can apply for a benefit payment from the Violent Offences Compensation Fund [*Schadefonds Geweldsmisdrijven*].²⁰³
- [164]. Lastly victims can resort to the civil courts. A conviction in a criminal case provides important evidence at the civil court: the victim can exhibit the criminal conviction.²⁰⁴ This civil law route however is complicated and can take longer, which may pose a problem to victims of cross-border trafficking in human beings who have left for their countries of origin.²⁰⁵
- [165]. For statistics on compensation paid to trafficked children per year, for the period 2000-2007, see Annex 1.

²⁰² Article 257a Code of Criminal Procedure.

²⁰³ 'This fund cannot reimburse losses resulting from lost income. In order to obtain a payment, it is necessary to lodge an application for a benefit payment with the Fund. The committee deciding on applications can call for further information and can also interview witnesses and experts. A claim can be awarded or rejected either in whole or in part. If it is rejected, then the disadvantaged party can lodge an appeal to the Court of Appeal in The Hague. The Compensation Fund has maximum benefit payment amounts, and can make supplementary payments. It makes no difference to the Compensation Fund whether the victim is a Dutch national. The offence must have been committed on Dutch territory, however. Very few foreign victims actually find their way to the Fund each year.' Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.60, online at www.bnrm.nl.

²⁰⁴ 'If the conviction has not yet become irrevocable, or if it ended in acquittal or dismissal, it still does not prevent a claim for compensation being lodged with the civil court. The court may, nevertheless, decide to await the criminal verdict.' Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.60, online at www.bnrm.nl.

²⁰⁵ Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.60, online at www.bnrm.nl.

H. Miscellaneous

- [166]. As discussed in section E.3.3. the Ministry of Health, Welfare and Sport and the Ministry of Justice are currently working on the development of new shelter possibilities, the so-called *categorale opvang* [categorical shelter].²⁰⁶ This project is aimed specifically at sheltering (minor) victims of trafficking who have applied for the B-9 Regulation during the first three months after they have been identified as a (possible) victim of trafficking.²⁰⁷
- [167]. Another current debate concerns critique on the fact that thus far hardly any impact assessment or effect studies concerning the Dutch fight against trafficking in human beings as laid down in legislation and policy documents have been carried out.²⁰⁸ Although certain pilots, such as the pilot ‘enclosed care’ (see section E.4.2.) and the pilot ‘quick action teams’ (see section B.3.1.) are and/or will be evaluated, at present no general impact assessment of the national policy as laid down in the National Action Plan of Trafficking in Human Beings has taken place.

²⁰⁶ In 2007 the National Rapporteur on Trafficking in Human Beings had recommended to explore the possibilities of this categorical shelter. 35th recommendation in the Fifth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2007, p.281, online at www.bnrm.nl.

²⁰⁷ Information obtained from an interview with a representative of the Dutch Ministry of Health, Welfare and Sport, The Hague, 17 July 2008.

²⁰⁸ Interview with a representative of the Bureau of the National Rapporteur on Trafficking in Human Beings (BNRM), The Hague, 10 June 2008.

I. Good practices

- [168]. Dutch legislation and policy on the fight against trafficking in human beings provide for several *good practices*.
- [169]. The appointment of the National Rapporteur on Trafficking in Human beings and the establishment of the supporting Bureau (BNRM), constitutes a prominent *good practice* in the Netherlands. The work of the BNRM has evidently contributed to the development of legislation, policies and practices concerning the fight against trafficking in human beings (see also section A.4.1.).
- [170]. The registration of data of (possible) victims of trafficking in human beings by *Comensha* and the Expertise Centre for Youth Prostitution, gives an insight in the numbers and backgrounds of victims of trafficking in human beings. Although there is room for improvement of the registration methods,²⁰⁹ the simple fact that registration takes place can be considered to be a *good practice*. On the basis of this registration policies can be adjusted to specific needs that occur from these data (see also section A.5.1.).
- [171]. Thirdly, although the problem most probably is not specifically Dutch, the Dutch policy on protection and fight against loverboys seems to be unique in Europe. Through close cooperation of police, prosecution and care providers, general awareness of the problem has been created and specific prevention and protection measures were and still are developed.
- [172]. The contribution of NGO's, like *Unicef The Netherlands*, *Defence for Children International The Netherlands*, *ECPAT The Netherlands* and *Terre des Hommes* to raising awareness of child trafficking,²¹⁰ developing policies to fight child trafficking and providing sufficient care for child victims, may not be underestimated. An example of a

²⁰⁹ See the critique of the National Rapporteur on Trafficking in Human Beings, Fifth report of the National Rapporteur on Trafficking in Human Beings (*English version*), The Hague, 2007, p. 47, online at www.bnrm.nl and Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM), The Hague, 2008, p. 7, currently available in Dutch only at www.bnrm.nl.

²¹⁰ See for instance A. van den Borne and K. Kloosterboer, *Investigating Exploitation, research into trafficking in children in the Netherlands*, produced by ECPAT Netherlands, in cooperation with Defence for Children International The Netherlands and Unicef Netherlands, and with financial support from PLAN Nederland, Amsterdam 2005, online at <http://www.ecpat.nl/ariadne/loader.php/ecpat/Rapporten/>.

good practice in this respect is the buddy project offered by *BLinN* (see section F.5.).

- [173]. In general the so-called '*ketenaanpak*' – the fact that all relevant actors (such as police and prosecution officers, care providers and legal guardians) cooperate intensively in the fight against trafficking in human beings – may also be regarded as a *good practice*.

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	See below							
Number of children applying for the B-9 Regulation.	7	11	13 ²¹¹	n.a.	n.a. ²¹²	7	34 ²¹³	n.a.
Number of children being granted the B-9 Regulation.	n.a.	n.a.	n.a.	n.a.	n.a.	5	27	n.a.

²¹¹ The statistics for 2000-2002 are taken from the Third report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2003, p.62, online at www.bnrm.nl. These numbers concern applications for the B-9 Regulation, but do not specify how many residence permits were actually granted. Furthermore it has to be noted that these minors may incidentally and mistakenly, may include minors who applied for or were granted a temporary permit because they are the minor children of victims of trafficking who themselves applied for or were granted a temporary residence permit.

²¹² Annually the Dutch Bureau National Rapporteur for Trafficking in Human Beings (BNRM) analyses information it receives from the Immigration and Naturalisation Service (IND) concerning applications for and grants of the B-9 Regulation. Due to administrative reasons for the years 2003 and 2004, the IND could not provide the BNRM with this information, which explains the gaps in the table. Fourth report of the National Rapporteur on Trafficking in Human Beings (NRM) (*English version*), The Hague, 2005, p.5, online at www.bnrm.nl.

²¹³ The statistics for 2005 and 2006 are taken from the Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 14, currently available in Dutch only at www.bnrm.nl.

Number of trafficked children receiving full health care services	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Number of trafficked children receiving education/ training	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Number of trafficked children receiving legal assistance	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Number of final convictions based on child trafficking cases, per year ²¹⁴	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

²¹⁴ By letter of 9 July 2008, we sent a request for the number of final convictions based on child trafficking cases, per year for the period 2000-2007, to the Ministry of Justice. In a telephone conversation of August 11th, a representative of the Ministry informed us that due to the method of registration by the Public Prosecution Service it was as yet not possible to provide the information requested. This information is officially confirmed by a letter from the Minister of Justice of 28 August 2008. Statistics exist however on the number of cases registered by the Public Prosecution Office, that also concern minors. See Annex 2, table C.

	2000	2001	2002	2003	2004	2005	2006	2007
Total of amount of compensation paid to trafficked children, per year, in euros ²¹⁵	13,000	2,000	1,9650	8,580	76,000	7,700	2,342	5,000
Number of minor victims of trafficking involved in cases in which compensation has been paid per year ²¹⁶	4	1	15	15	6	5	6	1

²¹⁵ By letter of 9 July 2008, we sent a request for the total amount, average amount and range of amounts of compensation paid to trafficked children, per year for the period 2000-2007, to the Ministry of Justice. By letter of 28 August we received an answer from the Minister of Justice, informing us that the Ministry had obtained information from the relevant registers of the Central Judicial Collection Agency. Not all information we requested is however available. The Ministry informed us that a selection was made from its Central Judicial Collection Agency register of all compensation measures that had been imposed in cases of trafficking in human beings (convictions for offences under Art. 250a (*old*), Art. 250ter, Art. 273a and Art. 273f Penal Code) in which minor victims were involved in the period 2000-2007. Furthermore the Ministry gave an overview of the number of minors involved in these cases and the average of amounts of compensation paid to minor victims of trafficking in human beings. A range of amounts paid is however not available.

²¹⁶ According to information obtained from the Ministry of Justice, one case may have more than one victim.

Average of amounts of compensation paid to minor victims of trafficking in human beings, per year, in euros	3,250	2,000	1,310	572	12,667	1,540	390	5,000
Range of amount of compensation paid to trafficked children, per year	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Annex 2 - Other statistics relevant for child trafficking

A.

Age distribution of minor (possible) victims reported to <i>Comensha</i> and percentage of total of reported cases. ²¹⁷												
Age category	2001		2002		2003		2004		2005		2006	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
10-14 years	2	1%	-	-	2	1%	3	1%	1	0%	10	2%
15-17 years	25	9%	41	12%	18	7%	23	6%	23	5%	93	16%
Sum of reported cases of minor victims	27	10%	41	12%	20	8%	26	6%	24	6%	103	18%
Total of reported cases	284	100%	343	100%	257	100%	405	100%	424	100%	579	100%

B.

Number of unaccompanied minor aliens disappearing from shelters with unknown destination ²¹⁸			
	2005	2006	2007
Male minors	188	125	78
Female minors	52	56	44
Total	240	181	122 ²¹⁹

²¹⁷ Table copied from the Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 10, currently available in Dutch only at www.bnrm.nl.

²¹⁸ Statistics obtained from the Ministry of Justice by email of 22 July 2008. These statistics are also publicly available in *Proceedings of the Dutch Lower House of the States-General*, Appendix, 2007-2008, no. 1778, p. 3629-3630, online at www.overheid.nl.

²¹⁹ In 2007 46 male and 18 female minors disappeared from asylum seeker's centres and 32 male and 26 female minors disappeared from small-scale reception units.

C.

The following table provides information on the number of cases registered by the Public Prosecution Office, that also concern minors. In the period 2002-2006 in at least 17 % of the cases child victims were involved. This table does not give information on the total *number* of child victims, as one case may concern more than one minor victim.²²⁰

Number of cases registered by the public Prosecution Office, that also concern minors			
Year	Registered cases	Registered cases with (also) minor victims	
		No.	% of total amount of cases
2002	200	27	13 %
2003	156	41	26 %
2004	220	32	15 %
2005	138	36	26 %
2006	201	24	12 %

²²⁰ Table copied from the Sixth report of the National Rapporteur on Trafficking in Human Beings (NRM) The Hague, 2007, p. 30, currently available in Dutch only at www.bnrm.nl.

Annex 3 - Article 273f of the Dutch Penal Code

Non-official translation from the website of the Dutch National Rapporteur on trafficking in human beings²²¹

1. Any person who:

(a) by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;

(b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;

(c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;

(d) forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;

(e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;

(f) wilfully profits from the exploitation of another person;

(g) wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);

(h) wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration,

²²¹ <http://english.bnrm.nl/legislation/> (last accessed 05.08.2008).

when this other person has not yet reached the age of eighteen years;

(i) forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

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

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.

3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine, or either of these penalties:

(a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;

(b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine, or either of these penalties.

5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine, or either of these penalties.

6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine, or either of these penalties.

7. Article 251 is applicable mutatis mutandis.