

*National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children in the Netherlands*

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*Conference on “Data protection and right to privacy for marginalised groups: a new challenge in anti-trafficking policies”*

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Thank you, first and foremost, for the opportunity to speak to you today. And many thanks to the previous speakers for their wonderful contributions to this panel.

Today’s panel is about good practices in data protection. I am glad that I have been asked to look at this perspective from my experience as Dutch Rapporteur.

For seven years I have been the National Rapporteur now. My task is to report on the nature and extent of human trafficking in the Netherlands and on the effects of the anti-trafficking policies pursued. On the basis of my reports, I make recommendations to improve anti-trafficking policies, the vast majority of which have been adopted. My office is not an NGO, neither a governmental organization. ***My role is an independent one.*** I have always stressed that the essential requirement for the fulfillment of my mandate is independence. That I am independent induces both NGOs and government to trust me and allow me access to their data. As such, the independence ensures access to sufficient data for analysis, and by extension, leads to effective policymaking.

### ***Protection***

In the fight against human trafficking over ten years ago, the emphasis was on the investigation and prosecution of perpetrators. Now the ***protection of victims*** is a priority. In European and national laws and regulations the position of victims is further embedded. A very positive development. Measures to protect victims are widely known. Do we also know how statistics may contribute to the protection of victims? And why in order to give adequate protection we must know details.

### *Statistics & protection*

In the Netherlands the Coordination Centre for Human Trafficking (CoMensha) registers possible victims of human trafficking on my behalf. Yearly I receive their database on possible known victims. In 2011, three times more victims were registered than in 2007. 1,222 (possible) victims were registered in 2011. Of all the registered victims in the period 2010-2011, 24% included a request for shelter. CoMensha arranges accommodation for possible victims who are living legally in the Netherlands. In absolute terms, the number of victims requiring shelter rose from 225 in 2009 to 280 in 2011. In total, CoMensha was able to arrange initial shelter for more than three-quarters of the victims who were reported and who required shelter. Almost a third of all the victims requiring shelter in 2010 and 2011 were placed in categorical shelter for victims of human trafficking. For 24% (=119) however, no initial shelter was found. These statistics may guide further research and, if necessary, adjust policies to guarantee that victims are entitled to appropriate shelter.

Another example.

In the Netherlands on the basis of the B8 regulation temporary residence status is granted to victims as well as entitlement to certain state facilities such as shelter. The regulation is also an important instrument for criminal investigations since it means that the victims and witnesses remain available to the police and the public prosecution service. The condition for obtaining a temporary residence permit is that the victim cooperates in the criminal investigation. Now the statistics. In 2011, 398 victims were granted a temporary residence permit. In the period 2009-2011, a significant number of applications were denied (31=3%). That unusual number prompted me to do a case file analysis of the applications denied. One of the grounds for rejection is a person's criminal record, for instance, for shoplifting. As can be seen in the figure this was the most common ground. One example was a Ghanaian woman who had reported human trafficking to the police. Her application for temporary residence was rejected because of a shoplifting offence two years earlier which was unrelated to the human trafficking case. The woman had paid her fine of 130 euro. One case involved a more serious violation by a Cameroonian woman who had killed her daughter and had been sentenced to five years in prison. Her application was denied because she was considered an undesirable alien.

The findings from my analysis raise a question: to what extent should an earlier conviction, and the nature of that conviction, influence the granting of a residence permit.

### *Challenges when dealing with statistics*

One dealing with statistics finds himself on dangerous grounds. Two challenges are important in this regard. The first challenge I have discussed earlier this week on the seminar of TRAFSTAT: Tools for Validation and utilization of EU statistics on human trafficking, a project from the University of Tilburg. The bottom line of my presentation there was that while statistics are very useful and in practice provide – for example – politicians – the grip they were searching for, it is extremely important to be aware on *how to use statistics* by knowing the limits. Bad data may be worse than no data.

The second challenge refers to today's topic: *data-protection*. Data conferences are often about what we want to know about the victims of human trafficking: How many minors are trafficked? Is it just girls who are sexually exploited or also boys? How many domestic victims are trafficked? From which other countries victims are coming? Did every foreign victim of trafficking without a legal residence received at least a temporary residence? How much shelter is needed for victims? I can think of many other questions that have been raised during data conferences.

Why, during these conferences, is the focus less on data relating to offenders? I believe because collecting data on offenders seems to be less of an issue. Data relating to offenders are generally available or made accessible for the monitoring mechanisms without any problem. Data on victims however is generally sensitive. Non-governmental organizations are often reluctant to share data with government agencies. Protecting the victim's privacy is an important factor in this, as is uncertainty about the security of the information that is provided.

Nevertheless, protecting the privacy of perpetrators is an important aspect as well: in the one country possibly more than in other countries. The protection of data however does not pose a barrier to the collection of data on offenders, and this benefits the knowledge on human trafficking, and by extension, effective evidence-based policy. As an example: as an independent National rapporteur I have access to all police files in the Netherlands. I used data that I received from 55 police investigations in 2009 to analyze human trafficking structures. Three structures stand out:

- In the investigations involving domestic small-scale sexual exploitation, the victims were mainly from the Netherlands and the offenders were generally from the

Netherlands or from Turkey, Morocco, Surinam, or the former Netherlands Antilles. The number of victims and offenders in each investigation was small and the exploitation was almost exclusively sexual in nature.

- European sexual exploitation encompassed only sexual exploitation and involved a slightly larger number of victims and offenders who came mainly from Central and Eastern Europe. And this pattern showed also that central and eastern European traffickers also used a manipulative way to groom their victims feigning a love relationship.
- International large-scale exploitation outside the sex industry were mostly larger investigations, the victims were generally from Asia, and the offenders were from Asia and the Netherlands. It is worth noting that the recruitment of victims by feigning a loving relationship tends to be connected with domestic small-scale sexual exploitation, but that was not always the case.

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Why is this information important? It provides the police with information about possible patterns of human trafficking. It demonstrates that things don't exist in a vacuum. So if the police identify an Asian victim then it makes sense to find out if there are more of them, to make more inquiries. And to keep on looking for a human trafficking network. If they identify a Dutch victim however there is much less reason to do so on the basis of this research.

And when a Bulgarian suspected victim in prostitution assures the police that she is doing the work voluntarily it might be wise to question this free will.

### ***Data-protection as a barrier to data-collection on victims***

Data on victims is more difficult to obtain than data on perpetrators but it is in my opinion equally important in the fight against trafficking. Data-protection on victims proves to be a barrier for collecting these data. And whereas data-protection can certainly not be overlooked – for both the data on victims and offenders – it should not be a barrier.

The protection of victims is a matter of the utmost importance. That is how I started my presentation. The creation of knowledge, by collecting statistics on victims, is an indispensable aspect in this. In the Netherlands, some health authorities are not willing to

provide information on possible signs of human trafficking, in my view this is at the expense of appropriate assistance to the victim. Let me explain: I am not interested in the details on an individual level. But when I have the data on how many victims need psychiatric treatment, and when that number is substantial, backed by data, I can recommend that for instance that all VOTS are diagnosed and that this should be part of the protection plan.

I have in my latest report criticized youth care institutions for not notifying suspect underage victims of domestic trafficking. Their own registration system allows only for noting the intervention, not the problem the minor was given assistance or protection for. As a result there is no clue whatsoever within the youth care organization on the scale of this problem. I know from my police data and my research into the jurisprudence that the scale is considerably more urgent than meets the eye. That in my view is an omission that prevents the right protection.

Although I have access to data concerning victims, I still face some challenges. One is that I cannot link data from different institutes. Some victim data are aggregated, some data provide me with personal details. Because I cannot link the data I also cannot answer certain questions that have been raised in different data conferences, for example:

Did every foreign victim receive the residence permit or was he or she at least advised to his rights?

I have the names of the victims in the court rulings. I would like to know how these relate to the victims, registered as suspected victims.

The answer to these questions, however, could prove to be essential to evaluate the protection of victims.

I know, and of course that has been a topic here as well, that in some countries revealing the personal details on victim may prove hazardous for them in their country of origin. That is a grave factor to consider. Evidently. But there is a difference between getting the data and protecting the privacy, and not getting the data at all and failing the victim in his or her protection.

### ***To conclude***

To conclude, of course the protection of victims reaches out into the data gathering. The privacy of both victims and offenders should be protected. However, in my opinion, the protection of victims should outweigh the convulsive protection of the victim's privacy.