

Role of Organised Criminal Groups with regard to Contemporary Forms of Slavery: Call for Input

The below questionnaire addressed to Member States and other stakeholders is meant to assist the Special Rapporteur on contemporary forms of slavery, including its causes and consequences to elaborate a comprehensive report on the role of organised criminal groups with regard to contemporary forms of slavery. The report will be presented to the General Assembly during its 76th session in October 2021.

Deadline:

16 April 2021

Issued by:

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Purpose:

To inform the Special Rapporteur's forthcoming report to the 76th session of the General Assembly.

1. Types of criminal groups involved in contemporary forms of slavery

- a. Is there evidence of organised criminal groups engaging in contemporary forms of slavery in your country?
 - Yes.
- b. If so, please provide further information about these groups, including their names, social, cultural or ethnic profiles, and structures (e.g. large hierarchical groups or network-based small groups working individually or in collaboration with others).
 - No comments or statements are made regarding ongoing investigations.
- c. Do these criminal groups operate domestically or internationally?
 - Both domestically and internationally.

2. The nature and extent of criminal groups' involvement in contemporary forms of slavery

- a. What is the nature and extent of the involvement of organised criminal groups in contemporary forms of slavery in your country?
 - The nature and extent of the involvement of organized crime is complex, because it is not limited by borders. The phenomenon of trafficking in human beings is increasingly developing online. Besides activity in for example holiday parks and youth care facilities, there is more activity taking place on online platforms.
 - Types of activity: sexual exploitation, labour exploitation, forced criminality/criminal exploitation, and child trafficking.
- b. Is there information regarding individuals being exploited by organised criminal groups in criminal activities (e.g. drug production, theft, etc.)?
 - The police observes that migrants who are being smuggled risk exploitation *en route*.
 - The most frequently detected and estimated form of human trafficking in the Netherlands is domestic sexual exploitation. Although sexual exploitation has been criminalised, sex work is in itself not illegal in the Netherlands.
 - Data shows that trafficking for the purpose of criminal exploitation is increasing.
 - Other types of exploitation linked to criminal activities are: theft, robbery, drug trafficking, and forced begging.

- c. Is there evidence of individuals being exploited in legitimate businesses run by organised criminal groups, such as agriculture, domestic work, construction and catering?
 - Yes, within the scope of labour exploitation
- d. Is there evidence of corruption (e.g. bribery) and obstruction of justice (e.g. witness & jury intimidation) committed by organised criminal groups? If so, in what way does this affect victims/survivors of contemporary forms of slavery?
 - No.
- e. Does the involvement of organised criminal groups in contemporary forms of slavery pose additional challenges in the identification of victims? If so, please provide details.
 - Yes. In the case of an organized crime group there is more capability to transfer victims across the country and across borders. This increases the difficulty in identifying victims.

3. Legislative Frameworks

- a. In addition to legislation relating to contemporary forms of slavery, does your country have any statutory frameworks criminalising the activities of organised criminal groups (e.g. participating, leading/directing, organising or being a member)? If so, please provide details, including statistical information on prosecutions/convictions if available.
 - Art. 140 of the Dutch penal code prohibits participation in organisations whose purpose it is to carry out criminal activities. Penalties can amount to six years of imprisonment. Under special circumstances penalties can be higher (Art. 141).
- b. Do the legislative frameworks on contemporary forms of slavery stipulate the involvement of organised criminal group as an aggravating factor increasing penalties?
 - Art. 273f stipulates that individuals convicted of THB may be imposed a maximum of 12 years detention. When the crime is carried out by two or more individuals, the maxim is extended to 15 years.
- c. Does your country have legislative frameworks to promote intelligence-led law enforcement (the use of special investigative techniques such as surveillance and interception of communications) to combat contemporary forms of slavery?
 - With regard to the surveillance and interception of communication there are several possibilities in the Dutch law, once several severe requirements have been met and there is already a certain suspicion of individuals. Above all, permission from the public prosecutor is required, before these special techniques are used. The legislative framework for these measures is not specifically aimed at crimes related to forms of slavery.
 - Moreover, without having any specific suspicion of individuals, one can use intelligence-led methods to find perpetrators of human trafficking. In recent years, work has been carried out on a search application for picking up signals from the digital publicly accessible domain, the so-called web crawler. The web crawler focuses on ads with a risk of sexual exploitation and is currently being used on a pilot basis in police units. The police are still working on an action framework that explicitly states for which matters the web crawler may be used. The pilot phase will try to determine if there is sufficient legal basis and practical usability for the use in formal investigations.
 - Finally, the police runs tests on the legal use of 'catfish' profiles in order to look for traffickers who make first attempts at recruiting victims. It is estimated that the current legislative framework provides a sufficient basis for the use of this instrument. This hypothesis is currently being tested in court.

- d. Given the human rights implications arising from intelligence-led law enforcement (such as the rights to privacy and a fair trial), do these legislative frameworks provide for sufficient safeguards against abuse (e.g. judicial or other approval and oversight and grievance mechanisms in case of an abuse of process)?
- As mentioned above, these frameworks are still being developed. Privacy issues and possible abuse are important factors that are being taken into account within the development process.
- e. Does your country have legislative frameworks on money laundering and criminal asset recovery (or confiscation of criminal proceeds)?
- A financial investigation is always part of criminal investigations concerning trafficking in human beings.
 - In addition to charges for human trafficking, charges for e.g. money laundering can also be brought.
- f. Does your country also support civil asset recovery without criminal conviction? If so, please provide details including any safeguards in place.
- No.
- g. How does your country deal with corruption and obstruction of justice committed by organised criminal groups in relation to contemporary forms of slavery?
- Art. 285 of the Dutch Penal Code criminalizes influencing witnesses.
- h. What legislative and other mechanisms are in place to protect witnesses in criminal proceedings involving organised criminal groups?
- In exceptional cases, the victim may be regarded as a 'threatened witness' and be heard anonymously by the examining magistrate (art. 226a Penal Code). In such cases, the victim can also participate in the witness protection programme.
 - Furthermore, provisions in articles 187-187d Penal Code may offer the victim witness protection (limited anonymity).

4. **Victims'/survivors' access to justice and to remedies**

- a. What types of assistance (e.g. legal, medical, social and financial) is provided to victims who have been enslaved by organised criminal groups?
- The Dutch police and Victim Support Netherlands (VSN) organize general victim support. The police is responsible for informing victims of their rights and the available assistance upon first contact. Since 2018, the police uses the so-called method of 'individual assessment', where a police agent takes all personal circumstances of a victim of slavery into account.
 - VSN is responsible for developing an information portal for the victims who have been enslaved. VSN and the Municipal Health Services are jointly responsible for the emotional and psychological support for the victims who have been enslaved. A 'casemanager' is responsible for the concrete emotional and psychological support. This emotional and psychological support is provided as long as a victim who has been enslaved needs this kind of support. Besides the emotional and psychological support, VSN is responsible for legal advice and practical support.
 - Another organization who provides specialist help for victims of (modern) slavery is FairWork. FairWork directly supports victims of labour exploitation in the Netherlands. FairWorks wants to increase the confidence of the victims and their ability to live independently.
 - During the criminal proceeding the Public Prosecution Service is responsible for informing, assisting and supporting a victim who has been enslaved. A servant of the Public Prosecution Service is in close contact with victims who have been enslaved. A victim of slavery is entitled to free legal aid.

- b. Is provision of such assistance linked to a formal victim identification process and/or cooperation in criminal investigations and proceedings?

The support of VSN and Fairworks is not linked to a formal victim identification process.

- c. What mechanisms/channels exist for them to access justice and remedies, and in which ways are they able to participate in criminal proceedings?

There are four channels for victims of slavery to access justice and remedies.

Police

In order to track down and prosecute offenders successfully, it is paramount that victims of slavery report the crime. Suspects may be investigated and prosecuted ex officio and as such do not require the submission of a civilian complaint, meaning that a report of the crime to the police is not necessarily required. The victim's story, however, is frequently necessary to obtain sufficient grounds for prosecution, and actually to investigate and convict the offender.

AVIM

Victims of slavery who wish to file an official police report may turn to the Aliens Police, Identification and Human Trafficking department (AVIM) of the police, which is staffed by certified detectives.

Inspectorate SZW

The Inspectorate SZW handles reports from victims of labour exploitation.

TCI

Any anonymous reports of labour exploitation can be directed to the Criminal Intelligence Unit (TCI) of the Inspectorate. Besides this anonymous reports of slavery can also be submitted to 'Crime Stoppers Netherlands'.

As victims of slavery may experience emotional, physical or material damage, compensation schemes are in place to redress any damage suffered. How a victim of slavery may obtain this compensation, will be described as answer to the next question.

- d. Can victims/survivors of slavery receive compensation in your country and if so, compensations to how many victims have been paid? Please provide details in this regard.

Victims of slavery may obtain compensation in three ways.

Through criminal proceedings against the offender

The victim may choose to join criminal proceedings as an injured party and submit a claim against the accused. In addition, the court may impose a compensation order on the accused ex officio or at the request of the Public Prosecution Service.

Through civil proceedings

If the court should not impose a compensation order or if the case results in acquittal or dismissal, the victim may subsequently initiate civil proceedings in a civil court to claim damages from the offender.

Through an application at The Violent Offences Compensation Fund (VOCF)

VOCF gives financial compensation to victims of a violent crime resulting in serious psychological or physical injuries. VOCF has a team that handles cases related to terrorism. During the examination of the applications, VOCF is in close contact with the Public Prosecution Service. The legal specialists of VOCF aim to handle the cases fast and adequately.

It is not possible to estimate how much money has been paid to victims.

- e. Are confiscated criminal proceeds redistributed to enhance protection and assistance to victims and survivors? Please provide details.

No.

- f. Does your country implement the non-punishment principle whereby the victims of contemporary forms of slavery are protected from criminal prosecutions even if they are allegedly involved criminal activities?
- Yes, victims of slavery are protected from criminal prosecution for criminal activities, which they have been coerced or induced to commit.

5. Other Questions

- a. What are the key challenges in combating contemporary forms of slavery committed by organised criminal groups in your country?
- Lack of/reduced visibility of these type of crimes ('hidden crime', victims are often hesitant to come forward and criminal organizations operate internationally);
 - Recruitment of victims increasingly taking place online.
- b. Does your country make use of international cooperation tools to tackle transnational organized crime as it relates to contemporary forms of slavery (e.g. Mutual Legal Assistance, joint investigations, extradition, etc...)? Please provide details.
- EU cooperation via:
 - The Netherlands fulfills a leading role within EMPACT THB (European Multidisciplinary Platform against Criminal Threats – Trafficking in Human Beings);
 - Europol and the liaison officers network.
 - Participation in *Joint Investigation Teams*;
 - The Netherlands is closely working with Interpol, reinforcing analysis of trends and modus operandi;
 - The use of mutual legal assistance (treaties).
- c. Has COVID-19 had an impact on the modus operandi of the organised criminal groups which operate in your country and if so, in what way?
- On top of the aforementioned already existing trend, even more activity takes place online.