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Policy in the Trafficking of Women for purposes of prostitution: An inquiry into how the Dutch State deals with trafficked Latin American Women in prostitution.

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POLICY REGARDING THE TRAFFICKING OF WOMEN FOR PURPOSES OF PROSTITUTION: AN INQUIRY INTO HOW THE DUTCH STATE DEALS WITH TRAFFICKED LATIN AMERICAN WOMEN

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's views on the state of the Union and the progress of the war.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It contains a detailed account of the military operations of the Army during the year 1861.

To Canela, with my deepest love.

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Policy in the Trafficking of Women for purposes of prostitution : An inquiry into how the Dutch State deals with trafficked Latin American Women in prostitution.

Introduction.

Since the 1970's a global restructuring of capitalist production and investment has taken place and this can be seen to have wide-scale gender impact in migration trends. According to 1996 ILO Report there is a feminization of international labor migration, which is one of the most striking economic and social phenomena of recent times. Through migration , many women seek other opportunities to break away from their oppressive local conditions.

Within this migratory movement, many migrant women become involved –with or without consent -in the traffic in persons. This is a global phenomenon¹ that should be understood as a broad and international problem which covers diverse forms of exploitation, commerce and human rights violations, within a range of sectors where migrant women work in as prostitution, domestic service, entertainment, marriage and informal work.

According to the recent UN Trafficking Protocol, trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other form of coercion, of abduction, or fraud, of deception, of the abuse of power or of a positions of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person for the purpose of exploitation, being irrelevant the consent of a victim of any of these forms of exploitation.

This concept sets up a group of questions in regards to the rights of these trafficked women target group in the countries where they travel to . In many of these destination countries, the main attention has been placed on the issue of illegal migration and deportation , but trafficking cannot be understood unless seen in a wider context of women's rights, where

¹ According to Amnesty International, women are trafficked world-wide, primarily from South to North, but also increasingly from South to South; trafficking in women has been reported from Latin America to southern Europe and the Middle East, from south-east Asia to the Middle East and central and northern Europe, from South America to North America and Europe, and from eastern Europe to western Europe; being signs of a new wave of women trafficked for work in the sex industry from countries of the former Soviet Union to the Middle East.(Amnesty International Report 15/17/00)

policies and measures need to be addressed from a women's perspective and not only following State's requirements.

Under international law, states have a duty to respect and ensure respect for human rights law. It means the adoption of specific standards for the treatment of trafficked persons that provide them effective legal remedies, legal protection, non discriminatory treatment, restitution, compensation and recovery.

In the Netherlands, there is a growing tolerance towards prostitution today, but it is important to stress that this only applies to European citizens. The legalization process does not include immigrants who work in prostitution and came from other parts of the world.

According to the Dutch Ministry of Justice², approximately from 15,000 to 30,000 women work in prostitution in the Netherlands and 40 per cent of them are illegal migrant women. Then, the difficulty to prove forced prostitution as a crime is due to many factors that are inter-related. Formally, the label 'forced prostitution' is only accepted before the law if physical coercion and deceit can be proven. A victim of trafficking will be given a temporary staying permit for the duration of the trial, receiving juridical, medical and psychological support. But in the end she will have to go, as she is seen as an illegal alien. On the other hand, if the case is treated as prostitution with consent and if the women entered the country illegally, or if her legal permit to stay expires, she is expelled from the country on immigration grounds.

Even though trafficking is not limited to prostitution, for the purposes of this research, The Dutch legal framework that in one sense decriminalize and legalize voluntary prostitution will be reviewed to determine if government measures are sensitive to trafficked women's rights when they attempt to reduce illegal prostitution and combat the traffic.³

² Visser, Jan. 1999. *The Dutch Law Proposal in Prostitution*. RodeDraad Foundation. Pp 1.

³ The effectiveness /enforcement of the law does not necessarily imply a sensitive framework to protect women's rights.

i. OBJECTIVE OF THE RESEARCH

The main objective is to find out if governmental Dutch policies to reduce illegal prostitution and combat the traffic in women, had adopted measures which are sensitive to trafficked women's rights

In order to achieve this objective, Dutch policies that claim to protect women's subject of trafficking will be analyzed in order to realize if they protect trafficked women's rights . group .

ii. JUSTIFICATION OF THE RESEARCH.

During the last years alarming evidence of violence against women in prostitution worldwide has made international public opinion more aware of the problem. The United Nations estimates that trafficking is a 5-7 billion US dollar operation annually, with 4 million persons from one country to another and within countries.

The lack of actions from the States to protect their women's rights combined with other factors, such as the deterioration of the social -economic conditions of women in the last two decades , the thriving sex industry in many countries which plays a leading role in foreign exchange earnings as migratory policies in the countries of destination, led to a precarious situation in which women are becoming more vulnerable to traffickers.

iii. RESEARCH QUESTIONS.

Although The Netherlands as member State of European Union attach priority to adequate protection to minorities and the protection of their rights⁴ through international and regional Human Rights Conventions , the main question is *Do Dutch government policies focused on combating the traffic in women and decriminalize prostitution establish sensitive measures for the protection of trafficked women's rights?*

⁴ " The European Community and its member States hold that respect or the rights of persons belonging to national minorities, as part of respect for human rights generally, constitute an essential factor in achieving a new era of democracy, peace and unity in Europe." 1991 CSCE Geneve Expert Meeting.

This requires investigation in two set of sub-questions, the first one is which approach and government measures to combat trafficking does the Dutch State follow as a reception country of trafficked women for purposes of prostitution?

The second one is related to how do Dutch laws and measures to combat trafficking for purposes of prostitution affected trafficked Latin American women ?

v. METHODOLOGY AND RESEARCH STRATEGY.

The research consists of two phases. The first one will be focused on a legal analysis of trafficking in women for purpose of prostitution. In this context, I will review and clarify the Dutch policy setting through diverse international agreements and States approaches. In the second part , the focus will be centered onto a women's perspective : how trafficked Latin American women faced with this their condition as illegal, migrant prostitutes and what are the legal responses proposed by the Dutch State.

The first phase will review in its first chapter how trafficking in women for purposes prostitution and prostitution itself have been dealt within European states , from an historical perspective up to the different approaches and trends followed by those states.

The main approaches and trends from States in regards to trafficking laws and policies will be shown in chapter two.

An important aim in this first phase is to clarify the conceptual framework of the research , which helps to understand -in the second phase- how Dutch laws and policies are dealing with the phenomenon and which is/are the approaches the Dutch State follow in order to manage within the trafficking in women for purposes of prostitution.

The method applied is text analysis of secondary data as published policies from EU countries and international conventions . The use of these sources is relevant to determine which approaches and trends are followed the Dutch legal framework and policies within the last ten years in regards to the reduction and prevention against trafficking as well as the protection of trafficked women's rights .

In the second phase of the research, an analysis will be done on the situation and conditions of Latin American women involved in trafficking for purposes of prostitution. For this analytical purpose, Marjan Wijers's framework will be used in order to explain the three main factors which determine their situation: a) their position as women who migrate from one country to the other, regulated by migration laws, b) their position as women who work or worked in prostitution, regulated by prostitution laws; and c) their positions as victims of (internationally organized) crime, regulated by criminal policies on trafficking.

Each of these categories were analyzed from two angles: Latin American women's factual reality and a study of Dutch legislation and government measures within the last 10 years, concordant with each specific category.

The comparison between Latin American reality and the State laws and measures will show to what extent these policies approach deal and manage with trafficking in women and prostitution under a women's human rights perspective, therefore sensitive to women's realities and needs.

Data collection for this part will be done through interviews with organizations which work in prostitution and trafficking in women. The criteria to select these organizations was based in their proximity with Latin American prostitutes and the network created – by some of them- with Latin American organizations which also work in this phenomena.

vi. LIMITATIONS

One of the main limitations of the research is the access to women victims of trafficking. In the majority of cases, they are reluctant to talk about their experiences. For this reason it is impossible to indicate accurate numbers of women involved in trafficking as well as how they – from their own view - consider Dutch legal framework sensitive to their needs and rights.

The analysis of law implementation is other limitation in this research because it was impossible to access information regarding the implementation from governmental measures. The collected data were from NGO's experiences.

Other limitation regarding to the legal framework is the access to them in English. Some information is written only in Dutch, fact that required extra time in order to translate it.

vi. ORGANIZATION OF RESEARCH PAPER.

The research is organized in an introductory chapter and two main parts:

Part one contains Chapter 1 and 2 :

Chapter 1 gives a historical overview of the different definitions of “trafficking in women” and their development throughout international conventions and within the various international organizations and political arenas.

Chapter 2 looks into the different laws and state policies on prostitution and trafficking in women. The different legal systems are analyzed in terms of prohibitions and regulations aimed at the distinctive activities and parties involved, including their impact on the living and working conditions of women working in prostitution.

The second part contains Chapter 3, chapter 4 and chapter 5:

Chapter 3 analyzes the situation of Latin American women involved in traffic for purpose of prostitution. Chapter 4 which will place the issue within an analysis of Dutch legislation and measures to combat trafficking and legislate prostitution. Finally Chapter 5 will present the conclusions of the research and the recommendations for Dutch State.

I. - TRAFFICKING IN WOMEN FOR PURPOSES OF PROSTITUTION THROUGH HISTORY.

1. Introduction.

Basically, the first trafficking conventions (19th century conventions) were conventions originally directed at the so-called "white slave trade" . Since then up to the recent Protocol to prevent, suppress and punish trafficking in persons (November 2000) , has been a fairly regular enactment of prohibitions on or regulation or various aspects of trafficking in women, including prostitution and the exploitation of other with national boundaries as well as across them.

Whether these international standards could be subject to critic⁵, they should be interpretative by the States parties in a gender-sensitive way that is responsive to women's experiences of injustice. These international body of instruments, make women's human rights viable and applicable by public authorities everywhere. This is the case of the Netherlands, whose condition as State party obliged itself to monitor the implementation of women's rights under these international standards.

2. Early stages of trafficking for purposes of prostitution..

Prostitution and sex trafficking are an old phenomena that have been together since the times of the ancient Greeks and Roman up until today. The existence of prostitution as well as its role and place in the hierarchy of social values, continuously changes from acceptance as an institution, through tolerance to persecution. However, due to two main factors: a serious spread of syphilis and gonorrhea across Europe in the XIVth century and the rise of a new commerce: the trafficking in women and children. ⁶ , made that States intervened for the control of prostitution and the combat of trafficking.

⁵ According to Rebecca Cook, international human rights and the legal instruments that protect them were developed primarily by men in a male-oriented world.

Cook, R. *Human Rights of Women*. 1994. University of Pennsylvania Press. Philadelphia. Pp. 10

⁶ Feher Lenke. *Forced Prostitution and Traffic in Persons*. In *Combatting Traffic in Persons*. Netherlands Institute of Human Rights. No. 17. Pp. 67.

At the beginning of the XIXth century, the legislative control was strengthened, characterized by serious sanctions against trafficking in women and precise measures for the prevention of venereal diseases. In this context, the first international conference on the prevention of trafficking in women was held in 1895 in Paris, but it was until 1904 that the convention named International Agreement for the Suppression of the White Slave Trade aimed to combat the procuring of women or girls for immoral purposes abroad but this convention was limited – according to its preamble -to the compulsive forms of procurement and did not address those situations where there is no apparent compulsion or abuse.

The second convention took place in 1910, broadening its scope to include the “traffic in women” within national boundaries, but both conventions are limited to the process of recruitment but coercive conditions inside the brothels were not addressed.

In 1933 a new international agreement was signed in Geneva, removing the conditions of constraint, but only with regard to the international “ traffic in women”. Even though this convention guaranteed the protection of women, the requirement of constraint is left intact. A state can thus tolerate on a national level what it condemns on an international level.

Since that early period until today there have been several regulations on national and international level to deal more effectively with the problem of prostitution and trafficking on women. Diverse approaches that influenced these regulations have been followed by States: prohibitionist, abolitionist, regulatory and decriminalization. Even though they will be analyzed in the next chapter, it is important to mention them due to their influenced in international and national regulations.

3. The United Nations System.

3.1 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Other. (1949).

In 1946, the United Nations supported the idea of unification of the international measures against prostitution ; this Convention named Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others replaced all the preceding treaties.

The groundwork for the 1949 Convention was laid in the late nineteenth century with the development of an international abolitionist movement that was organized against state regulations of prostitution prevalent in Europe at that time. The aim of the 1949 Convention was to prohibit and control the traffic in women and children by making all pimping and procuring for prostitution illegal. In this sense, the Art. 1 of the conventions obliged State Parties to punish any person who “*to gratify the passions of other*”:

1] Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person.

The extension to exploitation of prostitution was one of the reasons why a number of states that were party to the preceding conventions, did not accede to this new convention. It was ratified by less than half the UN member states (66 out of 160).

According to abolitionists, this Convention implied a distinction between coerced and “voluntary” prostitution because it is directed specifically at prohibiting pimping, procuring and brothels. These actions constitute coercion but implicitly recognized prostitution to be freely chosen if the third party exploitation by pimps is absent. In this sense, this instrument regards prostitution as human rights violation only if it involves overt coercion or exploitation.⁷

3.2 The Convention on the Elimination of All Forms of Discrimination Against Women. (CEDAW) 1979.

The 1979 Convention on the Elimination of all Forms of Discrimination Against Women specifically deals with women’s human rights, obliging States parties to take all appropriate measures to eliminate all forms of discriminations against women.

The Article 6 contains a provision in regards to “traffic in women” and prostitution. It uses the same wording as the 1949 Convention, calling upon states parties to “take all appropriate measures to suppress all forms traffic in women and the exploitation of prostitution of

⁷ Reanda Laura. 1991 “*Prostitution as a Human Rights Question*”. Human Rights Quarterly 13. PP 209-211 and UNESCO/CATV 1992 “*The Penn State Report*”. Pennsylvania. 1-2

women”. However, there is missing a definition of what should be understood by traffic *in women and the exploitation of prostitution*.

3.3 Other attempts to address Trafficking in women from United Nations system.

The World Conference of the International Women’s Year, Mexico City, 1975, asked governments to take measures to prevent prostitution of women and girls⁸, and the second World Conference in Copenhagen in 1980 asked the Secretary General to provide a report on *prostitution throughout the world, its causes and the social and economic conditions which encourage it*.

The General recommendation 19 of CEDAW (1992) on violence against women includes specific paragraphs relating to Article 6 of the Convention. It reaffirms the requirements of Article 6 for states to “ suppress all forms of traffic in women and exploitation of others”, but also states that “ Poverty and unemployment force many women...into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”

Though this text does not specifically distinguish between forced and voluntary prostitution, an important shift in emphasis is apparent. Rather than focusing on repressive measures to eliminate the practice of prostitution, the Committee instead focuses on the prostitution as a subject whose rights can be violated.

The Declaration on the Elimination of Violence against Women. (1993) states “Violence against women shall be understood to encompass, but not be limited it, the following: physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution”.

3.4 Further steps in UN System. The New Protocol to Prevent, Suppress and Trafficking in Persons, especially Women and Children.

⁸ The Mexico Declaration on the Equality of Women, adopted at the Second UN Conference on Women, makes no distinction between forced prostitution and voluntary prostitution ‘*Women all over the world should unite to eliminate violations of human rights committed against women and girls such as rape, prostitution..*’. UN. Declaration of Mexico. Par. 28 34.

Since the World Conference on Human Rights held in Vienna (1993), there have been measures in order to deal more effectively with this phenomenon. In this context, the United Nations Economic and Social Council Resolution No. 1981 expanded the working group to include all the organizations of the United Nations systems and also asked governments to supply the information required to prepare its terms of reference. Its decision emphasized the scale of the problem and its complexity.

The Commission on the Status of Women at its 29th session in Vienna examined the report and submitted to the Economic and Social Council a draft resolution appointing a special rapporteur. The subsequent report takes stock both of the problems connected with the traffic in women and of the activities undertaken internationally proposing a policy for adoption by Member States and a program of action in this sphere for implementation by the agencies of the United Nations system.

In the same line of action, the Vienna Declaration and Program of Action of the 1993 World Conference on Human Rights, recognized women's rights as human rights and thereby the extension of state accountability to violence against women in the private sphere as well as urged state parties to adopt the Declaration on Violence Against Women. The Declaration addresses the issue of international trafficking as a form of gender-based violence and calls for its elimination through international cooperation in economic and development fields and through national legislation. As result, the Ad Hoc Committee in Vienna were urged to draft a definition of trafficking in the new protocol that protected all victims of trafficking. This Protocol named Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children, was signed by 121 countries- among others The Netherlands -in December 2000.

It is a wide-ranging international agreement to address the crime of trafficking in persons, especially women and children, on a transnational level. It creates a global language and legislation to define trafficking in persons, assist victims of trafficking and prevent trafficking in persons. It also establishes the parameter of judicial cooperation and exchanges of information among countries as well as intended to jumpstart national laws and to harmonize regional legislation against the trafficking in women and children.

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II. DIVERSE SYSTEMS AND APPROACHES FOLLOWED BY STATES TO DEAL WITH TRAFFICKING AND PROSTITUTION.

This chapter will examine the different systems to deal with trafficking and prostitution. Historically, the tendency to apply these systems have been changed. But what is interesting to analyze how each of these systems had influenced in a different way within the different laws that States enforced .

Consequently , this fact will determine the working and living conditions of local and migrant women engaged in prostitution , especially the trafficked ones who are in a relation of violence and abuse.

1. Diverse systems dealing with prostitution.

1.1 Prohibitionist system.

Some countries like USA follow the *prohibitionist system*. In this system all prostitution is declared to be unacceptable, and most or all aspects of prostitution are prohibited or criminalized. Not only the procurer but also the prostitute is liable for punishment, as is any third party.

In most cases the primary target for law enforcement is the female prostitute, not those who profit from her labour or income. The extend to which the law is actively enforced makes no significant difference to the position of prostitutes. This law denies the reality of prostitution and the fact that for various reasons women work as prostitutes to earn an income. Illegality renders prostitutes completely dependent upon others, such as pimps, procurers, police officers. This can make prostitution a very lucrative source of revenue for all involved parties, except the prostitutes themselves.

Trafficked women are completely at the mercy of pimps and brothel keepers, as there is not authority they can, theoretically, turn to. Any contact with law-enforcers will expose them as prostitutes and put them at risk of being arrested and jailed. Migrant women are in an even more vulnerable position. They are not only liable to arrest as prostitutes but also to arrest and deportation as illegal foreigners.

It may be concluded that, rather than “protecting women” or being in the interest of women, the prohibition of prostitution generates considerable profits for anyone but the prostitute, it facilitates and sanctions control and abuse by third parties, and leaves the women with no legal means whatever to defend themselves against violence, coercion or abuse.

1.2 Regulatory system.

In *the regulatory system*, the existence of prostitution is either legalized or regulated by the State- through different forms of registration and other forms of State control- in the interest of public order, public health and tax generation. Regulation is related to mandatory registration, mandatory medical control, areas/places where to work, soliciting and relating activities, taxes, nationality, residence and work permits. Countries like Germany and Greece follow this system.

Prostitution is tolerated as a necessary evil and the regulations are done in view of public health. Prostitutes are usually required to register with the police and to have regular STD (Sexually Transmitted Disease) tests, with penalties for women working without a license or health certificate. These mandatory medical controls can be criticized for a number of reasons: the control is limited because is focused only in the prevention of contagious diseases. Clients who infect women are not traced, which not only makes controls quite useless, but also stigmatize the prostitute one-sidedly. Almost always medical control is limited to the detection of STDs in the interest of protecting the client or “public health”, disregarding other illness which are only detrimental to the women’s health but can not damage the client. More over, health care facilities and STD prevention activities are accessible for registered prostitutes, but women who can not register, for example, because they are illegal, are excluded from health care services.

It creates a difference between legal and illegal forms of prostitution. Many women do not want to register because they fear the stigmatizing effects. This stigma is one of the objections raised against registration because it leads to severe social and economic isolation. For example in Germany 50,000 are registered but a further 150,000 women are estimated to work on prostitution. (Europap, 1995). Other women cannot register because of their illegal status, like most migrant prostitutes. As a result, many women will try to avoid registration,

which not only makes them liable to prosecution, but also relegates them to an illegal circuit with all the negative consequences this entails.

1.3 Abolitionism system.

States policies towards sex work have tended towards *abolitionism* in the latter part of the twentieth century. The majority of the European countries have adopted a system based on the abolitionist view, e.g., *The Netherlands*, Belgium and Great Britain.

It's interesting to mention that abolitionism in the nineteenth century was constructed in moral opposition to state regulation where prostitutes were registered for the purposes of disease control and public order. Abolitionists argued that it was wrong for the State to make women (sex workers) responsible for prostitution in general and venereal disease in particular.⁹

In quite a number of Western countries, e.g. Belgium, France and Austria, the state imposes tax payments on prostitutes, even though the profiting from prostitution is legally prohibited. As the majority of prohibitions and regulations concerning prostitution are aimed at third parties, working as a prostitute is not punishable, but any involvement of a third party is illegal, be it a brothel keeper or a friend, independent of the consent of the women and whether or not they exploit the women involved.

According to Wijers and Lap- Chew¹⁰, the prohibitions and regulations with regards to third parties can be divided into two main categories:

- Prohibitions pertaining to recruiting women for or bringing women into prostitution. (Recruitment prohibitions).
- Prohibitions pertaining to the managing, organizing or profiting from prostitution traditionally referred to as the "exploitation of the prostitution of others". (Employment prohibitions).

⁹ Kilvington Judith, *Prostitution Policy in Europe*. In Feminist Review No. 67. 2001.

¹⁰ Wijers, Lap Chew, *Trafficking in Women, Forced Labour and Slavery like practices*. Pp. 121.

According to this view the prostitute should not be penalized- in her condition as victim- but all other aspects of prostitution are considered criminal activities. As the prostitute was generally considered a female victim rather than a voluntary worker.

This way of thinking seems especially dominant on the international – United Nations-level. Though in words placing the problem of prostitution in a human rights-context, at the basis of it there often seems to be a strong rejection of prostitution as such.

But women involved in prostitution (disregarding its voluntary or forced character) are stigmatized in every system (be it abolitionist, prohibitionist or regulationist). Moreover it does not eliminate the stigmatization, although the exploitation of the prostitutes and cases of forced prostitution can be reduced by strict control of brothel-owners.

1.4 A new approach :decriminalization.

Since the beginning of the 80s a growing number of people have been discussing the advantages of *decriminalization* and legalization of voluntary prostitution .The basic principle in the decriminalization is the right of independent adult women to determine their lives by themselves.

According to this view, any policy should be based on the rights of the women to self-determination and the protection of their rights as workers. It is believed that trafficking in women, coercion and exploitation can be stopped if the existence of prostitution is recognized and the legal and social rights of prostitutes are guaranteed. In this sense, traffic in women could and should be prosecuted as a severe violation of laws.

2. Trafficking in women. Diverse States' approaches .

Transnational sex work has been intensified during the twentieth century, particularly over the last two decades. This fact has a close relation with the massive migratory movement of the 80's, which is characterized by the feminization of migration to western countries: more women have decided to leave their countries, searching for better incomes and live conditions for themselves and their families. But in their condition of migrants, they have few

opportunities of getting work in formal labor sectors, fact that push them to be relegated to the informal and unregulated labor market where women can be subjects of trafficking.

The main approaches in regards to the current strategies to face the problem of trafficking in women are the following : trafficked women as a moral problem, as a problem of (organized) crime, a migration problem, a public order problem, a labour problem and as a human rights problem.

2.1 As moral problem.

The basic principle is the moral rejection of prostitution. The strategies designed to prevent and combat trafficking are directly related with strategies to combat prostitution as such. Corresponding governmental strategies include criminalization either of all parties involved in prostitution (prohibitionist system), or of any third party (abolitionist system).

This approach consider trafficking in women and prostitution as an evil (inevitable or not) that should be controlled. Actions against trafficking within this approach aim at controlling and punishing the parties involved. The problem is that women in prostitution risk punishment , which in turn leads to stigmatization of the victims. Prostitutes are basically seen as passive victims of the social and economic system. Yet, many cases where no legal proceedings have been initiated against traffickers under a abolitionist system because the woman did not reflect the stereotyped imaged of a victim of trafficking, for instance because she agreed initially to work as a prostitute.

2.2 A problem of (organized) crime.

Traffic in women is defined as a problem of the criminal laws and the criminal justice system. As a criminal problem, government policies lean towards more punitive legislation with longer and heavier penalties increased national and international police cooperation, and a more active prosecution of offenders.

Traffic in women is rooted on violence and often takes place in a network-like structure. This has several consequences. Even if existing policies allow women to report to the police, which is often not the case, many women do not consider doing so a viable route for escape or

for improving their situation. Most women have no confidence in the police and the criminal justice system. They have had negative experiences with the police, such as arrest, harassment or, for migrant women, expulsion on grounds of prostitution or illegal migration. This explains their lack of motivation to report to the police. It subordinates women's interests in personal security, protection and such to the interests of prosecution.

2.3 A migration problem.

In many of the economically advanced countries, migration flows from the poorer regions are increasingly seen as a problem for society. Corresponding governmental policies aim to obstruct illegal or "unorderly" migration. Measures include tightening visa policies, limiting the number of residence and labour permits, bringing in more instruments for detention and expulsion of persons without residence permits, stricter control of foreigners on the national territory, closer supervision of mixed marriages and criminalization of third parties who facilitate illegal entry or stay.

An example of this approach is the discussion paper prepared for the Working Group on Migration Policy at the joint EU/IOM Conference on Trafficking in Women held in Vienna in June 1996. In its final recommendations for the prevention and repression of "trafficking in women" takes prevention to mean, "to prevent the entry of possible victims". This should be done through scrutiny by Embassy officials in countries of origin in the issuance of visas "to reveal suspected cases before the visa application of the victims are concluded, with the aim of combating organized trafficking in the countries of origin", and through raising public awareness about the "opportunities, limitations and rights of individual in the case of legal migration and the risks linked to illegal migration on the other hand". (European Commission, 1996a).

For Western European countries, the problem regarding the conditions of immigration and the context of irregularity of this migration prevail over the victim position and conditions of subsistence. In case of prostitution, measures tend to become even more repressive. Some countries explicitly exclude prostitutes from legal emigration or immigration. Other countries forbid migrant women to work in prostitution under penalty of detention and expulsion, even if they permit nationals to do so. This creates a considerable gap between official policies and

day to day experiences of these migrant women and this is where organized crime comes in filling the gap that official policies leave open.

Migrant women who are trafficked do not have access to legal resources in order to bring their traffickers to justice. In the majority of the receiving countries those with an illegal status will be immediately deported. Women are not protected legally by national or inter-States policies, migration policies focus on victim's deportation but not take into consideration the factors that do not allow them to integrate in their own society as well as formulate bilateral governmental policies in order to reintegrate them. On the contrary, most state policies regarding "aliens" effectively turn these women into criminals instead of victims. There is sometimes, lack of humanitarian treatment in trafficking in women cases.

2.4 A labour problem.

When trafficking is defined as labour problem, it can be considered the result of the poor legal and social position of women. Strategies aim to achieve recognition of labour in the informal sectors as legitimate work, recognition by destination countries of the demand for workers in these sectors and labour law protection for the women concerned. This approach calls for labour opportunities and working rights including pensions and benefits for women in prostitution.

Over the last years countries have established laws on sexual assault and intimidation in the workplace and on equal pay for work of equal value but most of the time they are not validated in domestic work and the entertainment and sex industry. Moreover, legislation on labour migration and rights of migrant workers in destination countries primarily aim at inhibiting women for migrating for work in the informal sector, for example through "prevention" programmes in countries of origin, stressing the risks of (illegal) migration and the impossibility of getting a legal work permit. At the same time, repressive and restrictive migrant labour legislation is reinforced, even though it is clear that it is impossible to stop labour migration.

The International Labour Organization (ILO) has begun to address this issue by researching the situation of migrant domestic workers and migrant workers in the entertainment industry. ILO conventions, such as the Convention on Forced Labour (ILO 29) and the Convention

concerning the Protection of Wages (ILO 95) and the Migrant Workers Convention could be used to strengthen the rights of migrant women workers.¹¹

One of the problems in the application of treaties on workers rights is the refusal of countries of destination to recognize that they are immigration countries. Another obstacle is created by the refusal to acknowledge female work in the informal sector, particularly prostitution, as work.

2.5 A human rights problem.

Trafficking in women is seen as a violation of women's human rights, for which states are accountable, both in the public sphere and the private sphere. Instruments designed to protect human rights are involved as key guidelines and used to enhance the rights of women, as well as to hold governments accountable for perpetrating or condoning violence against women in all spheres of life.

However, there are two different approaches. In the first one, prostitution itself is considered a violation of women's human rights equal to slavery. Such judgement brings back the moral approach, in which prostitutes are stigmatized as victims and deviants. The correspondent strategies to combat trafficking will aim at the abolition of prostitution.

The second approach considers not the work as such that violates women's human rights, but the conditions of force, deceit, violence and abuse of authority.

Strategies from this perspective include examining structural causes and mainstreaming action to eliminate all gender-based violence. It means shifting focus from protection to empowerment, and it means the participation and organizations of the women concerned. Lobbying focuses on replacement of the 1949 Convention with a new instrument based on female self-determination, on ratification and implementation of CEDAW and its optional Protocol, on opposition to all policies that marginalise and discriminate against women.

3. Combating Trafficking from a women's perspective

¹¹ Convention on the Protection of the Rights of All Migrant Workers and their families. Adopted 18 December 1990.

As it has been mentioned, the different strategies followed by governments correspond to some specific approach. Therefore the consequences will be reflected directly in the trafficked women:

APPROACHES	STRATEGIES	WOMEN AS
1. Moral Problem: Combat the traffic= Combat prostitution	<ul style="list-style-type: none"> Abolish prostitution Stigmatize prostitutes 	<ul style="list-style-type: none"> passive actors out of order
2. Migration Problem: Combat traffic=combat migration	<ul style="list-style-type: none"> Close borders Criminalize migrant women 	<ul style="list-style-type: none"> illegal aliens
3. Criminal Problem: Combat traffic=combat organized Crime.	<ul style="list-style-type: none"> Change in Criminal Law Capture criminals 	<ul style="list-style-type: none"> victims, able to be prosecuted
4. Labour Problem: Combat traffic=combat abusive Work, improve labour conditions	<ul style="list-style-type: none"> Work recognition of prostitution application of labour legal Framework 	<ul style="list-style-type: none"> workers to be protected, taxed.
5. Human Rights Problem: Combat traffic=combat human Rights violations	<ul style="list-style-type: none"> Defend rights of victims Protection of victims Compensation, indemnization 	<ul style="list-style-type: none"> victims to be protected rescued.

Within all the above approaches and strategies , two trends can be distinguished: two trends. On the one hand there are repressive strategies, such as:

- More restrictive immigration policies.
- More severe penalization.

Existing States policies are predominantly limited to these trends. But not only those have limited preventive effects, they also tend to eventually work against women instead of in their favor, e.g. by restricting women's freedom of movement or by using women as witness for combating organized crime in the interest of the state, without allowing them the corresponding protection. Significantly, repressive measures are the most obvious, easiest to implement and most appealing to governments in terms of correspondence to diverse state interests. Combating "trafficking in women" then comes to legitimize very different interests than those of women.

The other one considered women as victims, this is the approach followed by UN System and many NGO's which claim to protect trafficked women's rights, but do not consider them as actors but subjects.

If the trafficking in women is considered as a problem from the women's perspective, the interests of women can be opposed to those of the state. For trafficked women, it is exactly their illegal status, the lack of legal migration possibilities (in combination with the demand for work in the informal sector) and the lack of viable employment opportunities at home, that make trafficking such a profitable business for traffickers, forcing trafficked women to get into an illegal circuit without protections against violence and abuse.

Migrant women who are trafficked do not have access to legal resources in order to bring their traffickers to justice. In the majority of the receiving countries those with an illegal status will be immediately deported. They are not protected legally by national or inter-State policies. Therefore, migration policies focus on victim's deportation but do not take into consideration the factors that do not allow these women to be integrated in their own society – e.g. poverty, fear, threats for women and families – as well as formulate bilateral governmental policies in order to reintegrate these women. On the contrary, most state policies regarding “aliens” effectively turn these women into criminals instead of victims. There is sometimes, lack of humanitarian treatment in trafficking on women cases.

Those strategies do not strengthen the rights of trafficked women. Therefore, participation of the women concerned is essential to the development of effective change strategies. Support and lobby strategies are directed towards empowering women, enabling them to take back control over their lives, and towards facilitating their ability to speak up for their own rights. But these initiatives should not come only from the trafficked women's side or NGO's which work on trafficking. Governments should participate actively through mechanisms that allow women to achieve these objectives.

Women's reasons for entering prostitution need to be understood from a gender analysis of societal structures that work to women's disadvantage, however it doesn't mean that the human rights of women in prostitution should be forgotten. In principle, women in prostitution have the right of freedom of expression, freedom of movement, health, the rights to motherhood, justice and protection. Any strategy or suggested law should take the human

rights of women into account and not further victimize the women in prostitution or render women more vulnerable for violence and harassment from clients , traffickers or law enforcers.

Which is the Dutch government approach and policies regarding to trafficking and prostitution? The second part of my research will analyze the situation of Latin American women involved in trafficking and prostitution in the Netherlands as well as the Dutch legislation ; reality and law structure will be compared to answer the main question of the research: *Does Dutch government strategies focused on combating the traffic in women and decriminalize prostitution establish sensitive mechanisms and policies for the protection of trafficked women's rights ?*

III. TRAFFICKING IN LATIN AMERICAN WOMEN TO THE NETHERLANDS

This chapter will analyze the situation of Latin American women involved in traffic for purposes of prostitution. First, an historical and economical background will explain the main reasons for Latin American women to migrate and how they become involved in trafficking and prostitution. Second, the actual situation of Latin American in the Netherlands will be presented. For this purpose, the framework exposed by Marjan Wijers¹² will be used to explain the main factors which determined their situation: a) their position as women who migrate from one country to the other, regulated by migrations laws; b) their position as women who work or worked in prostitution, regulated by prostitution laws; and c) their positions as victims of (internationally organized) crime, regulated by criminal policies on trafficking.

- 1 A Historical and economical background for the trafficking of Latin American Women for purposes of prostitution.

1.1 Historical antecedents.

During the last century, the trafficking in Latin American Women became visible since the decade of 1940. By the end of that decade, the colonial Dutch government of Curacao Island established the Prostibule burden Campo Alegre, best known as “Le Mirage”. This place aimed to “satisfy the sexual needs of single men as Dutch sailors, North American military men and migrant male overseas workers”.

In order to “save the honor and virtue of local women of Curacao”, only foreign women were able to work with a special 3-month permission and under certain racial preferences (white and mulattos). The first women who came to the island were from Cuba and Venezuela. Later, Dominican Republic and Colombian women came also into this market.¹³

¹² Wijers M. *The position of Trafficked Women and Strategies for Support*. In Global Sex Workers. Kempadoo & Doezeema Ed. Routledge. London. Pp 70.

¹³ Informe Regional de America Latina y el Caribe.1996. *Trafico de Mujeres y trabajo Forzado*. Republica Dominicana 11-12 Diciembre .Pp. 7

According with Kempadoo¹⁴, this is an example of State's involvement in prostitution and trafficking on women in which the Dutch Government legitimated, institutionalized and promoted migration for sexual work. This situation was extended to other Dutch territories in the Caribbean like Aruba, Saint Marteen and Suriname. Many of these places became a bridge through America and Europe for purposes of sexual work, especially to The Netherlands. This previous experience introduced through sixties and seventies a migratory movement for purposes of sexual work through other regions of the World.¹⁵

3.2 Economical reasons for Latin American Women to get involved in prostitution and trafficking.

The global economic order has already impacted in women's lives. Since the 1970's a global restructuring of capitalist production and investment has taken place and this can be seen to have wide-scale gendered implication in migration trends.

Women's unequal rights and access to formal labour, women's restricted abilities to gain power over their own lives and the gender aspects of poverty, which affects women more severely than men, made that many women search for other opportunities to break away with their oppressive local conditions and for working opportunities elsewhere. But the lack of possibilities and the few legal ways to get a legal work, make that many women become involved in the traffic in persons for purposes of prostitution.

During the seventies, Latin American women were introduced into prostitution in Europe. The majority of women came from Dominican Republic and Colombia. Later, Brazil, Venezuela, Uruguay and Ecuador became emission countries.

The significant increase of the trafficking in Latin American women began by the middle of the 80's decade- "*la Decada Perdida*"- due to the deep economic crisis registered by that time. During that decade became to be evident the consequences of the economical developmental models in the region; among others unequal distribution of capital, increase of

¹⁴ Asociacion Latinoamericana para los Derechos Humanos. *Migracion de Mujeres Latinoamericanas a Europa*. 1999. ALDHU. Quito. Pp.14

¹⁵ INTERPOL resources informed in 1995 that Latin American Women were exported through Puerto Rico to Mediterranean Countries as well as Middle East.

poverty and consumerism. In that decade, Latin American women were brought -besides western countries- to Asia ,especially to Japan. The majority came from Colombia and Mexico.

Structural factors are particularly important in determining the migration propensity of women because they include not only economic factors but also the norms; values and cultural norms determining gender relations and gender roles.

In Latin America, the symbolic representation of masculinity and male sexuality are linked with the concept of machismo. This over dimensioned concept determines women's sexual subordination within gender power relations¹⁶ . Historically, this repressive sexuality were introduced by the Spanish colonial culture in terms to set as main moral virtues : the female virginity and monogamy as well as prohibits the homosexuality, transforming the liberal pre-Hispanic notion of sexuality.

Reproductive labour should be also integrated as a main factor to analyze this phenomenon. From a feminist perspective, reproduction as a concept embodies three different meanings that are interrelated; human reproduction; maintaining, sustaining human beings human beings throughout their life cycle, sometimes referred to the 'reproductive economy', 'sex –affective services', 'care-taking economy' and 'reproduction of human resources'; and systemic reproduction, i.e. the maintenance of particular structures that enables a given social system to be re-created and sustained. ¹⁷

2 Position of Latin American Women as Migrants and Migrant Workers.

Many Latin American women have few opportunities of getting work in formal labor sectors, either in their home countries or in the more developed ones. This labor division is reflected in migration patterns being they are relegated to the informal and unregulated labor market-without rights and protection. It's important to mention that not all the Latin American who decide to migrate have as a first choice to work in prostitution. But for many of them the lack

¹⁶ Nencel Lorraine, *Mujeres que se prostituyen*. 2000. Ed. Flora Tristan. Lima Pp. 111.

¹⁷ Truong Thanh-Dam, *Gender, International Migration and Social Reproduction*. 1996. In *International Female Migration and Japan*. International Peace Research Institute. Tokyo. Pp.146

of legal and independent ways to work within the informal sector, make them get involved in trafficking for purposes of prostitution.

During the last years more Latin American women are involved in trafficking for purposes of prostitution . A particular characteristic from this group – which differs from other region groups of trafficked women- is that many of them know they travel to work as dancers, artists, escort service or even as prostitutes but their decision and self determination change due to the multiple forms of discrimination and abuse they suffer, not only for their illegal migrant status but also for their women's position as women trapped in sex trade.

2.1 Some characteristics of Latin American women.

Even though there is no specific characteristics due to the diversity of social, cultural and , ethnical and economical background of these women which come from diverse countries of the region , some common characteristics are the following:

In regards to the age , the average age is about 18 and 45 years. Some investigations from COIN¹⁸ mentioned that Latin American women are older (between 30-45 years) than other groups of women (e.g. Eastern European women) and have children. Indeed, according to testimonies, the traffickers or agents preferred women with family because they need more money than single ones¹⁹ . These women as sole takers of their children are constrained to get involved in trafficking due to their economical family needs.

In countries, like Dominican Republic where according to OIM, the average of trafficked women (first trip abroad) is about 24 to 28 years old.²⁰, many young women travel with purpose to earn some money to invest later in their own business when they will be back home.

In terms of ethnic background, in the traffic for purposes of prostitution, the majority of women are mulattos or Latin American women of lighter skin. This group is preferred than black Latin American and Caribbean Women. These characteristics are determined by the

¹⁸ COIN: Center for Integral Orientation and Investigation. Dominican Republic NGO which provides assistance and instruction for sex workers and trafficked women who return to the country.

¹⁹ Informe Regional de America Latina y el Caribe.1996. *Trafico de Mujeres y trabajo Forzado*. Republica Dominicana 11-12 Diciembre .Pp.13

sexual market requirements²¹ and social economical conditions of the regions these women come from , which is reflected in a constant change in the division in the international market of women. For example, Latin American Women from Dominican Republic have been also exported instead of traditional markets like Europe but to Turkey and Lebanon as well as Mexican women to Japan.²²

3 Position as Women working in Prostitution.

However there is no obliged registration of prostitutes in the Netherlands, an estimation calculate there are about 25,000- 30,000 prostitutes, being 40- 60% from foreign origin. According to the Dutch Foundation against Traffic in Women (STV) and field worker a significant number, between 2,000 -3,000 arrive as a result of trafficking or work under conditions of forced labour.²³

The sex industry can be broken down into “organized “ and “unorganized” sectors. About 80% of prostitutes can be found in clubs, windows or escort agencies. Only 20% work in an unorganized way on the streets or at home(Europap 1, 232). The foreign prostitutes are concentrated in the windows and clubs services.

3.1 Latin American Women in prostitution.

Actually, a 60% (9,000) of the migrant prostitutes came from Latin America and work in cities like: The Hague, Arnhem, Deventer, Utrecht, Amsterdam, Haarlem, Rotterdam, Dordrecht, Nijmegen and Alkmaar. In cities like The Hague, Utrecht, Arnhem, Nijmegen and Alkmaar, they constitute the majority of prostitutes. Majority come from Colombia as well as Dominican Republic and Brazil. During the decade of nineties, transsexuals and travesties from Ecuador had arrived to work in prostitution.²⁴

²⁰ International Organization for Migration. 1996. *Trafico de Mujeres desde la Republica Dominicana con fines de Explotacion Sexual*. Pp.3

²¹ According to Diana Hummel from International Association against Racism and Sexual Exploitation, African Women were first destined to France while Latin American Women were to The Netherlands.

²² Informe Regional de America Latina y el Caribe. 1996. *Trafico de Mujeres y trabajo Forzado*. Op.cit Pp 13.

²³ STV, *Background Study on Basic Principles for a Code of Conduct within the Members States of the European Union to Prevent and Combat Traffic in Women*. 1996. STV .Utrecht. Pp.27

²⁴ Polania & Janssen. *No pense que eso me fuera a pasar. Prostitucion y trafico de mujeres latinoamericanas en Holanda*. 1998. Fundacion Esperanza. Bogota. Pp. 9

According to Maria Torres from Project Prostitution in The Hague, “ The majority of prostitutes in The Hague are foreigners, specially from Latin America. The nationality varies according to the streets. In Poeldijksestraat and Doublestraat there is a mixture of nationalities, but the majority are Colombians and Dominican Republic women. Small percentages come from Venezuela and Ecuador. I found some women from other nationalities like Mexican, the rest are from Africa, Poland and Ukraine”.²⁵

3.1.1 Windows prostitution.

The window prostitution is about 30% of the total prostitution in the Netherlands. It is estimated that 2,000 women worked in this kind of prostitution, being the majority foreign prostitutes. Usually this service has one room with one street window from where the women are visible to the clients. Many times, this space is the place where women live and work.

There are differences between windows, some of them are share for two women and have kitchen, small dining room and sanitary services, but also there are places where work until 4 women, with only one bathroom, improvised douche and without kitchen. Some of them have alarms in the same room or there is a 24-hour security service with street vigilance. This vigilance is included in the price of the window.

About prices, women should pay daily for the window about 150 Dutch guilders. This price could vary according to the city/street where is located. In practice women charge an average of 25 US Dollars per 15 minutes²⁶, being these prices shared by Dutch and foreign prostitutes, however there are some clients who take advantage of foreign women i.e. reduction of prices - who do not posses documentation.

According to Mariska Majoor, Director of Center of Information on Prostitution (PIC) there is a big difference between the labour conditions between Dutch prostitutes and foreign ones. “ No doubts. When you see Latin American women, you see them working in one place in the morning and other at night. Sometimes I wake up around 7 a.m. and see them working; when I am awake around 4 a.m. they are still working. Frequently they sleep in the same room”. The difference in labour conditions is their own fault, not for being foreigners but they do not

²⁵ Polania & Janssen. *Op.cit.* Pp33.

²⁶ The basic rate promoted by De Rode Draad (syndicate of prostitutes in the Netherlands) is US 37.30 dollars.

speak Dutch and neither claim to improve working conditions. If you are working in a completely dirty place, you should say to the owner :clean the room or I will get out of here.²⁷

3.1.2 Clubs service.

The majority of the sex industry in the Netherlands is organized through clubs around the country. In the Netherlands there are around 4,000 clubs and private houses where work around 15,000 prostitutes, being many of them illegal. In the clubs near to Belgium and Germany borders, there have been found Brazilian women. In the clubs inside the country, the majority of them are Colombians.

Prostitutes in clubs can not choose their clients. In many cases they are obliged to entertain any class of men. The prices for sexual services are around US 50.00 to US 150.00 for 30 minutes. The women receive around 20% to 50% of the price paid by the client. In other cases, they receive a fixed percentage no matter how many clients she gets. The clients pay for the drinks. In some clubs, the women are forced to consume alcoholic drinks. In other they receive a percentage for the drinks the client consumes.

In places where the owner has an agreement with pimps, the women do not receive directly the money, but the person who make the work the agreement. There are also brothels where the owner in charge to bring the women directly from their origin country and locate them in different clubs in The Netherlands or other European countries.²⁸

The majority of the clubs have private medical insurance. The sexual workers are obliged to be examined, paying them the expenses, laboratory analysis and medicines-if it's the case-. The results of the exams are given directly to the brothel keeper, who has a register of all the prostitutes. In case of being sick, some of them have the prerogative to send them back home. This medical control is not a protection for the women, but a mechanism the brothel keeper use in order to protect the good reputation of the club.

3.1.3 Houses and escort-service.

²⁷ Polania & Janssen. *Op.cit.* Pp 24

²⁸ Polania & Janssen. *Op.cit.* Pp 13

Approximately 15% of the prostitutes work by this system. Here, the clients call by phone and ask for the services. The sex worker go to the chosen place which can be the client's house, hotel or be a companion for dinner or nightclub. The service for a visit is around US 75 to 200 per hour. For one night, the prices are around US 500 to 1,250. The agencies are who get the main part of the profits.

Another 15% of prostitutes work in their own houses. Clients ask for appointments by phone. These sex workers search for their clients through newspaper ads or through intermediaries who get certain percentage of women's profits.

3.1.4 On the streets.

The main cities in the Netherlands have a zone of tolerance where from certain hours it is allowed prostitution on the streets. This kind of prostitution is about 10%, comparing with other forms of prostitution. During years, prostitutes addicted to heroine worked in this area. However, during the last decade the number of Latin American transsexuals and travesties who work in street prostitution have notably increased. This group in Amsterdam conforms the majority in the street prostitution. They are not addicted and come from Ecuador; a minority comes also from Colombia and Brazil.

The majority of street tolerance zones have a designated place proposed by municipalities for prostitutes. This space has sort of living room with sofas, table and TV in order that prostitutes can rest. It also has a canteen, toilette, shower and a medical service where prostitutes can go for medical examination (STD's exams) and get preservatives.

In the tolerance zones, the prostitutes wait for the clients, which drive their cars through a sort of parking place where the prostitutes attend them.

4. Position of Latin American Women as victims of organized Crime.

A considerable number of migrant prostitutes came to The Netherlands through trafficking in women. It's not possible to determine the exact number because many of them do not denounce their traffickers. Another reason is due to these women are constantly migrating

among countries, cities and brothels. The trafficked women have a high mobility – 3 to 6 months of permanence in The Netherlands.

According to the European Commission²⁹, there is an increment in the traffic of women. Through a research proposed by the European Union Commissary of Justice and Migration, in 1996 there was an estimated number of 200,000 to 500,000 women who are trafficked from Latin America, Africa, Asia and East Europe to European Community countries.

4.1 The International Trafficking in women from Latin America to Europe.

This traffic has as main purpose cover a demand related with European networks. They have as points of women's reference and recruitment countries like Brazil, Surinam, Colombia, and Dominican Republic. The traffic network in Latin American and Caribbean have created other modalities of commerce which is not typified as a " true trafficking in women " ³⁰ because the women know which would be their work in Europe. What they do not have any idea is about the exigencies of that sexual market. When they face the reality and resist doing their new work, they are pressured and forced to do it.

4.1.1 Recruitment methods:

There are diverse methods used in trafficking on women³¹, the main ones are:

- Recruitment through traffickers and operational networks:

Through travel agencies, contracts or marriage agencies. In the past many European "entrepreneurs" recruited them. Now the networks have been broaden and national entrepreneurs are in charge to recruit the women. According to a survey made by COIN in 1993, 19% of the women who travel abroad use these intermediaries. These kind of agencies offer through adds in newspapers, diverse jobs in Europe .They also offer help to get the required documents: passports, visas, birth certificates, transportation, etc.

²⁹ Polania & Janssen. *Op.cit.* Pp 16.

³⁰ Polania Fanny. *El trafico de Mujeres en America Latina* in ALAI Newsletter.No. 10 year 2. Pp. 8.

³¹ Informe Regional de America Latina y el Caribe.1996. *Op.cit.* Pp. 14.

In some cases women are required to fill out an application describing their physical appearance (a photo is included). These applications are sent to the European contact in order to check out if the applicants fulfill the demands of the market. One brand of this modality consists in recruit women through other women who are already working in prostitution abroad. A big number of trafficked women who came in the 70's; became intermediaries by recruiting women and receiving an economic incentive for this activity.

- Recruitment through relatives and friends.

Some relatives and friends are related to prostitution, inviting women to travel abroad. According to Licia Brussa³², “there is a certain amount of women who migrate for their own initiative. In fact, they are illegal migrants who came to The Netherlands because of their relatives or friends from their villages. In some cases, these people are involved in prostitution and brought they here to work as nannies or maids, but they finished working in prostitution, due to their illegal condition and the lack of possibilities to get other jobs”. However, in the case of Dominican Republic, many women are aware about which kind of jobs they will develop but not the conditions.³³

- Recruitment through faked or real marriages.

This method is done through marriage agencies or contact in tourist zones. Some foreigners offer to marry with a woman. They travel to the destination country where they will work as prostitutes or maids. Some women accept this situation because they want to keep their legal status. According to FIZ, in a marriage agency in Salvador (Brazil), the local police found 700 photographs of women, who were candidate for marriage with foreigners. In some photos, there were some phrases like docile and without own will or she dances and cooks very well”.³⁴

4.1.2 International Routes for traffic:

³² Brussa Licia, *Prostitutas inmigrantes en Holanda*. in *Nosotras las Putas* (original title: A vindication of the Rights of the Whores). Ed. Gail Pheterson. 1989. TALASA. Madrid.

³³ International Organization for Migration. 1996. *Trafico de Mujeres desde la Republica Dominicana con fines de Explotacion Sexual*. Pp.4.

³⁴ FIZ (Information Center for Asian, African and Latinamerican Women) & Centro Humanitario de Apoio a Mulher. *Uma Passagem para o Primeiro Mundo*. 1997. CHAME. Salvador.

According to the Regional Meeting about Trafficking in Women from Latin American and the Caribbean held in Dominican Republic in 1996, the following are the international routes for trafficking in women:

To the Netherlands.

From: Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Paraguay, Venezuela.

To Austria:

From: Colombia, Dominican Republic, Ecuador, Peru.

To Belgium:

From: Colombia, Dominican Republic.

To Germany:

From: Brazil, Colombia, Dominican Republic.

To Greece:

From: Colombia, Dominican Republic, Paraguay.

To Italy:

From: Colombia, Dominican Republic, Uruguay.

To Spain:

From: Brazil, Colombia, Dominican Republic, Paraguay.

To Switzerland:

From: Brazil, Dominican Republic.

4.1.3 After the arrival.

Latin American women are legally introduced with tourist or students visa. Previously they have been obliged to take a AIDS test³⁵ as well to sign a contract where is not mentioned they will work as prostitutes. When they realized about the work conditions and client's requirements, they refuse to do it , being obliged by the traffickers through threaten and violence to them or their families. Many of them had already by that time, debt bindings for air tickets, documentation and others.

There are many strategies ³⁶to keep trafficked women far away from police controls. Traffic networks which introduce women in Europe, transport them from one country to another as

³⁵ If not, as soon they travel to Europe, they should take AIDS test.

³⁶ Polania & Janssen. *Op. cit.* Pp 19.

well as the different locals within a same country. One strategy to produce a common feeling of resign in these women consists to keep them in a place with women who came before and are already familiarized with prostitution. Both strategies mobilized women through different locals and each 3 months from country to country. The only contact they have with European society is through network personnel, the doctor and the clients.

According to Maria Torres³⁷, it's not possible to talk about a fixed group who stay permanently in the same place due to the fear of being deported. When they finish to paying their debts to the traffickers, they either stay by their own or continue working for them .But the fact of being illegal prostitutes make them subjects of deportation.

The existence of a Latin Spanish-speaking culture in places like Amsterdam and The Hague, make many of them not to feel forced to learn another language. Fact that turn these women into an isolated group, which common goal is saving money to send to their families; lately return to their countries , build a house or manage a small business.

Maria Torres, works as social worker in the Prostitution Project in The Hague and comment about the Latin American prostitutes in the area. She comments about them³⁸, “ I know that a great number of women had arrived to the Netherlands by trafficking, but only a minority had denounced the traffickers. They said: *we cannot say we didn't know about our work as prostitutes, but we didn't know how this would be* . Therefore, I don't make any distinction through women who denounced trafficking and the others who do not present any denounce, both of them suffered . But at the same time , we should work with these women in a constructive way , making them realize all the achieves they got in their original countries, how they raise their children, how they go through the difficulties. Then, these women learn to accept themselves . It's important that these women focused in what they got , in their capabilities and not only consider themselves as victims . They are courageous women , not everyone can take the decision to leave their countries , looking for something better.”

³⁷ Polania & Janssen. *Op. cit.*. Pp 32

³⁸ Polania & Janssen. *Op.cit.* Pp 66.

IV. DUTCH LEGAL FRAMEWORK AND POLICIES TOWARDS PROSTITUTION AND TRAFFICKING IN WOMEN.

This chapter analyzes Dutch policies in regards to prostitution and trafficking. An introduction will provide the reader a general overview of the prostitution sector where trafficked women come to work in. The first part will be focused in policies towards migration, basically illegal migration due to trafficked women remain in this condition after their arrival in The Netherlands. The second part is focused in prostitution policies ; it means, the State approach towards prostitution, the possible “ legal” alternatives for migrant women who work in prostitution and the legal reform from October 2000. The third part will analyzes the Dutch policies towards trafficking in women .

1. Introduction : Prostitution in The Netherlands.

According to the project “ De Profeit Studie” conducted by the Mr. A. de Graaf Foundation in Amsterdam, commissioned by the Scientific Research Department (WODC) of the Ministry of Justice in order to get a detailed picture of the nature and scope of prostitution in The Netherlands shortly before the legal reform³⁹, the outcome was the following:

In one third of the Dutch municipalities prostitution can be found. It is most prominent in the larger cities and in border regions (with Germany and Belgium). There are window prostitution in 12 cities , where daily 2000 prostitutes work. Street prostitution is found in 10 cities with an average of 320 women working daily. There are about 600 to 700 sex clubs and apartments where daily work 3500 to 4000 prostitutes . As a general estimation ,there are on a given day at least 6000 prostitutes working in The Netherlands. It ‘s no possible to include figures on prostitutes who work in their own house and escort service; because the data from the research are too incomplete on these issues. However, insiders estimate in 1999 at least half of the prostitutes came from outside the European Union. Due to the lack of specific figures for alien and illegal prostitutes, it’s not possible to determine which the amount of foreign prostitutes who are whether legal or not, but at least in some regions like Amsterdam , Rotterdam and The Hague ; foreign, illegal women are a majority. In this context, “illegal” means “not in possession of a working permit” this means in practice that only persons with a

³⁹ Since October 1, 2000 the law on prostitution changed. Prostitution businesses are no longer illegal, they are treated as any other business and the prostitute has become a legally protected profession.

EU passport can work legally, it is national policy to deny anybody from outside the European Union to work in prostitution.

2. Dutch Legal Approach towards Alien's migration.

During the 1970's and 1980's, immigration came to be viewed by Europe's receiving states as a problem, becoming migrant laws and policies more repressive. Therefore, is overall agreement among all receiving states in Western Europe – including the Netherlands- that illegal immigration should be controlled through direct and indirect measures; direct measures include detection and expulsion at the borders and internal surveillance- the latter being considered particularly important where there are high levels of clandestine immigration, i.e. immigration of persons who have entered the country legally on tourist and other visas and subsequently overstayed. Indirect measures include carrier and employer sanctions, that is the penalization of any company or individual caught transporting or employing illegal immigrants.

In these countries not only the third party organizing the illegal entry (and/or the illegal employment) of another person, but also the illegal alien herself is liable to punishment; this is the case of the Netherlands where imprisonment for migrants who enter or stay illegally may be punished with imprisonment of six months.⁴⁰

Part of these policies also include stricter control over visas in their own countries as well in third countries⁴¹. According to this, Council of Europe- in concordance with the Maastricht Treaty⁴²- shall determine the third countries whose national must be in possession of a visa when crossing the external borders of the Member States.

Historically, the distinction between Dutch national in one hand and aliens and the other, was first made in the Dutch Alien Acts of 1849. Under this law aliens had to be admitted when they had enough money and were respectable. The Aliens Act of 1965 was the first

⁴⁰ Also called "trafficking legislation". See IGC, December 1995, "Summary description of legislation on aliens trafficking". This documents contains an overview of legislation in the fifteen participating States in the Inter-Governmental Consultation to deter illegal migration.

⁴¹ According to the IOM in the report trafficking in Dominican Republic, mentioned the Dutch Consulate in Dominican Republic authorizes annually 500 to 600 visas. The control over them become stricter due to 10% of them are procured by prostitution purposes.

codification of increasing limitations and growing administrative requirements for admission. The Act is still in force today, however has been amended several times and has been supplemented by the so- called Aliens Decree (Vreemdelingenbesluit) and the Aliens Circular (Vreemdelingendecreet). Currently, a proposal for a new Aliens Act is pending in Parliament. Given to the controversial novelties of the Bill, impeding even further the chances of Aliens to be admitted to the country, the new act will probably not be in force before 2001.

According to the Aliens Act, the first and main basic principle still is that every alien has the right to enter Dutch national territory, provided the Alien has a valid document for boarding crossing and the stay is allowed on the grounds as set for the Aliens Act. In principle, an alien who wants to stay in The Netherlands for a period exceeding three months, already need a visa for long term residence (machtiging tot voorlopig verblijf). This visa must be applied for at the Dutch diplomatic mission in the country of origin or habitual residence.

According to the Article 1B of the Aliens Act introduced in 1998, the residence of an alien in the Dutch territory is only lawful if he or she qualifies under one of the following main categories⁴³:

- Those who are officially admitted albeit conditionally (It is noted here that the prevailing Dutch law still know a number of status depending on the motive of the alien to live in the Netherlands and/or the time he or she has been living already).
- Those who have applied for admission, pending the decision (provided that the right to stay pending that decision in the Dutch territory is granted either by law or by the Court).
- Those who reside in the Dutch territory in the visa free period of three months, as long as they comply with the general conditions (such as sufficient financial resources and constituting not threat to the public order).

Despite the terms of the law and the firm commitments made by politicians, recent history has shown that an immigration policy defined as strict cannot be carried out without periodical organization of illegal aliens. In the last 25 years, consecutive Dutch governments had yielded on at least four different occasions to measures aiming to solve the problem of illegal

⁴² Collinson, Sara . " *Europe and International Migration*". 1993. Royal Institute of International Affairs. London . Pp.127.

⁴³ Van Bennekom W, Van den Bosch M and others. *Comparative study of the Member States on immigration Law, with special reference to deportation and administrative detention. Report on the Netherlands*. 2000. Centre for Migration Law. University of Nijmegen.

Aliens. Sufficient proof has to be delivered that the “illegal” has been living and working in The Netherlands for a considerable period of time so that it could be assumed that the individual had made a substantial contribution to the Dutch society. And of course, the “illegal” should have no criminal records.

3. Dutch legal Approach towards prostitution.

In the Netherlands a distinction had been made since the beginning of this century. (1911) between, on one hand working as a prostitute and on the other hand, organizing the work of prostitutes and materially/ financially profiting from prostitutes earnings. This is part of an *abolitionist* system where the prostitute is not punished but the activities around her.

Recently, the law has been changed. According to current law, prostitution in itself is not a criminal offence, but it does not mean that prostitution is dealt in a different way than in the rest of Europe. According to Jan Visser⁴⁴, the moral attitude of Dutch people do not considered as proper or acceptable behavior, but the pragmatism in Dutch political practice, make possible to see sex industry as another social phenomenon. A number of 'private' activities in the sphere of morality are officially tolerated if they do not interfere with public order. If prostitution is not disrupting ordinary life in a neighborhood, it will be allowed to exist openly. This somewhat open attitude is the foundation for the new policy. Prostitution itself is not seen as the problem, rather the cases where this is happening involuntary or in situations where public order is violated, then the new element is the formalization of this practice by legalizing prostitution businesses.

3.1 Migrant women in prostitution.

Until some years ago, prostitutes without valid legal papers were widely tolerated in Dutch prostitution. Lately, the police are carrying out systematic controls to remove them ; one of the main motives given is that by allowing illegal aliens to work in prostitution, a market for traffickers is maintained. By prosecuting the brothel owners if they employ illegal aliens, the police hope to destroy this market and thus end the trafficking. The owners are then treated as

⁴⁴ Visser, Jan. 1999. *The Dutch Law Proposal in Prostitution*. RodeDraad Foundation. Pp 6.

traffickers and as an additional measure they will lose their license to operate a brothel. The expectation is that this will be effective in order to get illegal prostitutes out.

Because of these controls, illegal prostitutes go underground in illegal circuits and have to work under worse conditions. Which alternatives do they have? According to *Trends in prostitutie en beleid*⁴⁵, there is some possible 'escapes' for illegal prostitutes. One is to work in illegal brothels that are operated in a hidden way, with fronts or covers like a singles bar or a private club. A second possibility is to work with false papers or via a paper marriage. A third option is to work in informal ways, like in private homes, via middle men and in private homes.

- Through marriage: to marry a national entitles women to reside legally in the country. The authorities may check if the foreign women live together with her husband. When it is found otherwise, the woman can be deported. Her residence permit is (at least during three to five years) dependent on the marriage. In case of divorce she will lose the right to stay and risk being deported.

In case of trafficking, she has no means of escape, since leaving her husband implies that she loses her right to stay. Then, the only way for women to acquire a legal residence permit is to marry a national. Women pay large amounts of money for sham marriages, either to their "husbands" or middlemen. If a woman refuses to pay or to subject herself to abuse, the "husband" can simply threaten to report her to the Aliens police. Another common trick is to threaten the women to "leave" her just before the end of the 3 or 5 years period, unless she is willing to pay again another amount of money.

- Through work permit: Although being a prostitute as such is not against the law, working as a prostitute is subjected to regulations. Migrant prostitutes risk being arrested as illegal aliens and deported due to the fact it is not possible to obtain a legal work permit for prostitution. This situation creates a double standard, where prostitution is "legal for local women, but its practice by foreign women may be deported in grounds of illegal status.

⁴⁵ Liesbeth Venicz, Lorraine Nencel and Jan Visser. 1999 *"Trends in prostitutie en beleid"*. Rode Draad Foundation. Pp. 7

To counteract this, an appendix of the Law on Identification was drawn, this makes it mandatory to identify oneself when working as a prostitute. This is an exception to the general rule in The Netherlands; a self-employed person is not obliged to identify himself to the police while working.

3.2 The local policy: the Municipalities.

Nearly all of the municipalities which have no prostitution now (70%) prefer not to attract prostitution. Most cities adopt a policy whereby only one brothel is allowed under very strict conditions, thereby hoping to discourage potential entrepreneurs. A few municipalities will probably challenge the law, because they want to keep prostitution out of their communities because of religious reasons.

More than half of the municipalities with prostitution only recently contacted the brothels, they admit that they have little knowledge of what is going on. They have no information of the location of sex clubs, prostitution in private homes or the existing of escort agencies. Because there were never problems reported, the local government was happy not to have to intervene. Although in general the police are better informed, they have in many regions very little insight in the number and nationality of the prostitutes, in the identity of owners, in the working conditions and potential crimes.

The city of Amsterdam⁴⁶ was one of the cities that started experimenting with forms of licensing. The new article in the Penal Code only deals with forced prostitution and trafficking, therefore prostitution businesses have become legitimate enterprises and local governments can regulate them by way of licensing. The vast majority of city councils have drawn up a local policy that includes:

- The number of brothels that are appropriate, this is often the number of existing brothels,
- The geographical areas where they are allowed,
- The required details of the structure and the interior of the building (safety, hygiene, working conditions),

⁴⁶ Liesbeth Venicz, Lorraine Nencel and Jan Visser. *Op.cit.* Pp. 12

- The style of management, guaranteeing freedom of work for the prostitutes (safe sex, choice of clients, no compulsory drinking of alcohol, etc),

These conditions are written into a special chapter of the Local Bylaw (or Local Regulations regarding Public Safety). The license is based on this bylaw and is given to the owner of the business. He will be held personally responsible of any violations. The penalty will be the loss of the license.

The preparation and the issuing of licenses is monitored by a municipal working party, that generally consist of representatives of the mayor (department of public safety), the police, the housing department, the municipal health service and sometimes the fire brigade and the labour inspection. This working party coordinates the regular inspection by its members. The task of the municipal health service is twofold. They are responsible for proper and hygienic working conditions and they are responsible for activities to promote safer sex and they coordinate medical facilities for prostitutes. It is general policy in The Netherlands that prostitutes are not mandatory tested for STD or HIV. It is felt that the government is responsible to make medical check ups and treatment available, but it is the responsibility of the individual to use them. In larger cities there are special free clinics, but many prostitutes prefer their private doctor or a specialized dermatologist.

The national government stresses the necessity co-ordinate policy on a regional level. In many part of the country this is done, the police region comprise generally some 10 to 20 cities, the mayors synchronize their actions on that level. One police team will then be in charge of the regular visits to the brothels.

3.3 The legal reform of October 2000.

The Penal Code used to define third parties that exploit women and boys for the purpose of prostitution as criminals who should be put in prison. However, these laws were not put into practice. Prostitution was treated as a fact of life and brothels were openly or tacitly tolerated.

Officially, this practice of tolerance become policy since October 1st 2000 . is not regarded as a criminal offence in the Netherlands. The Ministry of Justice declared that public

prosecution will refrain from prosecuting in certain fields. (In judicial terms: the opportunity principle). The rationale behind it is that to prosecute this will produce more problems than it solves. By tolerating brothels under the condition that there is no associated crime like forced prostitution and prostitution of minors, and that the business poses no nuisance to residential areas, prostitution could better be monitored by accepting it as an integrated element of city life.

The Dutch Penal Code will no longer treat "organizing the prostitution of an adult female or male person" as a crime when this is done with the consent of the prostitute. If a person regards prostitution as the best option to earn a living she shall have the same rights as any other worker has. Any form of forced prostitution, pimping and trafficking will remain in the Penal Code, the maximum penalty will go up to 6 years imprisonment. The brothel or sex club will need a license from the council and will have to meet standardized occupational health and safety conditions.

According to Venicz ⁴⁷, the contact between civil servants and brothel owners is still a bit uneasy. Both parties need time to adjust to the new situation and the new relationship. The social acceptance of prostitution as a social phenomenon and the legal acceptance of the profession of brothel owner does not automatically mean that the latter is seen as just another businessman. From their part there is too a lot of suspicion about the aims and activities of the public administration, due in part to a lack of exchange of information. The suspicion is fed when the activities and signal from different governmental bodies are contradicting each other.

There is no major change in the way the Dutch society is handling prostitution. What change is the way in which accepted from unacceptable behavior is distinguished is not longer done on the judgement of the moral content but of this conduct but on the assessment if violence or force is being used. Politicians justify this policy speaking of the advantage to treat prostitution as just another branch of the economy, In this way, it can be regulated efficiently in the interest of three areas: public and social order, combating crime and improving working and living conditions of prostitutes.

⁴⁷ Liesbeth Venicz, Lorraine Nencel and Jan Visser. Op.cit. Pp.9

4. Dutch Policy in trafficking in women.

4.1 Laws on traffic in women.

The Netherlands did not sign nor access to the UN 1949 Convention. Within countries which are destination countries, there have been difficulties to conceptualize Trafficking in Women. The critical point was whether all activities in the sex industry constitute sexual exploitation per se, or whether only sex work under exploitative or slavery-like conditions could qualify as sexual exploitation.

An example of these debates is the first European Union Conference on Trafficking in Women organized in Vienna the 10th of June 1996. Although the conference did not come up with a commonly share definition of traffic in women, some issues were raised as the need for a more co-ordinate policy at international, European and national level, giving priority to the human rights aspect of the problem. Also, it was raised the necessity for further research and similar standards and comparable information among the countries as well as a recommendation for the Member States to organize one central, national unit connecting all interested parties including ONG's were other important issues raised in the conference.

For countries like the Netherlands which has legalized/ regulated prostitution as an economic and labor sector, the exploitation of women in the sex industry could be avoid through the regulation of pimps, customer's behavior and severe sanctions for traffickers.

Following this approach; under the heading " Trafficking in Persons", the Criminal Code in its art. 250 of the Dutch Penal Code prohibited inducing another person to engage in prostitution by means of (threat of) violence, abuse of ascendancy derived from actual relations or by deception". Abuse of authority is assumed if a woman is found to be in conditions, which are " not equivalent to the conditions under which an independent and emancipated prostitute in The Netherlands normally works".

A legal reform of this article was made in October, 2000. It has two principal aims: to regulate voluntary prostitution and to increase the prosecution of forced prostitution, trafficking and the prostitution by children. The penalties for these crimes have been risen from 1 to 6 years.

For both the police and the public prosecution this has become a policy priority. The official guideline from the Ministry of Justice prescribes that in every case where there is a suspicion of trafficking, the victim must be given the option to report or to contemplate this by allowing her the shelter of a safe house. In the case of prosecution of her traffickers she can stay in The Netherlands under a temporary staying permit and receive social benefits. This does not officially allow her to work. And because many fear reprisals from the traffickers, not many women press charges and not many of them stay for the duration of the trial.

In December 2000 in Palermo, Italy. The Netherlands has also signed the UN Convention Against Transnational Organized Crime and its supplementary protocol: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

It's important to mention this new Protocol do not limit the forced or coerced trafficking but include all trafficking, irrespective of the consent of the victim.

4.2 General Government measures.

4.2.1 Internal measures .

In 1988, the Netherlands were the first country to introduce a temporary resident permit for victims of trafficking, both in the interest of the prosecution to keep witnesses as in the interests of the women involved to receive help. This ruling (Vc B22, now Vc B17) was added to the Dutch Aliens Law stating that “ In the presence of the least suspicion of trafficking, a women should be allowed to stay in the Netherlands until the whole juridical process has been completed”. The reflection period is three months, during which a women is entitled to a safe shelter, legal advice, medical check up and social security benefits. A residence permit is granted for the duration of the investigation, the prosecution and the trial. At first, the victim is granted a one-year residence permit. If the juridical proceedings still continue after that year, her residence permit is prolonged with a year, and so on.

(NL1, 26).

In 1993, this temporary residence permit was extended to non- victim's witnesses who were willing to testify for the prosecution in cases of trafficking. In 1996, The Ministry of Justice issued additional instructions to the police regarding the implementation of Vc b17.

According to STV⁴⁸; this resolution in the field of judicial co-operation, is the most relevant instrument and crucial element in effective prosecutions. However, there are problems with implementing the policy. Before victims can be assisted, they usually have to be referred to the NGO concerned by the police. Many have argued that more victims might be identified if police intervention were made more effective.

Furthermore, the NGO's work is not made easier by the fact that many victims are only reported after much has already happened (such as pressing charges). Also, a late reference to the NGO, accompanied by little information provided for by the police (for sake of the investigation), makes it extremely difficult to find a safe shelter for the women involved and to give adequate support. They might not fully understand their rights and position. Besides, there have been cases of women who thought they had only made a statement, but according to the police, have pressed charges. (STV oral information Nov. 1996).

In 1998 there were 72 cases of trafficking in the registers of the public prosecution. But often women do not dare to press charges because they are afraid of reprisals. As long as they are in The Netherlands they can be offered help and protections, but when the criminal proceeding are completed, they again face deportation.

Even though this temporary-staying permit is given on the condition that she files charges and only for the duration of the criminal procedures. This measure is meant to encourage women to press charges, as such serves primarily the interest of the prosecution rather than the interest of the women concerned. Back home they are unprotected against reprisals by their traffickers or the authorities and risk rejection by their families.

4.2.2 Some measures within European Union.

The STOP Programme.

The Netherlands had joined the STOP Programme. This joint action programme STOP (Sexual Trafficking of Persons) adopted on 29 November 1996 by the Council of European Union, is targeted for persons responsible for combating the trade in human beings and

⁴⁸ Kootstra Trijntje & Stichting tegen Vrouwenhandel. *Background Study on Basic Principles for a Code of Conduct within the Member States of the European Union to Prevent and Combat Traffic in Women*. 1996. STV. Utrecht. Pp. 18.

sexual exploitation : judges, public prosecutors, police departments, civil servants and other public services concerned with immigration and border controls and with social and tax legislation, the prevention or combating of trade in human beings and the sexual exploitation of children, and assisting the victims or dealing with the perpetrator.

The EUROPOL Convention.

The EUROPOL Convention had signed by the Netherlands (July 1995). EUROPOL is the European law enforcement organization that aims at improving the effectiveness and cooperation of the competent authorities in the Member States in preventing forms of international organized crime. Two of the priority areas of activity for EUROPOL are to lay down illegal immigrant smuggling and trade in human beings .

The EU Ministerial Conference. 1997.

The Dutch government has also participated at the EU Ministerial Conference on trafficking in women, held in The Hague from 24 to 26 April 1997, resulted in a series of proposals. The main ones were:

- Adjustment by the Member States of their national legislation in order to prevent the automatic expulsion of victims;
- Closer European cooperation in the fight against trafficking in women.
- Improvement of police information networks;
- A leading role for EUROPOL in the context of specialization in trafficking in human;
- Raising the awareness level of police forces and customs and legal services within the fifteen EU Members, so that they take matters related to trafficking in women more seriously. The ministers also recommended that the countries of origin of the victims of such traffic should set up surveillance mechanisms aimed at detecting prostitution networks and organizing information campaigns aimed at warning women about the false promises of traffickers.

4.3 Government measures for prevention.

Embassies in countries of origin try to warn women who are potential victims of trafficking, moreover, in projects which aim to foster economic self-dependency among women, the Dutch government hopes to prevent traffic in women.

The Dutch government has also financially supported the La Strada Programme: Prevention of Traffic in women in Central and Eastern Europe. Also, various peer projects⁴⁹ have been established with regard to informing foreign prostitutes about their rights and duties while staying in the Netherlands, i.e.: STD/HIV information.

4.4 Government measures for reparation and support mechanisms.

The Dutch government subsidizes the NGO the Dutch Foundation against Traffic in Women (STV).

Victims of trafficking who press charges are entitled to social security benefits, safe shelters, legal, medical and psychological help, connected with their temporary residence permit.

In connection with municipal institution and the police, groups of women social workers in Amsterdam, Rotterdam and The Hague, try to establish individual relationships with prostitutes, helping them with problems such as housing, drug addiction and contact with the authorities.

In 1992, the city of Amsterdam brought the Intermediary project for foreign prostitutes under the wing of the Municipal Health Service's prevention worker. Among the objectives of this project are: to inform foreign and migrant prostitutes of their rights and responsibilities during their stay in the Netherlands; to encourage and support prostitutes in reporting traffic in women as well as exploitation or abuse of women.

4.5 Government measures for criminal investigation and prosecution.

⁴⁹ Kooststra T. Op.cit. Pp.121

Besides the temporary residence permit ; The Dutch Attorney-General's office formulated directives in order to facilitate the prosecution of traffickers (1989). The directives were introduced to achieve a uniform national policy in the approach of traffic in women.

According to the directive:

- There should be special police units dealing with prostitution and traffic in women.
- Information on traffic in women should be transferred by local police to the National Criminal Intelligence.
- Traffic in women should be regarded as a form of organized crime and therefore should receive priority.
- The care and support of victims should be adequately being taken care of granting her a reflection period and a temporary residence permit. Also, she should be informed of the criminal proceedings and be entitled to a confidante at the police hearings.

The implementation of the directives by police officers and state attorneys was evaluated in 1992 and 1993. The general conclusion of the evaluation was that only elements of the directives were implemented and that this usually depended on personal relations and commitment of individual police officers and state attorneys. As a result, the Directives were revised and more attention should be given to the adequate implementation of the Directives, a/o by appointing special contact persons at the offices of the Public prosecutor.

Local governments policies.

In the new article 250a of the Penal Code only forced prostitution and trafficking are mentioned. Thus local governments are free to develop a system of their own to regulate houses of prostitution. But in order to create the desired uniformity and integration of local policy, the national government has prepared a number of blueprints and suggestions how to organize this legalization on a community and regional level. They have been published in the Handbook Local Prostitution-policy. The most important proposals and measures are⁵⁰:

- The national government developed an overall model to implement local and regional control of prostitution. It is a "contract of control" with a set of agreements between local

⁵⁰ Visser, Jan. 1999. *The Dutch Law Proposal in Prostitution*. Op.cit..Pp.7

government, the police and the public prosecution on the correlation of administrative and punitive measures.

- Local government can organize a licensing system in order to regulate the prostitution sector on the basis of a model published by the Association of Dutch Municipalities.
- For the Public Prosecution guidelines are published on how to proceed in cases of trafficking in persons and forced prostitution.
- A special guideline is written on how to deal with victims of trafficking in the legal procedures.
- A code of conduct is drawn for civil servants and policemen on how to behave in the prostitution milieu.
- Mayers (who are responsible for the issuing of licensed) will have access to criminal records in order to check the background of owners and managers of brothels.
- The Law on Identification is amended; prostitutes must identify themselves to the police.

V. CONCLUSIONS.

I started this research questioning myself how women's rights of trafficked women can be properly protected by the States due to in many EU destination countries , the trafficking in persons has been placed as a problem of illegal migration . According to this approach, trafficking is defined as a problem for the state rather than for the women involved. The focus has been moved from violence against women to illegality.⁵¹ Furthermore, the element of violence and abuse and the gender specific character of "trafficking in women" disappear. As a consequence; corresponding governmental policies combat trafficking in women aim at obstructing illegal migration rather than protect women , therefore their rights as trafficked persons .

Then my research question was how Dutch government strategies focused on combating the traffic in women and decriminalize prostitution establish sensitive measures for the protection of their women's rights .

In the Dutch context , although prostitution as such is legal under certain conditions, foreign prostitutes (which have been in their majority trafficked women)are assumed to bear an illegal status. In that case she is subject to state punishment and eventual expulsion on immigration grounds. In the second case ,she is considered the fault of criminal agents, in which case she may be granted temporary residency rights (juridical, medical, psychological support) before expulsion if she agrees to identify and testify against the traffickers. In other words, in the first case she is considered an out law and in the second a victim. It means, the position of "legal" prostitutes is the position of a prostitutes with a working permit a/o EU citizens. This definition of prostitution as work for EU citizens and as violence committed by criminal traffickers for persons without EU passports or working permits; would have as a result; some State protection and, in principle, some rights to earn money through sexual commerce⁵²

⁵¹ For the Dutch Criminal Code, the element of violence or threat is necessary to configure the trafficking of persons. Art. 250. Paragraph 2.

⁵² In this line of reasoning , the exploitation of women in sex industry is accidental, not integral to prostitution being the trafficking policies focus in the regulation of pimps.

from women from the South and the East in a market where less than half the prostitutes⁵³ in major Dutch cities are in fact Western Europeans .

This legislation intent to intensify a double standard of control discriminating against non- EC women. Consequently; will an illegal circuit emerge where illegal prostitutes will work under more severe forms of exploitation? Besides, under which conditions can non EU women work in Dutch prostitution ? or can they be categorically denied for this?

It must be concluded that repressive migration policies and the resulting illegal status of women make migrant women more dependent and more vulnerable to various forms of abuse and violence. With no legal residence and working permit and the constant risk of arrest and expulsion, migrant women are compelled to work at force labor practices in the worst conditions, without defense against abuse agents, brothel-keepers and corrupt officials.

According to the Dutch Parliament, the main objectives of the law are: a) in the area of administrative regulation (control and containment of the prostitution industry), b) the area of prosecution (combating involuntary prostitution, the protection of minors against sexual abuse and the combating prostitution related crimes), c) in the social field (improving the position of prostitutes) and d)in the field of alien policy (diminishing the number of illegal aliens in prostitution).

These laws do not protect women; on the contrary they effectively exclude migrant trafficked women stigmatized as prostitutes from legal protection by failing to distinguish between individual decision and coercion and by blaming prostitute-branded women themselves for violence committed against them.

This State stigmatization of migrants prostitutes involved in traffic as women in transgression⁵⁴, not only denies asylum but undermine women's entitlement to democratic equality with measures of surveillance and control rationalized as necessary "special protection" for "vulnerable persons". Women are thus denied the status of subjects capable of

⁵³ According to the Dutch Ministry of Justice, approximately from 15,000 to 30,000 women work in prostitution in the Netherlands and the 40 per cent of them are illegal migrant women.

⁵⁴ They are viewed as bad or fallen, bad if motivated by their own self-interest, and fallen if prey to malicious male design.

assuming individual agency and responsibility . But non agency can be developed without the existence of a sphere of women's rights which support it. Consequently, no human rights protection can be developed if there is no social and institutional constructions to support it. In this sense , even though the State has been one of the social institutions which has been in charge of regulation of women's sexuality through years, it should be also responsible to create spaces for trafficked women's agency as well as to enforce trafficked women human rights standards⁵⁵ .

In regards to women's agency, it is related with the capacity of self empowerment of women ; the fact of not being consider only as victims of trafficking but as women with self resources , who take the option of being prostitutes no matter the institutionalized stigma around them – victims and illegal prostitutes.

Whether the sexual economic exchange is an act of choice or forced exploitation, these women travel abroad from Latin American countries where they have few opportunities of getting work in formal labor and informal sectors to The Netherlands in order to achieve certain economical stability for themselves and their families. Goals many of them achieve no matter their relegated and segregated status.

In regards to women's rights, it's a duty of the State to enforced trafficked women' human rights standards. According to Gail Pheterson⁵⁶, a political elimination of the very notion of female sexual/economic transgression (chosen or forced) by granting all women the same rights, liberties and protections against violation as those to which human being in general .

The movement for prostitutes' rights had some success so that certain sex workers are gaining limited human rights and political voice. However, rather than decrease the vulnerability of foreign prostitutes, it reinforces their isolation and dependence on criminal male protection due to State's policies that separate them legally and socially from local prostitutes.

States have the obligation to recognize and protect the human rights of all persons in conformity with the Universal Declaration of Human Rights and other international human

⁵⁵ State reprisal against women in transgression is a safeguard against female liberty and sometimes a means of readjusting the terms of control in accordance with prevailing circumstances. Such readjustment is particularly pronounced around the issues of birth control, employment, migration and paid sex work.

⁵⁶ Pheterson Gail, *The Prostitution Prism*. 1996. Amsterdam University Press. Amsterdam. Pp.105.

rights instruments . It means, in the case of trafficked persons: the right to be provided with effective legal remedies, legal protection, non-discriminatory treatment, restitution, compensation and recovery. But also grant them with equal worker benefits, rights and protections as legal residents .

In recognition of those rights and obligations, States, like the Netherlands, should adopt and/or implement and periodically review and analyze legislation to ensure its conformity with international human rights standards as well as protect all rights of trafficked persons.

RECOMMENDATIONS

- The Netherlands as a country which enforced international human rights instruments in its national law and policies , should protect and promote respect for the human rights of women who have been victims of trafficking.
- Ensure that trafficked persons are not subject to discriminatory treatment in law or in practice on account of race, age, language, religion, political, cultural beliefs or practices and other status, including their status as victims of trafficking.
- Ensure safety and fair treatment for trafficking women, therefore ensure access to the embassy or consulate of the country in which the trafficked person is a citizen and to non-governmental organizations that provide services and/or counseling to trafficked persons as well as ensure that irrespective of their immigration status or the legality or illegality of the work they perform have the rights to press criminal charges against trafficker and other who have exploited or abuse them..
- Provide trafficked women with a qualified translator and legal representation before and during all criminal, civil, administrative and other proceeding in which the trafficked persons is a witness, complainant, defendant or other party, and provide free transcripts or copies of all documents and records related to any and such proceedings, in their own languages.
- Provide protection to trafficked persons and witnesses in a manner that does not subordinate the safety and integrity of trafficked persons or witnesses to the interest of the prosecution, including a change of identity , where necessary; the need for the safety of family members and provide them with information about their legal rights and the procedures available for claiming compensation, restitution and recovery as a result of being trafficked.
- No detain, imprison or prosecute any trafficked person for offences related to being a victim of trafficking, including for lack of a valid visa (including a work visa), solicitation, prostitution, illegal stay and/or the use of a false visa or false travel or other

documents; and not hold trafficked persons in a detention centre, jail or prison, at any time, prior to, during and after all civil, criminal or other legal proceedings.

- Establish specialized police and prosecutorial units that are trained to deal with the complexities, gender issues and victim sensitivities involved in trafficking.
 - Prevent immediate expulsion by staying any actions of deportation and provide resident status (including the right to work) for a period of six months initially, during which time the trafficked women can decide whether or not to initiate a civil action or to be a witness in a criminal actions against the trafficker. If the trafficked women decides either to initiate a civil action or become a witness in a criminal action, or both, then the state shall provide the trafficked person with resident status (including the rights to work).
 - Not deport any trafficked person if there are substantial ground for believing that such person would be in danger of being subjected to torture.
 - Provide trafficked persons with information and an opportunity to apply for permanent residence under national laws and international treaties. In considering applications for asylum, a trafficked person shall be permitted to introduce evidence supporting a claim that repatriation could seriously endanger her life, such as a high risk of reprisal by traffickers or persecution or harassment by the authorities.
 - Promote and support the development of cooperation between trafficked persons, law enforcement agencies and non-governmental organizations capable of providing assistance to trafficked persons. All persons providing services (health, legal and other) should receive training to sensitize them to the rights and needs of trafficked persons and should be provided with guidelines to ensure proper and prompt aid.
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- Provide support to programs , including those undertaken by non-governmental organizations, for education and campaigns to increase public awareness of the causes and consequences of trafficking.

- During the period of temporary residence status , provide, on an equal basis with citizens of the State, adequate, confidential and affordable medical and psychological care , adequate and safe housing, and social services: counseling in the trafficked person's mother language, adequate financial support , opportunities for employment, education and training.
- When and if the trafficked person returns to her home country, provide the funds necessary for the return and where necessary, issue, or provide assistance in the issuance of, new identity papers as well as reintegration assistance and support programmes in order to minimize the problems they face in reintegrating into their communities.
- Cooperate through bilateral, regional, interregional and international mechanisms in the development of strategies and joint actions to prevent trafficking in persons , the safe and voluntary repatriation , therefore the protection of the lives and rights of trafficked women.

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