



## *Trafficking in Human Beings in Belgium 2007-2008*

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# Trafficking in Human Beings

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# 1. Legal framework

## 1.1. The Law of 10 August 2005

The law of 10 August 2005 combating human trafficking introduced for the first time a comprehensive definition of the term ‘human trafficking’ in Belgian law.<sup>1</sup> According to the new law, the crime of human trafficking entails two elements: The first element is a type of action involving movement of a person, namely the recruitment, transportation, transfer or accommodation of a person or the exchange or transferral of control over this person. The second element is the aim of this action, namely to (i) use this person for prostitution or for other acts of sexual exploitation, including child pornography but not adult pornography, (ii) to exploit him/her as a beggar, (iii) to employ this person in circumstances that contravene human dignity, (iv) to harvest this person’s internal organs, or (v) to have this person commit a crime against his/her will.

This definition of the crime of human trafficking differs from the one provided by the 2005 Council of Europe (CoE) Convention on Action against Trafficking in Human Beings,<sup>2</sup> which has been signed but not ratified by Belgium. The Belgian definition adds objective (ii) and (v) to the CoE definition and lacks what is generally considered to be a constitutive element of the crime of human trafficking, namely the use of certain means to commit the crime, such as the threat or use of force, coercion, the abuse of power or the abuse of the vulnerability of the trafficked person.<sup>3</sup> The Belgian law has thus shifted the focus away from the abuse of the victim, targeting his/her exploitation instead.<sup>4</sup>

The 2005 law contains a number of articles that can rightly be criticised. Firstly, probably the most regrettable deficit of the law is the above-mentioned absence of the prerequisite of coercion or the use of force as one of the constitutive elements of the crime of human trafficking. Secondly, the law criminalises human trafficking for purposes of sexual exploitation but the *travaux préparatoires* fail to include adult pornography as one of those purposes, in contravention of European standards.<sup>5</sup> Thirdly, concerning economic exploitation, the term ‘human dignity’ is not further explained, which leads to confusion. However, the *travaux préparatoires* provide some insight into the matter, indicating that the absence of a wage or a disproportionately low wage for the delivered work constitutes economic exploitation in violation of human dignity.<sup>6</sup> The problem with this approach is that it, in combination with the absence of a prerequisite of coercion or use of force, could lead to a redefinition of human trafficking as a mere infraction on social legislation, *e.g.* in cases where an illegal alien voluntarily accepts a wage lower than the generally accepted average.

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<sup>1</sup> Law of 10 August 2005 amending several articles in order to strengthen the fight against human trafficking, smuggling of human beings and the practice of ‘huisjesmelkerij’, *Belgisch Staatsblad*, 2 September 2005.

<sup>2</sup> Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005.

<sup>3</sup> Threat or use of force, coercion, abuse of power and abuse of the vulnerability of the victim do constitute aggravating circumstances under the new law.

<sup>4</sup> Council of Europe, “Action against trafficking in human beings: prevention, protection and prosecution”, Proceedings of the regional seminar in Oslo on 1-2 November 2006, p. 37, at [http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006\\_Proceedings.pdf](http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf) (accessed 18 October 2007).

<sup>5</sup> Institute for International Research on Criminal Policy, “Mensenhandel in België. Status questionis, evaluatie en toekomstopties”, December 2006, p. 16, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

<sup>6</sup> *Ibid.*, p. 17-18.

In this matter, a 2007 decision by the Court of Appeal of Antwerp decided in a case of Romanian citizens employed illegally in Belgium that working for a lower wage than what is foreseen by law, and for more hours a week than what is legally allowed, was in itself insufficient to consider this employment to be in violation of human dignity, *inter alia* on the grounds that the Romanians involved did not oppose their working conditions, wage or the accommodation provided by their employer.<sup>7</sup> As a result, according to the court, it could not be proven that the accused had exploited the factual situation of the Romanian citizens as they were able to enjoy higher standards of employment in Belgium compared to conditions in their home country. The accused were consequently deemed innocent of the crime of human trafficking.

Finally, the issue of beggary merits some remarks. The exploitation of a person for beggary is essentially a particular form of economic exploitation and therefore redundant in the law. Moreover, concerns have been raised that the explicit inclusion of exploitation for beggary as a type of human trafficking has been led by the ulterior motive of combating public inconvenience caused by scenes of beggars in the streets.<sup>8</sup>

### 1.2. The law of 15 September 2006

The Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners includes a number of articles that are intended to increase protection to victims of human trafficking by granting them, under set conditions, the right to stay on the Belgian territory.<sup>9</sup> This law, which entered into force on 1 June 2007, offers victims of human trafficking the opportunity to obtain residence permits in exchange for assistance in criminal proceedings against the perpetrators of the crime. Should the proceedings eventually lead to a conviction, or if the crime was committed under aggravating circumstances of threat or use of force, coercion, deception or the abuse of the victim's vulnerability,<sup>10</sup> the victim will eventually obtain a permanent residence permit in Belgium.<sup>11</sup>

The reasoning behind granting victims of human trafficking residence permits under these conditions is based on the fact that they have taken serious risks in filing a complaint against the perpetrators and therefore risk reprisals in their home country.<sup>12</sup> However, regrettably, and contrary to recommendations of victims organisations, an objective victim status has not been introduced.<sup>13</sup> This means that all victims of human trafficking, including minors, are required to cooperate with the judicial authorities if they are to obtain a (permanent) residence permit. However, this permit can only be obtained if the perpetrators are convicted, but even if a victim is fully willing to cooperate with the judicial investigation there are

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<sup>7</sup> Court of Appeal of Antwerp, 23 May 2007.

<sup>8</sup> *Ibid.*, p. 21.

<sup>9</sup> Articles 64-68 of the Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners, *Belgisch Staatsblad*, 6 October 2006.

<sup>10</sup> This is the only case in which the prerequisites set for the existence of the crime of human trafficking by the Council of Europe, but abandoned by the Belgian legislator, still play a role.

<sup>11</sup> This system of protection of the victim and the related specific requirements to be met by the victim, are described in a detailed manner in the Circular Letter of 26 September 2008 concerning the introduction of a multidisciplinary cooperation in relation to victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgisch Staatsblad* 31 October 2008.

<sup>12</sup> Council of Europe, "Action against trafficking in human beings: prevention, protection and prosecution", Proceedings of the regional seminar in Oslo on 1-2 November 2006, p. 42, at [http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006\\_Proceedings.pdf](http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf) (accessed 18 October 2007). The same protection system applies to victims of the crime of smuggling of human beings, albeit only in specific cases.

<sup>13</sup> Institute for International Research on Criminal Policy, "Mensenhandel in België. Status questionis, evaluatie en toekomstopties", December 2006, p. 44, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

always factors beyond his/her control that could cause the investigation to fail to lead to a conviction. This can be the case if the perpetrators cannot be identified and/or found, if they have left the Belgian territory, if they cannot be extradited to Belgium, if they have passed away or if they have already been convicted for the same offence in another country. In these cases, a victim who cooperated fully with the judicial authorities will not attain a positive result from his/her cooperation.

Moreover, requiring victims of human trafficking to cooperate with the authorities before granting them permission to stay on the Belgian territory is not in line with a human rights based approach to the fight against human trafficking. From a human rights perspective it would be more logical to automatically offer protection status to all victims of human trafficking simply because they are victims and not merely in order to persuade them into assisting with the development of a criminal case against the perpetrators.

Fortunately, and contrary to what could be assumed from the foregoing, victims in cases of human trafficking that do not lead to a conviction or in which the mentioned aggravating circumstances do not apply, are not being entirely left in the cold. Within the unofficial so-called STOP-procedure, which is separate from the official procedure, adult victims of human trafficking can still benefit from the advantage of regularisation in cases that do not lead to the identification or conviction of the perpetrators. The condition for regularisation is that the criminal proceedings have lasted a minimum of two years.<sup>14</sup> However, this unofficial procedure is not included in the 2005 law and should be given an explicit legal basis in order to increase the security and protection of victims of human trafficking that could possibly benefit from it.

### *1.3. Criminal Legislation*

Belgium has enshrined the crimes of trafficking and smuggling of human beings in two different pieces of legislation.

The crime of human trafficking is enshrined in the Penal Code, while the crime of human smuggling is forbidden under the Law Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners describes the crime of human smuggling.<sup>15</sup> The reasoning behind the incorporation in separate laws lies in the fact that human trafficking is seen as a crime against a person, while smuggling of human beings is seen as a crime against the state because it implies an illegal crossing of the border by a person who has fully consented to the smuggling.

Articles 433*quinquies* to 433*septies* of the Penal Code cover the crime of human trafficking, punishable by prison sentences of 1 to 15 years depending on the circumstances, while articles 77*bis* to 77*quater* of the Law Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners deal with the crime of human smuggling, also punishable by prison sentences of one to 15 years depending on the circumstances.<sup>16</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Articles 10 and 29 of the Law of 10 August 2005 amending several articles in order to strengthen the fight against human trafficking, smuggling of human beings and the practice of renting poor housing at exorbitant rates, *Belgisch Staatsblad*, 2 September 2005.

<sup>16</sup> Ibid., articles 10-13 and 29-31. The base sentence in both instances is 1 to 5 years imprisonment. However, in case the crime is committed under aggravating circumstances (*e.g.* if the victim of the crime is a minor, if the crime is perpetrated with the use of force or coercion towards the victim or if the crime is committed habitually), the prison sentences provided 10 ten to 15 years.

## 2. Trafficking in human beings: the implementation of the legal framework

### 2.1. National Action Plan

In July 2008 the Belgian federal government introduced a national action plan to combat trafficking in human beings and human smuggling.<sup>17</sup> In general terms, the plan contains preventive and repressive elements and emphasises the need to aid the victims and inform the public.<sup>18</sup> Two specific measures are worth mentioning: (i) the intensification of investigations into the financial means of perpetrators and increased financial punishment of traffickers; and (ii) the introduction of a protection system for economically exploited private personnel in the diplomatic sphere, who were up until now not entitled to a victim status and residence permit even if they cooperated with the judicial authorities.<sup>19</sup>

### 2.2. Sectors

The part of this report scrutinizing the implementation of the above described legal framework in various economic sectors will be largely based on the findings made by Frédéric Loore and Jean-Yves Tistaert in their book “Belgique en sous-sol. Immigration, traite et crime organisé”.<sup>20</sup>

In an introduction to the main part of their book, Loore and Tistaert characterize the Belgian system as one that looks good on paper, but does not work in practice due to various shortcomings. To put it in the authors’ words: “[t]hese networks take shelter behind legal umbrellas and exploit the preventive and repressive systems put in place by the Belgian authorities. The multiplicity of state organs charged with leading the fight [against human trafficking and human smuggling], the lack of coordination between them, the shortage of conceptual analysis of these phenomena and of their way of functioning, the scarcity of publications and public broadcasts to spread the knowledge on the subject; the administrative burdens, the chronic lack of means, the lacunae in the legislation, or the restrictive application in practice thereof, and sometimes also corruption and conflicts of interests, are windfalls that are equally being exploited by organized crime networks.”<sup>21</sup>

But before tackling the shortcomings of the Belgian system in detail, an overview will first be given of the predominant sectors in which human trafficking takes place in Belgium. To complement the picture sketched by Loore and Tistaert in this respect, concrete examples of cases of 2008 will be given where relevant.

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<sup>17</sup> Ministry of Justice, “Actieplan: strijd tegen mensenhandel en mensensmokkel”, <http://www.just.fgov.be/persberichten/2008/07/11.html> (accessed 4 March 2009).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007. Frédéric Loore is an independent journalist who has written for a wide variety of high quality Belgian and French newspapers and weeklies. He is also one of the authors of the book “Uranium appauvri. La guerre invisible” published in 2001 by Robert Laffont. Jean-Yves Tistaert has worked for over ten years in the Brussels Region as a social inspector specialized in issues of foreign labor linked to immigration from non-EU countries and was at the time of writing the book the head of an investigative Task Force of a municipal administrative police.

<sup>21</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 14.

#### a. Prostitution

Prostitution is one of the primary sectors in which human trafficking occurs in many countries, and Belgium is no exception. Loore and Tistaert estimate that hundreds if not 1,000 and more prostitutes of foreign nationality are working in Brussels and at least as much in Antwerp (to these figures should be added the unknown figures for other large urban centres such as Ghent, Liège and Charleroi).<sup>22</sup> Both authors cannot be accused of exaggeration and of painting a black picture of the situation - on the contrary - as the most recent and accurate statistics released by the *Gemeenschappelijke Gemeenschapscommissie* (GGC) reveal that there are about 5,000 prostitutes active in Brussels<sup>23</sup>

While the primary country of origin of foreign prostitutes in Belgium used to be Albania during the 1990's, at present it is the Bulgarians who - in the words of Loore and Tistaert - "hold the leadership on the market".<sup>24</sup> Other key countries of origin are Romania, West-African countries, and increasingly, Ecuador and Brazil.<sup>25</sup>

- *In 2008, a criminal investigation was initiated against two Chinese suspects who owned small massage salons that were used as a front for prostitution. At least four Chinese women had been trafficked to Belgium to be exploited as prostitutes in these massage salons. They were kept in the salons at all times, only being allowed one hour of leisure time, which took place under supervision. The women were also forced to hand over 70% of their revenues, of which they did not receive anything in practice because they also had to pay the suspects for housing, food and other costs. The victims were moreover threatened and one of them bore marks of physical abuse (beatings and cigarette burns) at the time of arrest.*<sup>26</sup>
- *In October 2008, in the context of the European Day against Human Trafficking, a short documentary was released in Belgium in which a twenty year old woman from an Eastern European country recounts how she was trafficked from her country of origin to be used as a prostitute in Brussels. The woman explains how she and the other girls were forced to work twelve hours a day, seven days out of seven, and had to charge € 50 per customer (which meant they had to 'serve' at least 5 customers just to be able to pay for the so-called 'window right' of € 250). The victim of human trafficking moreover shares how disgusted she felt by her 'work' and how she was frequently beaten and threatened because she did not smile enough or because she refused customers. Eventually she managed to run away. After a short stay in the streets and with an NGO she was repatriated back to her home country. However, the criminal network found her there and, armed with swords, "dragged me into the streets. The whole neighborhood stood by but no one helped me. I was beaten, abused and raped. I have threatened to kill myself."*<sup>27</sup>

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<sup>22</sup> Ibid., p. 13.

<sup>23</sup> Investigation carried out by the (Flemish) Katholieke Universiteit Leuven (KUL) and the Erasmushogeschool Brussels which were commissioned by the *Gemeenschappelijke Gemeenschapscommissie* (Common Community Commission). Brussel Deze Week, 2-9 April 2009.

<sup>24</sup> Ibid., p. 27.

<sup>25</sup> Ibid.

<sup>26</sup> Centre for Equal Opportunities and Opposition to Racism, "Men\$handel, -\$mokkal. Jaarverslag 2007", 2008, p. 90, at [http://www.diversiteit.be/?action=publicatie\\_detail&id=25&thema=2](http://www.diversiteit.be/?action=publicatie_detail&id=25&thema=2) (accessed 2 March 2009).

<sup>27</sup> *De Standaard*, "Protest tegen moderne slavernij", 18 October 2008. The short documentary by the title of "Tien minuten" can be viewed at <http://www.youtube.com/watch?v=FDCPR4MnhIA> (accessed 8 March 2009).

## b. Textile

Various criminal networks are active in the illegal textile industry in Belgium, mostly in Brussels and Antwerp but also in Charleroi, Liège, Verviers, Denderleeuw and Dendermonde.<sup>28</sup>

Belgium hosts a large amount of clandestine textile workrooms which are being run primarily by people of Turkish, Moroccan and Italian origin.<sup>29</sup> These so-called parallel networks operate completely outside of the law and use manual workers who are in illegal situations in Belgium, because they are easier to exploit.<sup>30</sup> Loore and Tistaert estimate this clandestine manual labor force to reach as much as 3,000 individuals.<sup>31</sup> They are the victims of “the most frequent and the gravest human rights and labor rights abuses” in Belgium.<sup>32</sup> In Brussels, where around one thousand illegal persons may be active in the sector, recruitment takes place in the following communities: Turks (mainly Kurds), North-Africans (mainly Moroccans), Poles, Asians (Thais and Laotians), Iraqis, Indo-Pakistanis, Romanians and Slavs.<sup>33</sup> In Antwerp, where the sector is being run by the Georgian mafia, the majority of the illegal work force originates from former Soviet Union satellite states, primarily Georgia.<sup>34</sup>

Another lucrative aspect of the illegal textile industry in Belgium is the collection and resale of second hand clothing. This business, which is in the hands of persons of Syrian origin, consists in the buying of large stocks of second hand clothes collected by charity organisations in order to export them to Third World countries where they are sold at a price much higher (500 to 2,000%) than the buying price.<sup>35</sup> A specific characteristic of this sector is that it exploits under inhumane conditions almost exclusively male manual workers from Islamic countries, who are in an illegal situation in Belgium.<sup>36</sup> All these people are the victims of large networks specialised in the trafficking of human beings, which - as Loore and Tistaert along with various observers on the terrain suspect - might be connected to the financing of radical Islamic movements.<sup>37</sup> In times of great demand, this workforce is supplemented by women from former Soviet Union countries, mainly Romania.<sup>38</sup>

In their work, Loore and Tistaert highlight with numerous examples the failures of the fragmented and short-sighted approach of the issue by the legislative, judicial and law enforcement authorities in the framework of their respective competences. This prevents them from discovering the necessary connections that would allow them to achieve a clearer picture of these structures of economic exploitation: “[i]n the end, only illegal labor is targeted and, sometimes, sanctioned in the person of the owners of the workrooms.”<sup>39</sup>

- *In November 2008 a person of Syrian origin was arrested in the city of Aalst on suspicion of human trafficking and economic exploitation. The suspect exploited four Romanian women*

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<sup>28</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 42.

<sup>29</sup> *Ibid.*, p. 21.

<sup>30</sup> *Ibid.*, p. 39.

<sup>31</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 43.

<sup>32</sup> International Labour Organisation, as quoted in F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 39.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, pp. 43-44.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 44

<sup>39</sup> *Ibid.*, p. 21.



*without known place of residence in his workroom for second hand clothes. He picked up the women in Brussels in the morning, drove them to his workplace where they had to work for ten hours a day in a dilapidated and moist room without heating and sanitary facilities, and brought them back in the evening. The women were not allowed to talk during working hours and had to go outside in the open air or to the backyards of the neighbors for their sanitary needs. Some of the women had also not been paid yet, after months of work.*<sup>40</sup>

c. Construction

The construction business is another sector in which human smuggling and human trafficking for purposes of economic exploitation are prevalent in Belgium. In recent years, a new transnational criminal network has developed through which Brazilians are being brought to Brussels via Portugal.<sup>41</sup> This network has now grown to such a size that it has extended its activities to other major Belgian cities, like Liège or Antwerp, and even to France and the Netherlands.<sup>42</sup> The Brazilians are trafficked to Brussels with false passports and other documents such as birth certificates and driving licenses which give them a Portuguese identity and therefore freedom of movement in the Schengen area.<sup>43</sup> Estimates of their numbers can only be rudimentary, but the figures received from social inspectors by Loore and Tistaert suggest that 10,000 to 40,000 Brazilians are employed in Brussels alone.<sup>44</sup> To get a better picture of the extent of economic exploitation in the construction sector, estimates of the number of African, Asian and Eastern European workers should also be added.

d. Phone shops

A sector that is poorly regulated in Belgium is the telecommunication sector and trafficking networks have exploited the existing lacunae in the Belgian legislation to set up lucrative businesses known as phone shops.<sup>45</sup> Reaching 2,000 to 3,000 units all over Belgium, they are almost exclusively owned by Pakistanis, Afghans and Moroccans.<sup>46</sup> Loore and Tistaert estimate that up to 90% of these shops work outside the legal framework.<sup>47</sup> Moreover, a coordinated police action targeting these phone shops, entitled Tam Tam, has demonstrated that the phone shops network is one of the epicenters of human trafficking and human smuggling in Belgium.<sup>48</sup> Such shops are set up from India, Pakistan and Afghanistan, and located at strategic places to facilitate the exploitation of human beings trafficked to Belgium.<sup>49</sup>

e. Agriculture

The agricultural sector in Belgium, and more specifically the part specialized in seasonal fruits harvesting located in the province of Limburg, also makes extensive use of human trafficking and human smuggling

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<sup>40</sup> *De Standaard*, ““Werknemers moesten behoefte doen in vrije natuur””, 26 November 2008.

<sup>41</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 58.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, p. 59.

<sup>45</sup> *Ibid.*, p. 59.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, p. 60.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, pp. 60-61.

to find a cheap manual labour force.<sup>50</sup> Indian networks are especially active in this sector. In their book, Loore and Tistaert explain the role played – at least until 2004 - by the Indian community of Sint-Truiden (Limburg) and the local Sikh temple in the trafficking networks extending from India to the United Kingdom.<sup>51</sup> The smuggled Indians generally only spend a limited time in Belgium as their final destination is usually the United Kingdom.<sup>52</sup> While in Belgium, they are exploited as a cheap workforce in orchards. However, police sources indicate that since 2004 the Indian network of seasonal workers has lost influence in Belgium due to increased competition from Spain and Poland while anecdotal evidence points to an increased use of Eastern European workers in this sector.<sup>53</sup>

- *In November 2008 a Turkish man and a Bulgarian woman were arrested on suspicion of human trafficking for purposes of economic exploitation of seven Bulgarians. The Bulgarians were being put to work in a chicken farm where they were paid per chicken they caught. However, they were forced to pay half of their wages to the traffickers. The seven Bulgarians were repatriated to their country.*<sup>54</sup>
- *Also in November 2008, a Belgian man and a woman were arrested on suspicion of human trafficking of Romanian citizens they used in their horticulture business. The Romanians - who were forced to buy € 1250 worth of stocks in the company in order to be allowed to work there - were brought to Belgium with false passport visas obtained from the Belgian Embassy in Bucharest. The visas allowed the traffickers to present the Romanians as self-employed workers while in reality they were hired as manual workers who were forced to work for too many hours a day and too low wages. This prompted one of the victims to claim it was slavery.*<sup>55</sup>

#### f. Restaurants

Human trafficking for purposes of economic exploitation is also common practice in certain parts of the catering sector in Belgium. Chinese criminal networks specialized in the trafficking and smuggling of human beings are particularly active in this sector as they provide Chinese restaurants - and to a lesser extent Chinese grocery stores - with a hard-working and extremely cheap labor force.<sup>56</sup> The victims are not only Chinese citizens who are trafficked or smuggled to Belgium as destination country but also many Chinese citizens temporarily staying in Belgium while awaiting the final part of their trip to another country.<sup>57</sup> This is particularly the case since the introduction of a direct flight connection between Beijing and Brussels. Belgium has become an important country of destination and/or entry into the European Union en route to Paris and London for so-called Chinese tourists, students or businessmen.<sup>58</sup>

- *In March 2008 the owner of a Chinese restaurant in the city of Aalst and his wife were convicted to respectively 30 and 24 months imprisonment on the grounds of human trafficking and drug dealing. At the time of their arrest, four Chinese citizens who were staying illegally in Belgium were working at their restaurant for a hunger wage. The economically exploited victims had been provided by a Chinese criminal network specialized in the trafficking of human beings. One of the*

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<sup>50</sup> Ibid., p. 67.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.; see examples given.

<sup>54</sup> *De Standaard*, “Bulgaren uitgebuit als illegale kippenvangers”, 28 November 2008.

<sup>55</sup> *De Standaard*, “Tuinbouwers verdacht van mensenhandel”, 29 November 2008.

<sup>56</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 69.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., p. 70.

*female victims had paid € 12,000 to the network for her trip to Belgium. Upon her arrival she had first been put to work in a massage parlor that turned out to be a brothel in reality. Because she refused to work there, she was transferred to the restaurant where she was exploited by the owners. The male cook had also been trafficked to Belgium to be exploited as a cheap labor force in the restaurant. He was forced to work for 12 hours a day and had to sleep next to the toilet. If he refused to work, the owners would threaten to have him beaten up by a criminal gang.<sup>59</sup>*

- *In December 2008 the Court of Appeal of Ghent convicted the owners of a Chinese restaurant in the city of Blankenberge to suspended sentences of three and four years in prison for trafficking of human beings for purposes of economic exploitation. The Court also declared the profits of the lucrative business invalid for an amount of € 750,000. These profits stood in stark contrast to the conditions under which the economically exploited victims were employed. They were forced to work twelve hours a day, six days a week, for a wage of a mere € 3 per hour and were housed in inhumane circumstances.<sup>60</sup>*

An unusual case of exploitation of foreign workforce was also discovered in an international catering business operating in Belgium.

- *In September 2008 the prosecutor at the Labor Court of Ghent granted victim status to the people in charge of the toilets at the motorway restaurants of the Carestel chain in Drongen, Wetteren and Kalken in Belgium. The prosecutor considered the Kazak and Moldovan women and men to be victims of human trafficking for purposes of economic exploitation. They were put to work for fifteen hours a day, seven days out of seven, and were paid a hunger wage of three or four euro an hour. On paper they were active as self-employed workers under EU passports they somehow obtained. However, in reality they were being exploited as a cheap labor force by the German company Kronos that had recruited them and kept them tied by hands and feet. The victims were thus for instance forced to use part of the scarce money they made to purchase their cleaning products and toilet paper from Kronos.<sup>61</sup>*

g. Private sphere: the case of the Saudi Royal Family

In 2008, an unusual case involving members of a foreign royal family was revealed by the Belgian media.

- *In November 2008 a case of human trafficking for purposes of economic exploitation involving members of the royal family of Abu Dhabi came to light in Brussels. The widow of a sheik and her family had rented out an entire floor of the Conrad Hotel in the Belgian capital for a period of eight months. The family employed 17 service girls. However, these girls were treated as slaves rather than as employees. They had to be available day and night, were paid a very low wage and many of them were forced to sleep in the hallway. Moreover, their passports and identification documents were taken from them to prevent them from escaping. After one of the girls managed to complain to the police, the authorities entered the hotel and found the 17 girls. The members of the royal family, who are officially being suspected of human trafficking, will most likely evade an eventual conviction and punishment because they were released after their*

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<sup>59</sup> *De Standaard*, “Chinees restaurant dekmantel voor drugs- en mensenhandel”, 19 March 2008.

<sup>60</sup> *De Standaard*, “Verbeurdverklaring voor mensenhandelaars”, 19 December 2008.

<sup>61</sup> *De Standaard*, “Toilet dames by Carestel uitgebuit”, 20 September 2008; *De Standaard*, “Uitbuiting in Carestel-toiletten”, 20 September 2008.

*interrogation and have in all likelihood returned to Abu Dhabi, a country with which Belgium does not have an extradition treaty.*<sup>62</sup>

### 2.3 Smuggling in human beings

Detailed information on the extent to which smuggling of human beings is prevalent in Belgium is difficult to obtain, mainly due to the lack of statistical data being gathered by the Belgian authorities. However, anecdotal evidence suggests the continued widespread nature of this phenomenon and clearly shows that Belgium is often used as a transit country to the United Kingdom.

For example, in January 2007, 12 suspects - including two Belgians - were convicted by the Brussels courts in the biggest European case of smuggling of human beings up to date.<sup>63</sup> The suspects were part of an extensive network specialized in the smuggling of human beings between Turkey and the United Kingdom, which had over its entire existence smuggled nearly 100,000 people.<sup>64</sup>

In 2008 alone, many smugglers in human beings were arrested and/or convicted by Belgian courts. In January 2008, 12 Iranians were convicted to sentences of one to six years in prison.<sup>65</sup> The network smuggled Iranian citizens to Belgium either via Greece where they arrived by boat or through insufficiently secured airports in Italy, Poland and Romania.<sup>66</sup> Also in January 2008, a citizen of Ghana was convicted to one-year imprisonment in Belgium for smuggling illegal aliens from the city of Oostende on the Belgian coast to the United Kingdom.<sup>67</sup> Furthermore, in February 2008, an Indian was convicted to a suspended sentence of four years in prison and a fine of €11,000 for smuggling in human beings.<sup>68</sup> The smuggler was caught after his accomplice was arrested in the United Kingdom with two Indian citizens in the trunk of her car.<sup>69</sup> The two were specialised in smuggling Indian citizens to the United Kingdom via Belgium and even trained their victims in methods to survive five hours in the trunk of a car.<sup>70</sup> Finally, in October 2008, 15 human smugglers were arrested during a coordinated police action in Brussels, Tubize and Vilvoorde.<sup>71</sup> During the police raid, some 200 victims of the human smugglers were also discovered at various safe houses, where they were being held under inhumane circumstances.<sup>72</sup> In Saint-Gilles for instance, 24 victims were forced to live together in a room of 12 square metres.<sup>73</sup> The uncovered network is suspected to have smuggled many hundreds of Indians to the United Kingdom, via Belgium.<sup>74</sup>

Smuggled victims are moreover often transported in inhumane conditions and victims of violence. For example, in a case dating back to July 2006 that was dealt with by the Assizes Court of Antwerp in

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<sup>62</sup> *De Standaard*, “Sjeika’s ontlopen wellicht straf”, 29 July 2008; *De Standaard*, “Payoke biedt slavinnen uit Brusselse Conradhotel onderdak”, 8 November 2008.

<sup>63</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 81.

<sup>64</sup> *Ibid.*

<sup>65</sup> *De Standaard*, “Jaren cel voor mensensmokkelaars”, 30 January 2008.

<sup>66</sup> *Ibid.*

<sup>67</sup> *De Standaard*, “Jaar cel voor mensensmokkelaar”, 29 January 2008.

<sup>68</sup> *De Standaard*, “Vier jaar cel voor Indische mensensmokkelaar”, 23 February 2008.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *De Standaard*, “Grootscheepse actie tegen mensensmokkelaars”, 18 October 2008.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

November 2008, 6 Iraqi human traffickers residing in Belgium were prosecuted for abducting and torturing two smuggled Indians for four days<sup>75</sup> They were burned with cigarettes and beaten repeatedly on the soles of their feet, their ears and their joints.<sup>76</sup> Their backs, chests and bellies were burned by use of a deodorant can and a lighter. One victim also suffered multiple anal rapes with a pointy stick, while the other was held under water until he nearly got drowned.<sup>77</sup> Apparently, the purpose of the abduction and torture was to settle an outstanding debt with the criminal network that had smuggled the Indians to Belgium on their way to the United Kingdom.<sup>78</sup> The Iraqis were demanding a ransom of € 50,000 of friends and family of the victims residing in the United Kingdom in return for their release.<sup>79</sup>

#### 2.4. Belgium: “L’état gruyère”

*Belgium, L’état gruyère* is an untranslatable concept because of its implicit connotation: it refers to a type of Swiss cheese characterised by a specific internal structure: holes. In the case of Belgium, it means the system to combat human trafficking looks good on paper but is in reality riddled with holes. The sentence was first introduced by Johan Leman, a former director of the *Centre for Equal Opportunities and Opposition to Racism* and later taken over by Loore and Tistaert in their book on human trafficking and organized crime in Belgium. “*L’état gruyère*” is the title of the chapter in Loore and Tistaert’s book that analyses in detail the shortcomings of the Belgian system, which are being exploited in any manner possible by criminal networks specialized in the trafficking and smuggling of human beings. In their work, Loore and Tistaert describe and criticize the various deficiencies of the Belgian system to combat human trafficking. A number of these deficiencies dramatically undermining the efficiency of the Belgian policy will be exposed here.

**A first problem** Loore and Tistaert illustrate is linked to the institutional reforms in Belgium: the multiplicity of administrative instances equally competent and responsible for the issuing of travel permits and the resulting possibility of forum shopping for human traffickers. The competence to issue travel permits - once a federal competence - has now been transferred to the regions in Belgium. As a result, there are currently four administrative instances - one for each region - charged with the issuing of travel permits, which are an indispensable requirement for any non-EU foreigner to enter Belgium.<sup>80</sup> In concrete terms this means that if a person is refused a travel permit in one region, nothing prohibits him/her from submitting the same application to the administration in each of the other regions. Moreover, even when all of these refuse his/her request, he/she can still apply for a travel and work permit as a self-employed worker at the federal level.<sup>81</sup> In itself this is not a problem. However, Loore and Tistaert rightly identify two shortcomings of Belgium’s policy that awfully reduce its efficiency: the fact that the different administrations do not coordinate their decisions and the fact that they do not optimize their checking procedures, for instance by creating a common database.<sup>82</sup> “[E]ach entity works in its own corner! Of course, starting from there abuses are possible.”<sup>83</sup>

**A second issue** identified by Loore and Tistaert is the lack of efficiency and resources within and coordination between the different authorities in charge of the issue. For instance, an entire control system

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<sup>75</sup> *De Standaard*, “Mensenhandelaars martelden Indiërs met Saddam-technieken”, 14 November 2008.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 76.

<sup>81</sup> *Ibid.*, p. 77.

<sup>82</sup> *Ibid.*; p. 76.

<sup>83</sup> *Ibid.*

is set in place to check the legitimacy of a request for a travel and work permit for a foreigner, submitted by an enterprise.<sup>84</sup> However, when it comes to examining the exact nature of the activities of the enterprise, the verification is done summarily or is even inexistent in the majority of cases because the responsible inspectors are overloaded with lots of files to analyse.<sup>85</sup> Furthermore, one of the conditions to obtain a travel permit is that the employer must provide evidence for the payment of social security contributions. Yet, the four regional authorities responsible for the issuing of travel permits are not able to check whether this requirement has been fulfilled, “simply because they do not have access to the files of the National Agency for Social Security”.<sup>86</sup> Moreover, the harmonisation of the electronic systems GENESIS and LIMOSA used by the federal social inspection services has still not been realised, despite the fact that this harmonisation is a precondition for the coordination of their databases.<sup>87</sup>

Both aforementioned issues together lead to a protection system in which “the obstacles put in place to hinder organised fraud are practically inexistent.” This is particularly worrying since a travel permit that is renewed four times gives access to a permanent residence permit.<sup>88</sup> Obviously, various criminal organisations - including traffickers and smugglers of human beings - abuse these lacunae in the Belgian system.

**A third shortcoming** of the Belgian system described by Loore and Tistaert is related to the ambiguity in the human trafficking Law of 10 August 2005, and in particular in its definition of economic exploitation. The term human dignity - a crucial element of the crime of human trafficking for purposes of economic exploitation - is not explained in the law, nor is it given a sufficiently clear content in the preparatory works. As a result, problems arise in practice in the application of the law. Moreover, the 10 August 2005 Law sometimes collides with the Law of 30 April 1999 regulating foreign labour and the penalties incurred by the violation of these laws are completely different. Yet, in practice inspectors are often confronted with situations that are unclear and that could be interpreted as falling under each of both laws. This problem is exacerbated by the fact that the law of 10 August 2005 no longer considers the consent of the victim as an element that would dismiss any charges of human trafficking.<sup>89</sup> Because forced exploitation of the worker is no longer a constitutive element of the crime of human trafficking, Loore and Tistaert fear that the danger exists that other practices, including many cases of ‘simple’ illegal employment of foreigners, will increasingly be brought under the application of the law on human trafficking.<sup>90</sup> This could in turn lead to misrepresentations and incoherence in criminal statistics,<sup>91</sup> as exemplified by the failed attempt of the *Information and Analysis Centre on Human Trafficking and Human Smuggling* to coordinate and harmonize all available data in one databank. This Centre had to stop its activities because it could not create a consensus among the various stakeholders on a common definition of economic exploitation.<sup>92</sup>

**A fourth criticism** Loore and Tistaert express is the fact that the 750 interpreters active in the judicial system in Belgium are often not paid within a reasonable time period by the Justice department.<sup>93</sup> As a result, some of them find themselves in a difficult financial situation that renders them vulnerable to

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<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid., p. 76-77.

<sup>87</sup> Ibid., p. 93.

<sup>88</sup> Ibid., p. 77.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., p. 80.

<sup>91</sup> Ibid.

<sup>92</sup> Centre for Equal Opportunities and Opposition to Racism, “Men\$enhandel, -\$mokkal. Jaarverslag 2007”, 2008, p. 38-39, at [http://www.diversiteit.be/?action=publicatie\\_detail&id=25&thema=2](http://www.diversiteit.be/?action=publicatie_detail&id=25&thema=2) (accessed 2 March 2009).

<sup>93</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 86.

corruption by criminal organizations.<sup>94</sup> This is particularly problematic because interpreters - as the backbone without which the justice system cannot work in cases of transnational crime - are ideally placed to infect a file with a distorted translation, to assist in the falsification of documents, etc.<sup>95</sup> Investigations conducted by the *General Commissariat for Refugees and Stateless Persons* - which disposes of its own team of interpreters - show that these risks are not imaginary: in the period of April 2001 to May 2005 the General Commissariat identified five cases of abuse of power by its interpreters.<sup>96</sup>

**A fifth major stumbling block** in the fight against trafficking and smuggling in human beings identified by Loore and Tistaert is related to priorities imposed on social inspectors by their superiors.<sup>97</sup> It appears as though inspectors receive clear orders to prioritize files of social fraud that could lead to the guaranteed confiscation of big sums of money.<sup>98</sup> Inspectors consequently spend more time investigating these big dossiers, rather than the less profitable ones in which human trafficking and economic exploitation are involved.<sup>99</sup> “Concretely, this means for instance that social inspectors will target in priority a construction site on which 15 Romanian citizens are illegally employed, rather than a photo-shop in the back offices of which an unfortunate Indian is exploited.”<sup>100</sup> Loore and Tistaert also suggest that these orders emanate from the political level.

**A sixth and final major problem** described by Loore and Tistaert is linked to what they call the absence of political will to strengthen the legal arsenal available to magistrates in order to combat human trafficking.<sup>101</sup> Judicial authorities active in the fight against trafficking in human beings have time and again requested the introduction of a law that would allow them to punish the ultimate beneficiaries of a system of human trafficking for purposes of economic exploitation.<sup>102</sup> These beneficiaries are not only the traffickers themselves or the enterprises that employ the trafficked victims. The main financial beneficiaries are often the enterprises which subcontract a number of their activities to companies offering their services at very low prices, in order to maximise their profits.<sup>103</sup> However, in this context, the primary reason why the subcontracted companies are able to offer such low prices is because they exploit trafficked persons as their workforce. Yet, the final beneficiaries cannot be held responsible under current legislation unless direct complicity can be proven - for instance by demonstrating the provision of logistical assistance or direct and physical contacts with the workroom in which the trafficked victims are being exploited - which is very rarely the case and is difficult to prove in any case.<sup>104</sup> Loore and Tistaert rightly conclude that “[w]e know that subcontracting system is the Gordian knot of the whole problematic of trafficking in human beings, a knot which cannot be untied but by striking the chain of responsibilities from one end to the other. [...] And, if necessary, to hit them [the ultimate financial beneficiaries] where it hurts, meaning in their wallets.”<sup>105</sup> The *Centre for Equal Opportunities and Opposition to Racism* has in its recent yearly reports also always urged the need to conduct financial investigations to strike at the heart of the human traffickers’ business.<sup>106</sup> In this respect, the commitment of the federal government to

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid., p. 89.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid., p. 90.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid., p. 89-90.

<sup>106</sup> Centre for Equal Opportunities and Opposition to Racism, “Men\$handel, -\$mokkal. Jaarverslag 2007”, 2008, p. 68, at [http://www.diversiteit.be/?action=publicatie\\_detail&id=25&thema=2](http://www.diversiteit.be/?action=publicatie_detail&id=25&thema=2) (accessed 2 March 2009).

“intensify investigations into the financial means of perpetrators and increase financial punishment of traffickers” is to be welcomed (see section 2.1. *National Action Plan*).

But Loore and Tistaert go further in their criticism of the lack of political will to combat human trafficking and even speak of hypocrisy in the minds of certain decision-makers. They defend their statement by referring to a circular letter issued by the College of General Prosecutors in January 2007. Addressed in the first place to the Prosecutors at the labor courts, the letter requests them to not pursue cases regarding the use of foreign workers involving less than five workers not registered in the social documents and three workers not residing in the European Economic Area who do not possess a valid residence and travel permit.<sup>107</sup> “In other words: do not waste your time with the small cases (which nonetheless are the most numerous), and too bad for the victims”.<sup>108</sup> Loore and Tistaert continue by rightly stating that “[t]he modern slave drivers now know what to do to escape prosecution”.<sup>109</sup> Moreover, they point out that *Laurence* - the electronic database of the Labor Prosecutor’s offices containing figures on economic exploitation and illegal employment of foreigners - has now been programmed to only accept those entries that are in line with the circular letter of January 2007 and thus severely underestimates the situation in Belgium.<sup>110</sup>

Loore and Tistaert’s chapter on Belgium as *l’état gruyère* concludes with the following statement: “[i]ndifference of the political actors, incoherence of the administration and subjection to too many levels of power, cruel deficit of reliable statistical data, legislation riddled with lacunae, absence of a global strategy, weakness of the conceptual analysis of the phenomenon, insufficient means... A blessing for the adherents of the illegal economy; a boulevard for organized criminality.”<sup>111</sup>

### 3. Data and trends on human trafficking in Belgium

In Belgium, no uniform system exists for the collection and registration of data on trafficking and smuggling of human beings. Therefore, it is difficult to provide a clear and comprehensive picture on the prevalence of these crimes in Belgium. However, a wide variety of sources are available for consultation, each providing a little piece of the puzzle. In this section, these sources will be discussed in an attempt to offer further quantitative and qualitative insight in the matter, complementary to the description given above.

#### 3.1. Human trafficking and human smuggling

On a scale ranging from very low to very high, Belgium is listed as a country with a high incidence of reporting as a transit country and a very high incidence of reporting as a destination country for human trafficking in the 2006 *United Nations Office on Drugs and Crime* (UNODC) report on trafficking in human beings.<sup>112</sup> The UNODC reports that people were trafficked to Belgium primarily from countries such as Nigeria, Brazil, Albania, Bulgaria, Romania and China.<sup>113</sup> Figures from other organisations

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<sup>107</sup> F. Loore, J-Y Tistaert, *Belgique en sous-sol. Immigration, traite et crime organisé*. Brussels: Éditions Racine, 2007, p. 90.

<sup>108</sup> *Ibid.*, p. 90-91.

<sup>109</sup> *Ibid.*, p. 91.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*, p. 93.

<sup>112</sup> United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns*, April 2006, p. 19-20, at [http://www.unodc.org/pdf/traffickinginpersons\\_report\\_2006ver2.pdf](http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf) (accessed 19 October 2007).

<sup>113</sup> *Ibid.*



indicate that most people only passing through Belgium - *i.e.* human smuggling - are usually on their way to the United Kingdom.<sup>114</sup> In its 2008 report on trafficking in persons, the United States *Department of State* continues to rank Belgium as a destination and transit country for men, women and girls trafficked for purposes of economic and sexual exploitation.<sup>115</sup> The same report finds that women and girls are primarily trafficked to Belgium for sexual exploitation, while male victims are trafficked for economic exploitation in restaurants, bars, sweatshops and construction sites.<sup>116</sup>

Figures indicate that in 2006 people were primarily trafficked to Belgium for purposes of forced labour and sexual exploitation, with the latter being more prevalent than the former.<sup>117</sup> However, human trafficking for purposes of economic exploitation is on the rise since 2006, at least in the Flemish Region.<sup>118</sup> The strong rise in 2006 of this particular type of human trafficking was almost solely due to the significant increase in the number of Brazilian men being exploited in the construction business. These figures were confirmed in 2007, when nearly half of the 137 people received by the victim shelter *Payoke* were victims of human trafficking for purposes of economic exploitation.<sup>119</sup> This represents a major increase in comparison to 2005, when this figure only amounted to 18% of all cases. The Belgian federal police also noticed a strong increase in the cases of economic exploitation, mainly in the sectors of construction, agriculture and catering businesses.<sup>120</sup> They registered 220 cases in 2007, which more than doubles the number of files (85) opened in 2005.

In its most recent global report on trafficking in persons, the *United Nations Office on Drugs and Crime* notes a decrease in the number of people being convicted on the grounds of human trafficking and/or smuggling in Belgium over the years 2003 to 2005 (2005 being the most recent year for which the UNODC was able to obtain complete data from the Belgian authorities).<sup>121</sup> While in 2003, 400 individuals were convicted in Belgium for trafficking and/or smuggling of human beings, this figure decreased to 362 in 2004 and 281 in 2005.<sup>122</sup> Sentenced traffickers and smugglers generally received a sentence of one to ten years imprisonment.<sup>123</sup>

It is difficult to assess whether this decrease indicates a weakening of the fight against human trafficking and smuggling, or is on the contrary a sign that the fight is being increasingly successful in deterring traffickers and smugglers. It appears as though a distinction should be made between human trafficking and human smuggling.

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<sup>114</sup> United States Department of State, *Trafficking in Persons Report*, June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007); Pag Asa, "Jaarverslag 2006", p. 17, at [http://www.pagasa.be/uploads/documenten/JAARVERSLAG\\_LR.pdf](http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf) (accessed 19 October 2007).

<sup>115</sup> United States Department of State, *Trafficking in Persons Report*, June 2008, p. 69, <http://www.state.gov/g/tip/rls/tiprpt/2008/> (accessed 2 March 2009).

<sup>116</sup> *Ibid.*

<sup>117</sup> United States Department of State, "Trafficking in Persons Report", June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

<sup>118</sup> Pag Asa, "Jaarverslag 2006", p. 15, at [http://www.pagasa.be/uploads/documenten/JAARVERSLAG\\_LR.pdf](http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf) (accessed 19 October 2007).

<sup>119</sup> *De Standaard*, "'Mensenhandel is niet langer een synoniem van prostitutie'", 18 June 2008.

<sup>120</sup> *De Standaard*, "Mensenhandelaars gaan ondergronds", 11 April 2008.

<sup>121</sup> The figures given should be treated with caution since no differentiation was made by the Belgian authorities between the crimes of trafficking and smuggling, when submitting data to the UNODC. As a result, it will be difficult to draw any reliable conclusions from the data.

<sup>122</sup> *Ibid.*, p. 237.

<sup>123</sup> *Ibid.*

With regard to human trafficking, an analysis made by the Belgian federal police indicates that traffickers are increasingly going underground, especially for sexual exploitation.<sup>124</sup> Human traffickers attempt to hide their practices from the police by using escort clubs, striptease bars, massage salons and even beauty salons as shop fronts.<sup>125</sup> They bring their victims to the clients, in hotels, clubs or private residences and only use telephones and internet as a means of contact.<sup>126</sup> As a result, the detection of human trafficking for purposes of sexual exploitation is becoming ever more difficult: “[h]uman trafficking is becoming more invisible”.<sup>127</sup> This is another way to interpret the declining figures of police investigations opened in cases of sexual exploitation, from 740 files in 2005 to 610 in 2007.<sup>128</sup>

Concerning human smuggling, a cautious assumption could be made that the prevalence of this particular type of crime is declining in Belgium. This conclusion could be drawn when combining the figures provided by the UNODC with other available data.<sup>129</sup> For instance, in 2008 the Belgian *Office for Foreigners* announced that the coordinated fight against smuggling of human beings is starting to show concrete results.<sup>130</sup> In 2007, the police was able to intercept 2,570 illegal aliens attempting to reach the United Kingdom via Belgium, mainly Indians, Iraqis and Palestinians.<sup>131</sup> This figure represents a significant decrease when compared to that of 2000, when 8,695 illegal aliens were apprehended on Belgian territory.<sup>132</sup> Based on these figures, the *Office for Foreigners* concludes that Belgium is being used less as a transit country by human smugglers, who appear to be moving their routes to the Netherlands and Scandinavian countries.<sup>133</sup> The *Office for Foreigners* links this phenomenon to the high number of safe houses being uncovered and dismantled by the police in recent years and the increasing number of severe prison sentences pronounced by Belgian courts in cases of human smuggling.<sup>134</sup> However, other information available calls for a need to nuance the aforementioned conclusion. It appears as though also in the case of human smuggling, perpetrators are increasingly making use of methods that are harder to detect and combat. In recent years, criminals specialised in the trafficking of people to the United Kingdom via Belgium are making more and more use of fraudulent marriages (the number of files concerning fraudulent marriages handled by the Belgian police has increased by 6,000 between 2005 and 2007).<sup>135</sup> Whatever might be the case, the smuggling of human beings continues to remain highly problematic in Belgium, as shown by the examples mentioned in Section 2.3. *Smuggling in human beings*.

### 3.2. Assistance to victims

#### *Adult victims*

The Belgian federal government finances one NGO that is specialized in the reception of victims of human trafficking in each region: *Payoke* for the Flemish Region, *Pag-Asa* for the Brussels Region and *Sürya* for the Walloon Region. These NGOs offer assistance to victims in the form of residential or

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<sup>124</sup> *De Standaard*, “Mensenhandelaars gaan ondergronds”, 11 April 2008.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.* Quoted is Mr. Wim Bontinck, Chief Commissioner of the central agency on human trafficking of the federal police of Belgium.

<sup>128</sup> *Ibid.*

<sup>129</sup> Although it still remains highly problematic as discussed in Section 2.1. *Sectors / Human Smuggling*.

<sup>130</sup> *De Standaard*, “België niet langer transitland illegalen”, 21 February 2008.

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *De Standaard*, “Mensenhandelaars gaan ondergronds”, 11 April 2008.

ambulant shelter and guidance; psychosocial and medical aid; and legal and administrative support.<sup>136</sup> In 2006, the three NGOs provided some form of assistance to a total of 445 victims of human trafficking.<sup>137</sup> In 2007 - the most recent year for which comprehensive statistics are available - they registered 619 victims and especially noted a significant increase in the number of victims of economic exploitation.<sup>138</sup>

In 2007 the first comprehensive analysis of data on victims of human trafficking and/or smuggling in Belgium was carried out at the *Institute for International Research on Criminal Policy* of the University of Ghent.<sup>139</sup>

The analysis shows that during the period 1999-2005 the three Belgian victim centres received 3,332 complaints of possible victims of human trafficking and/or smuggling.<sup>140</sup> In 1,101 - or one third - of the cases, a victim dossier was opened.<sup>141</sup> 2,231 complaints were not taken into consideration for two main reasons among others: in 47% of the cases because there were insufficient elements confirming allegations of human trafficking or and in 19% of the cases because the individual who had submitted the complaint decided not to continue the procedure.<sup>142</sup> Many possible victims apparently refused to submit a statement and to officially enter the procedure out of fear for the reaction of the traffickers.<sup>143</sup>

Of the 1,101 individuals for which a victim dossier was made, 75% were female and 25% male.<sup>144</sup> Some 40% of the victims originated from Eastern European countries (primarily from Romania, Bulgaria and Albania), 25% from African countries (54% from Nigeria), 21% from Asian countries (50% from China) and a mere 6.7% from Latin American countries.<sup>145</sup> Especially noteworthy is the fact that the vast majority of victims from the Eastern European and African region were female (respectively 89% and 80%), while the opposite is true for the Asian countries where a majority of 62% was male.<sup>146</sup> In line with the finding that females are primarily used for sexual exploitation and males for economic exploitation, this suggests that networks trafficking citizens of Eastern European or African countries are specialised in sexual exploitation, while networks trafficking citizens of Asian countries practise economic exploitation.

Of the 1,101 cases in which a victim dossier was made, only 24% led to a successful conclusion of the entire procedure and the granting of a residence permit to the victim.<sup>147</sup> Most notably, in nearly one fifth of those cases, the residence permit was granted on the basis of the unofficial STOP-procedure, which thus proves to be an important tool to assist victims of human trafficking and/or smuggling.<sup>148</sup>

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<sup>136</sup> Centre for Equal Opportunities and Opposition to Racism, “Opvangcentra voor slachtoffers”, at [http://www.diversiteit.be/CNTR/NL/human\\_trafficking/centres+victims/](http://www.diversiteit.be/CNTR/NL/human_trafficking/centres+victims/) (accessed 19 October 2007).

<sup>137</sup> United States Department of State, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

<sup>138</sup> United States Department of State, *2008 Human Rights Report: Belgium*, 25 February 2009, at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119070.htm> (accessed 4 March 2009).

<sup>139</sup> G. Vermeulen, E. Van den Herrewegen and L. Van Puyenbroeck, *Mensenhandel in beeld. Eerste kwantitatieve en kwalitatieve analyse van Belgische slachtofferdata*, 2007, Maklu, Antwerpen-Apeldoorn.

<sup>140</sup> *Ibid.*, p. 20.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, p. 21.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, p. 90.

<sup>145</sup> *Ibid.*, pp. 26 and 90. It should be noted that in recent years the number of victims originating from Latin America, especially from Brazil, has risen starkly.

<sup>146</sup> *Ibid.*, p. 26.

<sup>147</sup> *Ibid.*, p. 24.

<sup>148</sup> *Ibid.*

In the 75% of the dossiers that were not successfully concluded, premature interruption of the procedure was in the first place caused by the disappearance of the victim (42% of all cases).<sup>149</sup> Part of these victims voluntarily chose to leave the procedure, for instance because they wanted to continue practising activities such as prostitution on their own account, which is contrary to the requirements of the procedure.<sup>150</sup> However, many victims also quit the procedure as a direct consequence of pressure from traffickers in order to get them “back to work.”<sup>151</sup> In 18% of the cases, the procedure was stopped due to a decision by the prosecutor’s office to cease prosecution.<sup>152</sup> A final major factor (17%) in the termination of the procedure is determined by the victim centres themselves, which ended the procedure mainly because the victim systematically refused to adhere to the centre’s internal regulations (52%) or because the victim returned to his/her former environment (27%).<sup>153</sup>

### *Minor victims*

In November 2008, the *Centre Interdisciplinaire des Droits de l’Enfant* (CIDE/ Interdisciplinary Centre for the Rights of the Child) released a report on the protection of trafficked and smuggled unaccompanied minor foreigners.<sup>154</sup> The study, while commending Belgium for playing a leading role in the global fight against trafficking of children and the protection of victims, brings to light various shortcomings of the Belgian system.

Firstly, concerning the vital step of detection of victims, the study reveals the existence of lacunae in the Belgian system when it comes to trafficking of children, especially regarding the detection of exploitation within the family and outside.<sup>155</sup> Minors face additional problems that hinder detection: they are kept hidden or locked away, they have problems considering themselves as victims and/or are afraid to present themselves as such, etc.<sup>156</sup> Yet, people active in the first line protection services such as the police, lawyers, medical centers, shelters and schools, are not sufficiently trained to detect such cases, let alone to protect them.<sup>157</sup> Moreover, a coherent system of data collection on unaccompanied minor victims of human trafficking does not exist in Belgium, making it impossible to obtain a clear picture of the prevalence of child trafficking and smuggling.<sup>158</sup>

Secondly, the Belgian legal system offering protection to unaccompanied minor victims of human trafficking, defines these victims in a restrictive sense.<sup>159</sup> European Union citizens are not included in this definition and are thus denied access to the protection system.<sup>160</sup> This is particularly regrettable because children originating from Eastern European countries form a large part of the unaccompanied minor victims of human trafficking in Belgium, especially since the accession to the EU of Romania and Bulgaria.<sup>161</sup>

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<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid., p. 25.

<sup>153</sup> Ibid.

<sup>154</sup> Centre Interdisciplinaire des Droits de l’Enfant, “De bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en -smokkel”, November 2008,

[http://www.sdj.be/admin/docmena/Dossier\\_Traite\\_des\\_Enfants\\_NL\\_-\\_OK.pdf](http://www.sdj.be/admin/docmena/Dossier_Traite_des_Enfants_NL_-_OK.pdf) (accessed 5 March 2009).

<sup>155</sup> Ibid., p. 3.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid., p. 13.

<sup>159</sup> Ibid., p. 3.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

Thirdly, the study finds that the requirements to be granted victim status and eventually a temporary residence permit are nearly impossible to achieve for unaccompanied minors.<sup>162</sup> Just like adults, they are obliged to cooperate with the judicial authorities in order to obtain the said status and enjoy its advantages.<sup>163</sup> In reality it is practically and psychologically very difficult for children to cooperate with these authorities and to submit a complaint and make statements.

*In January 2008, the Belgian police uncovered a network of Romanian child traffickers and arrested 12 suspects. The criminal network was specialized in the trafficking of minor girls for purposes of sexual exploitation. The girls were taken away from their families in Romania in an often violent manner. Rapes, extortions, death threats and other forms of violence were used to show those who refused that they should not oppose the human traffickers. The girls were taken to safe-houses in Brussels before being transported to their final destination. This could be a brothel in Brussels, a sex club in Spain or a street in a major Italian city.*<sup>164</sup>

#### 4. Reports of International Organisations

In 2008, both the **Committee against Torture (CAT)** and the **Committee on the Elimination of Racial Discrimination (CERD)** commented on Belgium's policy and activities in the fight against human trafficking.

In its concluding observations, the CAT expresses its preoccupation with the facts that

- (i) Belgium does not sufficiently combat the fundamental causes of trafficking in women;
- (ii) the allocated resources to the fight against human trafficking appear to be insufficient;
- (iii) and Belgium only grants residence permits to victims who collaborate with the judicial authorities.<sup>165</sup>

For its part, the CERD welcomes the adoption of the Law of 10 August 2005, but at the same time notes the absence of detailed statistical information on investigations, prosecutions and convictions of human traffickers as well as the lack of measures to protect and provide adequate reparation to victims.<sup>166</sup>

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<sup>162</sup> Ibid., p. 4.

<sup>163</sup> However, it must be noted that a paragraph in the National Action Plan against human trafficking recommends to "amend the legislation in such a manner that the provision of a residence permit to minor victims of human trafficking is no longer coupled to their cooperation with the judicial authorities".

<sup>164</sup> *De Standaard*, "Roemeense kinderhandelaars opgepakt", 31 January 2008.

<sup>165</sup> Committee against Torture, "Examen des rapports présentés par les États parties en application de l'article 19 de la Convention. Observations finales du Comité contre la torture. Belgique.", CAT/C/BEL/CO/2, 21 November 2008, para. 25.

<sup>166</sup> Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observation of the Committee on the Elimination of Racial Discrimination. Belgium.", CERD/C/BEL/CO/15, 11 April 2008, para. 20.

## Recommendations

*Human Rights Without Frontiers* recommends to the Belgian government and all other responsible public authorities to:

- ratify, as a matter of priority, the Council of Europe Convention on Action against Trafficking in Human Beings;
- amend the definition of human trafficking for purposes of sexual exploitation in a manner that is consistent with the international and European definitions, to target all types of sexual exploitation and not only prostitution and child pornography;
- clarify by law and in a clear and comprehensive manner which cases of human trafficking are targeted by the sentence “to employ this person in circumstances that contravene human dignity” in the Law of 10 August 2005;
- delete from the definition of human trafficking, the explicit reference to beggary;
- introduce an objective victim status that provides for protection and the issuing of residence permits to victims of human trafficking and of aggravated forms of human smuggling, regardless of their cooperation with the judicial authorities leading to a conviction;
- provide an explicit legal basis for the unofficial STOP-procedure in order to make it an official instrument which victims have a right to access. This recommendation is only relevant if the previous recommendation is ignored and the granting of victim status is kept conditional on cooperation with the judicial authorities and the issuing of a residence permit on this cooperation leading to a conviction;
- introduce, as a matter of priority, a uniform and comprehensive system for the collection and registration of data on trafficking and smuggling of human beings;
- increase efforts taken to combat the fundamental causes of human trafficking and strengthen international cooperation, in particular with the countries of origin of victims;
- introduce a system that allows for the coordination of decisions on the granting of travel and work permits between the different competent authorities and optimise their respective procedures, for instance by the introduction of a common database;
- provide the responsible authorities with sufficient resources to support the fight against human trafficking and human smuggling, and grant them access to whichever information necessary to allow them to successfully complete their duties;
- ensure the timely payment of all staff on the government payroll active in the fight against human trafficking, in order to decrease chances of corruption;
- support the strengthening of the fight against human trafficking and human smuggling by putting a halt to the prioritisation of “big” cases of social fraud to the detriment of “smaller” cases of human trafficking and human smuggling;

- strengthen the legal arsenal available to magistrates to combat human trafficking by providing the judicial authorities with the necessary means to conduct extensive financial investigations, prosecute and punish the ultimate financial beneficiaries of human trafficking for purposes of economic exploitation;
- retract, as a matter of urgency, the circular letter of the College of General Prosecutors of January 2007 and re-programme the database *Laurence* so as to include all data on economic exploitation and illegal employment of foreigners;
- broaden the definition of unaccompanied minor victims of human trafficking to all minors who do not possess the Belgian nationality in order to put a halt to the discrimination of unaccompanied minor victims originating from the European Economic Area;
- provide awareness raising on the problematic of unaccompanied minor victims of human trafficking and training in their detection to all relevant persons active in the first line protection services;
- ensure that unaccompanied minor victims of human trafficking are treated in the first place as children who have become the victims of a crime and not as 'instruments' in the prosecution of the perpetrators. In this respect, the Belgian government is urged to implement, as a matter of priority, the measures foreseen in the National Action Plan of July 2008 to allow the granting of a residence permit to unaccompanied minor victims of human trafficking, regardless of their cooperation with the judicial authorities.

*Human Rights Without Frontiers International* (HRWF Int'l) is a non-governmental organization with an objective to promote democracy, the rule of law and human rights in a global perspective. HRWF Int'l has branches in Belgium, China, Nepal, Bhutan and the US. and cooperates with associate member organizations in Armenia, Bulgaria, Georgia, Iraq, Japan, Russia, etc.

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See our report "Human Rights in Belgium 2008": <http://www.hrwf.net>