

ARTICLE

DELIBERATING AT A CROSSROADS:
SEX TRAFFICKING VICTIMS' DECISIONS ABOUT
PARTICIPATING IN THE CRIMINAL JUSTICE PROCESS

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ABSTRACT

Following the trauma associated with being exploited in the commercial sex industry, sex trafficking victims are faced with the decision of whether or not to cooperate with criminal justice authorities in the investigation and prosecution of their traffickers. This Article comprehensively explores the contours of this decision-making process with primary, empirical research conducted with victims themselves. The study utilized in-depth, qualitative research methods with a sample of thirty-nine female sex trafficking victims in the Netherlands, most of whom are from common "source" countries for human trafficking. The data reveal that victims often engage in a complex balancing of various factors weighing in favor of and against participating in the criminal justice process prior to finalizing their decisions, which challenges stereotypes of trafficking victims as simple-minded, "passive objects." The most salient factors emerging from the data were retribution for harms inflicted by their traffickers, fear of their traffickers and/or their traffickers'

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associates (primarily fear of retaliation), and a desire to prevent the victimization of others. This Article situates the different factors emerging from the data both within the landscape of empirical research with similar populations and within the broader socio-legal context, highlighting structural constraints on victims' exercise of agency within the decision-making process. In doing so, it underscores the indispensability of victims' perspectives in realizing a victim-centered, human rights-based approach to human trafficking.

| | |
|--|------|
| ABSTRACT..... | 1033 |
| I. INTRODUCTION..... | 1035 |
| II. METHODOLOGY..... | 1039 |
| III. REFLECTION PERIOD..... | 1043 |
| IV. FACTORS PARTICIPANTS CONSIDERED WHEN DECIDING WHETHER OR NOT TO PRESS CHARGES AGAINST THEIR TRAFFICKERS..... | 1046 |
| A. Harm and Retribution | 1046 |
| B. Fear of Their Traffickers and/or Their Traffickers' Associates | 1049 |
| C. Preventing the Victimization of Others through Deterrence and/or Incapacitation | 1055 |
| D. Permission to Remain | 1059 |
| E. Closure and Relief | 1066 |
| F. Restitution..... | 1068 |
| G. Futility..... | 1070 |
| H. Receiving Support..... | 1072 |
| I. Link with Trafficker..... | 1073 |
| J. Rule of Law..... | 1074 |
| K. Inspiring Other Victims to Seek Help | 1076 |
| L. Leaving the Past Behind | 1078 |
| M. Disinclination to Discuss Details of Trafficking Situation with Law Enforcement..... | 1079 |
| N. Absence of Choice..... | 1080 |
| V. DECISION-MAKING FACTORS ABSENT FROM THIS STUDY | 1082 |
| VI. DECISION-MAKING IN CONTEXT: RECOGNIZING AND LOOSENING THE CONSTRAINTS | 1084 |

| | |
|----------------------|------|
| VII. CONCLUSION..... | 1086 |
|----------------------|------|

I. INTRODUCTION

Victims¹ of sex trafficking are often constructed as “passive objects who are incapable of making reasoned judgments.”² Yet paradoxically, in the months following their escape or removal from their trafficking situations, they are expected to make a major decision: whether or not to cooperate with authorities in the investigation and prosecution of their traffickers. For many victims, this decision is made during a “reflection period”—the name of which communicates the serious contemplation and introspection associated with such a significant decision. The Council of Europe Convention on Action against Trafficking in Human Beings (the “Convention”) and EU Directive 2004/81/EC require states to provide the reflection period to certain categories of foreign victims, during which time they can recover and engage in an “informed” decision-making process.³ Additionally, they have legal rights to various types of assistance during this period, including a “subsistence” standard of living, emergency medical

1. The Author recognizes the tension surrounding the term, “victim,” and employs it in this Article to refer to an individual who has experienced the crime of sex trafficking in the legal sense rather than as a construction of that individual's identity. See Jo Goodey, *Sex Trafficking in Women from Central and East European Countries: Promoting a 'Victim-centred' and 'Women-centred' Approach to Criminal Justice Intervention*, 76 FEMINIST REV. 26, 34 (2004).

2. Ann D. Jordan, *Human Rights or Wrongs?: The Struggle for a Rights-Based Response to Trafficking in Human Beings*, 10 GENDER & DEV. 28, 30 (2002). Accord Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 160 (2007); Sule Tomkinson, *The Multiplicity of Truths about Human Trafficking: Beyond “the Sex Slave” Discourse*, 7 CEU POL. SCI. J. 50, 51 (2012).

3. Council of Europe Convention on Action against Trafficking in Human Beings, art. 13, May 16, 2005, C.E.T.S. No. 197 [hereinafter Convention] (mandating state parties to provide a recovery and reflection period of at least thirty days to individuals for whom there exist reasonable grounds to believe are trafficking victims); Council Directive 2004/81, art. 6, 2004 O.J. (L 261/19) 1, 3 (EC) [hereinafter Directive 2004/81/EC] (requiring EU Member States to grant a reflection period to trafficking victims who are third-country nationals). According to the Convention's Explanatory Report, the provision governing the reflection period is intended to apply to undocumented victims or those with a short-term residence permit. Convention, *Explanatory Report*, May 16, 2005, C.E.T.S. No. 197, 49 [hereinafter Convention Explanatory Report].

treatment, translation and interpretation services, and having their safety and protection needs taken into account.⁴

This Article provides an in-depth exploration of the contours of victims' decision-making processes with respect to their participation in the criminal justice process, which is significant for several reasons. First, given that one of the hallmarks of trafficking victimization is being under the trafficker's control,⁵ this decision is likely to represent victims' first opportunity (or one of their first opportunities) to exercise agency over their lives since before they were trafficked. Fostering the agency of victims can assist them with the healing process⁶ and is also an integral part of a victim-centered response to human trafficking, which is increasingly considered the "gold standard."⁷ Second, exploring victims' considerations during this decision-making process provides insights into their support and protection needs during the post-trafficking period. Victims themselves are the best source of this information, as they are best positioned to know their own needs, interests, values,⁸ and priorities.⁹ Third, understanding the facilitators and barriers to victims' participation in the criminal justice process is critical to stopping traffickers from continuing to victimize others with impunity. Globally, the number of convictions for human trafficking is very low.¹⁰ Since victim

4. Convention, arts. 12-13; Directive 2004/81/EC, arts. 6-7.

5. See Conny Rijken & Renée Römken, *Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to Facilitate a Human Rights Based Approach*, in *THE NEW FACES OF VICTIMHOOD: GLOBALIZATION, TRANSNATIONAL CRIMES AND VICTIM RIGHTS* 80 (Rianne Letschert & Jan van Dijk eds., 2011).

6. See Elizabeth Osuch & Charles C. Engel, *Research on the Treatment of Trauma Spectrum Responses: The Role of the Optimal Healing Environment*, 10 *J. ALTERNATIVE & COMPLEMENTARY MED.* S-211, S-215 (2004); *IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE* 19 (Naomi Roht-Arriaza ed., 1995).

7. See U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, *The 3Ps: Prosecution, Protection, and Prevention* (2018); GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, *QUESTIONNAIRE FOR THE EVALUATION OF THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS BY THE PARTIES* 2 (2018).

8. See J. A. Muir Gray, *Evidence Based Policy Making*, 329 *BRIT. MED. J.* 988, 988 (2004) ("[E]vidence based policy making has to consider not only the evidence and needs of the population but also the values of that population").

9. See REBECCA SURTEES, INT'L CTR. FOR MIGRATION POLICY DEV., *LISTENING TO VICTIMS: EXPERIENCES OF IDENTIFICATION, RETURN AND ASSISTANCE IN SOUTH-EASTERN EUROPE* 16 (2007).

10. MARIE SEGRAVE, SANJA MILIVOJEVIC & SHARON PICKERING, *SEX TRAFFICKING: INTERNATIONAL CONTEXT AND RESPONSE* 123 (2009); U.N. Office on Drugs & Crime, *Glob. Rep.*

testimony is usually necessary to convict traffickers,¹¹ the low conviction rate is at least partly attributable to the lack of a “victim-centered or rights-based approach to human trafficking” as the main reason why “victims are reluctant to take part in criminal investigations and trials.”¹² Like a victim-centered approach, a human rights-based approach to human trafficking emphasizes the empowerment of victims as agents in their own lives.¹³ Under both approaches, victims must never be reduced to prosecutorial tools.¹⁴ However, for victims who would like to participate in the criminal justice process but are reluctant to do so for one or more reasons, exploring these barriers to participation is a prerequisite to developing effective policies, practices, and interventions to mitigate them.¹⁵ As a result, more victims can be empowered to participate in efforts to stop their traffickers from victimizing others.

on Trafficking in Persons 2016, at 12, U.N. Sales No. E.13.IV.1 (2016); Kristiina Kangaspunta, *Was Trafficking in Persons Really Criminalised?*, 4 ANTI-TRAFFICKING REV. 80, 84-85 (2015).

11. See SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 38 (2009); Amy Farrell, Colleen Owens & Jack McDevitt, *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, CRIME L. & SOC. CHANGE, 139, 157-58 (2014); Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. WORLD AFF. 179, 183 (2003); Rijken & Römkens, *supra* note 5, at 73, 92.

12. Rianne Letschert & Jan van Dijk, *New Faces of Victimhood: Reflection on the Unjust Side of Globalization*, in THE NEW FACES OF VICTIMHOOD: GLOBALIZATION, TRANSNATIONAL CRIMES AND VICTIM RIGHTS 3, 10-11 (Rianne Letschert & Jan van Dijk eds., 2011).

13. See Jordan, *supra* note 2, at 30; Janina Pescinski, *A Human Rights Approach to Human Trafficking*, U.N. U.: INST. ON GLOBALIZATION, CULTURE & MOBILITY (Feb. 23, 2015), <http://gcm.unu.edu/publications/articles/a-human-rights-approach-to-human-trafficking.html#comments> [<http://perma.cc/P47Y-UMPK>]; Rijken & Römkens, *supra* note 5, at 82.

14. See Carole Angel, *Immigration Relief for Human Trafficking Victims: Focusing the Lens on the Human Rights of Victims*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 23, 24 (2007); Marie Segrave, *Surely Something is Better than Nothing? The Australian Response to the Trafficking of Women into Sexual Servitude in Australia*, 16 CURRENT ISSUES IN CRIM. JUST. 85, 88, 90 (2004). See also IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 209 (Mary Gregor ed. & trans., Cambridge Univ. Press 1996) (1797) (arguing that “a human being cannot be used merely as a means”).

15. See Francis P. Bernat & Tatyana Zhilina, *Human Trafficking: The Local Becomes Global*, in HUMAN SEX TRAFFICKING 4 (Frances P. Bernat ed., 2011) (“It is critical to determine what factors will secure victims’ willingness to assist in the arrest and prosecution of traffickers who prey on people and force them into various forms of forced labor and sex trafficking captivity or debt bondage”).

Victims' decision-making processes are explored through a qualitative study with thirty-nine female sex trafficking victims in the Netherlands. Dutch law grants human trafficking victims a three-month reflection period, during which time they are expected to decide whether or not to "press charges" against their traffickers.¹⁶ The number of victims granted the reflection period was 174 in 2014, 134 in 2015, and 116 in 2016.¹⁷ This downward trend is reflective of fewer victims being identified, likely due to reduced police resources devoted to human trafficking and a wide-reaching reorganization of the Dutch police force that led to a loss of institutional knowledge.¹⁸ A decision to press charges obligates a victim to fully cooperate with criminal justice authorities. This process includes, at a minimum, in-depth police interviews. If the case proceeds, an investigative judge questions the victim during pre-trial investigation and she can later be summoned to testify during the prosecution stage.¹⁹

The overwhelming majority of participants in this empirical study decided to go forward with pressing charges, while only a few decided against it. A handful had not yet made their final decisions and remained unsure, though one of these participants was leaning towards pressing charges and two were inclined not to do so. Regardless of the outcomes of their decision-making processes with respect to pressing charges, almost all interviewees considered multiple factors while making their decisions. Like human trafficking victims' decisions regarding whether to accept or decline assistance, their decisions about pressing charges are

16. Grp. of Experts on Action Against Trafficking in Human Beings, Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings the Netherlands: First Evaluation Round 7 (2014) [hereinafter GRETA 2014].

17. GRP. OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, REPORT CONCERNING THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS THE NETHERLANDS: SECOND EVALUATION ROUND 34 (2018) [hereinafter GRETA 2018].

18. *Id.* at 25; U.S. Dep't of State, Trafficking in Persons Report 321 (2018) [hereinafter TIP Report 2018]; Janene Pieters, *Sharp Drop in Human Traffickers Prosecuted in Netherlands*, NL TIMES (Aug. 21, 2017), <http://nltimes.nl/2017/08/21/sharp-drop-human-traffickers-prosecuted-netherlands> [http://perma.cc/4588-KZ2K].

19. See Piet Hein van Kempen, *The Protection of Human Rights in Criminal Law Procedure in The Netherlands*, 13.2 ELECTRONIC J. COMP. L. 9-10, 15 (2009).

“the outcome of a complex set of considerations.”²⁰ Their descriptions of these factors and of their thought processes reveal the typically complex balancing of advantages and disadvantages in which victims engage when deciding whether to participate in the criminal justice process. It was common for participants to give weight to one or more factors that favored one decision outcome over the other, but then to ultimately decide that these factors were outweighed by those on the other side of the equation. The deliberative processes described by many of the interviewees in this study challenge stereotypes of simple-minded, passive trafficking victims in need of paternalism.²¹

The remainder of this Article proceeds in five parts. Part II describes the research methodology, sample, and research setting. Part III addresses results and issues pertaining specifically to the reflection period. Part IV examines the factors participants weighed in their decision-making processes with respect to pressing charges against their traffickers, and explores their significance and implications. It also notes the presence or absence of these factors in empirical studies with similar populations. The factors are generally discussed in order of descending salience in the data. Part V identifies several factors found to impact decisions about participation in the criminal justice process in other studies with trafficking victims, but which are absent from the data in the present study. This part also provides possible explanations for the discrepancies. In Part VI, the Article highlights structural constraints on trafficking victims’ freedom of choice and proposes victim-centered law and policy measures aimed at mitigating them. A conclusion underscoring the significance of the research follows.

II. METHODOLOGY

This study involved qualitative, semi-structured interviews with thirty-nine female victims of sex trafficking from nineteen

20. Rijken & Römken, *supra* note 5, at 82 (citing ANETTE BRUNOVSKIS & REBECCA SURTEES, LEAVING THE PAST BEHIND? WHEN VICTIMS OF TRAFFICKING DECLINE ASSISTANCE 17-18 (2007)).

21. See Jordan, *supra* note 2, at 30; Srikantiah, *supra* note 2, at 160; Tomkinson, *supra* note 2, at 51.

countries (see Figure 1 for a regional breakdown of the sample).²² The size of the sample was determined by the principle of “saturation,” which is “the point when new interviews seem to yield little additional information.”²³ The interviewees ranged in age from eighteen to fifty-five, with most concentrated at the lower end of the spectrum. Interviews were conducted in twelve languages, with the assistance of interpreters.²⁴ At the time they were interviewed, none of the participants were still in their trafficking situations or in contact with their traffickers. Most interviewees were residing at a government-funded shelter for female trafficking victims in Amsterdam when they participated in the study. Of those who were not at the shelter when they were interviewed, several had previously resided there and were still receiving services from its staff, one had resided in a similar shelter in Rotterdam, and two others had been invited to participate through anti-trafficking organizations.

The Netherlands is an important context for sex trafficking research. Prostitution was legalized in the country in 2000,²⁵ which made it a focal point for discussion and debate around sex trafficking.²⁶ Moreover, Amsterdam is a major destination for

22. The fieldwork for this study was conducted from November 2014 through July 2015.

23. RONET D. BACHMAN & RUSSELL K. SCHUTT, *THE PRACTICE OF RESEARCH IN CRIMINOLOGY AND CRIMINAL JUSTICE* 275 (2011).

24. See Rachel J. Wechsler, *Lost or Gained in Translation? The Use of Interpreters During Qualitative, Semi-Structured Interviews*, BORDER CRIMINOLOGIES BLOG (July 26, 2016), <http://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/07/lost-or-gained> [<http://perma.cc/98DB-3M88>] (explaining the selection and use of interpreters in this study).

25. DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, *TRAFFICKING IN HUMAN BEINGS: FIRST REPORT OF THE DUTCH NATIONAL RAPPOORTEUR* 7 (2002).

26. See, e.g., Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 361-62, 398-401, 404 (2006); Wim Huisman & Edward R. Kleemans, *The Challenges of Fighting Sex Trafficking in the Legalized Prostitution Market of the Netherlands*, 61 CRIME L. & SOC. CHANGE 215 (2014); Alexandra Hudson, *Forced Prostitution Fears Could Dim Dutch Red Lights*, REUTERS, Jan. 26, 2006; Marlise Simons, *Amsterdam Tries Upscale Fix for Red-Light District Crime*, N.Y. TIMES (Feb. 24, 2008), <http://www.nytimes.com/2008/02/24/world/europe/24amsterdam.html> [<http://perma.cc/7659-G5A5>].

trafficking, often involving Eastern European criminal gangs.²⁷ While generalizing of the results beyond the Netherlands must be done with a degree of caution, this research has wider applicability because the vast majority of participants were trafficked from common “source” countries whose citizens are often trafficked for sexual exploitation to other destination countries as well.²⁸

Given that this research was conducted with a vulnerable population, ethical considerations were given significant weight throughout the study. For example, all interviews were planned and conducted in accordance with the guidelines and principles contained in the *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*.²⁹ These recommendations represent basic standards for interviewing women who have experienced or are currently experiencing trafficking victimization.³⁰ Examples include avoiding re-traumatization, preparing for emergency interventions should a participant reveal that she is in imminent danger, and ensuring that research results have beneficial practical applications for trafficking victims.³¹ In addition, as a “prerequisite for every successful qualitative interview is the building up of a trustful relationship between interviewer and narrator,” particularly when the research concerns sensitive topics,³² the necessity of building up trust and rapport with participants was taken seriously. For example, the Author spent significant time in the shelter interacting with potential participants prior to conducting the interviews. Although establishing a trustful relationship with trafficking victims can be

27. Renata van der Zee, *Amsterdam Mayor Opens Brothel Run by Prostitutes: “It’s a Whole New Model”*, GUARDIAN (May 16, 2017), <http://www.theguardian.com/cities/2017/may/16/amsterdam-mayor-brothel-prostitutes-new-model> [<http://perma.cc/E7S6-PM3G>].

28. See U.S. Dep’t of State, *Trafficking in Persons Report* 60, 69, 103, 118, 190, 203, 208, 210, 290, 298, 306, 335, 337, 355, 395, 406, 425 (2017).

29. See Cathy Zimmerman & Charlotte Watts, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, WORLD HEALTH ORGANIZATION [WHO] (2003), http://www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf [<http://perma.cc/79JR-5J5F>].

30. *Id.* at 1.

31. *Id.* at 4, 23-27.

32. Veronica Bilger & Ilse van Liempt, *Methodological and Ethical Dilemmas in Research Among Smuggled Migrants*, in *THE ETHICS OF MIGRATION RESEARCH METHODOLOGY: DEALING WITH VULNERABLE IMMIGRANTS* 121 (Veronika Bilger & Ilse van Liempt eds., 2009).

“a long and strenuous process,”³³ these efforts offer considerable benefits: in the present study, they facilitated the collection of richer data and allow for greater confidence to be placed in the truthfulness of participants’ responses, and thus, the overall accuracy of the findings.³⁴

The feminist principle of maintaining the authenticity of women’s voices³⁵ played a key role in the data analysis and the presentation of the results. This furthers the goal of empowering women who have been victimized, through the creation of “knowledge of *their* experiences and *their* viewpoints,” rather than “simply report[ing] the voices of those charged either with supporting or punishing them.”³⁶ Enabling the women to express their perspectives and experiences in their own words is essential to empowering them and resisting hierarchies within the research process.³⁷ Creating a “polyphony of informant voices” also fosters a form of “textual validity” by providing greater access to the data.³⁸

33. Annette Brunovskis & Rebecca Surtees, *Untold Stories: Biases and Selection Effects in Research with Victims of Trafficking for Sexual Exploitation*, 48 INT’L MIGRATION 1, 10 (2010).

34. See Lianne A. Urada & Janie Simmons, *Social and Structural Constraints on Disclosure and Informed Consent for HIV Survey Research Involving Female Sex Workers and Their Bar Managers in the Philippines*, 9 J. EMPIRICAL RES. ON HUM. RES. ETHICS 29, 33-34 (2014) (noting that female sex workers who knew the person interviewing them for a qualitative research study beforehand felt that “they could offer truthful answers” and disclose sensitive information, while those who did not know the interviewer beforehand were worried about potential confidentiality breaches).

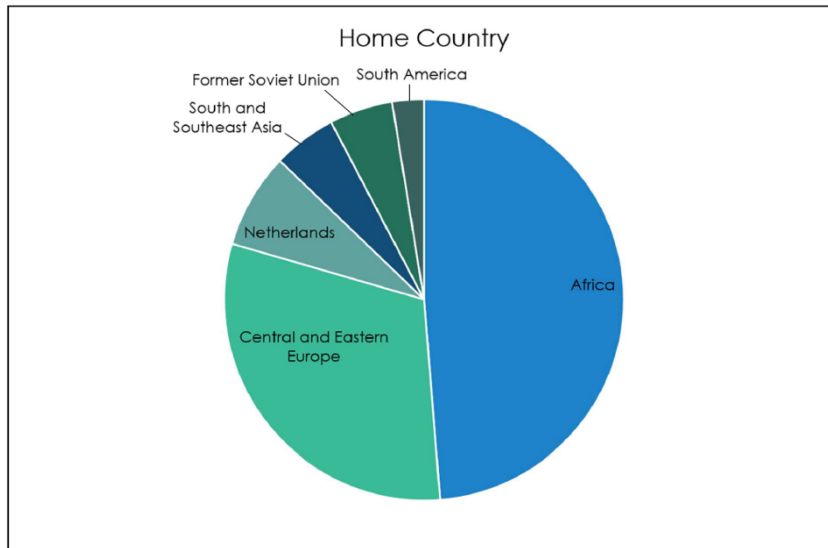
35. Barbara Du Bois; *Passionate Scholarship: Notes on Values, Knowing and Method in Feminist Social Science*, in THEORIES OF WOMEN’S STUDIES 105, 108 (Gloria Bowles & Renate Duelli Klein eds., 1983); Mary Bosworth, Carolyn Hoyle & Michelle Madden Dempsey, *Researching Trafficked Women: On Institutional Resistance and the Limits to Feminist Reflexivity*, QUALITATIVE INQUIRY, 769, 773 (2011).

36. Bosworth, Hoyle & Dempsey, *supra* note 35; see also Du Bois, *supra* note 35.

37. See *id.*; Elizabeth Chiseri-Strater, *Turning in upon Ourselves: Positionality, Subjectivity, and Reflexivity in Case Study and Ethnographic Research*, in ETHICS & REPRESENTATION IN QUALITATIVE STUDIES OF LITERACY 115, 147 (Peter Mortensen & Gesa E. Kirsch eds., 1996).

38. Chiseri-Strater, *supra* note 37, at 128-29.

Figure 1. Regional Breakdown of the Research Sample.



III. REFLECTION PERIOD

Following the disempowering and traumatizing experience of trafficking victimization, victims are immediately confronted with a sudden change in environment and major questions about their future, including whether to press charges against their traffickers.³⁹ Adding to this challenge is the fact that, following their exit from their trafficking situation, they are often experiencing pressing issues that must be addressed before they can fully process their future options, such as physical exhaustion, medical needs, and Stockholm syndrome.⁴⁰ The reflection period is thus important to enable victims to address their immediate needs prior to having to finalize significant decisions about their future. Fortunately, Directive 2004/81/EC and the Convention recognize

39. See SARAH CRAGGS & RUZAYDA MARTENS, RIGHTS, RESIDENCE, REHABILITATION: A COMPARATIVE STUDY ASSESSING RESIDENCE OPTIONS FOR TRAFFICKED PERSONS 88 (2010).

40. Conny Rijken, *Trafficking in Persons: A Victim's Perspective*, in ROUTLEDGE HANDBOOK OF HUMAN TRAFFICKING 239, 244-45, 248 (Ryszard Piotowicz, Conny Rijken & Baerbel Heide Uhl eds., 1st ed. 2018). See also SHIREEN S. RAJARAM & SRIYANI TIDBALL, THE WOMEN'S FUND OF OMAHA, NEBRASKA SEX TRAFFICKING SURVIVORS SPEAK – A QUALITATIVE RESEARCH STUDY 21-22 (2016).

the importance of both reflection and recovery during the immediate post-trafficking period and provide victims with rights to resources aimed at addressing their pressing needs.⁴¹ One of these presumed needs during the post-trafficking period is permission to remain in the destination country. This is accounted for in the Directive and Convention's prohibition on enforcing expulsion orders against victims in the reflection period. It is also reflected in the fact that the right to the reflection period in the first place is only granted to victims who are non-EU nationals (in the Directive) and to those who are illegally present or only hold short-term resident permits (in the Convention).⁴² However, EU national victims with the legal right to reside in the EU countries they have been trafficked to based on their citizenship would also benefit from a right to the reflection period and the accompanying assistance measures. Certain EU countries, such as the Netherlands, recognize this and grant victims from other EU countries rights to the reflection period and attendant benefits through their domestic law,⁴³ despite not being required to do so by international or regional law.

Almost all participants in the study reported that they had been informed of their entitlement to a three-month reflection period. In a two instances, interviewees had wanted to start the process of pressing charges prior to the expiration of the reflection period, but the police had prevented them from doing so. When asked if there were any factors that caused her to hesitate to press charges, one woman explained:

There's no way I hesitated. Actually I wanted to do it, but the police told me when they came here, "we want you to think about it for three months"... I wanted [to press charges] immediately but they told me "after three months."⁴⁴

Victims who have decided in favor of pressing charges prior to the expiry of the reflection period may want to start the process before three months have passed for a variety of reasons, such as wanting to end the "limbo" of the reflection period, to feel like

41. Convention, *supra* note 3, art. 13; Directive 2004/81/EC, *supra* note 3, art. 6.

42. *Id.*; Convention Explanatory Report, *supra* note 3, at 49.

43. Vreemdelingencirculaire (Aliens Circular) 2000 (B) § B8(3.1), available at <http://wetten.overheid.nl/BWBR0012289/2020-02-25> [<https://perma.cc/4EFS-J7T5>] [hereinafter Vreemdelingencirculaire].

44. Interview with Participant No. 9, in Amsterdam, Neth. (Dec. 9, 2014).

progress is being made on their case, to prevent evidence from becoming stale, and to get the police interview portion of the process—which is often emotionally taxing—over with sooner. In refusing to allow victims to begin the process before the end of the reflection period, perhaps police are concerned that even victims who say they are certain of their decisions to press charges may later have doubts or change their minds (which would be a rather paternalistic approach). Alternatively, perhaps there are resource limitations that have resulted in a queue of cases waiting to begin the process. However, the Immigration and Naturalization Service’s (“IND”) policy document concerning the Dutch law on benefits for foreign trafficking victims in the Netherlands (the “B8 regulation”) states that victims can press charges immediately.⁴⁵ According to the Amsterdam Police Human Trafficking Unit, there is no policy against allowing victims to start the process prior to the expiration of the reflection period.⁴⁶ This indicates the likelihood that there have been misunderstandings among police officers about the policy and/or miscommunications between police and victims. Either way, there is a need to re-examine police communication protocols and procedures to ensure that victims are clearly informed and understand that they are able to begin the process of pressing charges prior to the end of the reflection period, if they prefer to do so.

Although Dutch law states that the reflection period cannot be extended,⁴⁷ there appears to be some flexibility in certain cases. One participant reported that the police had extended her reflection period by three months. She explained:

When I came here I had the three months that I can then think over, and only then. But actually I needed six months [A]fter those three months had passed, I had an appointment [with the police] and then I didn’t go to this meeting. And they called me here and they asked me am I going to give my testimony. I said that I would like to do that, but I need more

45. Vreemdelingencirculaire, *supra* note 43, § B8(3).

46. Emails from Bart Soels, Operational Specialist in Amsterdam Police Human Trafficking Unit, to author (July 19, 2017, 01:49 EST; July 20, 2017, 01:24 EST) (on file with author); Email from Harold van Gelder, Team Lead for Amsterdam Police Human Trafficking Unit from 2002 to 2015, to author (Apr. 27, 2017, 09:14 EST) (on file with author).

47. Vreemdelingencirculaire, *supra* note 43, § B8(3.1).

time. And they agreed with that because they knew that I have some valuable information I can give them. So they gave me those three extra months.⁴⁸

As the excerpt shows, this interviewee appears to think that her reflection period was extended due to the usefulness of the information she could provide to the police. One hopes that this is not the case and, in actuality, the police base these decisions upon victims' needs in line with a victim-centered approach, rather than upon the quality or utility of the information they can provide.

IV. FACTORS PARTICIPANTS CONSIDERED WHEN DECIDING WHETHER OR NOT TO PRESS CHARGES AGAINST THEIR TRAFFICKERS

A. Harm and Retribution

Kaufman⁴⁹ asserts that “[r]etributive punishment remains a powerful intuition,” and this phenomenon is strongly reflected in these data with respect to pressing charges: two-thirds of participants cited one or more retributive factors as impacting their decision-making processes. Roughly two-thirds of this group (almost half of all interviewees) described the severe harms they personally suffered at the hands of their traffickers as a factor weighing in favor of pressing charges. In the words of one participant:

I see it as a necessity to stand for this and to come with my complaints so that those who’ve been guilty of doing harm to me will have to pay for—hopefully they’ll find them—and they have to pay for what they did to me.⁵⁰

The harms participants’ traffickers caused often had lasting effects and negatively impacted these women after, even long after, they were no longer in their trafficking situations:

Because of him, I wanted to kill myself, because of him, I’m sick, because of him, there are so many things . . . he needs to pay for it, for what he did to me. And because of him, he forced

48. Interview with Participant No. 17, in Amsterdam, Neth. (Apr. 22, 2015).

49. WHITLEY R.P. KAUFMAN, *HONOR AND REVENGE: A THEORY OF PUNISHMENT* 47 (2012).

50. Interview with Participant No. 15, in Amsterdam, Neth. (Nov. 24, 2014).

me to do things I never wanted to do. Because of him, I will be traumatized all of my life.⁵¹

Several interviewees explained that their traffickers had not only harmed them, but had also inflicted harm upon their loved ones and/or other individuals. A victim with a young son expressed the following rationale for her decision to press charges:

I want that the people should get—they should be punished because they have done lots of bad things. Not only with me but maybe for—with the other women also because I saw there . . . Yeah, because they not only hurt me, they hurt also to my son also. . . they destroy all life.⁵²

Similarly, an interviewee described the harm her traffickers tried to inflict upon her unborn child as one of the reasons underlying her decision to press charges:

So when I was with them, and I was pregnant, they were wanting me to use drugs and alcohol. They wanted me to keep working⁵³ while I was pregnant. They walked on my stomach and my back. And they beat me, hit me.⁵⁴

Participants often stated their retributive reasoning expressly, explicitly connecting harms with punishment. In some cases, however, it was implied through the description of the harms victims endured at the hands of their traffickers. In detailing these harms while explaining their decision-making processes, a number of interviewees implied that their traffickers deserved to be punished for inflicting them. Harm and retribution are linked because retributive justice apportions punishment in accordance with the degree of moral offense committed, which is based in large part on the magnitude of the harm and the extent to which the offender imposed it intentionally.⁵⁵ Women citing retributive rationales, whether expressly or implicitly, viewed pressing

51. Interview with Participant No. 39, in Amsterdam, Neth. (Dec. 5, 2014).

52. Interview with Participant No. 33, in Amsterdam, Neth. (Apr. 30, 2015). Grammatical and syntactical errors within interview excerpts have not been corrected, unless strictly necessary for comprehension, to maintain the authenticity of participants' voices.

53. In this context, the term "working" typically refers to working in prostitution.

54. Interview with Participant No. 14, in Amsterdam, Neth. (Nov. 25, 2014).

55. Kevin M. Carlsmith, *The Roles of Retribution and Utility in Determining Punishment*, 42 J. EXPERIMENTAL SOC. PSYCHOL. 437, 437-38 (2006).

charges as the process by which punishment for intentional wrongs committed against them can be imposed upon their traffickers.

Other empirical studies with trafficking victims⁵⁶ have also identified retribution as a motive for deciding to participate in the criminal justice process. This was the case with respect to giving testimony in Bjerkan and Dyrld's qualitative study with approximately twelve female sex trafficking victims in Serbia and Moldova.⁵⁷ Furthermore, Doyle et al. found that a desire to punish their traffickers was a motivation for labor trafficking victims in Ireland to pursue prosecutions.⁵⁸ Given Kaufman's aforementioned assertion about the strong intuitive nature of retributive reasoning, it is unsurprising that this theme has emerged in multiple studies giving voice to the motivations of human trafficking victims.⁵⁹

In line with Kaufman's observation, Wenzel and Okimoto argue that humans' retributive tendencies are "deeply ingrained," and further contend that they have "evolutionary origins that are also tied to fundamental psychological needs."⁶⁰ From a retributive

56. Results from empirical studies concerning trafficking victims' perspectives that are referenced in this Article are based on primary research with victims themselves rather than on research with third parties (e.g. service providers, law enforcement) to avoid perpetuating the patronizing assumption that these parties can speak *for* victims. See JO GOODEY, *VICTIMS AND VICTIMOLOGY: RESEARCH, POLICY AND PRACTICE* 117 (2005); MARIE SEGRAVE, SANJA MILIVOJEVIC & SHARON PICKERING, *SEX TRAFFICKING AND MODERN SLAVERY: THE ABSENCE OF EVIDENCE* 84 (2018).

57. LISE BJERKAN & LINDA DYRLID, *THE COURAGEOUS TESTIMONY: TRAFFICKED WOMEN'S MOTIVATIONS FOR AND EXPERIENCES FROM TESTIFYING AGAINST THEIR TRAFFICKERS* 5-6, 8, 12 (2006). Surtees also maintains that retributive reasons motivate trafficking victims to testify, but supports this assertion with an interview excerpt from Bjerkan and Dyrld's report rather than with one from her own empirical study with trafficking victims. Thus, it is unclear whether retribution is also identified as a decision-making factor in Surtees's study or if she is simply referring to this finding in Bjerkan and Dyrld's research. SURTEES, *supra* note 9, 163.

58. David Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari & Rachel J. Wechsler, *'I Felt Like She Owns Me': Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland*, 59 *BRIT. J. CRIMINOLOGY* 231, 244 (2019) (interviewing fifteen foreign labor trafficking victims in Ireland).

59. See KAUFMAN, *supra* note 49.

60. Michael Wenzel & Tyler G. Okimoto, *Retributive Justice*, in *HANDBOOK OF SOCIAL JUSTICE THEORY AND RESEARCH* 251 (Clara Sabbagh & Manfred Schmitt eds., 2016). See also Kevin M. Carlsmith & John M. Darley, *Psychological Aspects of Retributive Justice*, in *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 194, 194, 203-06, 211 (M.P. Zanna ed., 2008).

perspective, punishment serves to restore “psychological equilibrium” by redressing the offender’s perceived contempt for the victim.⁶¹ Psychological research suggests that individuals expect to experience positive emotions, such as satisfaction, after someone who has victimized them is punished, even when it is costly to them.⁶² This appears to be the case for many participants in the present study, as they have identified a number of potential costs associated with pressing charges against their traffickers, *infra*, but most have still decided to press charges regardless.

B. Fear of Their Traffickers and/or Their Traffickers’ Associates

Another commonly reported factor was a fear of harm at the hands of their traffickers and/or their traffickers’ associates. Approximately half of the participants stated that this fear played a role in their decision-making processes. For all but a few of these interviewees, this factor weighed against pressing charges. Many were worried about the possibility of retaliation against themselves and/or their loved ones if they pressed charges. One trafficking victim described her fear of reprisals in the following way:

Because if I do aangifte,⁶³ I’m scared that later, maybe in six month later, I have very happy family, I have job, I have boyfriend, I have very beautiful life, and then my [trafficker] . . . make trouble for me. That’s why I have to think very carefully.⁶⁴

The fear of violent retaliation was a very real concern for many participants, and some of them referenced their traffickers’ violent pasts, possession of weapons, and/or specific threats their

61. Neil Vidmar & Dale T. Miller, *Socialpsychological Processes Underlying Attitudes toward Legal Punishment*, L. & SOC’Y REV. 565, 579 (1980).

62. Kevin M. Carlsmith, Timothy D. Wilson & Daniel T. Gilbert, *The Paradoxical Consequences of Revenge*, 95 J. PERSONALITY & SOC. PSYCHOL. 1316, 1318, 1321-23 (2008); Dominique J.-F. de Quervain, Urs Fischbacher, Valerie Treyer, Melanie Schellhammer, Ulrich Schnyder, Alfred Buck & Ernst Fehr, *The Neural Basis of Altruistic Punishment*, 305 SCI. 1254, 1256-58 (2004).

63. “Aangifte” is the Dutch word for “pressing charges.” This word appeared in many of the interviews and was employed by participants speaking a variety of languages. Its prevalence within the data is the primary rationale for not translating it to English within the interview excerpts.

64. Interview with Participant No. 31, in Amsterdam, Neth. (Feb. 27, 2015).

traffickers had made against them when describing their consideration of this factor. For example, one interviewee explained that her trafficker “have make people dead for money, you know, he’s killer for money.”⁶⁵ Another participant recalled the following threat:

This man I was with, he has threatened me with a weapon, with a gun, telling me that whenever I would press charges against him, he would kill me. And I’m still scared for that reason.⁶⁶

Similarly, another victim’s traffickers made serious threats explicitly related to pressing charges:

They said if you press charges and then we’re definitely going to find you and take your child and kill you . . . many times I heard them say it.⁶⁷

A participant who was extremely worried about her safety made reference to her trafficker’s prior violence and threats against her in explaining the role her fear of violent reprisals played in her decision-making process:

I was thinking about it a lot, but I am very afraid to do it because I am really scared of this guy. If the police can give me some guarantee and security, then I might press charges . . . I was afraid to die (she points to scars on her body). He has beaten me up, even with a gun [because] . . . I tried to run away from him two times and he could find me. The second time he told me that if I do it again then he will kill me and cut me to pieces and bury me in his garden.⁶⁸

A significant portion of the participants who reported that fear was a factor in their decision-making process articulated their concern that pressing charges would risk the well-being of their loved ones. One woman who expressed intense fear because her trafficker knew where her family lived in her home country, explained:

I don’t know what police can do. I don’t know. I never have make so press charges Because I think for me, I say, when

65. Interview with Participant No. 28, in Amsterdam, Neth. (Feb. 3, 2015).

66. Interview with Participant No. 11, in Amsterdam, Neth. (Dec. 5, 2014).

67. Interview with Participant No. 14, *supra* note 54.

68. Interview with Participant No. 1, in Amsterdam, Neth. (Jan. 30, 2015).

I go there you make press charges, there is your name, which is this girl, and then he go to my family. He cannot find me because I am here, I am protected, but I have my family, I don't want to be nothing for my family.⁶⁹

This participant raised a serious issue when she pointed out that her name would be included in official documents if she pressed charges, since in the Netherlands, trafficking victims are not typically granted anonymity.⁷⁰ Furthermore, this interviewee highlights the significant risk of reprisals against victims' family members in their home countries. Even if foreign victims feel protected in their destination country, their loved ones may be vulnerable to threats and violence from traffickers, who often know how to contact and locate them.⁷¹ For example, one interviewee recalled the following threat:

My pimp most of the time he tried to explain me, "what, you go to speak with you family, what you think [they] can help you? Your mother can learn you *dead*. Understand? Dead. You possible to learn your sister dead. I can make this for you" . . . he called to . . . my mother to explain this.⁷²

At times, threats were made in person, directly to the victim's family members:

69. Interview with Participant No. 28, *supra* note 65.

70. Email from Warner ten Kate, National Public Prosecutor for Trafficking in Human Beings and People Smuggling, to author (July 31, 2015, 01:29 EST) (on file with author) (stating that the National Public Prosecutor for Trafficking was not aware of any witnesses in human trafficking cases who had been granted "full anonymity." "Full" anonymity, as opposed to "restricted" anonymity, prevents a witness's name from appearing in official documents). Disclosure of victims' identities in criminal proceedings is an issue in other jurisdictions as well. *See, e.g., Vesna Nikolić-Ristanović, What Victims Went Through and How They Survived, in A LIFE OF ONE'S OWN: REHABILITATION OF VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION 111* (Lise Bjerkan ed., 2005) (finding that a lack of identity protection was "[o]ne of the biggest obstacles to the safety of the victim" in a study involving human trafficking trials in Serbia).

71. *See* Convention Explanatory Report, *supra* note 3, at 63-64; UNIVERSITY OF CALIFORNIA BERKELEY, THE HUMAN RIGHTS CENTER, FREEDOM DENIED: FORCED LABOR IN CALIFORNIA 4, 18 (2005), <http://www.law.berkeley.edu/files/FreedomDenied.pdf> [<http://perma.cc/36L2-G28Y>].

72. Interview with Participant No. 5, in Amsterdam, Neth. (Jan. 23, 2015).

[My trafficker] went to Nigeria⁷³ again. And went to threaten my mother. “You should tell your daughter [she] should give [me my] money.”⁷⁴

These and other victims in the sample expressed great fear about the safety of their parents or siblings who were still residing in their home countries. For adult victims’ parents and siblings who are not EU citizens, the danger is especially concerning, as family reunification rules in the Netherlands only cover their partners and children.⁷⁵ Therefore, adult trafficking victims are unable to apply for their threatened parents and siblings to join them in the Netherlands and avail themselves of Dutch protections, leaving them vulnerable to intimidation and violence from traffickers in their home countries.

Threats like those in the foregoing excerpts are a well-documented means by which traffickers control their victims.⁷⁶ The impact of these threats upon victims’ decision-making processes can be reinforced and amplified by the presence of other factors, such as peer influence. For example, one young woman explained:

Oh, no, I don’t want that. I don’t—I was very scared so I said no I don’t want [to press charges] Yeah because there are more girls and they are in the same situation as me, because they hanging out with him too, and now they working⁷⁷ and so but—and they talked to the police too and—but no one [pressed charges] I’m very scared of him because I know he have a *lot* of friends and, yeah, he always knows [how] to

73. The names of home countries are not redacted only in cases where there are sufficient numbers of participants from a particular country to preserve anonymity.

74. Interview with Participant No. 35, in Amsterdam, Neth. (Feb. 25, 2015).

75. *Vreemdelingencirculaire*, *supra* note 43, § B7. These rules permit reunification with partners and children (generally under the age of eighteen, though there are certain exceptions for young adults up to age twenty-five) regardless of whether they are vulnerable to reprisals.

76. Laurel E. Fletcher, Kevin Bales & Eric Stover, *Hidden Slaves: Forced Labor in the United States*, *BERKELEY J. INT’L L.* 47, 62, 65, 77 & n.107, 83-84 (2005); Elizabeth Hopper & José Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 *INTERCULTURAL HUM. RTS. L. REV.* 185, 201 (2006); Siddharth Kara, *Supply and Demand: Human Trafficking in the Global Economy*, 33 *HARV. INT’L REV.* 66, 69 (2011).

77. In this context, the term “working” typically refers to working in prostitution.

find me That, and for my mother's safety, and my brother⁷⁸

As this interviewee was still a teenager, she may have been more susceptible to peer influence than an older victim would be.⁷⁹ Still, it can be difficult for individuals of any age to overcome social influences,⁸⁰ particularly when doing so involves personal risk. She may have questioned why she should be the one victim to take this risk and perhaps believed that if her trafficker's other victims came to the same decision with respect to pressing charges, then that must be the correct one.

Fear of reprisals as a barrier to participation in the criminal justice process was also a strong theme emerging from other empirical studies with trafficking victims across various jurisdictions. In their study with sex trafficking victims in Germany, Helfferich et al. found that victims' fear of their traffickers, linked to threats against victims or their family members and/or experiences of trafficker violence, was a major factor weighing against making a witness statement.⁸¹ This fear also emerged in Cuzuioc-Weiss and Lacroix's qualitative study involving interviews with victims of sex or labor trafficking in the Czech Republic, Hungary, Italy, and Portugal, in the context of giving statements to police.⁸² Regarding decisions about whether to testify against their traffickers in criminal proceedings, Bjerkan and Dyrlid and Nikolić-Ristanović found that victims' fear of reprisals against themselves and/or their families contributed to victims' reluctance, and in

78. Interview with Participant No. 3, in Amsterdam, Neth. (Jan. 30, 2015).

79. See Lisa J. Knoll, Anne Gaule, Alberto Lazan, Edward A. K. Jacobs & Sarah-Jayne Blakemore, *Neural Correlates of Social Influence on Risk Perception during Development*, 15 *SOC. NEUROSCIENCE* 1, 1 (2020).

80. See M. J. Connor, *Peer Relations and Peer Pressure*, 9 *EDUC. PSYCHOL. IN PRACTICE* 207, 208-09, 212-13 (1994).

81. Cornelia Helfferich, Barbara Kavemann & Heike Rabe, *Determinants of the Willingness to Make a Statement of Victims of Human Trafficking for the Purpose of Sexual Exploitation in the Triangle Offender-Police-Victim*, 14 *TRENDS IN ORGANIZED CRIME* 125, 129, 132, 138-40 (2011) (interviewing fifty-three victims of sex trafficking).

82. BARBARA CUZUIOC-WEISS & CHANTAL LACROIX, *STUDY ON POST-TRAFFICKING EXPERIENCES IN THE CZECH REPUBLIC, HUNGARY, ITALY AND PORTUGAL* 121 (2010) (interviewing thirty-three victims of sex or labor trafficking). See also SHIREEN S. RAJARAM & SRIYANI TIDBALL, *supra* note 40, at 16 (finding that sex trafficking victims experienced fear of trafficker retaliation while sharing information with law enforcement in a qualitative study with a sample consisting of twenty-two adult female victims in Nebraska).

some cases refusal, to give testimony.⁸³ These latter two studies also documented victims' fear of retaliation not only from their traffickers, but also from their traffickers' associates, much like the teenage participant's concern that her trafficker has "a lot of friends" in the present study.⁸⁴

In contrast, a few participants counted the "fear" factor as a reason weighing in favor of pressing charges. Two such women thought that if they pressed charges, state authorities would provide them with protection from potential harm at the hands of their traffickers and their traffickers' associates. When explaining why she decided to press charges, one of them shared:

'Cause I was telling [my lawyer] that I'm afraid for my life. She say that the police will protect me . . . I explain to her that one day I went to [the grocery store], a guy was following me with a bicycle . . . I don't know who. I never see him before. He was following me, when he see this camera here, he go down this way with the bicycle. Then . . . I run, I enter the door [of the shelter]. He was following me direct.⁸⁵

Similarly, Helfferich et al. found that certain sex trafficking victims' fear of violence at the hands of their traffickers increased their willingness to make a witness statement, tied to their belief that the police would protect them.⁸⁶

A couple of participants felt that their fear could be addressed through the incarceration, and therefore, incapacitation of their traffickers. One asserted, "I have to do this, you know. I have to do this because I want to live relaxed. To . . . live relaxed, this guys for me have to stay in the jail, you know."⁸⁷ This theme also emerged in Surtees's qualitative study of trafficking victims in five South-eastern European countries, in the context of decisions to testify in criminal proceedings.⁸⁸ In the case of the following interviewee, it is unclear whether she believed that pressing charges would keep her safe from her trafficker because of police protection, the

83. BJERKAN & DYRLID, *supra* note 57, at 4-6; Nikolić-Ristanović, *supra* note 70, at 108-10.

84. Interview with Participant No. 3, *supra* note 78.

85. Interview with Participant No. 19, in Amsterdam, Neth. (Apr. 29, 2015).

86. Helfferich, Kavemann & Rabe, *supra* note 81, at 129, 132, 141.

87. Interview with Participant No. 5, *supra* note 72.

88. SURTEES, *supra* note 9, at 163 (interviewing eighty human trafficking victims exploited for sex, labor, begging, criminal activities or other purposes).

incapacitation of her trafficker or other reasons. Regardless, she appeared confident that pressing charges would preserve her safety:

Because if I didn't do it, maybe [my trafficker] must come around one day. I have to do it for my sake, 'cause she's threatened me, so I have to do it. So that I will be safe.⁸⁹

C. Preventing the Victimization of Others through Deterrence and/or Incapacitation

Concern for the well-being of others often pervaded victims' rationale for pressing charges. Almost half of the participants reported that their desire to prevent others from becoming trafficking victims was a factor weighing in favor of pressing charges within their decision-making processes. Many viewed this factor in terms of the risk that others will become future victims of the specific individuals who had trafficked them:

[A]nother reason [why I have decided to press charges is] that he can do the same thing to other girls There may fall more victims This person who has done this to me may have done it before, so I may have not been his first victim. And he may do it still after me, so I wonder why he has not been caught up until now. But I have very good information on him, very concrete information, and I want to give that information so that he will be stopped.⁹⁰

In addition to stopping their specific traffickers from victimizing others, many participants expressed that a desire to work against trafficking victimization more generally was a factor in their decisions to press charges:

What I have gone through is inhumane. I can't stand the idea of other girls going through the same thing. So if I decide to press charges it is just as an example and to contribute in the possibility to stop this kind of activities.⁹¹

[W]hat I wanted to stop were the . . . people who actually use the women and the prostitution If I only could stop them this is what is my greatest—if it was in my power only. And if I had the ability and the power to do that, no one would stay

89. Interview with Participant No. 8, in Amsterdam, Neth. (Feb. 3, 2015).

90. Interview with Participant No. 24, in Amsterdam, Neth. (Dec. 10, 2014).

91. Interview with Participant No. 11, *supra* note 66.

on this position [E]xactly where you don't expect there exactly live a girl that is—has been beaten. Sometimes when I walk on the street and I see a man and a woman walking, sometimes I'm thinking, it can just very well be that she is a prostitute and he is her pimp. That she is afraid. Because I had been like that, I have been—had the same feelings and I have been afraid myself. I was among people and I was walking next to my pimp but nobody knew that I'm this person in difficulty and that somebody has to help me and save me. And this thought just was killing me, that there's more women like me that has been beaten and they're working⁹²

For some participants, this factor appeared to be connected to wanting to protect their loved ones, particularly their female relatives and friends, from becoming victims of sex trafficking. Thinking about the possibility of their loved ones enduring trafficking situations similar to the ones they had experienced themselves was a powerful motivator for some interviewees, often in the face of fear, to decide to press charges. The following quotations illustrate consideration of this factor:

I thought about it and I said if this can happen to me, it can happen to my sister, it can happen to anyone. Maybe it's happening to many people and I don't know. And I said maybe this man is going on collecting girls my age, maybe other women and doing the same thing he did to me. So I said if I have a chance that they can look for him, let me try.⁹³

Yeah I want to help with the case because—look, now, I know this situation, but I have two sister. I have friends. My brother have daughter. Nobody give me guarantee to after one year, my sister is don't be in my situation, you know? Nobody give me guarantee to next girl is not be in my situation.⁹⁴

As the interview excerpts demonstrate, the participants motivated to act based on their desire to prevent the victimization of others feel as though they have the power, at least to an extent, to impact the lives of potential victims in a positive way. This undercurrent of empowerment shortly after their own

92. Interview with Participant No. 17, *supra* note 48. In this context, the term “working” typically refers to working in prostitution.

93. Interview with Participant No. 34, in Amsterdam, Neth. (June 12, 2015).

94. Interview with Participant No. 5, *supra* note 72.

victimization is a testament to their resilience. Akin to this study, Bjerkan and Dyrild found that a desire to prevent the trafficking victimization of others motivated some victims to testify,⁹⁵ and Doyle et al. determined that it was a reason underlying decisions to pursue prosecutions more generally.⁹⁶

However, significant issues with the rationale of preventing others from becoming trafficking victims through deterrence or incapacitation of traffickers are that in the Netherlands, few trafficking cases are prosecuted,⁹⁷ and those who are convicted of trafficking offenses are incarcerated for only very brief periods. In 2015, the average prison sentence for convicted traffickers was just 558 days, down from an average of 804 days in 2013 and 665

95. BJERKAN & DYRLID, *supra* note 57, at 5. As with retribution, SURTEES, *supra* note 9, at 163, also notes that wanting to prevent others from being victimized is a factor underlying trafficking victims' decisions to testify, but supports this assertion with an interview excerpt from Bjerkan and Dyrild's earlier study rather than with one from her own empirical study. Thus, it is unclear whether this factor emerged in Surtees's study or if she is simply referring to this finding in Bjerkan and Dyrild's research.

96. Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58, at 244.

97. GRETA 2018 *supra* note 17, at 24 (stating that "[m]any THB cases do not lead to prosecution because of lack of evidence"); Letter from Mark Harbers, Dutch Minister for Migration, to Petya Nestorova, Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings (Oct. 16, 2018) (appended to GRETA 2018) (confirming that "[i]t is true that few THB cases lead to actual prosecution"). "THB" stands for "Trafficking in Human Beings."

98. NATIONAL RAPPOREUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, MONITOR MENSENHANDEL: CIJFERS VERVOLGING EN BERECHTING 2011-2015 8 (2016). This is the most recent sentencing data available, which is why the 2018 TIP report recommends that the Netherlands "improve data collection on sentences." TIP Report 2018, *supra* note 18, at 320.

99. See CUSTODIAL INSTITUTIONS AGENCY, MINISTRY OF SECURITY AND JUSTICE, INFORMATION SHEET FOR DUTCH PRISONERS ABROAD: WOTS: SERVING A SENTENCE IN THE NETHERLANDS? 5 (2013). In 2018, the Dutch Minister for Legal Protection submitted a legislative proposal to end the practice of automatic conditional release after offenders have served two-thirds of their sentences, for those serving custodial sentences of six years or more. *Dekker: End to Automatic Eligibility for Conditional Release*, GOV'T OF THE NETH. (May 1, 2018), <http://www.government.nl/ministries/ministry-of-justice-and-security/news/2018/05/01/dekker-end-to-automatic-eligibility-for-conditional-release> [<http://perma.cc/D2GF-RUCP>]. The proposal also reduces the duration of conditional release to a maximum of two years and requires affected prisoners to be evaluated for conditional release on a case-by-case basis. *Id.* In 2019, the Minister submitted this proposal to the Dutch House of Representatives. *Maximum Duration of Conditional Release Reduced to Two Years*, GOV'T OF THE NETH. (Jan. 17, 2019), <http://www.government.nl/ministries/ministry-of-justice-and-security/news/2019/01/17/maximum-duration-of-conditional-release-reduced-to-two-years> [<http://perma.cc/8CQ4-XP5Z>].

days in 2014.⁹⁸ Moreover, offenders generally only serve two-thirds of their sentences before being released on parole.⁹⁹ These light sentences incapacitate traffickers for only brief periods and are unlikely to have much of a deterrent effect. Perhaps if victims had been made aware of typical case outcomes and sentencing practices, they would not have given as much weight to their desire to prevent their traffickers from victimizing others (and other factors related to incarceration) in their decision-making processes. Bjerkan and Dyrli's study provides support for this notion as at least one of their participants chose not to testify due in large part to her awareness that her traffickers would likely receive light sentences.¹⁰⁰ In the present study, none of the participants who had decided to press charges at least in part due to their desire to prevent the victimization of others had reached the prosecution or sentencing phase of a criminal case against their traffickers, and if any eventually do, they are probably going to be disappointed. This is particularly likely to be the case given that approximately half of the sample¹⁰¹ believed that their traffickers should be sentenced to least five years in prison, while almost a quarter¹⁰² asserted that they should be incarcerated for twenty or more years. Participants' apparent lack of knowledge about the low likelihood of prosecution and lengthy incarceration of their traffickers calls into question whether victims in the Netherlands are provided with sufficient information to make an "informed decision" about whether to cooperate with authorities, as specified in the Council of Europe Convention and Directive 2004/81/EC.¹⁰³

100. BJERKAN & DYRLID, *supra* note 57, at 5-6 (noting that a participant declined to testify mainly because her traffickers were unlikely to be incapacitated for very long and her family would be at risk for reprisals following their release). *See also* RAJARAM & TIDBALL, *supra* note 40, at 29 (finding that sex trafficking victims believed that increasing punishments for traffickers and buyers of sex would decrease victims' reluctance to report their trafficking victimization).

101. But nearly two-thirds of participants who specified a length of incarceration.

102. Approximately a third of those who specified a length of incarceration.

103. *See* Convention, *supra* note 3, art. 13(1); Directive 2004/81/EC, *supra* note 3, art. 6(1).

D. Permission to Remain

Although much less prevalent than the previous three factors, almost a quarter of participants stated that their desire to remain in the Netherlands legally played a role in their decision-making processes. After the reflection period, victims are only granted temporary residence permits if they agree to press charges.¹⁰⁴ There is an exception to this rule for victims who are unwilling or unable to assist authorities due to a serious threat and/or a medical or psychological limitation during the reflection period¹⁰⁵ and beyond.¹⁰⁶ However, civil society representatives have reported that “the [Dutch] authorities do not always accept NGO assessments about victims of THB being too traumatised to participate in criminal proceedings.”¹⁰⁷ Scholars, NGOs, and international organizations have often criticized the practice of making assistance to foreign trafficking victims conditional upon their cooperation in criminal investigations and prosecutions, which is widespread and certainly not limited to the Netherlands, because it places state prosecutorial goals above the needs and well-being of victims.¹⁰⁸ In doing so, this practice instrumentalizes victims as tools to achieve state goals,¹⁰⁹ in contravention of a victim-centered, human rights-based approach.¹¹⁰

Challenging the common notion that undocumented trafficking victims are predominantly motivated to assist with investigations and prosecutions to obtain a residence permit,¹¹¹ only around a third of undocumented non-EU nationals in the

104. Vreemdelingencirculaire, *supra* note 43, § B8(3.1).

105. *Id.*

106. *Id.* § B8(3.2, 10).

107. GRETA 2018, *supra* note 17, at 26.

108. See, e.g., *id.* at 28; Anette Brunovskis & May-Len Skilbrei, *Two Birds with One Stone? Implications of Conditional Assistance in Victim Protection and Prosecution of Traffickers*, 6 ANTI-TRAFFICKING REV. 13, 22-23 (2016); Rijken & Römkens, *supra* note 5, at 94; *Conference of the Parties to the United Nations Convention against Transnational Organized Crime*, GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN (Oct. 13-14, 2008) (statement of Bandana Pattanaik), http://gaatw.org/statements/Statement_COPS08.pdf [<http://perma.cc/R83D-EPBU>].

109. Brunovskis & Skilbrei, *supra* note 108, at 23.

110. See Angel, *supra* note 14, at 24; Segrave, *supra* note 14, at 88, 90. See also Kant, *supra* note 14, at 209.

111. See, e.g., Brunovskis & Skilbrei, *supra* note 108, at 22-23; Helfferich, Kavemann & Rabe, *supra* note 81, at 139, 146.

sample reported that this factor had impacted their decision to press charges, and a few even explicitly denied that it had played a role. Yet for some undocumented participants, this factor weighed heavily in their decision-making processes. For example, when asked why she had decided to press charges against her trafficker, one woman initially responded:

You want an honest answer? . . . [P]robably I wouldn't be doing this. I don't know, it's hard to say but I had to do it for my status. For my visa.¹¹²

For this subset of participants, like those in Brunovskis and Skilbrei's qualitative study with sex trafficking victims in Norway, "even the possibility of permanent residence contributed strongly to motivating cooperation" with criminal justice authorities.¹¹³

Most of the victims citing this factor asserted that it would not be safe for them to return to their home countries. Indeed, the need to leave an unsafe situation in their home countries directly led to a number of them becoming trafficking victims in the first place. A participant who had been living in an orphanage in a village that had been destroyed by Boko Haram prior to being trafficked explained why she wanted to remain in the Netherlands:

I don't have a home [in Nigeria]. I don't want to go . . . Also, my life is in danger. 'Cause this man hurt so many people and they are killing so many [of] these girls that work in the streets. My life is in danger . . . I feel safe [in the Netherlands]. I don't have anywhere to go. For my life and the life of my daughter.¹¹⁴

Another Nigerian participant was even more explicit in framing this factor as a barrier to her freedom of choice when explaining why she had agreed to press charges against her trafficker:

Because I don't get a choice . . . because I don't have anywhere to go. I don't have anybody . . . I don't have anywhere to go . . . Because I don't have anybody in Nigeria. My mother is dead . . .

112. Interview with Participant No. 37, in Amsterdam, Neth. (June 9, 2015).

113. Brunovskis & Skilbrei, *supra* note 108, at 23 (interviewing twelve women who had been trafficked for sexual exploitation). Permission to remain in the destination country also emerged as a motivation for trafficking victims to cooperate with authorities in Helfferich et al. and Doyle et. al's studies. See Helfferich, Kavemann & Rabe, *supra* note 81, at 139; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58, at 244.

114. Interview with Participant No. 23, in Amsterdam, Neth. (June 2, 2015).

don't know my father . . . I can't go back to Italy . . . because that woman [who trafficked me is there and] will kill me.¹¹⁵

This woman's belief that her circumstances constrained her freedom of choice may have been exacerbated by the fact that she was pregnant and was concerned for her future child's well-being. The absence of meaningful choice for certain victims within the context of decisions about pressing charges parallels that of people who make "rational" decisions which increase their vulnerability to trafficking victimization, due to constraining structural factors.¹¹⁶

Even some participants who did not report or even denied that this factor played a role in their decision-making process expressed that it would be dangerous for them to return to their home countries. One woman who had explicitly stated that the possibility of remaining in the Netherlands legally had not factored into her decision to press charges described her reaction to learning that the police had closed her case and she will not be permitted to stay in the Netherlands:

[W]hen [my trafficker] came, she didn't find me again, she will know that I must have reported her. It is a . . . danger for me. This politie,¹¹⁷ they don't think in that way. They will just say, "I cannot—you should go back to your country." Since you give me protection, you empowered me, you give me . . . peace. You are now losing me again to the danger . . . I'm in more danger if these people send me out.¹¹⁸

This interview excerpt raises an important concern that applies to non-EU nationals who are victims of trafficking in the Netherlands. This participant expressed that she felt "empowered" enough, through protections and support, to press charges against her trafficker. Yet, after she took that step and gave the Dutch authorities the information they wanted, she was upset and

115. Interview with Participant No. 25, in Amsterdam, Neth. (June 1, 2015).

116. See Sally Cameron & Edward Newman, *Trafficking in Humans: Structural Factors*, in *TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITICAL DIMENSIONS*, 21, 23-24 (Sally Cameron & Edward Newman eds., 2008); Bebe Loff et al., *Prostitution, Public Health, and Human Rights Law*, 346 *THE LANCET* 1764, 1765 (2000); Donna Dickenson, *Philosophical Assumptions and Presumptions about Trafficking for Prostitution*, in *TRAFFICKING AND WOMEN'S RIGHTS* (Christien. L. van den Anker & Jeroen Doomernik eds., 2006).

117. "Politie" is the Dutch word for "police."

118. Interview with Participant No. 35, *supra* note 74.

worried to learn that she was losing the protections and support because her case had been closed. In pressing charges against their traffickers, victims, such as this one, risk potential retaliation.¹¹⁹ This risk is exacerbated by the use of victims' real names, rather than pseudonyms, in official documents, which is generally the case in the Netherlands.¹²⁰ Although victims may provide law enforcement authorities with a great deal of information, through no fault of their own, their cases may be closed because authorities are unable to locate their traffickers or decide that there is insufficient evidence to prosecute the accused. Indeed, this appears to be the case for the vast majority of trafficking victims who press charges in the Netherlands.¹²¹ When their cases are closed, their residence permits based on their trafficking victim status are revoked.¹²² Often, these victims' lawyers will apply for permission for them to stay in the Netherlands on humanitarian grounds,¹²³ but this has become increasingly difficult to obtain in recent years. Annet Koopsen, a lawyer with vast experience representing trafficking victims in the Netherlands, believes that this trend is attributable to an increase in these types of residency applications, greater skepticism about the veracity of victimhood claims (stemming from a rise in the number of cases lacking details from the victims about their trafficking experiences), and an increasingly anti-immigrant political climate.¹²⁴ Furthermore, Richard Korver, another Dutch lawyer, agreed that a changing

119. See Mike Dottridge, *Introduction*, in *COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD* 14 (2007); ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 102 (2010).

120. See Email from Warner ten Kate, *supra* note 70.

121. See Shanna F. Jones, *Making Soup with Sex Trafficking Survivors in Amsterdam's Red Light District*, *VICE* (Jan. 27, 2017, 9:30 AM), http://munchies.vice.com/en_uk/article/3d4qjy/making-soup-with-sex-trafficking-survivors-in-amsterdams-red-light-district [<http://perma.cc/H65E-8T6U>] (reporting that ninety percent of human trafficking cases in the Netherlands are closed due to a lack of evidence). See also GRETA 2018 *supra* note 17, at 24 (stating that "[m]any THB cases do not lead to prosecution because of lack of evidence and hence residence permits are usually not granted"); Letter from Mark Harbers, *supra* note 97 (confirming that "[i]t is true that few THB cases lead to actual prosecution").

122. Letter from Mark Harbers *supra* note 97. See also GRETA 2018, *supra* note 17, at 24.

123. See *Vreemdelingen*circulaire, *supra* note 43, § B9.12.

124. Email from Annet Koopsen, to author (Dec. 6, 2016, 23:38 EST) (on file with author).

political climate in the Netherlands contributed to this trend.¹²⁵ These assertions are supported by research documenting anti-immigrant attitudes in the Netherlands in recent years.¹²⁶

Trafficking victims from West African countries appear to face greater hurdles than those from other nations and tend to be constructed as “bad” or “non-ideal” victims¹²⁷ in the “hierarchy of victimization”¹²⁸ in the Netherlands. It seems that it is more difficult for West African victims to have their trafficking victimization, and the risks they would face should they have to return to their home countries, taken seriously by authorities. This can be at least partly attributed to the fact that, as Annet Koopsen maintains and research supports, opposition to immigration in the Netherlands is especially strong with respect to West Africa.¹²⁹ The Care Coordinator for the shelter where this research was conducted asserts that almost 100 percent of the cases of West African victims who stay at the shelter are closed before reaching trial.¹³⁰ The implication is that these cases are closed more quickly and at a higher rate than the cases of victims from other regions. Furthermore, the Dutch National Rapporteur notes that investigations into trafficking cases involving West African victims are often short-lived and, despite the pressing of charges, not even

125. Email from Richard Korver, to Roëlla Dissels (Jan. 12, 2017, 03:44 EST) (on file with author).

126. See, e.g., Amber Gemmeke, *West African Migration to and through the Netherlands: Interactions with Perceptions and Policies*, 42 URB. ANTHROPOLOGY & STUD. CULTURAL SYSTEMS & WORLD ECON. DEV. 57, 59-60, 81, 83 (2013); Jacob Poushter, *European Opinions of the Crisis in 5 Charts*, PEW RES. CTR. (Sept. 16, 2016), <http://www.pewresearch.org/fact-tank/2016/09/16/european-opinions-of-the-refugee-crisis-in-5-charts/> [<http://perma.cc/UR29-M8ZE>].

127. See generally Nils Christie, *The Ideal Victim*, in FROM CRIME POLICY TO VICTIM POLICY 17 (Ezzat A. Fattah ed., 1986) (distinguishing between ideal and non-ideal crime victims).

128. See EAMONN CARRABINE, PAMELA COX, PETE FUSSEY, DICK HOBBS, NIGEL SOUTH, DARREN THIEL & JACKIE TURTON, CRIMINOLOGY: A SOCIOLOGICAL INTRODUCTION 182-83 (2014); Maggy Lee, *Introduction: Understanding Human Trafficking*, in HUMAN TRAFFICKING 12 (2011); Erin O'Brien, Belinda Carpenter & Sharon Hayes, *Sex Trafficking and Moral Harm: Politicised Understandings and Depictions of the Trafficked Experience*, 21 CRITICAL CRIMINOLOGY 401-15 (2013).

129. Email from Annet Koopsen, *supra* note 124; Gemmeke, *supra* note 126.

130. Emails from Mill Bijnen, Care Coordinator for the Amsterdam Centrum Mensenhandel, to author (Feb. 11, 2017, 07:46 EST; Feb. 22, 2017, 07:38 EST) (on file with author).

officially registered with the Public Prosecution Service.¹³¹ The National Rapporteur links this trend with a lack of information in the statements that these victims provide to authorities within the context of pressing charges, upon which a criminal investigation could be based.¹³² The danger is that stereotypes about West African victims and the quality of the information they can provide may influence criminal justice gatekeepers' treatment of their cases. In other words, decisions about whether to pursue investigations and prosecutions, as well as the level of resources to devote to them, may be based upon preconceived notions rather than on the quality of evidence provided in each particular case. These stereotypes may also interfere with the collection of information, as police may end interviews prematurely and fail to ask sufficient follow-up questions to victims who are presumed to provide scant useful information. To the extent that differential treatment of West African victims is due to discrimination based on national origin, race or ethnicity, it is inconsistent with a human rights-based approach to human trafficking, which requires adherence to the principles of non-discrimination and equality.¹³³

Once victims' cases are closed, their humanitarian stay applications rejected, and their governmental financial assistance discontinued, they typically must move out of the shelter within one week and those without an independent right to remain in the Netherlands¹³⁴ are usually expected to leave the country within one month.¹³⁵ Consequently, victims who face a risk of retaliation

131. DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, *MENSENHANDEL IN EN UIT BEELD II: CIJFERMATIGE RAPPORTAGE 2008-2012* 256-57 (2014); DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, *MONITOR MENSENHANDEL: CIJFERS MOGELIJKE SLACHTOFFERS 2011-2015* 27, 27 n.35 (2016).

132. *Id.*

133. See Conny Rijken, *A Human Rights Based Approach to Trafficking in Human Beings*, 3 *SECURITY & HUM. RTS.* 212, 215 (2009).

134. Examples include a right to EU citizenship or asylum.

135. This timeline information was provided by a member of the shelter staff, who has chosen to remain anonymous. See also U.S. Dep't of State, *Trafficking in Persons Report 346* (2019) (explaining that "foreign victims who ceased cooperation with authorities lost their residency permit and consequently all support services[,] and "[a]uthorities worked with civil society to repatriate foreign victims unable to acquire residency permits") [hereinafter *TIP Report 2019*]). If victims apply for asylum, which they may do after they lose their residence permits based on their trafficking victim status, they may remain in the Netherlands legally while their asylum applications are pending. See Alfons Fermin &

for cooperating with authorities are seldom able to benefit from Dutch protections for trafficking victims once their cases are closed. Their home countries are often ill-equipped to protect them due to resource shortages, unreliable or corrupt police forces, and weak rule of law. In these cases, which are far too common, victims are left in a worse situation than they would have been in had they decided against pressing charges. Disappearing into the shadows to remain in the Netherlands illegally can seem like a better option to these victims than facing the risk of retaliation or other dangerous conditions in their home countries.¹³⁶ Regardless of whether a desire to remain in the Netherlands played a role in participants' decisions-making processes, the principle of *non-refoulement* is implicated in cases where victims would face serious danger if sent back to their home country, or to another country.

In reality, the conditions that non-EU trafficking victims must meet to stay in the Netherlands long-term are very strict, and the majority of those who press charges do not qualify due to the closure of their cases. Simply pressing charges is not enough; victims are only eligible for long-term residency if their case is prosecuted¹³⁷ or if they have maintained temporary residency based on an ongoing trafficking case for three years.¹³⁸ Given that “[m]any THB cases do not lead to prosecution because of lack of evidence and hence residence permits are usually not granted,”¹³⁹ victims who decide to press charges with the hope of being granted permission to remain in the Netherlands on a long-term basis are likely to be disappointed.

Frank Wassenberg, *A Home Away from Home: Housing Refugees in the Netherlands during the European Refugee Crisis*, in ROUTLEDGE HANDBOOK OF HOUSING POLICY AND PLANNING 52-53 (Katrin B. Anacker, Mai Thi Nguyen & David P. Varady eds., 2020).

136. See DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, TRAFFICKING IN HUMAN BEINGS: NINTH REPORT OF THE DUTCH NATIONAL RAPPOORTEUR 224 (2013) (reporting that there are “indications from the field that victims usually drop out of sight when they leave the shelter”).

137. On October 1, 2018, a change in the law entered into force: previously, trafficking victims needed a conviction in their case to be eligible for long-term residency (if they did not maintain temporary residency based on their case for three years), but now they only require a decision to prosecute. Letter from Mark Harbers, *supra* note 97.

138. See TIP Report 2019, *supra* note 135.

139. GRETA 2018, *supra* note 17, at 24.

Like permission to remain in the Netherlands for non-EU nationals, permission to reside in the shelter after the reflection period is a benefit only available to victims who press charges against their traffickers. Two interviewees reported that their wish to remain in the shelter was a factor weighing strongly in favor of pressing charges. Notably, this factor was absent from the results of previous studies with similar populations, including the ones where participants were or had the prospect of residing in shelters.¹⁴⁰ This difference could be attributable to the possibility that victims in the other samples had another viable housing option or greater resources than those who were influenced by this factor in the instant study. For example, one of the women who weighed this factor explained:

[My lawyer] ask me [if I want to press charges] because she was telling me if I don't do that, yeah, they have to ask me out in the street. So where can I go and live, I don't have place to live. Don't have place to go. Don't have nowhere.¹⁴¹

This woman's circumstances also raise questions about the existence of meaningful choice if she believes that she has a binary choice between pressing charges and becoming homeless. The emergence of "permission to remain" as a motivation to press charges, whether with respect to the shelter or to the Netherlands, underscores the significance of structural factors, such as poverty and gender inequality, as constraints upon victims' decision-making processes.

E. Closure and Relief

A handful of participants viewed pressing charges as a way to obtain a sense of closure and relief with respect to their trafficking situations. This rationale weighed exclusively in favor of pressing charges and was, at times, accompanied by other positive feelings. Two participants considering this factor regarded pressing

140. See Brunovskis & Skilbrei, *supra* note 108; BJERKAN & DYRLID, *supra* note 57; CUZUIOC-WEISS & LACROIX, *supra* note 82; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58; Helfferich, Kavemann & Rabe, *supra* note 81; Biljana Meshkovska, Nikola Mickovski, Arjan E. R. Bos & Melissa Siegel, *Trafficking of Women for Sexual Exploitation in Europe: Prosecution, Trials and Their Impact*, 6 *ANTI-TRAFFICKING REV.* 71 (2016); Nikolić-Ristanović, *supra* note 70; RAJARAM & TIDBALL, *supra* note 40; SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10; SURTEES, *supra* note 9.

141. Interview with Participant No. 19, *supra* note 85.

charges as a concrete step toward changing their lives that would provide them with closure and empowerment.

One described the role of this factor during her decision-making process as follows:

[I]t was also, like, you know, you give a chance for life, you know. If you don't press charges, ok, you may always be in the—like feel bad or sad that you did not do anything for the situation, you know. But, and then when you press charges then you feel like, you know, you have decided to move on with your life.¹⁴²

This interviewee conceptualized the decision of whether or not to press charges as one of action versus inaction in one's life. Notably, she also speculated about feelings regarding this decision in the long-term, and suspected that failing to press charges may lead to lifelong regret.

The second participant viewed the opportunity to press charges with the hope that it could lead to great changes in her life and a fresh start. Furthermore, it represented the transition from always putting her trafficker's needs first to acting in her own best interest:

No, [pressing charges] is—I [am going to] do, I think, for do this because maybe for do something good for me because I lose so much. So much time, so much, uh—crying all day, for nothing, you know. And maybe this can help me for born again, you know. For change my person, you know. And for do something good for me. Not for the person. For me. I'm person that if I can help you, I help you . . . I want to help, but [my trafficker] don't help me . . . you know. And I give [him] *all of me, all of me, for nothing.* ¹⁴³

Two other participants expressed a desire to feel relieved as a reason motivating their decisions to press charges. One of these women stated: "I can feel relief for my heart, my chest, my pains I've gone through, my suffering."¹⁴⁴ Her feelings of relief with respect to pressing charges suggest that she is comforted by the action she is taking to address and move on from the suffering she

142. Interview with Participant No. 15, *supra* note 50.

143. Interview with Participant No. 27, in Amsterdam, Neth. (Jan. 28, 2015).

144. Interview with Participant No. 19, *supra* note 85.

endured, which is directly related to the concept of closure. Similarly, Nikolić-Ristanović found that some sex trafficking victims had decided to testify because they “expected to feel better afterwards.”¹⁴⁵ Another interviewee in the present study, who was still making her decision but was not inclined to press charges, shared: “Filing a complaint would probably make me feel a little bit better about it, just more—I would be more at peace with myself.”¹⁴⁶ However, this potential benefit appeared to be outweighed by factors on the other side of the equation for this particular participant, specifically her fear of retaliation from her trafficker and his associates and her belief that pressing charges would be futile.

F. Restitution

Several participants expressed that the opportunity to recoup at least some of the money their traffickers took from them was a factor in their decision to press charges. Almost all of the women in this study were struggling financially, and this was often due to their traffickers having taken their earnings, savings, and other assets. This common practice has contributed to human trafficking’s status as a tremendously profitable crime.¹⁴⁷ One participant described the significant financial damage her trafficker had inflicted upon her and the importance of trying to recover her stolen funds in her decision to press charges as follows:

And that was the reasons, like, at least I was thinking that [my family] could be happy seeing me happy, at least I could buy myself an apartment with this money so I thought maybe I have a chance to—with all this proof—to claim something back. So that was, of course, really, really big reason, as you can imagine. It’s not like 2,000 euros, it’s 200,000 euro. I was like,

145. Nikolić-Ristanović, *supra* note 70, at 115.

146. Interview No. 29, in Amsterdam, Neth. (Apr. 29, 2015).

147. See Kimberly A. McCabe, *Common Forms: Sex Trafficking*, in *HUMAN TRAFFICKING: INTERDISCIPLINARY PERSPECTIVES* (Mary C. Burke ed., 2013); Jamie M. Turek, *Human Security and Development Issues in Human Trafficking*, in *HUMAN TRAFFICKING: INTERDISCIPLINARY PERSPECTIVES* (Mary C. Burke ed., 2013).

yeah, I could buy this apartment with this money and pfff . . .

¹⁴⁸

Another woman, for whom the chance to recover her money was the sole reason for pressing charges, explained: “Well I do the aangifte and I was like, okay, I think about ‘okay I give you all my money, so fucking hell and I don’t get nothing for it, now you go pay it back.’”¹⁴⁹ Similarly, a desire for restitution was a factor weighing in favor of participating in criminal proceedings against their traffickers for a number of victims in Surtees (a “prime motivator”) and Doyle et al.’s studies.¹⁵⁰

For a court to award restitution to victims, their traffickers must be convicted,¹⁵¹ which only occurs for a small minority of trafficking victims who press charges in the Netherlands.¹⁵² However, victims whose cases do result in a conviction are guaranteed to receive any damages the court awards them. This is because the Netherlands has an advance payment scheme in place through which the government pays any damages amount still outstanding eight months after the court issues the final judgment.¹⁵³ The government then seeks reimbursement from the offender.¹⁵⁴ The application of this scheme to trafficking victims in the Netherlands is a positive development that can provide victims with the compensation they are owed even when their traffickers lack funds or try to evade paying restitution by hiding their assets.¹⁵⁵ However, victims typically must wait a long time for payment because the advance payment scheme only applies once there is a final judgment, meaning that the trial and any appeals

148. Interview with Participant No. 37, *supra* note 112.

149. Interview with Participant No. 36, in Amsterdam, Neth. (June 4, 2015).

150. SURTEES, *supra* note 9, at 162-63; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58, at 244.

151. See GRETA 2014, *supra* note 16, at 49.

152. Few trafficking cases are prosecuted in the Netherlands, and even fewer reach convictions. See GRETA 2018, *supra* note 17, at 24; Letter from Mark Harbers, *supra* note 97; TIP Report 2019, *supra* note 135, at 345 (reporting that approximately eighty percent of individuals prosecuted for trafficking crimes were convicted in both 2017 and 2018).

153. GRETA 2014, *supra* note 16, at 49.

154. *Id.*

155. See BJERKAN & DYRLID, *supra* note 57, at 7 (asserting that traffickers often strategically register their properties in their relatives’ names so as to protect them from seizure).

must first be completed, which often takes years.¹⁵⁶ A faster route to receiving compensation is for victims to apply to the Dutch Criminal Injuries Compensation Fund, though it is capped at a lower amount than they could receive through a court proceeding.¹⁵⁷ Moreover, the Dutch National Rapporteur observed that victims from West African countries had their applications for this Fund rejected more often than those from other regions did, thereby providing additional troubling evidence of their low position in the “hierarchy of victimization” within the Netherlands.¹⁵⁸

G. Futility

Three participants felt that pressing charges would be futile. They expressed a lack of confidence in the criminal justice system to hold traffickers accountable, for a variety of reasons. One doubted the ability of Dutch law enforcement to locate her trafficker outside of the Netherlands and suggested the existence of corruption allowing those with “connections” to commit crimes with impunity:

I was concerned, being honest, if [my trafficker] would get, um, any kind of punishment. First, he is not from Holland, he is from Lithuania, he has the family and, um, house there. So he can always go away. Nobody will be searching for him. Second, he has connections. Third, the money he’s taken, he’s spent them already. So, I mean, it’s in the ideal world it’s nice to believe every criminal who does bad things to you is going to be punished, but I wasn’t really, you know, believing this 100 percent is going to happen.¹⁵⁹

156. Jeltsje Cusveller, *Compensation for Victims of Human Trafficking: Inconsistencies, Impediments and Improvement* 36, 47-48 (Aug. 2015) (unpublished M.S. thesis, Vrije Universiteit Amsterdam), [http://www.lastradainternational.org/lisidocs/3226-Compensation for victims of human trafficking - Cusveller.pdf](http://www.lastradainternational.org/lisidocs/3226-Compensation%20for%20victims%20of%20human%20trafficking%20-%20Cusveller.pdf) [<http://perma.cc/V6Z6-RRN2>]; see also OPENBARE MINISTERIE, JAARBERICHT 2018 12, 25 (2019) (reporting that, in 2018, criminal trials lasted an average of 212 days, it then took an average of 232 days for the files of appealed cases to reach the appellate court, and appeal proceedings then lasted an average of 223 days).

157. See DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, *MENSENHANDEL IN EN UIT BEELD: UPDATE CIJFERS SCHADEVERGOEDINGEN 2010-2014*, 6-8, 13 (2015); Cusveller, *supra* note 156, at 32.

158. DUTCH NATIONAL RAPPOORTEUR ON TRAFFICKING IN HUMAN BEINGS AND SEXUAL VIOLENCE AGAINST CHILDREN, *supra* note 157, at 3, 12, 14.

159. Interview with Participant No. 37, *supra* note 112.

Another interviewee was explicit in her belief that corruption would render the process of pressing charges futile. She recalled: “[o]ne time I didn’t want . . . I was like, even if I do it maybe he’ll have money and he will bribe the police.”¹⁶⁰ This consideration appears to be connected to her awareness of police corruption issues in her home country, which Cameron and Newman identify as a “proximate factor” contributing to the perpetration of human trafficking.¹⁶¹

In explaining why she was leaning against pressing charges, another participant articulated her belief that it would take more than a single victim pressing charges to result in a prison sentence for her trafficker. She also expressed concern that his associates would continue his trafficking activities without him:

I’m not sure how my complaint would change things in any way I don’t believe that one complaint will put him to jail . . . then I’m thinking that maybe he has more people behind him that would continue his legacy, even if he goes to jail.¹⁶²

In contrast to these findings, belief in the futility of participating in the criminal justice process did not emerge as a decision-making factor in previous studies with trafficking victims.¹⁶³ Perhaps those participants had been made aware of past successful cases against traffickers and their networks that prevented them from believing that participating in the process would be futile. This or other information could have contributed to a higher minimum degree of confidence in the capabilities of criminal justice authorities and institutions among victims in the other studies.

160. Interview with Participant No. 34, *supra* note 93.

161. See Edward Newman & Sally Cameron, *Introduction: Understanding Human Trafficking*, in *TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITICAL DIMENSIONS* 1, 3 (Sally Cameron & Edward Newman eds., 2008) (identifying proximate factors as policy and governance issues, including police corruption, which interact with structural factors (relating to human trafficking’s broad social, economic, and political context) to create vulnerability to trafficking victimization).

162. Interview with Participant No. 29, in Amsterdam, Neth. (Apr. 29, 2015).

163. See Brunovskis & Skilbrei, *supra* note 108; BJERKAN & DYRLID, *supra* note 57; CUZUIOC-WEISS & LACROIX, *supra* note 82; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58; Helfferich, Kavemann & Rabe, *supra* note 81; Meshkovska, Mickovski, Bos & Siegel, *supra* note 140; Nikolić-Ristanović, *supra* note 70; RAJARAM & TIDBALL, *supra* note 40; SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10; SURTEES, *supra* note 9.

H. Receiving Support

A few participants referred to the emotional support they were receiving from others as a factor weighing in favor of pressing charges. These women generally found the support they received to be empowering. One interviewee described the support and empathy she received from other trafficking victims in the shelter as a reason why she chose to press charges:

Maybe I feel more comfortable coming forward is that where I am right now getting support. There's someone I can talk to all the time and there are a lot of [other women] that are going through the same thing that I've been through, so that gives me the courage to go forward with pressing charges.¹⁶⁴

Another participant explained that the support she received from the shelter staff was instrumental in her decision to press charges:

Because if I was not here, I would *never* press charges. I wouldn't do it. They gave me support and then I managed to take this decision even though it took me six months . . . the people here in the shelter,¹⁶⁵ they were those that supported me taking the decision.¹⁶⁶

Similarly, Helfferich et al. found that support and counseling from third parties fostered victims' willingness to make a witness statement, but this finding was only reported for undocumented victims who were not facing strong pressures from their traffickers to refrain from making a statement.¹⁶⁷

An interviewee who was not inclined to press charges shared that she was receiving support from multiple sources, but that this was not enough to overcome the factors she weighed against pressing charges:

[T]he people always think about . . . talk to me, everybody's very nice and want to support me, I know, the police, everybody [says], " . . . please aangifte doen."¹⁶⁸ That is better

164. Interview with Participant No. 10, in Amsterdam, Neth. (Nov. 28, 2014).

165. The context strongly suggests that she is referring here to the shelter staff rather than to the other victims residing in the shelter.

166. Interview with Participant No. 17, *supra* note 48.

167. Helfferich, Kavemann & Rabe, *supra* note 81, at 139.

168. "Doen" is the Dutch word for "to do." "Please aangifte doen" translates to "please press charges."

for you and maybe you get some money,” but right now I think I’m not in the money.¹⁶⁹

While this participant interpreted the “support” positively, it is troubling (regardless of their purportedly good intentions) that the police and others appear to have attempted to pressure her into agreeing to press charges. This particular woman was quite strong-minded and seemed to have resisted this pressure, but a more malleable victim may bend to pressure (particularly from authority figures), even if she does not actually want to press charges.

I. Link with Trafficker

Several participants revealed that a connection to their traffickers played a role in their decision-making processes. For example, the responses of two women demonstrate how having children with their traffickers influenced their deliberations, albeit in different ways:

For the children. He’s the father of my kids so I feel bad. Thinking of it in all is incredible that I have to press charges against the father of my children. And that my children can’t have a father.¹⁷⁰

The person was the father of my daughter and the family wanted to take her from me. So that was also a reason.¹⁷¹

While both interviewees were concerned about the impact pressing charges would have on their children, the former appeared to feel guilt, while the latter worried about a threat arising from her trafficker’s parental rights. This difference is reflected in the contrasting ways in which they viewed this factor with respect to their decision-making processes: for one, it was a reason not to press charges, but for the other it was a factor in favor of doing so.

Another participant reported an affinity with her trafficker due to their shared background, which she considered a reason not to press charges against him. She explained: “[T]he person who

169. Interview with Participant No. 31, *supra* note 64.

170. Interview with Participant No. 22, in Amsterdam, Neth. (Dec. 9, 2014).

171. Interview with Participant No. 14, *supra* note 54.

brought me, we're from the same country So, inside me I feel bad punish him We speak the same language. We from the same country.”¹⁷² Even though this victim did not have familial ties to her trafficker and she did not know him for very long, their shared nationality and linguistic background was enough to foster a sense of loyalty towards him.

In contrast with the foregoing, one interviewee asserted that the absence of a link between her and her trafficker made her decision to press charges an easy one. She stated: “For me it was very easy because this person is not my friend, he's not my husband, he was not being my pimp[.]”¹⁷³ It is noteworthy that she listed the “pimp-prostitute” relationship as one that would have made her decision with respect to pressing charges more difficult. It is unclear whether this is due to loyalty she would feel towards her pimp, fear that a pimp would retaliate if one of “his” prostitutes cooperated with authorities to investigate and/or prosecute him, or another rationale. Consonant with this participant's perspective, the marriage or romantic relationship some sex trafficking victims in Helfferich et al.'s study had with their trafficker was an influential factor weighing against a decision to make a witness statement.¹⁷⁴

J. Rule of Law

Three participants cited the rule of law in the Netherlands as a factor weighing in favor of pressing charges. Two of them explicitly contrasted the weak rule of law in their home countries with the stronger Dutch rule of law in discussing their consideration of this factor:

I found out there's law in the land and that's the law of the land. Because I was told too that if someone did something like that you, you're supposed to go to the law and get the perpetrator arrested What really helped me come up to the decision is that where I'm from, the law of the land doesn't always prevail,

172. Interview with Participant No. 26, in Amsterdam, Neth. (Jan. 29, 2015).

173. Interview with Participant No. 16, in Amsterdam, Neth. (Apr. 22, 2015).

174. Helfferich, Kavemann & Rabe, *supra* note 81, at 132.

but in the Netherlands here, I was told there's a law, and the law has to be followed.¹⁷⁵

You know why I [decided to press charges in the Netherlands]? Because I don't believe to in Bulgaria the police here do something for my case. Because how impossible I can go there to talk, three, four months, and nothing about my case. Nothing!¹⁷⁶

While both of these interviewees framed this motivation in terms of a comparison, the former emphasized the power of the rule of law in the Netherlands and the latter her exasperation with the weak rule of law in her home country. Notably, inadequate legal regimes and poor law enforcement in source countries have been identified as contributors to the proliferation of human trafficking.¹⁷⁷

The third participant who considered this factor explained why "justice" was an important value underlying her inclination to press charges in terms of the rule of law in the Netherlands:

Justice like if I done something wrong to you. I think you understand. If I done something wrong to you, and you take me to the court, so the judge will decide which punishment for me I think this country have rules. So I think if I done something bad to you, if you take me to the police of course they'll take me to the court so the judge will decide what they have done for you.¹⁷⁸

Except for a single victim in Bjerkan and Dyrliid's study, whose faith in the rule of law contributed to her decision to testify against her traffickers,¹⁷⁹ this factor did not emerge in the aforementioned empirical studies with trafficking victims.¹⁸⁰ The discrepancy could be due to the other samples having less faith in the relevant

175. Interview with Participant No. 10, *supra* note 164.

176. Interview with Participant No. 5, *supra* note 72.

177. See Newman & Cameron, *supra* note 161, at 3; Phil Williams, *Trafficking in Women: The Role of Transnational Organized Crime*, in *TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITICAL DIMENSIONS*, 145, 149 (Sally Cameron & Edward Newman eds., 2008).

178. Interview with Participant No. 2, in Amsterdam, Neth. (June 3, 2015).

179. Bjerkan & Dyrliid, *supra* note 57, at 12.

180. See Brunovskis & Skilbrei, *supra* note 108; CUZUIOC-WEISS & LACROIX, *supra* note 82; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58; Helfferich, Kavemann & Rabe, *supra* note 81; Meshkovska, Mickovski, Bos & Siegel, *supra* note 140; Nikolić-Ristanović, *supra* note 70; RAJARAM & TIDBALL, *supra* note 40; SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10; SURTEES, *supra* note 9.

legal system, lacking knowledge about rule of law in the relevant foreign jurisdiction or implicit incorporation of this factor within other motivations, such as a desire for retribution or to prevent the victimization of others.

One concern with victims giving weight to this factor is that they may feel obligated to press charges rather than do so because of their own personal preferences. They may feel pressured to participate in the criminal justice process simply because it is more reliable and involves more effective and independent institutions than exist in their home countries. It is likely that certain victims are unaware of the truly optional nature of their participation and feel as if they are “supposed to”¹⁸¹ engage with existing criminal justice procedures and institutions.

K. Inspiring Other Victims to Seek Help

One participant explained that she wanted to be a role model for other women by asking the police for help with her trafficking situation:

If the other womans can happen the same with me or this woman, maybe if see that what you do, speak with the police and you ask for help, you want help, you need help, maybe you can have a good life for this, but you need help because alone you don't have.... And maybe this can help the other womans.... This is because so much people don't—this is the problem with people because they don't, uh, don't ask for help, you know. They [think] 'ok I alone. I alone go. I reach my hand and I go.' But, no. If you don't understand something, if you have something you see that is bad for you, speak with one person can you know that this person wants something good for you, you know. The politie or this situation, this person don't want something bad for you. And for this you need—if you have these people for help you, you need to open your, uh, you know, you open for these people for help you, you know. But other womans, they don't think so.¹⁸²

In stating this as a reason why she wanted to press charges, this participant suggests that cooperating with law enforcement and

181. Interview with Participant No. 10, *supra* note 164.

182. Interview with Participant No. 27, *supra* note 143.

other criminal justice actors in the investigation and prosecution of traffickers is helpful to victims. She appears confident that the police act in victims' best interests and want "something good" for them.¹⁸³ Her point about the importance of openness is a bit ambiguous. She may mean that victims should be receptive to offers of assistance or that authorities need full information about a victim's situation as a prerequisite to providing effective, individualized assistance. Alternatively, perhaps she is speaking to the requirement that victims provide information to law enforcement to receive certain benefits for longer periods, such as residency, financial support, and permission to remain in the shelter.¹⁸⁴

This factor was not identified in the aforementioned empirical studies as impacting victims' decisions about their participation in criminal justice processes.¹⁸⁵ While not articulated as a reason underlying their decisions to press charges, a few other participants in the instant study also expressed their belief that victims should be inspired to take action against their traffickers and/or sex trafficking in general. One of these interviewees asserted that "it's very important that all women, also the women who are afraid, learn why they should stand for their rights"¹⁸⁶ and another expressed that she wanted to "empower people to not to be afraid to expose [sex traffickers]."¹⁸⁷

183. *Id.*

184. Following the reflection period, only victims who agree to press charges and who then fully cooperate with criminal justice authorities are entitled to the benefits that accompany trafficking victim status in the Netherlands. See TIP Report 2019, *supra* note 135, at 346 (finding that "foreign victims who ceased cooperation with authorities lost their residency permit and consequently all support services.").

185. See Brunovskis & Skilbrei, *supra* note 108; CUZUIOC-WEISS & LACROIX, *supra* note 82; Doyle, Murphy, Murphy, Rojas Coppari & Wechsler, *supra* note 58; Helfferich, Kavemann & Rabe, *supra* note 81; Meshkovska, Mickovski, Bos & Siegel, *supra* note 140; Nikolić-Ristanović, *supra* note 70; RAJARAM & TIDBALL, *supra* note 40; SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10; SURTEES, *supra* note 9.

186. Interview with Participant No. 12, in Amsterdam, Neth. (June 15, 2015).

187. Interview with Participant No. 35, *supra* note 74.

L. Leaving the Past Behind

One participant reported that her desire to focus on her future rather than discuss her past trafficking situation was a factor weighing against a decision to press charges:

I'm still thinking with [the decision about pressing charges], because I, um—yeah now I think about my own future. And I don't want to look back to my past.¹⁸⁸

This interviewee was very optimistic about her future, believing that in six or seven months she would likely have a “very beautiful life” with her boyfriend,¹⁸⁹ with whom she had already made her future plans.¹⁹⁰ Thus, it makes sense that focusing on her (potentially) happy future rather than on her traumatic past was appealing to her. This participant's situation and optimism about the future was unusual in the research sample, which could help to explain why she was the only one who reported considering this factor during her decision-making process.

A desire to move on from the past and to focus on the future was also reported as a reason why some victims declined to testify in cases against their traffickers in Bjerkan and Dyrlid and Cuzuioc-Weiss and Lacroix's research.¹⁹¹ As in the present study, these findings were associated with hope and optimism about the future, based on positive changes in victims' life situations.¹⁹² Furthermore, Bjerkan and Dyrlid explain that, due to the typically lengthy nature of the criminal justice process, victims' life situations may drastically change between the time they initially agree to testify and the time their traffickers' trials begin.¹⁹³ Victims may not inform individuals with whom they enter into new personal or professional relationships about their trafficking victimization, and participating in a trial can raise the risk that these individuals will find out about victims' pasts.¹⁹⁴ Additionally, anti-trafficking actors and psychologists have attributed

188. Interview with Participant No. 31, *supra* note 64.

189. This participant's boyfriend was not the same man who had trafficked her.

190. Interview with Participant No. 31, *supra* note 64.

191. BJERKAN & DYRLID, *supra* note 57, at 6; CUZUIOC-WEISS & LACROIX, *supra* note 82, at 112.

192. *Id.*

193. BJERKAN & DYRLID, *supra* note 57, at 6.

194. *Id.*

reluctance to testify to the necessity that, in court hearings, victims must “both remember and face, once again, what they have tried hard to forget.”¹⁹⁵ This can make it difficult for them to truly move on with their lives¹⁹⁶ and cause them to relive pain from their pasts.¹⁹⁷ A participant in the present study who had been brought back to the Netherlands to testify in a criminal case against her trafficker described experiencing this firsthand: “for me, [I] think [testifying] is difficult because [for] one year I want to try to forget, I don’t want to really remember. One year I think I ‘ok I can forget, my life is changed, my life is changed.’ But no, you only think so, you know?”¹⁹⁸

M. Disinclination to Discuss Details of Trafficking Situation with Law Enforcement

During the process of pressing charges, victims typically must recollect traumatizing experiences in full detail and share sensitive information with law enforcement. Not surprisingly, some do not wish to face that ordeal. One participant viewed this as a reason not to press charges, stating, “I don’t want to talk with the police in details.”¹⁹⁹ This woman made clear that this was a specific factor weighing against a decision to press charges. She may have felt concern for her privacy or been embarrassed to speak about certain topics and share specifics with strangers. This factor may also be related to the preceding one in that recalling and discussing negative past experiences can make it difficult to look forward toward the future or may interrupt the healing process in certain cases. Another interviewee recalled having these feelings during the process of pressing charges. She explained, “you maybe have decided to put this behind me, but you have to tell everything So it was very difficult to say—certain things are very difficult to say, but you just have to say them.”²⁰⁰

195. BJERKAN & DYRLID, *supra* note 57, at 5; *see also* CUZUIOC-WEISS & LACROIX, *supra* note 82, at 116.

196. BJERKAN & DYRLID, *supra* note 57, at 5.

197. *See* CUZUIOC-WEISS & LACROIX, *supra* note 82, at 116.

198. Interview with Participant No. 5, *supra* note 72.

199. Interview with Participant No. 3, *supra* note 78.

200. Interview with Participant No. 4, in Amsterdam, Neth. (June 12, 2015).

Analogously, Cuzuioc-Weiss and Lacroix document a reluctance among some trafficking victims to share details about their trafficking experiences with the police or in court.²⁰¹ An interview excerpt from one of their participants indicates that she felt embarrassment related to the many questions the police had asked her about her situation.²⁰² Another of their interviewees seemed frustrated that law enforcement officers repeatedly asked for additional details, as this individual felt that he or she had already provided sufficient information to them.²⁰³ This participant also appears to have connected her disinclination to discuss further details of her trafficking situation with “leaving the past behind,” as he or she follows the preceding sentiment with “[n]ow it is time to move on.”²⁰⁴

N. Absence of Choice

The actual degree of “choice” regarding pressing charges that many victims possess, given their situations (particularly with respect to those lacking legal status and resources), is arguably quite limited.²⁰⁵ However, in the case of one participant, the absence of choice was even more overt: she reported that the police had “kind of” forced her to press charges.²⁰⁶ In her situation, a former client of hers had brought her to a police station in Amsterdam because she had told him that she wanted to escape from her pimp. The police then instructed her to write a statement about her situation. She also asserted that the police did not inform her about the reflection period. Although she is a non-Dutch EU citizen and therefore was not entitled to the reflection period under Directive 2004/81/EC or the Convention, she should have been offered it pursuant to domestic law.²⁰⁷ The difference

201. CUZUIOC-WEISS & LACROIX, *supra* note 82, at 109-10, 112.

202. *Id.* at 110.

203. *Id.* at 112.

204. *Id.*

205. See Brunovskis & Skilbrei, *supra* note 108, at 23 (arguing that the “pairing of protection and prosecution serves to create a considerable pressure on victims to cooperate with authorities”).

206. Interview with Participant No. 38, in Amsterdam, Neth. (Apr. 30, 2015).

207. See Vreemdelingencirculaire 2000 (B) § B9(1) (2009), http://wetten.overheid.nl/BWBR0012289/2009-01-01#Circulaire.divisie9_Circulaire.divisie1 [<https://perma.cc/VCS6-VPDA>] (stating that

between this participant's experience and that of the others is likely attributable in large part to timing: she first pressed charges in 2009, which was several years before most of the other interviewees in the study had had contact with law enforcement about their trafficking situations. This woman also had to begin the process of pressing charges against her trafficker once again, in 2011, as the police had lost her documents from the 2009 process. Regardless of whether a trafficking victim is legally entitled to a reflection period, law enforcement should not be forcing or coercing her into pressing charges. Fortunately, the data show that the other participants had not encountered this practice, which is a promising sign that progress has been made towards respecting trafficking victims' rights and agency in recent years.

Coerced cooperation is hardly an issue only affecting trafficking victims in the Netherlands. Bjerkan and Dyrliid's study with victims in Serbia and Moldova revealed that a number of them had been directly or indirectly forced to testify against their traffickers.²⁰⁸ Participants reported a variety of coercive tactics authorities had used, including the threat of or actual imprisonment and being prevented from leaving the country.²⁰⁹ Likewise, police detention of victims in Germany served as strong pressure for them to give witness statements.²¹⁰ Furthermore, police authorities from Serbia, Moldova, and Italy openly described their use of "indirect pressure and manipulation" to persuade victims to testify, such as "taking into consideration, and benefitting from, the fact that they have been humiliated and lost their self-confidence."²¹¹

Forcing victims to participate in the criminal justice process is antithetical to a victim-centered, human rights-based approach.²¹² Doing so undermines their agency²¹³ and deprives them of their right to make informed decisions during the reflection period about whether to cooperate with authorities in the investigation

non-Dutch EU citizens can derive residency rights from the regulation for foreign victims of human trafficking so long as they do not claim rights under EU law).

208. BJERKAN & DYRLIID, *supra* note 57, at 9.

209. *Id.*

210. Helfferich, Kavemann & Rabe, *supra* note 81, at 135.

211. BJERKAN & DYRLIID, *supra* note 57, at 9.

212. *See* Pescinski, *supra* note 13.

213. *See id.*

and prosecution of their traffickers.²¹⁴ Moreover, it reduces victims to mere instruments of the criminal justice system rather than treating them as the rights-holding, agentic individuals that they are.

V. DECISION-MAKING FACTORS ABSENT FROM THIS STUDY

While the aforementioned empirical studies with similar populations have yielded analogous findings with respect to certain decision-making factors emerging in the present study, these other studies have also detected additional factors which were absent from the present study's results. These discrepancies merit consideration. One such factor is stigma related to trafficking victimization. For certain victims in Bjerkan and Dyrlid's study, this factor weighed against testifying because they feared that doing so would increase the likelihood that their family, friends, and community members would find out about their victimization, leading to stigma and social exclusion.²¹⁵ The discrepancy between the findings may be due, at least in part, to geographical proximity. As compared to the women in Bjerkan and Dyrlid's research, who were either from the same country or a country close to where the trial was taking place, most of those in the instant study are from nations which are much farther away from the location where court proceedings would be held, should their cases reach trial (i.e. the Netherlands). Perhaps the comparatively greater distance between the location of the trials and that of many participants' home countries in the present research allayed any concern that news of participants' victimization would reach their local communities.

Another factor arising in Bjerkan and Dyrlid's findings but not in those of the present study is victims' feelings of loyalty and guilt connected with the receipt of relatively small amounts of money from their traffickers.²¹⁶ Bjerkan and Dyrlid contend that by allowing sex trafficking victims to keep a small percentage of the profits from their exploitation, traffickers strategically foster a

214. See Convention, *supra* note 3, art. 13; Directive 2004/81/EC, *supra* note 3, art. 6.

215. BJERKAN & DYRLID, *supra* note 57, at 4.

216. *Id.* at 8.

sense of indebtedness and loyalty among their victims.²¹⁷ These feelings can translate into a reluctance to testify against their traffickers.²¹⁸ This theme did not emerge among the sample in the present research but may apply to other sex trafficking victims in the Netherlands.

Fear of the police was a factor weighing against participation in the criminal justice process for victims in several of the relevant studies. Helfferich et al. found that this fear was often instilled by traffickers and was connected with fear of imprisonment and deportation for victims without legal residence status.²¹⁹ Furthermore, some trafficking victims in Cuzuoic-Weiss and Lacroix's study were reluctant to cooperate with authorities because they were afraid of being criminalized.²²⁰ One of their participants reported her fear of being jailed if she failed to answer law enforcement's questions correctly while giving a statement about her trafficking victimization.²²¹ Fear of being criminalized or mistreated by police also emerged among Burmese women in Thailand in Segrave et al.'s research, which they linked with discrimination based on race and national origin.²²² In contrast, fear of the police did not appear as a decision-making factor in the present study. This discrepancy could be due to the fact that most participants had been brought to the shelter by Dutch police officers, and the majority reported having had positive experiences with them. It is also unlikely that any victims who are very frightened of the Dutch police would have been at the shelter where most of the participants were residing, as police contact is a requirement for this population. Another possibility is that fear of law enforcement may be more prevalent in jurisdictions where sex work is illegal and trafficking victims are often charged with prostitution offenses, unlike in the Netherlands.²²³

217. *Id.*

218. *Id.*

219. Helfferich, Kavemann & Rabe, *supra* note 81, at 138, 141-42.

220. CUZUIOC-WEISS & LACROIX, *supra* note 82, at 110.

221. *Id.*

222. SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10, at 90.

223. Rebecca Hayes-Smith & Zahra Shekarkhar, *Why is Prostitution Criminalized? An Alternative Viewpoint on the Construction of Sex Work*, 13 CONTEMP. JUST. REV.: ISSUES IN CRIM., SOC. & RESTORATIVE JUST. 43 (2010). *See also* RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR*

A final factor worth noting is a lack of identification with “victim” status. Segrave et al. found that some participants in their study did not perceive themselves to be victims and that this factor weighed against cooperating with criminal justice authorities.²²⁴ Instead, they often viewed themselves as migrant workers who had experienced bad luck as a result of a particular decision they had made.²²⁵ It is unsurprising that this factor did not emerge in the present study because almost all of the women interviewed were receiving assistance based on their status as trafficking victims. Thus, they had to accept being labeled as such, even if only to the extent required for pragmatic purposes.

*VI. DECISION-MAKING IN CONTEXT: RECOGNIZING AND
LOOSENING THE CONSTRAINTS*

The operation of the foregoing decision-making factors cannot be fully understood in isolation from the broader socio-legal context within which victims make their decisions about whether to participate in the criminal justice process. As noted in the discussion of various factors, contextual structures and forces can constrain victims’ exercise of agency by limiting the scope of their viable options. For example, structural factors such as poverty, economic inequality, and race-, ethnicity-, and gender-based discrimination and violence (which often contribute to victims’ vulnerability to being trafficked in the first place),²²⁶ combined with state policies making residence permits, continued stay in specialized shelters for human trafficking victims, and other assistance following the reflection period conditional upon victims’ agreement to press charges, constrained participants’ options and imposed considerable pressure upon them to press charges. This is reflected in the weight some interviewees gave to permission to remain in the Netherlands, permission to remain in the shelter, and restitution in their decision-making processes. Furthermore, a lack of anonymity for most victims in the criminal

A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF 135-39 (2011).

224. SEGRAVE, MILIVOJEVIC & PICKERING, *supra* note 10, at 85.

225. *Id.*

226. See Newman & Cameron, *supra* note 161, at 1-3; Cameron & Newman, *supra* note 116, at 21-57.

justice process and the absence of a right to bring certain non-EU citizen family members who are vulnerable to reprisals to the Netherlands, along with the proximate factors of inadequate legal regimes, poor law enforcement, and corruption in their home countries,²²⁷ contributed to the strong influence of fear of traffickers and their associates in many participants' deliberations.

Adding another layer of complexity is that, for a number of women, effective decision-making appeared to be constrained by a lack of information about the nature of the Dutch criminal justice process and typical case outcomes. This was reflected in the belief many of them expressed that if they pressed charges, their traffickers would be punished and prevented from trafficking other victims. For some, this was also connected to a belief that they would be able to maintain long-term legal residency based on their assistance with a case against their traffickers. Inaccurate beliefs fueled by a lack of or incomplete information about the likely outcomes of pressing charges can distort victims' decision-making and call into question whether they are enabled to make an "informed decision" about whether to cooperate with authorities, in accordance with Directive 2004/81/EC and the Convention.²²⁸ Thus, it is important to view victims' decision-making processes against the backdrop of external, contextual factors that impose constraints upon their post-trafficking exercises of agency.

These constraints could be mitigated through certain victim-centered law and policy measures. First, the unlinking of residence permits, permission to stay in shelters, and other forms of assistance from both victims' willingness to press charges and the outcomes of their cases would alleviate pressure to press charges in order to have their basic needs met.²²⁹ Moreover, doing so would allow victims' needs to drive the duration of assistance and protection rather than their usefulness in furthering state prosecutorial goals. Regarding victims' fear of reprisals against themselves and their loved ones, providing adult victims with the right to bring all threatened family members to the Netherlands for protection (and not only partners and children) would loosen the

227. See Newman & Cameron, *supra* note 161, at 1, 3.

228. Directive 2004/81/EC, *supra* note 3, art. 6(1); Convention, *supra* note 3, art. 13(1).

229. See Rijken & Römken, *supra* note 5, at 94.

constraining power of this factor. Making the option for full anonymity more widely available to victims who are at risk for retaliation²³⁰ and removing the addresses of specialized shelters from the Internet would also be helpful policy changes in this regard.²³¹ With respect to victims' inaccurate beliefs about likely outcomes of pressing charges, the Netherlands should adopt a policy requiring the communication of additional information to victims towards the beginning of the reflection period, including the probable trajectory of their case, estimated timelines, and typical sentencing practices, in order to enable them to make more informed decisions about pressing charges. This would also allow them to better manage their expectations and plan for the future. Perhaps the greatest challenges to address are the broad, structural forces such as poverty, entrenched discrimination, and gender-based violence,²³² which constrain individuals' decision-making both before and after trafficking victimization. These require countries to devote significant resources and engage in sustained cooperation with one another to mitigate. The same applies to proximate factors, including corruption and weak rule of law.²³³ Given the difficulty of effectively tackling the global iniquities which restrict victims' agency, destination countries must ensure that their laws and policies provide trafficking victims with a reprieve from, rather than exacerbate, their constraining effects.

VII. CONCLUSION

The research reveals that trafficking victims often engage in a complex balancing of multiple factors when deciding whether or

230. It should be recognized that full anonymity is only likely to be an effective measure in cases involving multiple victims who had substantially similar experiences with the defendant so that the defendant will not be able to identify the victim through the details of her testimony.

231. See, e.g., *ACM-COSM*, HVOQUERIDO, <http://hvoquerido.nl/locatie/acm-cosm/> [<http://perma.cc/H4T9-RB3C>] (last visited Mar. 15, 2020). See also Convention Explanatory Report, *supra* note 3, at 48 (stating that "the address of any accommodation needs to be kept secret and the accommodation must be protected from any attempts by traffickers to recapture the victims").

232. See Newman & Cameron, *supra* note 161, at 1-3; Cameron & Newman, *supra* note 116, at 21-57.

233. See Newman & Cameron, *supra* note 161, at 1, 3.

not to press charges against their traffickers, which supports the notion that, rather than “passive objects . . . incapable of making reasoned judgments,”²³⁴ trafficking victims are deliberative, rational, and agentic individuals. The most prevalent of the factors considered among the sample were retribution for harms inflicted by their traffickers, fear of their traffickers and/or traffickers’ associates (primarily fear of retaliation), and a desire to prevent the victimization of others. However, the less prevalent factors should not be overlooked. Three of them—futility, permission to remain in the shelter, and inspiring other victims to seek help—were not identified in previous empirical research with similar populations and contribute to a fuller picture of the range of victims’ motivations. Possible reasons why this study has detected a wider range of decision-making factors than previous studies include greater time devoted to probing victims’ decision-making processes during the interviews and the fact that this sample was more diverse (in terms of home countries represented) than that of the other studies.

Understanding the full range of victims’ potential concerns, priorities, and perspectives is a prerequisite to improving the support and services provided to them during and following the reflection period. It can sensitize the actors working with victims in the post-trafficking period to a fuller spectrum of their possible concerns and goals, and open doors to more wide-ranging and tailored support. It can also assist with the identification of shared interests among victims and criminal justice actors, such as preventing future victimization and retaliation, holding traffickers to account for their crimes, inspiring victims to seek assistance, and respecting the rule of law. Recognizing these shared interests can foster rapport and mutual collaboration among victims, law enforcement, and other key criminal justice stakeholders. This would discourage the treatment of victims as mere prosecutorial tools. However, whether or not victims’ interests align with those of the state, they must be empowered to pursue them, if a victim-centered, human rights-based approach is to be followed in practice.

234. Jordan, *supra* note 2, at 30.

