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Beyond the dichotomy between migrant smuggling and human trafficking: a Belgian case study on the governance of migrants in transit

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Annexes

Annex I

Examples Interview Guides



Universiteit
Leiden



QUESTIONNAIRE MINISTRY OF JUSTICE

General

1. Can you each describe your role within the Ministry of Justice?
2. Can you describe the role of Ministry of Justice in practice within the Inter-departmental Coordination Unit for combating smuggling and trafficking in human beings?
3. Do you see the fight against irregular migration and smuggling and trafficking as related? If so, can you give an example of this link?
4. Based on your experience, what would be the biggest challenges that you face to tackle human trafficking and/or human smuggling?
5. Did you perceive an evolution/change when it comes to the phenomena of human smuggling? More or less professionalization of the actors, new techniques, new modus operandi, new routes, different groups involved, etc.?

EU

6. To what extent do you feel that the decisions that are taken at the European Union level with regard to migration and border control as well as with regard to the fight against human trafficking and human smuggling, affect your daily work?
7. Do you feel it is useful to be part of the European Union when it comes to combatting human trafficking and human smuggling?
8. How do you concretely are kept up to date with the European legal/policy changes that occurred in the field of human trafficking/smuggling and irregular

migration? Do you have a role in terms of the communication of these information to the other actors (newsletter/training/staff meeting, etc.)?

9. What changes do you see in your daily work since the permanent border control at Schengen borders was abolished?

Institutions

10. What is the relationship between the local and/or federal police and the Ministry of justice in the event of HS and HT cases?

a. Same question with the relation with the ministry of foreign affairs.

11. Could you describe your relationship with the Public Prosecutor Office (at all levels including the federal one) for cases of human trafficking and human smuggling? What are the procedures put in place?

12. The fight against 'transmigration' is a priority of the government and is currently high on the agenda. The same applies to the fight against smuggling and trafficking in human beings, with a view to the national security plan (2015-2018). Do you consider these different priorities to be complementary or contradictory?

13. What is your perception on the international collaboration in cases of human trafficking and human smuggling.

14. In particular, how do you perceive the roles of Frontex, Europol and Eurojust.

15. Do you collaborate and exchange with other Ministries of Justice at the European level? If so, how and at what frequency?

Policy-making

16. General: could you provide us some insight on the policy-making process related HS and HT.

17. Who are the main actors involved in the policy-making process related to matters of HS and HT?

a. More specifically, could you pinpoint the organizations/institutions (whether governmental or non-governmental/experts/partners) that are consulted when new laws/drafts/policies are adopted?

b. Are first line actors (police officers, labor inspectors, members of the specialized reception centers) consulted in that process?

c. How would you describe their roles (daily work) on the ground?

18. As these matters are subject to EU regulations, who is representing Belgium at this level and how? Do you feel like the Belgian approach on these phenomena is being adequately represented? If so, could you provide an example?

EXAMPLE INTERVIEW GUIDE – PROSECUTOR

*translated from French/Dutch – adapted to each prosecutor depending on their PPO which includes the Labour Prosecutor Office. The interview guide also contained quotes from the work published (either in doctrinal articles/national rapporteur reports or in the press by themselves or by other specialised prosecutors. These quotes were used as prompts and selected based on the specialisation of the respondent.

General

1. Can you each describe your role within your institution (depending on the public prosecutor office/also several (former and current) members of the GRETA?
2. In your daily work, how do you concretely distinguish between cases of trafficking and smuggling of human beings?
3. What is the distinction between article 77bis (assistance to entry/transit/stay) and the migrant smuggling *stricto sensu* (77) when there is no patrimonial benefit? What constitutes concretely « intention délictuelle » (how is interpreted)?

Institutions

4. Can you describe the relationship between the federal police, the local police when it comes to identifying and investigating cases of trafficking and smuggling of human beings?
 - a. Can we talk about systematic contact and assistance between the different levels?
5. Could you describe your relationship with the police (both local and federal) for cases of human trafficking and human smuggling? What are the procedures put in place?
6. Can you describe the relations between the different public prosecutor offices: Public Prosecutor, Labour Prosecutor and Federal Prosecutor's Office?
7. Can you describe the relationship between the PPOs and the NGOs (reception centre) in charge of victims of human trafficking/migrant smuggling.
 - a. Are there conflicts/clashes of priorities in practice? And if so, what are the consequences? E.g.: difference between zonal security plan and national security plan?
8. Based on the national security plans (2015-2018) : the fight against migrant smuggling is now a priority. Do you perceive a change in terms of investigation due to this change (proactive and not reactive/ increase of means/ training)?

9. Are there conflicts/clashes of priorities in practice? And if so, what are the consequences? E.g.: difference between zonal security plan and national security plan?

Legal/technical (questions selected based on the specialisation of the respondent)

10. Reaction on doctrinal opinion written by on specialised magistrate: "The law seems to protect the national borders more than the migrants in the sense that the one who transports an irregular migrant or rents him a flat at normal price can be prosecuted on the basis of article 77bis of the law of 15 December 1980".

11. The offence of HT in Belgium is broad. Consequence: jurisdictions reluctant to use it and divergence of interpretation between prosecutors/judges in practice (doctrinal opinion). Is this a reality and if so, how do you explain it? "Only the most serious cases can be qualified as trafficking.

12. In the last report issued by the National Rapporteur, one of your colleague stated that 'police officers with empathy' were the most able to pick the 'good migrant' to talk to in order to have concrete intelligence on the situation. Could you elaborate on that? What is an empathic police officer?

13. Clash between the HT offence and the representation that people of the ideal victim (work of Lavaux-Legendre – sexually exploited, passive, female and weak). Impact of these stereotypes on the fight against the phenomena, notably for trafficking for labour exploitation ?

14. Reflections on the use of the term 'transmigrant' – potentially using Claes' (2018) quotes on the term described as 'dehumanising', allowing for the offloading of responsibility.

EU

15. Do you think it is useful to be part of the European Union when it comes to combatting human trafficking and human smuggling?

16. To what extent do decisions taken at EU level on migration, border control and anti-trafficking affect your daily work?

17. How does the lack of permanent border control in the Schengen area affect migrant smuggling in Belgium?

18. Has your work changed since 2015 and if so, to what extent?

19. What is your perception on the international collaboration (particularly at the EU level) in cases of human trafficking and human smuggling.

- a. In particular, how do you perceive the roles of Frontex, Europol and Eurojust.

EXAMPLE INTERVIEW GUIDE – POLICE

General

1. Could you describe your role within your institution?
2. In your day-to-day work, how do you distinguish cases of human trafficking and human smuggling? Could you provide a concrete example?

EU

1. To what extent do you feel that the decisions that are taken at the European Union level with regard to migration and border control as well as with regard to the fight against human trafficking and human smuggling, affect your daily work?
2. Does the Federal Police keep you up to date with the European and/or national legal/policy changes that occurred in the field of human trafficking/smuggling and irregular migration? And if so, how (newsletter/training/staff meeting, etc.)?
3. Do you feel it is useful to be part of the European Union when it comes to combatting human trafficking and human smuggling?

Perception with regards to migration and border(s)

1. Based on your experience, what would be the biggest challenges that you face to tackle human smuggling?
 - Based on your experience? Is the transit migration a new phenomenon? If so, how?
 - How does transit migration affects your daily work? (Also prompt/quote on the use of the term transmigrant – useful and why?)
 - Is there a conflict in terms of priorities at the different levels of governance?
2. What would be a memorable work story or a memorable individual(s) that you encountered while doing your job? You may also retell a story that happened to one of your colleague, even if you are not a character in the story.
3. What changes do you perceive in your day-to-day work since the permanent control at the intra-Schengen borders were removed?
4. In the same line, did you perceived a change in your work (related to human trafficking/smuggling) since the start of the migration crisis of 2015? Is so, do you have concrete examples on how your work has changed?

5. Did you perceive an evolution/change when it comes to the phenomena of human smuggling? More or less professionalization of the actors, new techniques, new modus operandi, new routes, different groups involved, etc.?

- Could you describe the smuggler's profile?

6. When you encounter a migrant that is a possible victim of human trafficking/ aggravated form of smuggling, could you describe the feelings that you have towards him/her?

a. Does this feeling change depending on the circumstances and if so which ones?

Institutional collaboration

a. National level

1. Could you describe the relationship between the Federal Police and the Local Police when it comes to identify and investigate cases of human trafficking and human smuggling?

a. Is there a clear division of tasks?

2. Can we talk about contact and assistance between the local police and the federal police in cases of human trafficking and human smuggling?

3. Could you describe your relationship with the Public Prosecutor Office and judges for cases of human trafficking and human smuggling? What are the procedures put in place?

4. Could you describe your relationship with the specialized NGOs for cases of human trafficking/smuggling? What are the procedures put in place and how does this exchange of information work in practice?

b. International level

5. What is your perception on the international collaboration in cases of human trafficking and human smuggling. In particular, how do you perceive the roles of Frontex, Europol and Eurojust.

6. Do you remember cases where you received the assistance of one of these three institutions and if so, how did it take place?

Annex II

Example Consent Form (non-anonymisation)

CONSENT FORM

Project: Combatting Human Trafficking and Human Smuggling in intra-Schengen Border Areas

Who is responsible for this research project? Maartje van der Woude, Professor, Chair of Law and Society, Leiden University; Roxane de Massol de Rebetz, PhD candidate, Leiden University. Both are researchers at the Van Vollenhoven Institute for Law, Governance and Society (Leiden Law School – vollenhoven@law.leidenuniv.nl). The research is partially funded by the National Dutch Police (The Hague).

What is the aim of the project?

This research aims to better understand the phenomena of human trafficking and human smuggling and their intersection in practice in the specific context of intra-Schengen border areas (focus Western Mediterranean Route). For this purpose, the research aims to:

- Identify the legal and operational framework set in place to tackle these phenomena in the different European Member States under studied (Spain, France, Belgium).
- Understand the perception of relevant actors (e.g. border police officers, workers of NGOs) on human smuggling and its eventual intersection with human trafficking.
- Understand how first line actors deal with these types of crimes and the everyday conditions and organisational culture that allow them to tackle these phenomena or, eventually the conditions/difficulties that prevent them to do so.

What is asked of you during this research:

You are asked to participate in an interview or a focus group discussion of 1 to 2 hours with the researchers. The focus group discussion will revolve around the topic mentioned above and the experience, perception and view of the professional on the phenomena of human trafficking and human smuggling in their specific countries. In order to have the most accurate information, this interview/focus group discussion will be recorded, with the help of a digital recorder.

Are there risks or advantages to participate in this research?

We do not foresee any risks or discomfort from your participation in the research. There are no anticipated direct benefits of the research to you. There is no financial compensation for the participation in the research. However, your participation will help to better understand the challenges faced by the authorities to combat human smuggling and human trafficking.

What do you do with my answers?

The answers in the form of transcripts and researchers' notes will be analysed and compared with the answers of other research participants together with desk research results and a legal analysis on the legislation on human trafficking and human smuggling in the countries aforementioned. The results will be the basis for a report for the National Dutch Police and academic outputs such as publication in academic journals and conference presentations.

How will you handle the information gathered?

As you are taking part of this research as a unique national expert on human trafficking and/or human smuggling, we foresee difficulties in the process of complete de-identification. Various experts on the topic might be able to deduct your identity on the basis of the information provided. Your crucial role and expertise on human trafficking and/or human smuggling in your country constitutes the value of the data gathered. Hence, the quality guarantee of the information is dependent of your specific position and expertise on the topic.

For that reason, personally identifiable information will be reported in the research product(s) in the form of your professional function. Moreover, only trained research staff will have access to your responses. Within these restrictions, academic results of this study will be made available to you upon request. As indicated above, this research project involves making audio recordings of interviews with you. The audio recordings will be transcribed either by the researchers or by a third party that is bound to strict secrecy and confidentiality which is enshrined in a data processing agreement between the firm and the University. Transcribed segments from the audio recordings may be used in published forms (e.g. Journal articles and book chapters). The audio recordings and the transcripts, forms, and other documents created or collected as part of this study will be stored securely at Leiden University. For academic integrity, data is being kept securely for 10 years after the end of the study.

Do I have to answer all the questions?

No. Your participation is entirely voluntary. You may refuse to answer any question. You may decide to remove yourself from the research also during the interview / focus group discussion. You may signify your wish to have your personal data remove from the research by contacting one of the two principal investigators.

What if I have other questions during the study?

If you have more questions about this research or your role in it, please contact Maartje van der Woude at M.A.H.vanderWoude@law.leidenuniv.nl or by phone at Leiden University at tel: +31 71 527 7552 or Roxane de Massol de Rebetz at r.m.f.de.massol.de.rebetz@law.leidenuniv.nl or by phone at Leiden University at tel: +31 71 527 7260.

CONSENT

Please tick the YES/NO boxes below	YES	NO
I have read the information provided above, I understand the purpose of this research and I have obtained answers to my questions regarding my participation. I know that I can stop participating at any time without having to justify my decision.		
I freely consent to take part in this research by giving this interview.		
I understand that personal information collected about me that can identify me [e.g.,my name or professional contact details] will be shared within the study team		
I give my consent to the digital audio recording of the interview		
I am aware that I can withdraw my consent to the digital audio recording during the interview at any time		
I give my consent that my answers can be quoted in the form of my professional function and not include any other personal details in research outputs		
I give permission for the de-identified transcripts of my answers as well as the researchers' notes will be archived so it can be used for future research and learning.		
I have been given a copy of this consent form co-signed by the interviewer.		
I agree that personal name can be used for quotes		

My name (capital letters)

My signature

Date

As researcher for the project, I have explained the whole of the project and remain available to answer your questions.

Signature of the researcher

Date

Curriculum vitae

Roxane de Massol de Rebetz was born in Liège (Belgium) on August 10, 1991. She obtained her bachelor's degree in Law from the University of Namur (Belgium) in 2013 and her master's degree in Law (specialization in Public Law) *magna cum laude* from the Université Libre de Bruxelles (Belgium) in 2015. After an internship in private banking, she started a master at Leiden University (the Netherlands) in Crime and Criminal Justice from which she graduated *cum laude* in March 2017. For her master thesis, she conducted a critical analysis of newly adopted French counterterrorist reforms through the lens of exceptionalism. From August 2017, she started to work at the Van Vollenhoven Institute for Law, Governance and Society (vvi) at Leiden University, Leiden law School, as a teaching assistant. Together with her supervisor prof. dr. mr. Maartje van der Woude, she obtained funding from the National Dutch Police to research questions related to migrant smuggling and human trafficking within the context of Intra-Schengen mobility and conducted experts' interviews in France, Spain, and Belgium. From August 2018, she worked as a PhD candidate within the vvi under the supervision of prof. dr. mr. Maartje van der Woude, prof. dr. Masja van Meeteren and prof. dr. Joanne van der Leun. Since December 2023 she works as an assistant professor of Law and Society at the vvi.