

FNV input on the role of workers organisations in preventing and addressing contemporary forms of slavery

March 31st 2024

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Following a call for input on the role of workers' organisations in preventing and addressing contemporary forms of slavery, the Dutch Trade Union Confederation has collected information relating to the input sought by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

The Dutch Trade Union Confederation (*Federatie Nederlandse Vakbeweging, FNV*) is the largest trade union in the Netherlands, representing over 700.000 members. It protects worker interests both through political agitation and through collective bargaining with employers and employers' organisations. FNV engaged in various campaigns to prevent abuses of workers by employers, including situations that can be classified as contemporary slavery.¹

Trade union role in preventing contemporary slavery

FNV has in the past successfully combatted the aforementioned combination of employment and tenancy through organising efforts and political lobbying.² However, in most other cases, FNV has found it difficult to tackle the worst issues in Dutch labour relations. These issues are caused mainly by a power imbalance between employers and employees, to the extent that the traditional power balancing afforded by trade unions cannot easily be enacted. Many employees are in such precarious positions that they cannot even properly engage with trade unions. The Dutch government, meanwhile, has been unable or unwilling to restore a balance between employers and employees. Below these problems will be detailed.

Trade union rights

Trade union rights in the Netherlands are legally protected in the Netherlands through case-law. The Netherlands has a combined monistic-dualistic system of treaty implementation, which ensures that some but not all treaties to which the Netherlands is party function directly as Dutch law in the domestic legal system. Among these are the European Convention of Human Rights, the International Covenant for the Protection of Civil and Political Rights and the European Social Charter. The International Covenant on Economic, Social and Cultural Rights is not subject to direct implementation in the domestic legal order.

In the Netherlands, the most representative trade union in a sector has a right to enter into collective negotiations with an employer or employer group.³ However, this right is practically of limited use because while employers are expected to enter into collective negotiations, they are under no obligation to enter into a collective agreement. This means that, while a judge can rule that a trade union has a right to sit at the negotiating table, that ruling cannot compel the employer to actually engage productively with trade unions.

¹ <https://www.bnnvara.nl/joop/artikelen/fnv-wat-arbeidsmigranten-in-nederland-meemaken-is-moderne-vorm-slavernij>

² <https://www.fnv.nl/migrantworkers/news/separation-of-employment-and-accommodation-a-posit>

³ Hoge Raad 22 December 2023, ECLI:NL:PHR:2023:1211 (TUI Airlines)

This right is limited in various ways FNV sees as detrimental to the right to organise and the right to collective bargaining. First and foremost, the right of trade unions to enter company premises is subject to the approval of the employer. Property rights in the Netherlands are used, therefore, to prevent trade union representatives from engaging with employees. This is especially egregious in cases of abattoirs and agriculture, where employees are mainly migrants unfamiliar with the Dutch language or labour system.⁴ In many of these cases, employers also provide housing in locations from which they attempt to bar trade union representations as well, ensuring that these migrant workers can neither be reached at home or at work. Some employers also confiscate the passports of migrant workers.

A second detriment to the right to organise is the fact that there is no strict legal requirement for trade unions to be independent. Dutch law defines a trade union as a *vereniging* (association) which includes in its articles of association/constitution the purpose of concluding collective labour agreements. In other words, since a *vereniging* is a legal entity which has at least two founders, any two people can adopt articles of association/constitution and found a recognised trade union. This has led to a number of situations where a non-representative organisation dependent on employers, recognised by law as a union, has undermined the right of independent trade unions to enter into collective bargaining.⁵

A third detriment to the right to organise are the limitations to the right to strike. Without the right to strike, trade unions cannot fully make use of their right to organise and to enter into collective agreements, since they become dependent on employer willingness to grant certain requests. Lower courts have consistently applied broad limitations to the right to strike in order to protect 'social needs', such as delivery of Valentine's Day flowers, Christmas cards, and preventing delays at airports so people can go on holiday abroad. More details can be found in the complaint entered by FNV, CNV and ETUC with the Committee of Experts of the Council of Europe, no. 201/2021.⁶ Moreover, employers have broad possibilities to employ strike-breakers.

Forced Labour Convention No. 29 and Abolition of Forced Labour Convention No. 105

FNV and other trade unions have on numerous occasions expressed concerns to the Dutch parliament, enforcement agencies and other relevant stakeholders concerning the fact that the number of cases against labour exploitation brought to the Dutch Public Prosecution Office is diminishing annually, while abuse of workers increases and victims are not adequately protected in the Netherlands.

It is most urgent that the existing enforcement instruments and mandates are used to achieve effective supervision, detection, prosecution, and conviction of labour exploitation. At this moment little or no use is being made of the options of imposing fines, shutting down operations or imposing a penalty. If these existing resources were to be used effectively and enforcement agencies take more rather than less action, many cases can already be tackled, according to the Dutch Court of Audits.⁷ The situation in the road transport sector, for example, is such that the FNV had to take the

⁴ Tweede Kamer, vergaderjaar 2022–2023, 28 286, nr. 1269

⁵ <https://nos.nl/artikel/2383120-vakbonden-kwaad-op-piepkleine-bond-die-lot-200-000-uitzendkrachten-bepaalt>

⁶ <https://www.coe.int/en/web/european-social-charter/-/no-201-2021-european-trade-union-confederation-etuc-netherlands-trade-union-confederation-fnv-and-national-federation-of-christian-trade-unions-in-the>

⁷ <https://english.rekenkamer.nl/publications/reports/2021/09/28/offenders-scot-free-victims-not-helped>

Dutch Labour Inspectorate (successfully) to court to demand the enforcement of the law.⁸ The Dutch situation is defined partially by broad ‘paper rights’, which the relevant agencies never effectuate in practice.

As the Dutch Ministry of Social Affairs points out, extra funds were given to the Netherlands Labour Authority. The Dutch Court of Audits has investigated to what extent the extra funding has led to more enforcement. The outcome was very clear; enforcement efforts in the Netherlands remain ineffective. On September 28, 2021, the Dutch Court of Audits reported that perpetrators of labour exploitation in the Netherlands often go unpunished and victims are rarely provided with proper help and support. Also the Dutch Rapporteur on Human Trafficking made it abundantly clear year after year – on multiple occasions – that labour exploitation and criminal exploitation often go unpunished in the Netherlands.

FNV is alarmed, almost on a daily basis, by testimonies of exploitive working situations involving excessive overtime, severe underpayment, foreign workers’ high dependency on employers or temporary employment agencies, social isolation, random fines or deduction, intimidation, dangerous working places, and unhealthy working environments. Some of the cases are examples of violations of labour laws and should be dealt with through civil or administrative law. But FNV also encounters cases of workers with indications of severe labour exploitation that should be prosecuted through criminal law, yet FNV continues to find that enforcement in these cases is lacking.

Participation Act

The aim of the Participation Act was to stimulate people on social benefits back to work. Instead of a safety net providing people without work (or enough earnings through work) with a sufficient income, the Participation Act has become a transactional act: in order to receive a safety net (social benefit) you have to do something in return (*‘tegenprestatie’*). The government says the aim of the *‘tegenprestatie’* is to bring people closer to the labour market. However the *‘tegenprestatie’* has not lead to more jobs for people on social benefits. This conclusion by the trade unions is confirmed by the Evaluation of the participation act by the Netherlands Institute for social research (SCP): the Participation Act has not lead to more work for people on social benefits, because the Act does not calculate the fact that some people simply cannot work.⁹

At the same time the Participation Act is a very strict law and people on social benefits are faced with scrutiny and mistrust by the government. A mistake can lead to having to pay back your social benefit. Not willing or not being able to fulfil the obligation to do something in return can also lead to sanctions. The new government has announced that they want to ‘humanize’ the Participation Act and the trade unions hope that the *‘tegenprestatie’* will be removed from the Participation Act. Trade unions would further like to stress that we don’t see local governments investigating whether work done under the cover of *‘tegenprestatie’* leads to displacement of jobs.

The strictness of the Participation Act makes it easier for employers to abuse their workers, because using the Participation Act can be daunting for workers, especially for workers who face discrimination in the enforcement system of the Act. Moreover, some migrant workers do not have access even to these basic provisions, making them especially vulnerable to abuse.

⁸ <https://www.ttm.nl/management/transportbedrijven/ilt-schiet-te-kort-bij-controleren-chauffeurs-de-rooy/144411/>

⁹ <https://www.scp.nl/actueel/nieuws/2019/11/15/doelstellingen-participatiewet-nauwelijks-behaald>

Minimum Age Convention No. 138

Internships

FNV has serious concerns that the broad use of internships result in working conditions for young people between 16 and 18 years old that are the same as for adult workers. Over the past years a serious shortage of personnel in the care sector has developed. As a result, trainees carry out more and more of the regular tasks. In some cases this even leads to the employer obliging trainees doing technical nursing activities, for which they are not legally competent and without proper supervision. Also the Dutch Consumers Association has observed that clients receive home care from unqualified staff, which can lead to dangerous situations.¹⁰ Apart from the employers' pressure, trainees of 16 or 17 years old are also faced with liability conditions that are not desirable in case something goes (seriously) wrong.

This problem is worsened by the fact that schools are in a very dependent position for getting access to positions for internships. The very moment trainees mention the various problems they encounter during their internship, the school is hesitant to take measures because they depend too much on these companies or institutions for the internships of their trainees. So employers can continue these practices without any consequences, only made worse by the lack of enforcement.

Migrant workers

One example of substantial holes in the enforcement system in the Netherlands exists in the realm of third country nationals (non-EU nationals) who migrate to the Netherlands for work.¹¹ In this particular case, sixty Indonesian healthcare professionals were put to work in the Netherlands under student visas instead of work visas. Because Dutch law allows students to work for 16 hours, aside from their 16 hour 'internship', these 'students' were allowed to work for their employer for 32 hours per week. Because of their 'internship' their employer could also circumvent the collective labour agreement, which did not apply to internships. Moreover, these 'students' were subject to grading by their teachers, which meant that insufficient grades could lead to their termination and expulsion from the country. This is an example of the way Dutch companies can find loopholes in labour protections, a practice that has been turned into a business model.

The problems of unions to engage with migrant workers, especially with undocumented migrants, are worsened by strict Dutch migration laws. Many migrants are unable to speak out against labour exploitation for fear of being deported, either after a complaint with the Labour Inspectorate or because their employer outs them to migration officials. According to the Periodic Report of the Netherlands with regards to the Covenant on Economic, Social and Cultural Rights (State report of July 1st 2022), infringing on the rights of undocumented migrants is state policy. This means that many undocumented migrants have little recourse when their rights are being violated, including the fact that they are unwilling or afraid to engage with trade unions.

Recommendations

There are various ways that stakeholders can improve prevention of contemporary forms of slavery. Governments and employers can protect whistleblowers and other employees from retaliation by employers and migration officials following reports of labour abuses. This would allow workers to approach trade unions and the Labour Inspectorate, which would have to be properly funded in order

¹⁰<https://www.consumentenbond.nl/binaries/content/assets/cbhippowebsite/gidsen/gezondgids/2018/nummer-4---augustus/ng201808p08-thuiszorg-p.pdf>

¹¹ [Indonesische Nabila moest in Nederland zorgstage lopen onder haar niveau, terwijl volwaardig werk was beloofd - EenVandaag \(avrotros.nl\)](#), geraadpleegd op 18 februari 2024.

to perform its functions. Moreover, employers and government should allow trade unions access to both employer premises and worker housing. Governments and employers can also do more to protect the rights of migrant workers in general, to alleviate fears of deportation in cases of disagreements between worker and employer. Moreover, governments should work to close the many loopholes in protections of (migrant) labour.