

## ► Executive Summary

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### Access to protection and remedy for human trafficking victims for the purpose of labour exploitation in Belgium and the Netherlands

According to the latest ILO global estimates on modern slavery, almost **25 million people are victims of forced labour worldwide**.<sup>1</sup> Forced labour persists despite its prohibition in international and regional instruments. The fight against forced labour received new impetus with target 8.7 of the UN Sustainable Development Goals and the adoption of the 2014 Protocol to the Forced Labour Convention, 1939 (No. 29), which reinforces the rights to access to protection and remedy for victims of forced labour and trafficking in human beings. The objective of this [study](#) is to examine the **avenues for access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands**. While much literature already exists on the gaps in protection and remedy for human trafficking victims, the **relevance of this study is its emphasis on identifying existing avenues for protection and remedy also for potential victims,<sup>2</sup> such as those who are not identified as human trafficking victims or have had their human trafficking victim status withdrawn**. The study is based on desktop research complemented by interviews with selected practitioners from different professional categories in both countries. Our study seeks to provide insights into how these avenues work in practice, to identify barriers that exist in accessing them and to highlight existing good or promising practices. Its findings aim to inform policy makers, practitioners, NGOs and academics in the EU and beyond.

Overall, we found that **in both countries, multiple mechanisms in criminal, civil and administrative law exist**. These allow (potential) victims of human trafficking for the purpose of labour exploitation, at least in theory, to access protection and remedy, including compensation and/or possibilities to

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<sup>1</sup> The estimates include victims of trafficking for the purpose of sexual and labour exploitation, begging and criminal activities. It also includes victims of state-imposed forced labour but it does not include trafficking for the purpose of organ removal.

<sup>2</sup> In this study “victim” refers to those persons who have been identified through the National Referral Mechanism (NRM) and have been granted access to protection and remedy through the anti-trafficking law and policy framework. “(Potential) victim” refers to those persons who refuse to cooperate with authorities and therefore are not given victim status and those who have their victim status withdrawn, (e.g., case is dismissed for procedural issues, has been dismissed, or proceedings have started but prosecutor decides to prosecute for other offences than human trafficking)

claim back wages. **However, it appears to be very difficult to use these mechanisms in practice.** Where (potential) victims make use of such avenues they strongly **rely on specialised assistance**, including anti-trafficking and labour rights support organisations and trade unions. We also noted that there are a number of very committed professionals that aim to support victims in their access to remedy and protection across the different professional categories interviewed and whose commitments undoubtedly make a positive difference in the outcome for victims.

**Access to protection** depends, first and foremost, on being detected as a potential victim of human trafficking. Our findings echo other reports, which find that **detection of victims is difficult and that most victims go undetected.** Situations of human trafficking for the purpose of labour exploitation are often **not evident at first glance.** Investigating suspicious cases requires time and resources that frontline actors such as labour inspectors and police often lack. (Potential) victims are frequently unwilling to come forward and share necessary information about their situation due to a variety of reasons, including lack of trust in authorities, lack of self-identification as victims, no residence status and dependency on the (often little) income received from their job. In addition, if they are not identified as human trafficking victims they are not entitled to any form of support when making complaints.

**Labour inspectors** can have a particularly important role in **detecting and identifying potential victims** in both countries. Notably, we find that the **quality of information and the level of detail** labour inspectors include in their inspection report when coming across potential victims **can have a significant impact on the outcome of a case.** Such information ranges from seemingly trivial issues such as including the workers' correct contact details, to describing the workplace and the working conditions, to noting down the precise function and tasks the potential victim carried out. In the experience of our interviewees, currently trade unions' role and visibility in the anti-trafficking context, in areas such as victim detection, appears to be limited in both countries. However, the example of the Dutch trade union FNV-VNB in the transport sector showcases their potential role in victim detection and in facilitating access to remedy.<sup>3</sup>

In both countries, following detection, suspected victims of human trafficking are to be offered an unconditional reflection and recovery period. In practice, it appears in the Netherlands granting the full reflection and recovery period<sup>4</sup> can sometimes be influenced by investigative considerations. Furthermore, in both countries, **when multiple victims are detected, not all of them may be listed on the indictment of the prosecutor with severe consequences for their access to protection and remedy.**

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<sup>3</sup> International Transport Workers' Federation, [Pandemic of exploitation in European trucking](#) (26 June 2020).

<sup>4</sup> The reflection and recovery period refers to the time period given to a (potential) human trafficking victim to recover and reflect on whether he or she would like to cooperate with authorities.

Access to protection following the reflection period is conditional upon cooperation with authorities in criminal proceedings in both countries. **The way the conditionality is applied seems to differ in both countries. While practitioners described the conditionality as comparatively “light” in Belgium, it seems to be more burdensome on the potential victims in the Netherlands.**

Practitioners report that in both countries **there are victims who refuse to cooperate with authorities** for a variety of reasons. Consequently, those victims are not identified as victims of human trafficking and are not entitled to the access to protection and remedy tied to this status after the reflection and recovery period. In both countries, **it appears not to be uncommon that the human trafficking victim status is withdrawn in the course of criminal proceedings.** Generally, victims lose their access to protection if cases are discontinued, or - in the case of the Netherlands - if the perpetrator is acquitted. However, in both countries, if proceedings have been going on for a number of years, victims without residence permit can apply for a permanent residence permit.

**Receiving their unpaid wages appears to be a central element of remedy** for (potential) victims of human trafficking for the purpose of labour exploitation. We find that the main route for human trafficking victims to claim remedy, is by joining criminal proceedings as civil/injured parties. If compensation is awarded following successful proceedings, it is difficult for victims to claim it in practice. The **“advance payment option”** in the Netherlands is a good practice as after eight months if the perpetrator has still not paid the compensation, the government steps in and advances the compensation to the victim.

In both countries, the **judicial threshold applied to prosecute successfully a case for human trafficking for the purpose of labour exploitation is perceived to be high.** The threshold appears to be anticipated by frontline actors when detecting and identifying victims, but also by prosecutors when deciding whether to initiate criminal proceedings. As a result, **there are indications that prosecutors sometimes choose to prosecute for lower-level offences rather than for human trafficking.** This has **severe consequences** for the victims as they will lose the important rights and entitlements that are tied to a human trafficking victim status. However, if criminal proceedings for lower-level offences are launched it may theoretically still be possible for potential victims to join as civil party/injured party to claim compensation. In Belgium, the Social Criminal Code allows for combining certain administrative offences with criminal ones. Hence, it may be possible for the potential victim to claim unpaid wages as a civil party in the criminal proceedings if the human trafficking charge is dropped. However, this hinges on the charges the prosecutors include in the indictment. For instance, it is necessary that the prosecutor includes the charge of non-payment of wages on the indictment, which does not appear to be the case by default. From a prosecutor’s perspective, the charge of non-payment of wages is not an important charge as it does not carry a high sentence for the employer. However, from a victim’s perspective the inclusion of this offence is crucial to receiving a remedy.

It is important to note that access to remedy is theoretically possible under civil or labour proceedings to potential victims - those who are not identified or have had their human trafficking victim status withdrawn - even if they have an irregular migration status. However, we find that there are **many barriers to accessing labour and civil courts in practice**, ranging from lengthy procedures to high costs. It emerged very clearly from the study that **if civil proceedings are envisaged, the assistance of victim support, civil society organisations or trade unions to victims is indispensable**. These organisations provide advice to potential victims on the different options available. In both countries, these organisations have developed good professional networks and working arrangements with institutional actors. However, they often lack financial resources which prevents them from dealing with all cases and from exploring new avenues for potential remedies including those that are less frequently used. This has a detrimental impact on potential victims' access to remedy.

Both countries have **administrative mechanisms in place** such as **state compensation schemes for victims of violent crime**, for workers who have had **workplace accidents** or whose employers have become **insolvent**. Both countries have set up funds for victims of violent crimes for which human trafficking victims are eligible. However, the accessibility to these funds seems to vary in practice. In Belgium, it appears to be very difficult to access for victims of human trafficking for the purpose of labour exploitation such as due to the need to exhaust other remedies first (criminal proceedings, potentially civil proceedings) and to demonstrate evidence of "intentional violence". In the Netherlands, the barrier to access the fund appears to be much lower, as access to the victims of crime compensation fund does not require the exhaustion of other domestic remedies first. Recent changes in the policy of the fund appear to have significantly simplified access to the fund for human trafficking victims for the purpose of labour exploitation as they no longer have to prove "serious injury".

In both countries, workers are entitled to **compensation for workplace accidents** either through employer's insurance or state schemes. In Belgium, migrant workers in an irregular situation are entitled to benefit from the workplace accident fund FEDRIS if the employer does not have the obligatory insurance. In practice however, victims in an irregular situation barely succeed to access FEDRIS without the support from third party organisations such as lawyers, trade unions and civil society organisations which have practical knowledge on the processes required. As bankruptcy of the employer is an obstacle to claiming back wages, it is possible for potential victims to claim back parts of their wages under **state insolvency schemes**. In Belgium, support organisations have experience with the procedure and have successfully supported potential victims. The Dutch mechanism seems to be less well known to some of the support organisations in the Netherlands. Barriers exist in particular with regard to other debtors being served first, the absence of a formal bank account in case of migrant workers in an irregular situation and that in some sectors workers are formally employed outside the country, where the work is carried out.

In the study, we zoom in on **the role labour inspectors can play in facilitating or even providing access to remedy**. In particular, in Belgium, where workers are found in exploitative situations during

workplace inspections, **labour inspectors are able to request the employer to pay unpaid wages on the spot.** In both countries, there is also the possibility for the worker to proactively submit a complaint to the labour inspection that can be followed up in a number of ways. Labour inspectors are also instrumental in ensuring employers respect applicable labour law and have a range of tools available to encourage and enforce compliance. In the Netherlands, there appears to be a renewed commitment by the labour inspectorate to making sure all tools, including closing down companies, are applied more routinely and to referring underpaid workers to lawyers to help them claim back their wages. At the same time, in Belgium, labour inspectors formally have a duty to **report migrant workers in an irregular situation to the authorities.** While this obligation formally does not exist in the Netherlands, in practice, workplace inspections with the police may result in migrant workers in an irregular situation being reported to immigration authorities. In addition, more informal mechanisms such as negotiations with employers or sectoral approaches, such as the Compliance Foundation for Temporary Agency Workers in the Netherlands, may provide avenues for remedy for potential victims. We find that informal negotiations with employers are frequently used but the effectiveness appears to depend on the leverage of the actor involved and the support of trade unions can be very helpful in these cases. In such negotiations **workers seem to be willing to accept payment of wages much below the minimum wage,** as they will be more likely to receive it quickly through such informal negotiations as opposed to having to wait years for formal proceedings to conclude. Sectoral collective agreements and innovative ways of enforcing these (e.g., through better cooperation between relevant actors) may support better compliance in specific sectors.

Overall, taking into account the barriers and promising practices that have emerged from our findings, our recommendations for improving access to protection and remedy for potential victims and victims of human trafficking for the purpose of labour exploitation, can be categorised into three broad themes. **First, making existing rights of access to protection and remedy for victims of human trafficking more effective; second, enabling effective complaint and compensation mechanisms for all workers who are not identified as human trafficking victims, and third tightening labour market governance and enforcement of labour law.**

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