

◆ Research Brief

April 2021

Access to protection and remedy for human trafficking victims for the purpose of labour exploitation

The role of trade unions in Belgium and the Netherlands

Key points

- ◆ Trade unions in Belgium and the Netherlands are important **actors in ensuring decent work conditions for workers, and in protecting their rights**. However, in the narrower anti-trafficking context the visibility of trade unions appears not to be well developed.
- ◆ A number of **important examples demonstrate the role trade unions play in the detection of potential victims and in facilitating their access to remedy**.
- ◆ In this context, it is worth highlighting that a key finding that emerged from the overall study on which this brief is based, is that in particular **access to effective remedy for individual potential victims appears to be nigh on impossible without the advice and guidance of third- party organisations** such as trade unions and civil society support organisations. Hence, **where unions are active, the support they provide to potential victims is crucial**.
- ◆ A **promising cross-border cooperation between trade unions and anti-trafficking actors** is emerging in the road transport sector.
- ◆ There is **scope for trade unions to engage more strongly with the anti-trafficking actors** in both countries and to make use of their full potential with regard to the detection of victims and supporting their access to remedy. **Strengthening trade unions' outreach towards migrant workers** in an irregular situation appears to be a central element to achieve this.

Introduction

This research brief is based on a comprehensive [study on access to protection and remedy for human trafficking victims in Belgium and the Netherlands](#) [1]. The study focuses explicitly on (potential) human trafficking victims for the purpose of labour exploitation [2]. This research brief zooms into findings with regard to the role trade unions play in providing access to protection and remedy to (potential) victims in both countries.

Q: How do trade unions support access to protection for potential human trafficking victims?

While in both countries trade unions are **not formally part of the National Referral Mechanism (NRM)**, there are some **examples that demonstrate the role trade unions can play in the detection of victims**. The efforts of the Dutch FNV-VNB Stichting (hereinafter FNV-VNB), a trade union foundation in the transport and logistics sector in the Netherlands, are of particular relevance.

 *[In] all road transport cases that are [with] the prosecution, we are the party that brought the case to the surface.*

◆ FNV-VNB, The Netherlands

The Dutch FNV-VNB seeks to ensure compliance of employers with applicable collective agreements in the transport sector and provides information and legal advice on questions relating to them. **The union reaches out to potential victims pro-actively such as by visiting them when they are resting in motorway car parks for lorries.** This is important as for many of these workers, it is nearly impossible to seek out help for themselves as their working conditions often severely limit the scope of possible actions they can undertake themselves.

 *[...] in our industry, as soon as the worker talks to the authorities they lose their job. Purely for mathematical reasons, they cannot simply leave their trucks in a car park and start an interview with the authorities because it would take 5 to 8 hours and they would have lost their job.*

◆ FNV-VNB, The Netherlands

In the cases the FNV-VNB detected, the union also played a key role in gathering evidence for the criminal investigations.

The **Belgian labour inspectorate has recently begun to engage with the FNV-VNB in cross-border efforts to investigate potential cases of exploitation in the road transport sector**. In a recent case, the FNV-VNB brought to the attention of the Belgian labour inspectorate a potential human trafficking case concerning a Ukrainian truck driver. The labour inspectorate, in joint efforts with the union, tried to locate the potential victim to examine his working and living conditions, and to analyse his tachograph. In another instance, the FNV-VNB cooperated with the Belgian union BTB to give a Philippine driver first support. They then brought the case to the attention of the Belgium labour inspectorate and the driver was referred to the NRM and subsequently identified as a human trafficking victim in Belgium. The Belgian labour inspectorate, the Belgian union BTB and the FNV-VNB intend to continue these promising exchanges.

Q: What are obstacles that prevent trade unions from detecting and referring potential victims to the NRM?

An important obstacle that appears to prevent trade unions from actively detecting potential victims is that **many of the potential victims are migrants (in an irregular situation)**. As such they are **not affiliated to national trade unions** and may **not easily come into contact with trade union representatives**. Similarly, trade unions offer many of their services only to their members.

Q: How do trade unions facilitate access to remedy for (potential) victims?

It is worth highlighting that a key finding that emerged from the overall study is that access to effective remedy for individual potential victims appears to be nigh on impossible without the advice and guidance of third-party organisations such as trade unions and civil society support organisations. Many (potential) victims are migrants and find themselves in very precarious situations. They often do not speak the local language and do not trust authorities. They thus rely heavily on third party organisations for guidance and support.

While in both Belgium and the Netherlands, **trade unions provide a range of important services, such as legal advice and support, these services are usually only available to trade union members. As many of the (potential) victims are not affiliated to a trade union, they typically do not benefit from these services.** Importantly, the **Brussels branch of the CSC-ACV trade union offers a weekly legal helpdesk. It receives complaints from and provides advice to any worker, including non-members and migrant workers in an irregular situation.** To allow all workers to benefit from the full range of services on offer, including possible legal assistance, the Belgian CSC-ACV provides the opportunity for workers in an irregular situation to join as a member **with a special membership fee of €4 per month.**

The representative from the CSC-ACV referred to a case in which the union provided legal assistance to a potential victim who sought to be recognised as human trafficking victim but was not granted victim status. **The union financed the legal assistance to the victim to join criminal proceedings as a civil party** and thus became eligible for compensation.

In another case, where the Brussels Labour Tribunal handed down its judgment on 4 May 2018, **the CSC-ACV trade union provided legal support to a migrant worker in an irregular situation (who was a CSC-ACV member through the aforementioned membership scheme) to claim his back wages and compensation** such as travel expenses, non-respect of notice period and wrongful dismissal. The applicant had been working irregularly for four years as a cleaner [3]. The court ruled in his favour and awarded him €50,000 (€43,206.09 back pay of gross wages and compensation of approximately €8,000 for costs of working clothes, travel expenses, non-respect of the notice period and wrongful dismissal). The case is currently in appeal. The migrant workers in an irregular situation was held in detention for parts of the proceedings and even after the court ruled in his favour. **Through campaigns led by Belgian trade unions and NGOs he was released in June 2018.**

In both countries, **trade unions can lodge complaints and start legal proceedings on behalf of potential victims**, though there are indications that this does not happen frequently [4]. The Dutch FNV-VNB reported that they often lodge complaints themselves, as many of the workers in the road transport sector are in very precarious situations and are hesitant to engage with authorities.

▶▶ *In most of the cases, the workers are not ready for it yet, and we are also not sure how the authorities [will] deal with it, so in those cases we do a charge ourselves. So, we do a criminal charge on several areas of the criminal law, it could be human smuggling, trafficking, falsifying documents and other types of fraud.*

◆ FNV-VNB, The Netherlands

In a recent instance, the Dutch FNV-VNB directly cooperated with the prosecutor's office to support remedy for potential victims.

Spotlight on trade union cooperation with prosecution in case of human smuggling involving exploitation in the transport sector

The FNV-VNB had investigated and detected several possible cases of human trafficking in the transport sector. As the prosecutor chose to prosecute for human smuggling instead of human trafficking, potential victims were not eligible for the specific rights and protection available to human trafficking victims. Since the prosecutor's decision, the FNV-VNB has advocated for potential victims to be included as injured parties in the criminal proceedings to be able to at least claim back their wages. The FNV-VNB has also been assisting the prosecution by collecting evidence and calculating the wages of the potential victim

Moreover, trade unions may **provide support in direct informal negotiations with employers** to help potential victims to claim back their wages. They do so, for instance, by calling the employer, sending a formal letter or in some cases threatening legal or collective action.

▶▶ *I phone the employer and I speak with him or with them, explaining that sanctions directive [...], but you know [...] in a very technical way, and a large part of them don't know you know the law and so on. And I tell them that they have two weeks to pay otherwise I will send the social inspection and so on. I [then] write to them because, of course, what I tell them is true, there is a sanctions directive, I can call the social inspection and so on.*

◆ CSC-ACV Brussels, Belgium

In the experience of the interviewees, trade unions can be very effective in such informal negotiations.

In addition, **trade unions support potential victims in their interactions with government authorities**. The Belgian CSC-ACV representative gave an example where she successfully intervened in a quest to seek the release of two migrant workers in an irregular situation who had been detained by the police after trying to file a complaint about their exploitative working conditions. Due to their irregular migration status, the police detained them rather than following up their complaint. Furthermore, interviewees identified trade unions as important actors in particular when it comes to **organising class actions** against fraudulent employers **in civil court**. In these cases, trade unions put together a file of an individual worker that is representative of the situation of the majority of workers in a company. Trade unions can also play a **useful role in pursuing the compensation** after it has been awarded by a court.

exploitation

Q: What are obstacles for trade unions to support access to remedy for (potential) victims and which other solutions may they propose?

A common obstacle faced by trade unions is that workers often cannot prove their employment relationship or the exploitative working conditions.

In such cases, where proceedings are not likely to succeed, the CSC-ACV Brussels, for example, **offers such workers the opportunity to join its networks and become engaged in advocating for policy change.** For instance, the CSC-ACV Brussels is actively engaged in organising migrant workers with or without a residence permit (*Comité des travailleurs.euse.s migrant.e.s avec et sans papiers*) and has a specific network for domestic workers (including those without residence permit) (*la Ligue des travailleuses domestiques*) [5].

Due to limited resources, however, cases in which trade unions generally appear to provide active support in judicial proceedings are particularly those that are considered to be of strategic importance. Such cases may exemplify certain structural problems in view of the trade union and are expected to lead to policy change or a change in regulation.

 *[On whether they often represent a case] [...] Not so very often. Because it's also a matter of priorities, I mean as a trade union we want to change the law.*

◆ CSC-ACV Brussels, Belgium

It is worth noting that **trade unions also have an important structural role in ensuring decent working conditions such as in negotiating collective agreements and providing input to policy and legislative initiatives.**

In both countries, trade unions are actively involved in organising campaigns, advocacy events and demonstrations to raise awareness amongst the public and policy makers and highlight particular cases of exploitation to trigger legal and policy change. In the most recent resolution of the CSC-ACV Congress [6], the union calls for the regularisation of migrant workers in an irregular situation who have found employment in Belgium and have been working in the country for a certain time. The resolution also calls for effective complaint mechanisms for migrant workers at EU level in cases where their rights are not respected. In the Netherlands, in April 2020, the FNV supported an online petition and a call for financial support launched by migrant domestic workers in an irregular situation who lost their income during the COVID-19 pandemic. The union sent a letter to the Minister of Labour and called on the government to give such workers (in an irregular situation) equal rights to those with a residence status [7].

Q: How could trade unions' role in providing access to protection and remedy be further strengthened?

Trade unions **are key labour market actors and represent millions of workers** in both countries. They can also play an important role in supporting access to remedy for potential victims. However, while interviewees for the study had some recognition for the role trade unions can play in facilitating detection and remedy to potential human trafficking victims, **the visibility of trade unions in the context of human trafficking in both countries appears not to be well developed.**

Trade unions **should be encouraged to strengthen their engagement with the anti-trafficking actors.** There appears to be a need for **better communication channels and exchanges between in particular the unions, labour inspectors and civil society support organisations.** The recent initiatives between the unions and Belgian labour

inspectorate are promising and efforts should be made for them to be maintained and consolidated. Trade unions could also reflect **on how they could better reach out to migrant workers, including those in an irregular situation.** The legal helpdesk of the CSC-ACV Brussels and the reduced membership rate for such workers appear to be essential elements in such an approach.

References

[1] ILO (2021), *Access to protection and remedy for human trafficking victims for the purpose of labour exploitation in Belgium and the Netherlands*. Wintermayr Irene, Weatherburn Amy, International Labour Office (2021).

[2] 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).

[3] Brussels Labour Tribunal, 4 May 2018 ([13/17144/A](#)).

[4] European Union Agency for Fundamental Rights (FRA) (2015), *FRANET Social Fieldwork Research Severe forms of labour exploitation - The Netherlands*, p. 62.

[5] For more information on the action of the CSC-ACV see [Travailleur.euse.s migrant.e.s avec et sans papiers CSC-ACV Bruxelles](#).

[6] CSC-ACV Congrès National 2019, *Lignes de Force #queltravaildemain #22*, p. 23-25.

[7] FNV (2020), Letter to Minister Koolmees, [Noodsituatie huishoudelijk werkers tijdens Corona-crisis](#), 24 April 2020.

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