



EUROPEAN POLICY BRIEF

Trafficking in human beings in the domestic work sector in the Netherlands: a hidden phenomenon



In the Netherlands, there is hardly any policy attention for THB in the domestic work sector and specifically for the demand-side of it. In order to address THB in the domestic work sector effectively, the Dutch government should consider taking action to reduce the vulnerability of domestic workers since their vulnerability is making them prone to exploitative practices. Addressing the employer directly (i.e. influencing the demand-side) is a crucial element of vulnerability-reducing policies just as guaranteeing rights for domestic workers is. Furthermore, key to tackling THB in the domestic sector is strengthening migration and employment policies as well as consolidating institutional capacities. The latter includes intensifying cooperation between NGOs and law enforcement and government institutions, and expanding competences of the labour inspectorate.

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INTRODUCTION

In general, the Netherlands is performing relatively well in terms of combatting Trafficking in Human Beings (THB). Yet further steps could be taken in addressing the demand-side of THB and also in addressing forms of trafficking outside of the sex industry. Whereas in past years attention to labour exploitation in general is on the increase, sector-specific attention is still required. While from a legal perspective it is irrelevant in which specific sector labour exploitation has taken place when speaking of THB in the Netherlands, from a policy perspective differentiation between the sectors is important since each sector has its own dynamics and the circumstances under which the work has to be performed differs.

One of the most vulnerable sectors in the context of labour exploitation is the domestic work sector. **Even though it has been indicated as a high-risk sector for THB since 2008 by the Dutch Police Agency, attention to the domestic work sector remains scant.** Yet, with the growing demand in household and care services, the number of domestic workers is growing steadily. **Because the work takes place in the private household, domestic workers are in a particularly vulnerable position and are therefore in need of specific attention to avoid exploitation.** In fact, in most of the successful Dutch criminal cases involving THB in the domestic

work sector, exploitation has been excessive, amounting to servitude as a qualified form of forced labour. At the same time, the fact that the work takes place in the private realm and that the group of domestic workers is diverse (i.e. live-in workers, live-out workers) poses serious challenges to preventing and combatting this particular form of labour exploitation.

This study's results suggest that reducing vulnerability and providing the necessary protection will make domestic workers less susceptible to exploitative practices. This study identified weaknesses in preventing and addressing THB in domestic work and gives a **set of recommendations**, including those that address the demand-side, to remedy this gap.

EVIDENCE AND ANALYSIS

Demand for cheap domestic workers and the occurrence of THB in the Netherlands

In the Netherlands, there is an increased demand for cheap domestic workers. There are several factors that fuel this demand. First, there are societal developments that have resulted in an increase in outsourcing domestic work, such as the population's aging as well as the increase in dual-earner households. There has also been a general governmental policy to scale down subsidised care and promote (unpaid) family and home care [*mantelzorg*] instead. Since many people have to reconcile employment and care work, the latter is increasingly outsourced. While formal arrangements are considered costly, outsourcing is mainly done in the informal work sector.

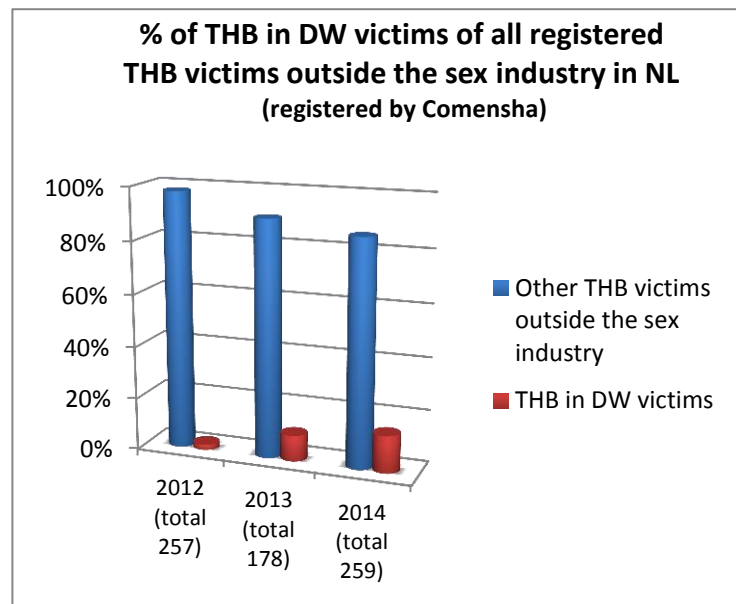
In the past, primarily non- or part-time employed women engaged in housework and family care at home. In recent decades, Dutch households are increasingly relying on domestic workers, although the ideal of the housewife as 'caregiver and homemaker' is still strong. The ideal is reflected in the high percentage of part-time working women in the Netherlands compared to other EU countries and the fact that Dutch families still hire domestic workers mostly for limited hours, rather than on a live-in basis. Live-in domestic workers (who work and live in their employer's household) include au pairs, live-in workers of diplomatic staff, and (irregular) migrant workers. While live-in domestic workers are more vulnerable to abuse than live-out domestic workers because of their firm tie with the employer, this does not mean that the latter category will not be subjected to abusive practices that may amount to exploitation. Although live-out domestic workers theoretically have more possibilities for leaving the situation in cases of bad working conditions or even exploitation since they are not dependent on the employer for housing, in practice there might be circumstances in which live-out domestic workers do not feel they have a real and viable option to leave the workplace, for example because of their irregular status, adding to their vulnerability.

Currently, an estimated 13% of households make use of a domestic worker and this percentage only involves the regulated market. Whereas 300,000 domestic workers are estimated to work in the regulated domestic work sector, the group of informal (paid) domestic workers might even be larger (since it is a generally accepted practice to hire domestic workers informally) but exact numbers are unknown. According to the organisation of undocumented migrant workers, the RESPECT Network, it is estimated that the group of informal domestic workers includes an estimated 150,000 undocumented migrants. Although in large cities informal domestic work is mainly performed by (undocumented) migrant workers, not much is known about this particular group. In fact, while (undocumented) migrants have been working in Dutch households for decades, there has only been limited research about their position.

Data on trafficking victims in Domestic Work

The only reliable data on THB victims in domestic work is provided by Comensha, a victim support organisation responsible for the official registration of victims of THB in the Netherlands. Although the number of registered THB victims in the domestic work sector is not high, the **percentage of victims has increased considerably in the past years.**

Whereas in 2012, only 2% of the total of 257 registered victims of exploitation outside the sex industry worked in households, this percentage rose in 2013 to 10% of a total of 178 victims in 2013 and again to 14.3% of the total of 259 victims outside the sex industry in 2014. The actual scope of the problem might even be much broader than the Comensha figures indicate. When considering the fact that many domestic workers, particularly those with an irregular status, are reluctant to report their situation, but prefer to leave the situation and find alternative work



instead, the number of victims might even be higher. Additionally, interviewees pointed out that some cases of forced/arranged marriage could also be considered human trafficking as the women were kept in the house and treated as domestic servants. Yet, aid organisations consider these cases in a domestic violence context rather than in the context of human trafficking due to insufficient knowledge about the applicability of THB. Finally, there are also cases of THB in domestic work that are not detected at all.

The main forms of THB in domestic work detected in the case-law in the Netherlands involve: (1) au pairs; (2) live-in workers at diplomatic households; (3) live-in domestic (migrant) workers in regular households; and, (4) live-out Dutch nationals who due to mental health issues were vulnerable to abuse.

Some factors that add to the vulnerability of the domestic worker relate to their specific position. There can be great dependency on the exploiter and lack of alternative job and housing opportunities. Furthermore, adding to their vulnerability, is the lack of knowledge about their (labour) rights and difficulty accessing justice in case of infringements of these rights. Lack of language skills and knowledge about Dutch society also creates obstacles to leave the household once problems with the employer occur. These factors may assist in explaining why workers remain in an exploitative situation, since they feel there is no real option to leave the situation.

In the criminal cases of THB in domestic work, circumstances that amounted to exploitation included: expectation that they will work as an au pair (limited hours of work, primarily cultural exchange) but ended up doing all household chores and/or being available day and night; sleeping on the floor; not given a private room to stay; having restrictions placed on free time or not being allowed to go out at all; physical abuse or threat thereof; sexual abuse; little or no payment; excessive work hours; lack of privacy; confiscation of passports; inability to leave the house; great dependency on the exploiter (under full control); and no access to medical assistance.

Addressing vulnerability: Influencing demand and guaranteeing labour rights for DW

What the above has shown is that domestic workers who may be prone to abuse are in very diverse situations that may differ considerably. This affects the policy approach that is required to prevent THB in domestic work. It is difficult to pinpoint a general theme around which an approach can be built.

Yet, by taking their vulnerable position as starting point, more general action can be taken. Empowering domestic workers by means of access to labour rights and making their workplace more transparent and accessible will decrease their vulnerability and therefore reduce the likelihood of becoming a victim of THB. Yet currently, existing policies and regulations on domestic workers in the Netherlands fail to adequately address the worker's vulnerability.

Certainly not all domestic workers in the Netherlands experience exploitative practices that may amount to THB. Yet, the domestic work sector has been indicated as a high-risk sector for exploitation/THB because of the specific characteristics of domestic work (secluded, in the private realm, not being considered 'real work', outside the competence of the labour inspectorate). These circumstances make domestic workers vulnerable to employer abuse since they are largely unprotected. The increased demand for particularly cheap domestic workers has enlarged the group that might be at risk of abuse and thus increased the conditions for THB to flourish in this sector.

Therefore, policies should aim at reducing workers' vulnerability as a means of preventing the occurrence of THB in the domestic work sector. Addressing the employer directly (i.e. influencing the demand side) is a crucial element of vulnerability-reducing policies, as is ensuring rights for domestic workers similar to other workers.

Currently there are no policies in place that seek to address the employer directly. Still, the employer can be guided in two ways. On the one hand, greater awareness could be created about minimum labour rights and work conditions that need to be observed when hiring domestic workers. On the other hand, it is equally important that employers who do not observe the domestic worker's rights know what consequences they will face. It is therefore important that government regulations and policies ensure a threshold of rights that protect the domestic worker from being exposed to abusive practices and that there is some sort of monitoring in place to ensure employers observe these rights. Furthermore, the fact that the work takes place in the private realm (where the labour inspectorate has limited authorities) remains an obstacle to monitoring compliance with these rights and taking action in case of severe violations.

Currently there are three regulations/policies in place that regulate domestic work in the Netherlands: (1) the regulation on au pairs; (2) the regulation on in-house servants of diplomatic households; and (3) the regulation on part-time domestic workers. This means there is no regulation in place to address the position of full-time domestic workers or live-in domestic workers. Further, there is no policy in place to address the position of irregular domestic workers. Domestic work is not a valid ground to acquire a (temporary) visa similar to other EU countries. Currently, third-country nationals who wish to work in the domestic work sector circumvent the laws by acquiring a visa for another purpose (e.g. an au pair visa for one year, a tourist visa for three months, or apply for refugee status), after which they remain (without documents) in the country.

The au pair policy and the regulation on in-house servants of diplomatic staff are fairly well-established and seek to impose certain safeguards to protect the worker from the employer. The regulation on live-in workers of diplomatic households, when implemented correctly, provides the worker with safeguards to the extent possible due to the immunity protection of the employer. The number of live-in domestic workers that fall under the regulation is relatively small: 170 in 2014. The fact that the Dutch regulation was considered as good practice by the OSCE for other Member States suggests that the Dutch Government has shown willingness to take action to protect certain groups of domestic workers if needed. The same holds true for the au pair policy, which was adjusted after malpractices with an au pair agency became known. **To enhance the protection of au pairs, one further adjustment is, however, justified.** Currently the possibility is offered to change family once problems have arisen, wherein the au pair agency plays a mediating role. Nonetheless, another host family needs to pay the full sum of mediation fees even though the au pair will stay less than the maximum of one year in the household. That creates an unnecessary barrier for au pairs to change host family since host families will prefer an au pair who stays for a full year for the same amount of mediation fees. Therefore in such situations a **reduced mediation fees for second host families** is an option that could be considered, since the duration of their

stay is shorter. Within the Netherlands approximately 1,500 au pairs come to the Netherlands every year for the purpose of cultural exchange.

The legal position of part-time domestic workers in the Netherlands is poor compared to other workers. While the regulation on Domestic Services [*Regeling Dienstverlening aan Huis*] provides a minimum wage, paid leave for four weeks, and 8% holiday bonus, domestic workers that fall under the regulation do not accrue pension, have no social security protection, and have limited sickness leave. Based on the Regulation on Domestic Services, domestic workers thus have far fewer social benefits and are therefore treated as **second-class workers**. Since mainly women are employed in the domestic work sector, it has been argued that this regulation is indirectly discriminatory against women. Further, this regulation only affects those domestic workers that work in a formal employment relationship. Yet, domestic work has developed mainly in the informal sector. This means that **the majority of the domestic workers in the Netherlands do not benefit from any of the regulations.**

The Regulation on Domestic Services is at odds with the ILO Domestic Worker Convention and therefore the Dutch government has indicated it will not ratify the Convention on the grounds that the existing regulation was sufficient. Interestingly, research has shown that the regulation is only known to less than half of the households that would benefit from it—and when it is known, it is only partly applied. NGOs and the labour union FNV have fiercely criticised the government's position, indicating that the decision not to ratify has much more to do with the substantial increase of social costs that would result from ratifying the ILO Convention. Not ratifying the ILO Convention has been considered a missed opportunity to take into account broader issues related to the work conditions of domestic workers and the protection of their rights, which may (unintentionally) make them more vulnerable to exploitation in the context of THB.

Limited monitoring mechanisms

One of the greatest obstacles in detecting bad labour conditions and THB among domestic workers is the fact that the **labour inspectorate is restricted from entering the private household**. This seriously hampers proactive action. While the labour inspectorate has been innovative in detecting domestic work cases (e.g. detecting through social media), it acknowledges that its competences are limited when it comes to domestic workers. **Cases come to the attention of the police or the labour inspectorate through NGOs and their cultural mediators instead. The NGO Fairwork works with cultural mediators (who themselves belong to migrant communities)** that serve as the eyes and ears in a particular migrant community, while at the same time are active in informing migrants about their rights and where to turn to when there are problems. In the case of domestic workers, the cultural mediators are more active in detecting malpractices because they have better access to these workers than government institutions. The specific characteristics of domestic workers make this approach very successful, which is also recognised by the Labour Inspectorate, therefore consolidating their role would assist in reducing the vulnerability of domestic workers.

In general it can be concluded that a mere human trafficking approach focusing on most excessive (individual) situations diverts attention from the broader discussion of the position of domestic workers. Strengthening their position will contribute to reducing the possibility that they end up in exploitative practices and contributes to the prevention of THB in the domestic work sector.

POLICY IMPLICATIONS AND RECOMMENDATIONS

While understanding that the sector's specific characteristics—in the private realm, secluded from the outside world—make it difficult for the government to take certain measures and actions to prevent and combat this issue, relevant stakeholders may adopt some more creative approaches to address the issue while at the same time respecting the specific circumstances under which the work takes place.

Addressing the demand side of THB in domestic work

In order to address demand effectively, more research is needed first into the profile of the employers. To be able to develop measures that target the demand side, it needs to be clear in the first place who is targeted and what the main goal of the campaign should be. After further research is conducted, targeted awareness campaigns could be launched based on the research outcomes that may include increasing both domestic workers' and employers' knowledge of the regulations in place. Additional awareness-raising campaigns for the general public should be used to foster a change of mentality in considering domestic work as real work, with actual rights attached.

More in-depth research into THB in domestic work

This study has shown the need for more in-depth research to obtain a more comprehensive view of the phenomenon, including the profile of victims and perpetrators as well as the role and position of (irregular) migrant workers in the domestic work sector. This study has also shown the relevance of further analysis, and analysis of successful but also unsuccessful criminal cases on THB in DW.

Strengthen and enhance identification of cases of THB in domestic work

One of the greatest obstacles in detecting exploitative practices in private households is the limited competence of the labour inspectorate. Yet, when people decide to make their house a workplace, at least some form of work conditions monitoring is justified. Some monitoring mechanisms adapted to the domestic work sector could be developed. The labour inspectorate could further examine other ways to better identify and reach out to domestic workers, including less traditional ways as the use of social media in order to perform some form of control despite its limited competences.

Since most domestic work cases come to the attention of law enforcement through NGOs and cultural mediators specifically, the Government could consider investing structurally in this human capacity to offset the fact that law enforcement itself is restricted to proactively detect cases. Further, since NGOs are closer to this particular group of victims, it would be a true added value for NGOs to have a more prominent representation in the Taskforce on Human Trafficking since they can bring these issues to the attention of all relevant stakeholders.

Finally, the research has shown that forced marriage cases may also be cases of THB in DW if all elements of THB are satisfied. Yet, currently there is still insufficient knowledge with first-line aid workers that these situations may also qualify as THB. In acknowledgement of the possible link between the two phenomena, more attention may be given to this underexamined area of concern, and expertise could be strengthened in order to better identify these situations.

Reducing vulnerability: Guaranteeing rights for domestic workers

Raise awareness of employers and domestic workers about regulation on domestic services

More awareness is needed (both among domestic workers and the households that fall under the regulation) about the existence and content of the regulation on Domestic Services (Cabinet's Letter to Parliament 2014). With the launch of a one-week campaign in October 2015, the Dutch government has taken a first step towards creating more awareness, yet more action is still required, which may also be initiated by other stakeholders such as NGOs or the Labour Union.

Assess the decision not to ratify ILO Convention

Further assessment of the Dutch government position not to ratify the ILO Convention 189 could be done in order to consider how the rights of domestic workers can be strengthened, whether by adjusting the existing Regulation or adopting a new regime altogether.

Examine amending au pair policy to enhance protection of au pairs

Currently au pairs are allowed to change host family in cases where problems have risen. The au pair agency has to find another family, yet in practice another family is not easily found since host families pay the same mediation fees for an au pair that remains for a short period as for an au pair that remains in the family for the full year. To make the change between families, one practical

option may be considering reduced mediation fees for the host family in cases where the au pair will remain with the family for a period shorter than the maximum of one year.

Consider legal migration routes for domestic workers

In the long term, there will be an increased reliance on domestic workers for private cleaning and care work, and that demand will likely not be met in the future. Relevant stakeholders should therefore not shy away from a more in-depth debate about the future and how the Netherlands will deal with the increased demand for domestic workers, considering all options based on experience of other EU countries. The government may consider, among other options, the possibility of allowing for regular migration routes for domestic workers into the Netherlands, similar to, for example, Italy.

RESEARCH PARAMETERS

This national study is part of the DemandAT country studies on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK.

The key objectives of research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies.

The case study has been based on both a desk research and interviews. The desk research consisted first of an analysis of existing literature (reports, case-law analysis and academic articles) on THB in labour exploitation and domestic work. Secondly, the national legislation and related policies have been examined. In addition, the relevant case law, on labour exploitation in general as well as specifically on THB for domestic work, has been studied. The desk study has been complemented with 15 qualitative interviews with important stakeholders. The interviewees are representatives of the judiciary, the government, NGOs, academia and trade unions.

References

de Volder, E. (2016) Case study report addressing demand in the context of THB in the domestic work sector in the Netherlands. DemandAT Country Study No. 6. ICMPD: Vienna.

PROJECT IDENTITY

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