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Trafficking in the Domestic-Work Sector in the Netherlands: A Hidden Phenomenon

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ABSTRACT

This article seeks to contribute to the anti-trafficking debate by exposing shortcomings in the policy framework applicable to the domestic-work sector in the Netherlands, a sector wherein workers are at risk of trafficking. The findings are the result of qualitative research (desktop research, case analysis, and in-depth interviews), conducted in 2015. Based on the analysis, it will be shown that the current policy framework fosters rather than alleviates the vulnerability of domestic workers for THB (trafficking of human beings), and therewith, the author calls upon the Dutch government to remedy these policies as part of their responsibility to prevent THB.

KEYWORDS

Domestic work; human trafficking; Netherlands; labor exploitation

The Netherlands offers in many ways best practices for other states when it comes to approaches to combat human trafficking. Yet in relation to trafficking for purposes of labor exploitation still much needs to be done to maintain this position. While labor exploitation has increasingly received attention in the past years, sector-specific approaches are still lacking. Yet sector-specific analysis can reveal whether policies and legislations in place are supportive in preventing/addressing THB or, at a minimum, are not reinforcing it. The domestic-work sector is a particular risk sector for THB in the Netherlands (BNRM, 2008, p. 186; KLPD, 2012). What makes this sector particularly prone to abuse is its hidden nature, which makes detection difficult. Further, domestic workers' social rights are not well protected: they enjoy fewer social rights than any other worker, making them more vulnerable to abuse, as will be shown in this article.

The framework of analysis is based on the international legal obligations of the Dutch government to prevent and address THB established by the Palermo Protocol and the EU Directive Against Human Trafficking. This legal approach is chosen since THB is acknowledged to be a severe human rights violation and law provides the

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necessary foundation for the protection of an individual's human rights.¹ The Dutch government has committed itself to preventing and addressing human trafficking and when its policies and approach turn out to have adverse effects on individuals in a particular sector, as will be shown in the discussion below, they can be called upon to change it. Therefore, by analyzing the applicable policies and approach, this article seeks to expose how the Dutch government can improve the policy framework of domestic work, as part of their international responsibility to prevent THB.

After establishing the research methodology of the current research, the discussion will start with some empirical findings about trafficking in the domestic-work sector in the Netherlands and the challenges that exist in exposing the extent of the phenomenon. Subsequently, the literature review will shed light on why domestic workers are particularly vulnerable to exploitative practices and what the obligations of States are to prevent exploitation from occurring. The analysis of the domestic-work sector in the Netherlands that then follows will show to what extent the Dutch government is actually taking all necessary steps to prevent THB in the domestic-work sector. The analysis shows how on the one hand social attitudes in society foster the idea of domestic work as not "real" work and on the other hand that the outsourcing of domestic work has led to an increase of domestic workers in the Netherlands who are less socially protected than other workers, as these social constructions have influenced the policies that currently regulate the domestic-work sector. The discussion will then turn to analyzing the applicable employment policies and approach and will reveal that these have the adverse effect of reinforcing rather than alleviating the vulnerability of domestic workers for THB. As part of their due-diligence obligation in relation to the prevention of THB, the Dutch government is called upon to remedy these (unwanted) outcomes. In conclusion, some recommendations will be made to remedy these shortcomings.

The research setting

This article finds its basis in a national case study on THB in domestic work in the Netherlands that the author has compiled in the context of a European research project (De Volder, 2016b). The Dutch case study has been based on both desk research and 15 qualitative interviews that the author conducted in 2015 with important stakeholders, including representatives of the judiciary, the government, NGOs, academia, and trade unions. The case study has been complemented with a policy brief to stimulate action to improve the position of domestic workers in the Netherlands and diminish their vulnerability to THB (De Volder, 2016b).

The extent of trafficking in the domestic-work sector in the Netherlands

To determine the actual extent of trafficking in the domestic-work sector in the Netherlands, one must first take a look at the official registered number of potential victims of THB. In the Netherlands, the Dutch Coordination Centre Against Human Trafficking (CoMensha) is responsible for registering possible victims of

trafficking in the Netherlands. This means that all first-responder authorities, including the police, the alien police, the Immigration and Naturalisation Service, border control, and labor exploitation, are obliged to report victims of trafficking in the Netherlands to CoMensha. While CoMensha is a nongovernmental organization, the function to register victims of human trafficking has been delegated to them by the Dutch government. All other organizations that are assisting victims of human trafficking in one way or another are urged to report cases as well.

In 2014, CoMensha registered 1,561 THB victims (BNRM, 2015, p. 3). While most registered victims are still exploited in the sex industry, the number of victims of exploitation outside the sex industry is on the increase, with 16.6% of the total of victims in 2014 compared to 12.4% in 2013 (BNRM, 2015, p. 13). Although the number of registered victims in the domestic sector is not high, the percentage of victims has increased considerably over the past years. Whereas in 2012 only 2% of the total of 257 victims of exploitation outside the sex industry worked in households, this percentage increased to 10% of a total of 178 victims in 2013 and increased 14.3% of a total of 259 victims outside the sex industry in 2014 (BNRM, 2014, p. 11; BNRM, 2015, p. 13). This means that in 2014, 37 registered victims of THB worked in a domestic household. According to CoMensha, the main forms of THB in domestic work that are detected in the Netherlands involve (1) au pairs; (2) live-in domestic workers at diplomatic households; and (3) live-in domestic (migrant) workers (including children) (Interview, CoMensha, 2015).

The actual scope of the problem is much broader than the figures of CoMensha suggest. For example, as we will see in the discussion of the applicable policies below, domestic workers in diplomatic households are in a special position because of diplomatic immunity. As a result, abuses will be reported to and dealt with by the Ministry of Foreign Affairs, not the Labour Inspectorate. Because of diplomatic immunity, the Ministry of Foreign Affairs does not report to CoMensha. Only via other organizations might these potential victims be registered but most often they are not (Interview, Fairwork, 2015). Further, when considering that many domestic workers, particularly those with an irregular status, prefer to leave the exploitative situation and find alternative work instead rather than to report their situation, the number of victims might even be higher (Interview, RESPECT Network, 2015). Finally, there are also cases of THB in domestic work that are not detected at all.

While the number of registered victims has been increasing, the number of criminal cases of trafficking in the domestic-work sector that have resulted in actual convictions of traffickers remains relatively low. Since 2008, there have been five successful cases involving trafficking of domestic workers).² At the same time, those cases of THB in the domestic-work sector that come to the attention of third parties, almost always involve the most severe forms of exploitation. Yet prosecuting the cases remains challenging. In general, many cases are not even brought to court by the Public Prosecutor or are dismissed because it is difficult to acquire substantial evidence and the application of the provision on trafficking proves difficult (Interview, Labour Inspectorate, 2015; Interview, Lawyer, 2015; Interview,

Public Prosecutor, 2015). This impunity is adding to the vulnerability of domestic workers at risk of being abused or exploited.

What these findings show is that trafficking in the domestic-work sector is a real problem in the Netherlands; still this may be only the tip of the iceberg. That the exploitation takes place in isolation makes it difficult to reveal cases and to collect sufficient evidence to convict perpetrators. The isolation and the impunity that results from it may explain why the forms of exploitation domestic workers face are severe. The literature research, in the next section, will offer more insight into the reasons why domestic workers are particularly vulnerable to abuse and forms of exploitation and at the same time offer insight into the extent of the obligations the Dutch government has in preventing THB and protecting this particular group of workers.

The vulnerability of domestic workers to trafficking and the obligations of states to prevent it

Within literature it has been generally acknowledged that the domestic-work sector is different from any other labor sector (Ambrosini, 2013, Triandafyllidou & Marchetti, 2015). The work takes place in the private household, creating an intimate relationship between the domestic workers and the employer (Lutz, 2008). Apart from the intimacy, a power imbalance exists between the employer and the employee. The interconnection between intimate work relations and power imbalances puts the domestic worker in a dependent (and vulnerable) position (Richard Guay, 2016). The family-type working relationships can impact work conditions, as the domestic worker may be requested to offer unpaid assistance or to perform extra chores outside the formal agreement (ILO, 2013). Within the Netherlands this practice is particularly pertinent in relation to au pairs. Au pairs feel connected to the family, particularly the children, and are reluctant to report abuses to the au pair agency or elsewhere.

Further the fact that the work takes place in the private sphere makes the work invisible and isolated (FRA, 2015). The situation is exacerbated by the fact that the Labor Inspectorate, responsible for monitoring the observance of labor laws, in all labor sectors including the domestic-work sector, is in many jurisdictions restricted in its powers in the domestic-work sector due to the fact that the work takes place in the private realm.

The unique position of the domestic-work sector at the intersection of the public and the private domain results in a situation wherein the labor sector cannot be disconnected from social and cultural constructions that exist in society about the work performed (Richard-Guay, 2016). The way domestic work is valued within society influences the policies that are adopted to regulate the sector. In the Netherlands, domestic work is traditionally considered to be a task provided by female family members as their (unpaid) contribution to the family, as will be discussed in the section on the cultural and social constructions about domestic work

in the Netherlands. The fact that domestic work is not valued as real or formal work has resulted in policies that treat domestic workers as second-class workers, provided with substandard working conditions compared to the conditions of other workers.

Further, the domestic-work sector harbors workers who are particularly susceptible to abuse (Interview, Respect Network [representing several migrant associations for domestic workers], 2015). The fact that the work is largely invisible makes the domestic-work sector one of the few sectors available for irregular migrants and migrants without education and/or sufficient knowledge of the Dutch language. At the same time, this makes the workers also more vulnerable since they can be treated poorly without being noticed. Further, because of the dependency (nowhere else to work), these workers can be in a position to accept circumstances they would not otherwise accept (Interview, Fairwork, 2015).

The specific characteristics of the domestic-work sector presented in the above make domestic workers particularly vulnerable to abusive practices that may amount to trafficking. States, including the Netherlands, have committed themselves in international legislation to combat human trafficking in all of its forms. Addressing the vulnerability of workers for trafficking is part of the obligation to prevent (and address) human trafficking.

The main point of reference for determining the obligations of states to prevent THB is the so-called Palermo Protocol of 2000, which is a protocol to the UN Convention Against Transnational Organised Crime. The Palermo Protocol is considered ground-breaking since it includes the first internationally agreed upon definition of THB, which has been incorporated in national and regional anti-trafficking legislation (Rijken, 2011, p. 394).³ Further, it is not the first time it has been acknowledged that trafficking could occur for purposes other than sexual exploitation. Although it has been 16 years since the definition was adopted, sexual exploitation still is central in efforts to combat human trafficking worldwide, although attention to labor exploitation is increasing (Rijken & Jagers, 2014).

Article 3 of the Palermo Protocol determines that for a situation to be classified as human trafficking, three elements need to be present: (1) the act (recruitment, transportation, transfer, harboring, or receipt of persons); (2) the means (threat or use of force, coercion, abduction, fraud, deception, the abuse of power, or abuse of a position of vulnerability; and (3) purpose of exploitation. The intent to exploit is paramount in the definition: Even when the actual exploitation has not yet taken place but the intent can be proven, the situation still amounts to THB.

What is meant by *exploitation* in the Palermo Protocol is not clearly defined. Article 3(a) states: "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." For exploitative practices in the domestic-work sector to be classified as trafficking for purposes of labor exploitation, the practices thus need to amount to forced labor or services, slavery or practices similar to slavery, and servitude.

What forced labor entails is not defined in the Palermo Protocol. The ILO defines forced labor as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴ However, not all forms of THB qualify as a form of forced labor and therefore the definition as put forward by the ILO has been criticized for being too limited (Jagers & Rijken, 2014). In 2005 the ILO gave further guidance and underscored a broad definition including situations in which a person cannot freely leave a job (ILO, 2005). In addition, the ILO has reaffirmed that forced labor includes slavery and practices similar to slavery (such as debt bondage) and that it encompasses THB (ILO, 2012).

This brings us to the most difficult issues currently debated in the context of THB—namely, when decent work evolves into a form of forced labor and under what conditions this can be considered to fall under THB. Skrivankova (2010) argues that exploitation is best understood as a continuum, with decent work on the one end of the spectrum and forced labor on the other end. She argues that work situations may constantly change and that modes of coercion can differ in the various stages of exploitation. The debate shows that core concepts of THB are not well defined and need further precision in order to be easily identifiable in different sectors, speaking in favor of sector-specific analyses to combat THB effectively.

As the definition in the Palermo Protocol reveals, trafficking in human beings is a serious crime, and it is considered to be a severe violation of human rights (Gallagher, 2010, p. 76). Taking a human rights-based approach to human trafficking, Obokata (2006) identifies four State obligations that apply to THB: to prohibit trafficking, to punish traffickers, to address the causes of trafficking, and to address the consequences of trafficking. These four obligations are reflected in the Palermo Protocol. In the Palermo Protocol the combating of human trafficking follows a three-tier approach (also known as “the 3 Ps”): the prosecution of THB, the prevention of THB, and the protection of victims. The 3 Ps in relation to combating THB are broadly accepted as a framework to concretize State obligations.

While current approaches have mainly focused on the obligation to prosecute trafficking and to a lesser extent on the obligation to protect victims, the obligation to prevent trafficking (or in Obokata’s words to “address the causes and consequences of trafficking”) has received much less attention. The Palermo Protocol obliges states to prevent and combat human trafficking in persons, by raising awareness but also through taking measures that “alleviate the factors that make persons, especially women and children, vulnerable to trafficking” (Article 9 (4) Palermo Protocol). This has been reaffirmed in the 2011 EU Directive.

While prevention is a progressive type of obligation and cannot be assured in its absolute form, it means that states should take positive action to alleviate vulnerability, which means, at a minimum, not adopting policies and approaches that add to the vulnerability of persons, either intentionally or unintentionally, for trafficking. In following Gallagher (2010), the obligation to prevent THB is one of due

diligence. States need to ensure that all reasonable and necessary measures are taken to prevent THB. What that exactly entails depends on the circumstances of the case, including the capacities of the State and relevant primary rules. In the context of THB, prevention means taking positive measures to halt trafficking. This means that the Dutch government should assess the (unwanted) outcomes of the employment policies regarding domestic work, as part of the international obligation to prevent THB and ensure that the policies are in place. Therefore when analyzing the domestic-work sector in the Netherlands the due-diligence obligation of the Dutch government to prevent THB is taken as a benchmark.

As discussed in the previous section, the domestic-work sector, because of its distinct character in comparison to other work sectors, cannot be seen as separate from social constructions that prevail in society about the work performed (Van Walsum, 2011a, 2011b; Richard Guay, 2016). The way the work is valued influences policies that regulate the domestic-work sector. As a result, currently domestic workers enjoy limited social rights, while at the same time domestic work is increasingly outsourced.

Cultural and social constructions about domestic work underlying current domestic-work policies in the Netherlands

The outsourcing of domestic chores is a relatively new phenomenon in the Netherlands. Specific notions of the family, which formed the basis of the Dutch welfare system after the Second World War, considered domestic work to be the mother's/wife's unpaid contribution to the family. These notions still prevail in the general attitude in Dutch society—that domestic work is not “real” work—so that even now it is increasingly outsourced; these attitudes have influenced current policies regulating the domestic-work sector (discussed in the section on shortcomings in Dutch domestic work policies, below). These policies still consider domestic workers to be second-class workers, and provide them with less social protection than other workers and, thus, making domestic workers more vulnerable to abuse and exploitative practices. Therefore unraveling these cultural and social constructions will assist in understanding the current policies that regulate the domestic-work sector and the ways these policies could be changed to reduce the vulnerability of domestic workers to exploitative practices, including THB.

After the Second World War, the welfare system in the Netherlands was based on the male as the breadwinner and the head of the family (Van Walsum, 2011a). All financial benefits were received by the male breadwinner and were meant to ensure that he could fulfill his financial obligations toward his family. Women were subordinate to and dependent on their husbands, although it was generally acknowledged that a man could only flourish well with a strong woman behind him. Her main task was to provide unpaid assistance and care for the nuclear family, the extended family, and society at large. This ideal of the male breadwinner's family remained a key principle of Dutch society until the 1960s and 1970s when

the Netherlands became party to international treaties guaranteeing equal rights for men and women (Kooy, 1975). The women's movement that followed changed many aspects of the traditional notion of family life. As Van Walsum (2011a, p. 64) explained: "All individuals are now assumed to support themselves and paid labour, rather than family relations, has become the major, and by now it would seem the only, vector to social participation and substantive citizenship."

What is problematic is that the changing role of women in society was not simultaneously met with a change in the welfare system. Providing unpaid care is no longer seen as the essence of female citizenship, and social security provisions no longer compensate for women's unpaid commitment to care (Knijn & Cuyvers, 2002, pp. 37–54). Yet, neither has care been reformulated as a collective responsibility of the State (Van Walsum, 2011a, p. 65). The Netherlands in fact provides working parents relatively little support in the way of subsidized child care or parental leave compared to other EU countries. The new model citizen is thus expected to be readily available for the labor market, unhampered by burdens of care, with ever-diminishing support of the government.

The increased outsourcing of domestic work is thus fueled by societal developments such as the increase of dual-earner households and the aging of the population (SEOR, 2014; De Ruijter, 2005). Further, there has been a general governmental policy to scale down subsidized care and to again promote (unpaid) family and home care (*mantelzorg*) instead.⁵ 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. It should be noted that despite the increase in outsourcing domestic work, it is still low compared to other EU countries. The ideal of the housewife as "caregiver and homemaker" is still strong (Van Walsum 2011b, p. 144). The ideal is reflected in the high percentage of part-time working women in the Netherlands and the fact that Dutch families still hire domestic workers for limited hours, rather than on a live-in basis (SEOR, 2004).

Currently, an estimated 13% of households employ a domestic worker, and this percentage only involves the formal market (Advies Commissie Dienstverlening aan huis, 2014, p. i). Whereas 300,000 domestic workers are estimated to work in the regulated domestic-work sector, the group of informal domestic workers might even be larger, but exact numbers are unknown. According to the organization RESPECT Network, it is estimated that the group of informally working domestic workers (of which the total number is unknown) includes at least 150,000 undocumented migrants (Interview Respect Network, 2015). Interestingly not much is known about this particular group. In fact, while (undocumented) migrants have been working in Dutch households since the 1990s, there has been only limited research about their position (Van Walsum, 2011b, p. 142). Most of the recruitment of domestic work in the Netherlands falls completely within the private sphere. This means that there are no other parties or institutions involved, such as agencies or the government (Advies Commissie Dienstverlening aan huis, 2014,

p. 6). The domestic workers are in a direct formal working relationship with the private employer. Parts of the domestic-work market are subsidized by the government, such as through subsidized care or guest parenting at home and financed through the Law on Day-care (*Wet Kinderopvang*). Particularly in hiring care at home, there are individual cases of fraudulent home-care agencies that function as intermediaries and exploit the workers they have placed in private households (Interview, Academic expert, 2015). However, there is little known about this particular form of exploitative practices, which is a particular point of attention for those responsible for anti-trafficking policies.

After establishing the social attitude toward domestic work as not “real work,” the discussion will now move to discuss the policies that regulate the domestic-work sector.

Analysis: Shortcomings in Dutch policies to address the vulnerability of domestic workers for trafficking

Whereas the State is under an obligation to address the vulnerabilities of domestic workers for trafficking or at least not reinforce it, parts of its policies turn out to have the reverse effect. Within the Netherlands, three policies are particularly relevant for the position of domestic workers: the au pair policy, the policy on domestic workers at diplomatic households, and the policy on part-time domestic work. These policies, to a more or less extent, add to the vulnerability of domestic workers since their rights are not protected fully. Further, in the Netherlands there are no migration policies in place that provide domestic workers with a (temporary) work permit, similar to other countries such as Italy and the UK. 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 1 year, a tourist visa for 3 months), after which they remain (undocumented) in the country (Interview, RESPECT Network, 2015; Interview, Fairwork, 2015).

For two of the identified groups of domestic workers vulnerable to exploitative practices (i.e. au-pairs and live-in domestic workers at diplomatic households), policies are adopted and reinforced to clarify their position and to strengthen their rights. 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 domestic workers need to pick up their own identity card at the Ministry of Foreign Affairs. There they will be informed about mandatory labor rights in the Netherlands and where to turn to in case their rights are violated. Every half year an interview is scheduled at the Ministry of Foreign Affairs. In case the ministry is informed about breaches of rights, the employer will be invited to mediate the dispute. The number of live-in domestic workers that fall under the regulation is relatively small: 170 were registered to work in diplomatic households in 2014. Recent research (Volkskrant, 2016) has shown that in the past 5 years, 26 complaints have been filed at the Ministry of

Foreign Affairs, concerning underpayment, bad labor conditions, and inappropriate treatment. In a few cases, the ministry undertook action, in the form of mediation in case of late payments and arranging safe return. One of the more-far-reaching sanctions the ministry can impose, deprivation of the right to hire domestic personnel, has not been used so far. This is a missed opportunity and would be a clear signal that the Dutch government is taking a stance against any form of human trafficking against whomever it is committed.

The au pair policy has, in turn, been adjusted after malpractices with an au pair agency became known. Every year, approximately 1,500 au pairs come to the Netherlands for the purpose of cultural exchange (Advies Commissie Dienstverlening aan Huis, 2014, p. 15). Au pairs may only apply via an agency that is recognized by the Immigration and Naturalisation Service and agencies are allowed to ask for a deposit of maximum of 34 euros. The regulation is solely for third-country nationals, who remain, for the duration of their stay, with a host family. In return for the facilities the host family offers, the au pair is allowed to perform light household tasks for a maximum of 8 hours a day and 30 hours a week for which the au pair receives a maximum of 340 euros per month as allowance (apart from the facility the host family is offering. Au pairs are thus not considered to be regular workers, since the main objective of their stay is cultural exchange. Yet in practice, au pairs have been in an actual employment relationship with their host family, while not being paid as such, leading to exploitative practices. While research initiated by the Dutch government in 2014 has concluded that there are no signals of human trafficking in relation to au pairs (Schans, Galloway, & Lansang, 2014, p. 9), many of the THB victims registered at CoMensha have worked as an au pair. What currently still keeps au pairs in a vulnerable position is that they cannot freely change family when problems arise. Although the regulation provides for the possibility that the au pair agency would find a new family instead, the new family has to pay the same fee for the au pair even though the au pair would only remain with the family for less than the maximum of 1 year since the au pair has already stayed with another family for part of that year. 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 fee a placement with a second host family could be a simple solution, since the duration of the stay would be shorter. This will decrease the vulnerability of au pairs to abuse.

The policy that fails to provide adequate protection is the Regulation on Domestic Services (*Regeling Dienstverlening aan Huis*). The Regulation on Domestic Services applies when domestic workers work less than 4 days a week for a private household. The objective of the regulation is to make it easier for private persons to formally hire another individual to perform household tasks, by exempting them from some of the obligations formal employers need to comply with (i.e., paying tax and social charges). The Regulation on Domestic Services instructs the employer to pay a minimum wage, paid leave for 4 weeks, and 8% holiday bonus.

Yet, domestic workers who 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 than other workers and are therefore treated as second-class workers, adding to their vulnerability. Some authors have gone as far as considering the Netherlands to provide domestic workers with third-world social standards (Heerma van Voss & Holtmaat, 2011, p. 1622). Bijleveld and Cremers (2010) further argue that the policy is indirectly discriminatory against women, since mainly women are employed in the domestic-work sector.

The regulation and the limited social protection is at odds with international action taken to secure the same position for domestic workers as other workers, which has been laid down in the 2011 ILO Domestic Workers Convention. Yet the Dutch government has indicated not to ratify the ILO Domestic Workers Convention since it would be at odds with the Regulation on Domestic Services.⁶ They argue that the Domestic Workers Convention would have to result in replacing the Regulation on Domestic Services and the government believes this regulation provides sufficient protection for domestic workers and allows private households to hire a domestic worker legally without having the (administrative) obligations an employer would have.⁷ Interestingly, research has shown that the regulation is only known to less than half of households that would benefit from it, and when it is known it is only partially applied (Panteia, 2014, p. 8). Further, the majority of domestic workers are working in the informal work sector and do not benefit from the regulation at all. What seems to be a more plausible reason is that ratifying the ILO Domestic Worker Convention would mean a substantial increase in social costs since domestic workers social rights would be leveled with other workers, something the government is apparently not willing to pay. Yet by showing unwillingness to ratify the ILO Domestic Workers Convention, the government fails to take into account broader issues related to the working conditions of domestic workers and the protection of their rights, which may make them more vulnerable to trafficking.

What the government further fails to acknowledge is the ever-growing demand for domestic workers and the fact that workers are needed to actually respond to the demand. Migrant workers come to the Netherlands via other routes and continue to work without legal status in the Netherlands, since providing domestic services is not a valid ground to issue. Netherlands does not consider domestic work as a valid reason to issue a temporary residence permit (except when the work pertains to diplomatic households). Yet, if it indeed results in irregular migrants responding to the demand, then the government effectively reinforces their vulnerable position. This is because the demand is not met within society, and since regular migration routes are absent, the demand may be answered by irregular migrants instead. Therefore the government should not shy away from discussing the possibility of temporary working permits for domestic workers.

Analysis: Obstacles in the detection of trafficking in domestic-work cases reinforcing the vulnerability of domestic workers

These policies seem to reinforce rather than alleviate the factors that add to the vulnerability of domestic workers. Further, obstacles to detecting trafficking for domestic-work cases also adds to the vulnerability of domestic workers, since potential abuses in their situation are not easily discovered by the police or the labor inspectorate as the work takes place in the private realm. Therefore the obligation of the Dutch government to address the vulnerability of domestic workers arguably includes increased efforts to make their position more visible and known, in order to stop the vicious cycle of nondetection, nonprotection, nonprosecution, and impunity. One of the greatest obstacles to detecting exploitative practices in private households is the limited in relation to other forms of labor. The Labour Inspectorate is much more restricted in its competences in relation to other forms of labor. The controlling inspectors are allowed to visit any workplace but are restricted from entering private households. The investigative inspectors are not allowed to enter private households, unless they have permission to enter of the Public Prosecutor.⁸ Permission to enter is granted when there is a reasonable suspicion that there are serious breaches of labor rights, to the extent that a criminal proceeding might be warranted. Once permission is granted, they have legal clearance to enter any place and have far-reaching investigative powers. Yet, the fact that private households make their house into a workplace justifies some form of oversight from the labor inspectorate that is currently absent. Further, other ways to detect exploitative practices in domestic-work settings are also justified from the perspective of the government's obligation to alleviate the factors that add to the vulnerability of workers for trafficking.

Exploitative practices are not detected by the controlling inspectors but rather are brought to the attention of the labor inspectorates through NGOs and, only rarely, by victims themselves. While migrant associations do come across exploitative situations, they are reluctant to report, particularly in cases of irregular migrants (Interview, Respect Network [representing several migrant associations for domestic workers], 2015). In the Netherlands, being provided with the status of victim of trafficking (and thus a temporary legal status) provides only limited protection during a "reflection period" (3 months) and, if the victim cooperates with the authorities, for the duration of the proceedings. In the Netherlands, it is difficult to acquire a permanent legal status on the basis of humanitarian grounds if you have been a victim of trafficking, probably to avoid abuse of the protection status for victims of trafficking. While migrant associations are reluctant to report, the NGO Fairwork is instrumental in revealing abuses to the labor inspectorate. The NGO Fairwork employs volunteers from various migrant communities, so-called cultural mediators. The cultural mediators 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 in case problems arise. The specific characteristics of

domestic workers (isolation, cultural context) makes this approach a very effective one, which is also recognized by the labor inspectorate that receives reports of serious breaches of labor rights in the domestic sphere, mostly through these cultural mediators. Since the authorities themselves are restricted from entering the domestic workplace (adding to the vulnerability of domestic workers for trafficking), the government could contribute to alleviating the vulnerability of domestic workers by structurally investing in cultural mediators, remedying the authorities' own limitations to detecting trafficking in the domestic-work sector.

Conclusion

This analysis has offered insight into the phenomenon of THB in the domestic-work sector in the Netherlands and into why domestic workers are particularly vulnerable to exploitation. It has contributed to the debate since it is based on the first in-depth study about THB for domestic work in the Netherlands, giving insight into the phenomenon. The article has shown that the Dutch employment policies and approach reinforce rather than alleviate the vulnerability of domestic workers for trafficking. As part of their due-diligence obligation to prevent THB, the Dutch government is therefore urged to remedy the (undesirable) outcomes of the employment policies and approach discussed, in line with the obligation to alleviate factors that add to the vulnerability of persons for trafficking (Article 9(4) Palermo Protocol).

Only when the government increases the visibility of the particular domestic workers that are susceptible to exploitative practices and decreases their vulnerability, can the government effectively prevent trafficking in the domestic-work sector. This article has sought to expose which elements of the policies and approach contribute to the vulnerability of domestic workers and has provided some suggestions to remedy them. It has further been shown that cultural and social constructs about the way domestic work is valued in society have a great impact on the policies that regulate the sector. Therefore adjustments in policies and approach should be accompanied with awareness that domestic work should be valued as "real work" and provide the same protection of rights as any other worker.

The ILO Domestic Worker Convention, providing social security rights for all domestic workers, serves as an example of a change in attitude worldwide toward this group of workers and could serve as inspiration for opening debate in the Netherlands about the position of domestic workers and ways in which their position should be strengthened to alleviate their vulnerability to exploitative practices that may amount to trafficking. Unfortunately the Dutch government is thus far reluctant to take the debate to the next level, while the demand for domestic workers keeps on growing.

Notes

1. UN OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary, 2010, p. 5.

2. Mehak Case of 2007, 2010; Case of the Psychiatric Patient of 2009; Case of Mentally Disabled Victim of 2011; the Brazilian Case of 2014; and the Cinderella Case of 2015. For extensive analysis of the cases and the elements of trafficking, see De Volder (2016a).
3. In the Netherlands, the definition has been included in Article 273f of the Dutch Penal Code. Within the EU, the definition has been incorporated in all relevant anti-trafficking legislation, including the EU Directive of 2011 (Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA), only expanding the scope of THB to include forced criminality and forced begging as forms of exploitation.
4. ILO Convention Concerning Forced or Compulsory Labour, 28 June 1930, 39 UNTS. 55.
5. The Dutch government is actively promoting unpaid care by family members: <https://www.rijksoverheid.nl/onderwerpen/mantelzorg/nieuws/2016/01/26/samen-aan-de-slag-met-informele-zorg>
6. Cabinet's Letter to Parliament (2014), "Cabinet Reaction to Advice of the Commission 'Dienstverlening aan Huis,'" The Hague.
7. Idem.
8. Law on Entry, 22 June 1994, The Hague, Article 2.

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