International Labour Office
Bureau international du Travail
Oficina Internacional del Trabajo

The Minister of Social Affairs
and Employment
Directorate for International Affairs
P.O. Box 90801
NL-2509 LV THE HAGUE
Pays-Bas

Réf. BIT/ILO ACD 19-2-1-42

Votre réf.

Dear Sir,

19 SEP. 2011

Please find herewith a copy of a communication dated 31 August 2011 whereby the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP) submit observations on the application by Netherlands of the Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); on the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (FNV and CNV); and on the Right of Association (Agriculture) Convention, 1921 (No. 11), Medical Care and Sickness Benefits Convention, 1969 (No. 130), the Minimum Age Convention, 1973 (No. 138), and the Workers with Family Responsibilities Convention, 1981 (No. 156) (FNV).

In accordance with established practice, these observations, as well as any comments that the Government of Netherlands may wish to make on the matters raised therein, will be submitted to the Committee of Experts on the Application of Conventions and Recommendations at its next session (November-December 2011).

Yours sincerely,
For the Director-General:

Cleopatra Doumbia-Henry
Director of the International Labour
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Date
August 31- 2011

Ref Yours

Ref Ours
197.202

Subject
Comments to the Government Reports 2011

Dear Ms Doumbia-Henry,

Please find enclosed in the annexes the comments of FNV, The Netherlands Trade Union Confederation, on this years Government reports on the following Conventions:

ANNEX I	C 81 and 129	Labour Inspection Joint comments by FNV, CNV, MHP
ANNEX II	C 121	Employment Injury benefits Joint comments by FNV, and CNV
ANNEX III	C 130	Medical Care and Sickness Benefits
ANNEX IV	C 11 and 138	Minimum Age
ANNEX V	C 156	Workers with family responsibility

Your are kindly requested to bring our comments to the attention of Committee of Experts on the Application of Conventions and Recommendations, for which I thank you very much.

Yours sincerely

FMV Policy Adviser International Affairs

ANNEX I **FNV , CNV and MHP joint comments to the Government Report**

for the period 1 June 2009 until 1 June 2010 made by the government of The Netherlands in accordance with article 22 of the Constitution of the International Labour Organisation on the measures taken to give effect to the provisions of

LABOUR INSPECTION CONVENTION 81 and

LABOUR INSPECTION (Agriculture) CONVENTION no. 129

The three Dutch Trade Union Confederations FNV, CNV and MHP want to make the following comments:

FNV, CNV and MHP are very concerned about the fact that the number of labour inspectors as part of the workforce of the Labour Inspectorate has been further reduced in 2010 as a result of political decisions in 2008.

The reduction over the years in the 'Labour Inspectorate' is motivated exclusively by political considerations, one of them being the aim of reducing the administrative burden for employers ('inspection holiday').

This reduction will further go on, due to the fact that the current Government has decided on a 20% reduction in the capacity of the Labour Inspectorate for the coming years. Not only staff and management are decreasing, also the executive part of the Labour Inspectorate will be reduced in number. The ILO standard for industrialized countries is 1 inspector for every 10.000 workers. In the Netherlands there is 1 inspector for about 30.000 workers. As a consequence, the number of inspectors in relation to the number of companies is low. On the average, chances for a company to be visited by an inspector is only once in every 30 years. The Netherlands, together with Belgium, has by far the lowest number of Labour Inspectors in Europe.

Besides this, the workload for inspectors has grown to an unacceptable high level, while it has been proven that visits of labour inspectors are the most effective way to eliminate violations of law. That is why the frequency of company inspections is for unions such a major point. Also, the Dutch Labour Inspectorate has no technical experts and only one medical expert in its organisation. Besides, there is no obligation to inform the Labour Inspectorate on (serious) cases of occupational disaeses. So the Inspectorate has neither the knowledge nor the capacity to advise companies on the prevention of these diseases or monitor companies and intervene if necessary.

The FNV, CNV and MHP are very worried about the level of knowledge within the Inspectorate concerning nanotechnology and man-made persistent nanoparticles. Too little investments have been made to fill in this knowledge gap. FNV, CNV and MHP would like the government to pay more attention to new developments in this field. And also to psycho-social risks. In particular the enforcement of the existing requirements set by law to deal with the risk of work-related stress remains weak. A clear definition of what is meant by 'work-pressure', one of the biggest risks in the Netherlands, is missing in our Working Conditions Act.

ANNEX II FNV and CNV comments to the Government Report 2011 on

Convention 121 Employment Injury Benefits

1. Introduction

Until the turn of the century the social security system of the Netherlands was characterized by comparatively extensive collective coverage of contingencies related to illness and disabilities in relation to employment. Just like in many other countries today, an employee who fell ill would receive his wages for a couple of weeks and in case his illness persisted, would fall into a public collective scheme and receive benefits until either he recuperated and would return to his work, or would enter long-term disability arrangements. The levels of the benefits were relatively high.

At that time the system seemed not to make any distinction between the possible causes of the illness or disability. It did not matter much whether it was caused by, or in relation with, the workplace and employment, or totally unrelated to it. The Civil Code did contain the current provision establishing liability of the employer in case of negligence of responsibility to provide for a safe workplace. But there was usually little incentive to invoke this provision because the public social insurance covered the damages to a relatively large extend.

In other words, the social security system of the Netherlands did not distinguish between what is usually described as the risqué social as opposed to the risqué professional; general risks and workplace-related risks.

2. Improved Gatekeepers Act (Wet Verbetering Poortwachter)

Over the last 15 years, the regulation concerning income during illness or disability has been drastically altered. Large parts of the contingencies have been shifted from the collective insurance schemes to the labour contract between the employer and his employee. Regardless of the cause of the illness or disability, the employer is obliged to pay at least 70% of the workers' wages during illness. The other 30% is at the risk of the employees. This Act is called the Improved Gatekeepers Act that was introduced in 2003. Each claim for Disability Act (WAO, continued in the WIA) the public administrator (UWV) has to check whether or not the employer had applied the rules regarding re-integration activities during the first year of sickness.

If the employer does not meet obligations regarding reintegration efforts:

The disability claim will be denied

- The employer has to prolong the continued wage payment. The period of continuation depends on the degree of violation, maximum of 52 weeks

If the employee does not participate in reintegration:

- The employer no longer obliged to continue payment, in the end may dismiss the employee
- The disability claim will be assessed, but the benefit will be denied or adapted

After two years the employers' obligation to pay 70% of the wages ends and in case of continuation of the contingency a public scheme, the WIA-legislation under consideration in the Experts' report, provides for a benefit in case of inability to gain income due to disability. The inflow into the WIA compared to the WAO has decreased substantially, but was already decreasing because of the Improved Gatekeepers act and two years of wage payment. The question is whether the great reform from WAO towards WIA was necessary.

In case of expiration of a fixed-term contract, or other forms of a-typical contract, before the two-year period ends, the Sickness benefits Act, which is a public provision, serves as a substitute regulation. This is called the safety-net. The number of flexible contracts is increasing.

3. Work and Income according to Labour Capacity Act (WIA)

The WIA was introduced in 2006 and the WAO continued only for 'old cases'.

The WIA contains two elements:

- IVA: The Income Provision Scheme for Fully Occupationally Disabled Persons
- WGA: The Return to Work Scheme for the Partially Disabled

The IVA has the following characteristics:

- Disability of 80% or more
- Durable disability
- The benefit is 75% of wage related income
- No rehabilitation activities
- In case of earnings: 70% of income is subtracted from benefit

The WGA has as characteristics:

- Degree of disability 35% or more: wage related benefit for a limited period, from 3 to 38 months, dependent on work history
- After this period wage related benefit on top of salary or minimum wage related benefit
- Degree of disability less than 35%: no benefit. Responsibility of employer and employee to undertake rehabilitation activities

After the wage related benefit one becomes a supplementary benefit, depending on realizing ones residual earning capacity. If realized earning capacity is *50%* or more of the residual earning capacity the benefit will be wage related. If this is less than 50% than the benefit will be minimum wage related. The percentage of the minimum wage a person receives depends on the level of disability, according to the following schedule:

Disability levels	% of the minimum wage
80-100%	70%
65-80%	50,75%
55-65%	42%
45-55%	35%
34-45%	28%

The social minimum is € 1,398.60 a month

4. The sharpened assessment of disability; how is the residual earning capacity calculated?

The decrease in inflow in WIA is partly due to the way the (loss of) residual earning capacity is calculated. The level of disability is calculated in terms of residual earning capacity. The public administrator (UWV) has a database filled with 7.000 jobs that in reality exist somewhere in a company in the Dutch labour market. These 7.000 jobs are described in detail concerning the required skills, physical and psychological burden etc. and appropriate salary. When a person is not declared fully and permanently disabled, UWV looks in the database for suitable jobs. The description of the jobs bears no relation to the actual availability of the jobs on the labour market. The claimant does not even receive an address from the company were the job has been described. This is why it is called a theoretical way of calculating ones residual earning capacity. During the years the way of calculating ones residual earning capacity became more and more theoretical. Some examples:

Before 1987 the public administrator had to find 5 suitable jobs in the direct environment of the claimant, together representing 50 working places. Assumed labour market perspectives were included, e.g. a person of 63 years of age who was declared fully disabled for his own job was usually declared fully disabled because of the assumption that this person probably would not find another job due to his age. In 1987 a loss of residual earning capacity of less than 15% gave no right to disability benefit.

Between 1987-1993 functions all over the Netherlands could be included in the calculation of ones residual earning capacity. The public administrator still had to find 5 suitable jobs, together representing 50 working places. The median salary of all suitable jobs was compared with the salary of the claimant (before he went ill).

From 1993 the public administrator had to find 3 suitable jobs, together representing 30 working places. Only the median of the 3 functions with the highest salary was included in the calculation.

Before 2006 only jobs with the same number of working hours could be declared as suitable. A part time worker could not be declared fit for fulltime jobs. According to the WIA part time workers are expected to work full time. The public administrator only has to find 3 suitable jobs in the system, each job representing 3 working places. The median salary of the 3 jobs with the highest salary is the basis of the calculation of the disability level. Since 2006 the threshold for eligibility to any employment injury benefit has been increased and a loss of residual earning capacity up to 35% gave no right to disability benefit.

The theoretical residual earning capacity discriminates people with low paid jobs.

Conclusion: the way the loss of residual earning capacity is calculated is highly theoretical and fictitious because of all these changes. The fact that nowadays most of the people applying for a disability benefit are declared either fully disabled or less than 35% stipulates that the system is dominant over the judgement of professionals. Even people who suffer from severe injuries are declared less than 35% disabled.

5. Reduction in influx in the WIA Act; a matter of definitions rather than decrease in disabled workers

In its reaction to the comments of the Expects, the government suggests that the WIA legislation has been successful in the sense that 'far fewer employees than in the past claim disability benefits'. The decrease of the influx is according to the government 71%, it claims about half of this decrease is a result of the WIA and the related legislation. This observation is supported by a reference made by the OECD in regard to the WIA legislation. FNV and CNV note that the current Deputy Secretary-General of the OECD Mr. Aart Jan de Geus who is responsible for that report is the same person who was in 2006 as minister of Social Affairs in the Netherlands responsible for the introduction of the WIA.

The suggestion is made that the WIA legislation has been a very successful factor in the prevention of disability, and that it keeps more workers active on the labour market. FNV and CNV do not support that view, because, it is in fact the above mentioned Gatekeepers Act (that obliges the employers mandatorily to continue paying at least 70% of the earned wages during the first two years of disability) that has contributed to the decrease of the influx in the WIA.

Even if at first sight a positive effect is acknowledged, the reality is that the conditions that have to be met in order to be granted a WIA benefit, have become very restrictive. That is the reason why far fewer claims are granted in comparison with the WAO, the predecessor of the WIA. This does not effectively mean that there are less disabled workers, nor should it be concluded that individual workers are less likely to become disabled or remain better equipped for the labour market. The actual disability rates most likely remain the same, but the definitions of the law have changed, causing large groups of disabled workers to fall outside the protection against contingencies that used to be covered. This is not just the case for disabled workers in general, but also for work related disability that is caused by occupational illness or injury that is covered by convention 121. The notion that disabled workers are 'saved for the labour market' due to the WIA is therefore false. It is widely acknowledged and supported by statistics that disabled workers' opportunities on the labour market are extremely limited, in particular for persons middle-aged or elderly.

It would be more accurate to state that under the current legislation 'far fewer workers are allowed to claim disability benefits'. Nothing indicates that the number of disabled workers has decreased. The government claims that the WIA focuses on the opportunities of the disabled worker to perform work according to his or her possibilities and needs. The legislation should work as an instrument to create an inclusive labour market in which disabled workers satisfactorily participate. If that would be the case, FNV and CNV would wholeheartedly support this policy. However, the actual realization of this aim falls short of its expectations, possibly due to the lack of a supporting complementary public employment strategy that would have to be specifically directed at these workers. The fact is that the government has transferred part of its responsibilities under convention 121 on to the individual employers and workers, without providing a solution for the deficit in the compliance which results from that retreat from the public sphere.

As support for the opinion that more workers remain active on the labour market despite their disability, the government states that if this would not be the case, these workers would turn up as unemployed in the statistics. That is somewhat of a misrepresentation however because unemployment benefits have also been the subject of restrictive measures over the last couple of years.

6. The threshold; under 35% no compensatory benefit

The Committee notes that the threshold of 35% loss of earning capacity is set too high to comply with article 14 of the Convention. This article distinguishes in paragraphs 2, 3 and 4 different situations of respectively total-, substantial and partial-, and non-substantial loss of earning capacity, in which periodical payment or lump-sum payment is appropriate. To substantiate its judgment the Committee refers to its comments in earlier cases concerning thresholds between 10% and 25%, in which cases the Committee accepted the threshold because of adequate compensation by means of other complementary income guarantees like lump-sum payment. The WIA Act does not distinguish any of the situations and provides no compensation whatsoever below 35%: no payment, no support, no provision of any employment services, no social assistance. Effectively, public policy directives prohibit that the Institute for Employee Benefit Schemes (UWV) provides its employment services to these groups of disabled workers. After all, according to the government's conviction, these workers are assumed to have sufficient functional possibilities to find a job on their own abilities.

The government dismisses the Committee's interpretation with the argument that its extensive discretionary power to determine the threshold is only limited by the restriction that hardship shall be

prevented. Thereby it disregards that implementation of all the provisions of the convention is required. That means that the different categories of the paragraphs of article 14 should be implemented in the WIA Act with proper regard for all the prescribed gradations. The convention may allow the member states the freedom to define the concrete implementation, but this has to be done according to the purpose of the convention which is the protection of all workers who have fallen ill or were injured in or by their work. The high and undifferentiated threshold contravenes this aim. In other countries around the Netherlands acknowledge this and employ lower thresholds: Belgium, France, Luxemburg and Ireland 1%, Sweden 7%, Italy 11%, the UK 14% and Germany 20%.

7. The responsibility and involvement of the social partners and the government

The government's message is clear: under 35% disability/loss of earning capacity the worker and his employer are on their own, public assistance has retreated entirely. According to the government this is not only in conformity with the Convention (and does not cause any hardship), but was also developed according to the views of the social partners in the consultation phase of the WIA act. In other words, FNV and CNV, as one of the parties in that process, have supposedly agreed upon that threshold and should therefore support it.

Of course in international law it is ultimately the government that is accountable, but FNV and CNV certainly attach great value to consultation processes and active involvement in the implementation of conventions and recommendations. We strongly support the idea that employers and workers at all levels share responsibility with the government when it comes to the resolution of social problems. And indeed, concerning the 'below 35% group of the WIA', initially the social partners have tried to meet the consequences of this political choice by the adoption of a so-called 'tailor-made agreement' within the bipartite Foundation of Labour. It was agreed that for workers with slight labour disabilities, tailor-made solutions should be found at company-level. To put it briefly, employers expressed their intention to do the utmost to employ as many of their disabled workers as possible and step over their reluctance to hire potential workers from this group.

The 2011 evaluation of the WIA act shows that in 2009 a mere 48% of this group is (still) employed. The majority is not! This is unacceptable to the FNV AND CNV. The evaluation report shows that this is a problem of both hiring and firing. Of those workers employed that become disabled, only 63% remain employed by their employer, and only 35% of the unemployed gain new employment.

The trade union confederations FNV and CNV have indeed dedicated themselfs with the organized employers within the Foundation of Labour to improve the labour market position for this group. In March 2008 this endeavor led to the memorandum 'Practical conclusions an recommendations 35-', that is based on 'Research on the reintegration of workers with a disability degree of less than 35%', contracted by the independent Regioplan Institute. Again this year the Foundation of Labour considered it incumbent to draw up additional recommendations. It is clear that progress was insufficient and that effectively, the prospects for this group have deteriorated.

Our conclusion therefore is that the activation policy at company level for this group of workers has failed them. Not only the government has made the decision to discard its responsibilities in relation to these workers, but a majority of the employers seem to also refrain from effectuating their good intentions. Of course, FNV and CNV hope that these adopted resolutions and recommendations will have a positive effect. However, in the light of the facts, their history and the current economical situation, we are not confident that the prospects are improving. It is general practice for the ILO to allow member states to implement the obligations by means of the involvement of the social partners. In fact this is even encouraged and concerning the Netherlands, this has very often turned out positive. For these workers however, the current result is that they are not covered by the protection the convention aims to guarantee. Ultimately the implementation is the responsibility of the government. It cannot hide any longer behind its 'the social partners agreed to do this argumentation'; it has to resume this responsibility.

8. The hardship argument

The government stipulates it considers one principle very important: If it is no longer possible for a disabled worker to resume any kind of work, there should be a fairly high benefit. But if a disabled worker is still able to work, however limited, the incentive to start work will have to be very strong. The government emphasizes that it is not a sanction, but an incentive.

On a labour market that tends to exclude partly disabled workers however, many workers who are partially disabled because of a work-related illness or injury, fall back on a minimum benefit that is unrelated to their formerly gained wages. That is contrary to what the convention aims for.

The Committee is concerned about disabled workers falling into hardship because of two causes: firstly because they need prolonged care or particular expensive treatment that they partly have to provide for themselves, and secondly because of the large income drop when a partially disabled worker goes from the income related IVA to the flat-rate WGA benefit. This paragraph relates to the latter cause of hardship. According to the government hardship does not come into question because the level of the benefits is consistent with the level prescribed by the Convention. Indeed, the point made by he Committee is not that the level itself is inappropriate, but that article 14(3) of the convention prescribes that the benefit for partial capacity should represent a suitable proportion of the benefit for total incapacity. It is the disproportionality that causes the problem, because proportionality between the two situations of disability is the norm. The government's condescending answer is a bit of an inanity; it suggests that it could solve the problem by adjusting the IVA and WGA benefits for fully disabled downwards, in order to establish the required proportionality. The government hastily stipulates that it has no intention to actually adjust the wage-related benefits for the fully disabled workers. FNV and CNV would like to add that it is in fact inconceivable that it would be able to do so; it would be contrary to the accepted basic principles of the WIA Act. It would require a whole new legislative process. Since this is not foreseen any time soon, the government should accept that this choice implies that adherence to the convention requires that there has to be suitable proportion between the two benefits.

9. Which (partially) disable workers actually work?

An important goal of the WIA Act is to promote that workers keep or resume their work. The Act provides instruments that support this goal. If one takes a look at the website of the UWV, the impression is that all disabled workers will receive extensive help in order to (re)obtain a job. But how many disabled do workers actually work, with or without the help of the UWV?

As already stated, below the 35% threshold for disability workers have no right to the WIA benefits, or to the support instruments for reintegration. As the majority of this group is unemployed (see above) there is still a possibility that they have a claim on the support of the UWV because they receive unemployment benefits.

Since 2009 UWV monitors the partially disabled workers in the WGA and the workers under the 35% threshold. It follows their developments concerning their jobs, reintegration support, and provides an overview on the durability of their labour relations. In its report of March 2011 the UWV observes that in both groups of disabled workers (the less than 35% disabled and the partially disabled that are granted a WIA benefit) we find on the one hand workers that worked in permanent normal labour contracts with their employers and on the other hand the so-called safety-net workers. The 'safety-net workers' are called by this name because they make use of the public 'safety-net'. As their contracts finished during their illness their employer did not have to continue paying their wages and they had to fall back on the public Sickness benefits act (see §2). Because of their low status on the labour market, their wages are on average much lower, and this is why they relatively fall more often in the below 35% group that has no WIA rights whatsoever. This does not mean that labour related injuries or illnesses are less frequent among these groups. These are workers working on temporary

contracts, agency workers, on-call contracts, (bogus) self-employed and other a-typical working contracts. In the Netherlands this is a very large part of the labour market. Although the definitions are not totally clear or used uniformly, estimates are that this group covers 20-33% of the labour market. UWV establishes that the dichotomy between the groups that has developed has no relation to their actual functional restrictions. This insider-outsider problem as it is designated by UWV shows that although the situation for the partially disabled workers with employers cannot be called good, these workers in the public safety-net easily fall into hardship when they become disabled. Again, this is regardless of the fact whether their disability is work-related or not. Their former employer may be responsible for their disability, but there is no way for them to redress any claim on the employer.

10. **Private law liability route**

The government states that workers who are victim of a workplace related illness or injury can use a more favorable legal route as they can file a (private law) liability claim for loss of income against their employer under article 6:578 BW. FNV and CNV assume that the state secretary has shifted the numbers of the article and actually refers to article 7:658 BW, because the article he mentions does not actually exist. Maybe this explains why the information on the legal procedure he presumably refers to is inaccurate. According to the government: "developments in the litigation practice on these procedures tend in practice towards automatic liability for these risks". This statement is very inaccurate. Research shows that the private law liability path is in fact extremely difficult to follow and, perhaps even more serious, inadequate in its results. The government does not elaborate on this matter, which is an affront for the workers concerned.

First of all FNV and CNV are of the opinion that a referral to a private law liability legal route cannot be in conformity with the convention. The opposite is true, insurance as prescribed in the Convention, is necessary precisely because of the inadequacy of the litigation route. That route provides no income security whatsoever. On the contrary, this route takes a long time, requires a lot of expensive legal knowledge that is not covered by any funding by the Legal Assistance Council, and comes with high costs for medical experts. It is an enormous financial and emotional burden and the outcome is uncertain. The worker first has to make a reasonable case in court that there is a causal connection between the damage and the employer's failure in his duty to care for the workplace and circumstances under which the work was performed. Research shows that there is a large disparity between the total number of occupational accidents and illnesses, the number of potential claims, the number of actual claims and awarded claim for damages:

Occupational accidents with injury and absence	± 225.000 Average per annum over 2003-2008
Potential number claims for damages	± 22.000
Actual number filed claims	± 3.300
Awarded claims for damages	± 2.600
Occupational illness	± 6.000 (±50.000)
Potential number claims for damages	± 600 (± 5.000)
Actual number filed claims	± 650
Awarded claims for damages	± 540

The amounts paid differ largely from case to case. The average amount is € 8.610 (average yearly income is 33.000/22.000 gr/nt). The amount for occupational illnesses is on average the highest, slightly more than € 11.000. The amount paid by large companies is € 21.480, which is much higher than the amount paid by small- and medium sized companies. The research report presents overviews of the relevant statistics concerning labour injuries and illnesses of four sectors of industry. It shows large discrepancies between the sectors concerning claim activity and actual paid damages. In the transport sector for instance a claim is filed in only 2% of the potential cases and the average damages paid are € 7867, while in the public administration sector claims are filed in 88% of the cases, resulting in an average of € 720 per case. Other research shows that these procedures take a very long time (the average period between emerging OPS complaints and actual payment of damages is 14,5 years) and are in fact disproportionally costly. Every €1.00 granted in damages to the victim, requires €1,30 costs by all involved (worker, employer, insurer, excluding the costs of the judiciary).

11. **Partially disabled worker carries burden of labour market deficiency**

The WIA act is not merely constructed as a regular insurance scheme but contains a number of financial sticks and carrots that are aimed to serve as incentives, also for workers that have been victim of occupational injury or illness. We do not elaborate on this again because an overview was given in earlier comments and the Committee has repeated these in its report. We are referring to the income requirement of the follow-up WGA and the obligations as a jobseeker. If a worker is unable to find work on a labour market that is ill-inclined to provide this for him, he carries the burden of this deficiency of the labour market. FNV and CNV consider this as a great injustice and feels these workers should not be victim of the unilateral shift of this burden from both the government and the employer onto them. FNV and CNV do not deny that it can be beneficial for workers to explore their resilience and possibilities to overcome misfortune. The WIA Act however does not serve this purpose. It makes disabled workers responsible for conditions that are beyond their power to influence. The system prods people who are vulnerable on the labour market and if they do not succeed in obtaining a job, burdens them with the consequences.

FNV and CNV are of the view that the WIA legislation is violating ILO Convention 121 and asks the Committee of Experts to urge the Government of the Netherlands to bring this legislation in full compliance with the Convention.

ANNEX III FNV Comments on the Govenment reports 2011 on

C 130, Medical Care and Sickness Benefits

In its 2011 Report the Government responds to two concerns raised by FNV in 2008.

article 10

In 2008 the FNV argued that given the private nature of the Health Insurance Act the government can not guarantee that all citizens or all members of a specific group will be insured. At the moment (2011) at least 150.000 persons of all classes and ages are not insured. Therefore the scheme does not comply with art. 10 of ILO Convention 130. The government can not guarantee that all employees are protected (a) or that all members of prescribed classes of the economically active population are protected (b) or that all members of prescribed classes of residents (c) are protected.

In its reaction the government acknowledges this problem and describes new legislation to solve the problem. The FNV feels that the new legislation should be given a chance. In three years time it will be clear whether it has worked or not.

article 13

The FNV has a difference of opinion with the Dutch government on dental care for adults. Dental care for adults is not covered by the National Insurance Act of 2005. FNV is of opinion that the absence of dental care for adults in the list of benefits is in violation with article 13.

In its reaction the government states that essential oral care is covered. "For adults the Government considers the following oral care essential: specialized surgical dentistry (oral surgery), the associated X-rays, dentures. People with an exceptional dental disorder, physical/mental disability or special dental problems resulting from medical treatment are entitled to complete dental care (subject to special conditions).

The FNV disagrees. Most adults are only entitled to oral surgery, meaning procedures involving the jaw bone and provided by hospital based oral surgeons. Essential dental care, involving the actual dental elements and usually provided by dentists – preventive advice, check ups, fillings, root canal, extractions, replacing individual elements, etc. - is not covered by the Health Insurance Act. Therefore the oral benefits of the Health Insurance Act are highly inadequate and in violation with article 13.

ANNEX IV FNV comments on the Government report 2011 on

Conventions 11 and 138, Minimum Age

MINIMUM AGE CONVENTIONS NO. 11 AND NO. 138

In its Report the Government of the Netherlands is presenting some of the results from the Labour Inspection monitoring report on the implementation of the rules and regulations for the employment of children and adolecents .

The government fails to present the percentage of compliance in the different sectors over the past years.

Trends in compliance (compliance rate) on the work of children and adolescents are summarized in
the table (3) below.

Tabel 3 Nalevingspercentages per jaar, per sector

Sector	2005	2006	2007	2008	2009	2010
Land- en tuinbouw		77%	69%	72%	78%	50%
Horeca	65%	62%	46%	47%	43%	40%
Detailhandel	59%	73%	79%	71%	53%	56%

These trends are certainly worrisome. Nevertheless, in connection with cutbacks in the capacity of the Labour Inspectorate, there is no inspection project in 2011.

One of the reasons for the low compliance rate in the Horeca is the frequent violation of the maximum working time for 15 year old children. These children were allowed to work no later than of 19.00 hrs. In order to address this low percentage of compliance the government expanded the legal options for child labour by allowing more exceptions to the rules (social work placement) ánd by expanding the latest time to which work may be done by 15-year-olds from 19:00 up to 21:00 hrs. FNV finds it quite alarming that the Government and the Labour Inspectorate polish up the compliance rate in this way.

The vast majority of the children and juveniles has only temporary work. Especially then the required supervision is often missing. It is known from previous research that employers and young workers in the same company strongly disagree on whether there is supervision. FNV would like to refer to its previous comments that in 25% of the cases children and young workers were not aware of the supervision that the employers said they were providing.

ANNEX V FNV comments to the Governments Report 2011 on

C 156 Workers with family responsibility

1 FNV agrees with the information provided by the government in the first paragraph

2 information on the actual use of the leave entitlement and the need for leave

The unpaid leave entitlements are being used much less frequently than the entitlements to paid leave. The unpaid long-term care leave is hardly ever used. Employees prefer to take short-term leave to take care of their seriously ill relatives and friends , in combination with holiday leave, adjustment of working hours, temporary reduction of working hours and tele-working from home. One in every eight persons in the Netherlands has care responsibilities while only 10% of the people who are entitled to long term care leave, actually makes use of this entitlement.

Care givers with a job often use their holiday leave to combine their employment and care responsibilities (30%) and 26% makes use of the short-term care leave. The reason for this is that the long term leave is unpaid and conditions are rigid. There are only two options: a 6 weeks full time leave or a 12 week long half time leave. The Government has submitted a draft law to Parliament to make this more flexible. The FNV considers this to be an improvement and expects that in the future the long term leave will be used more frequently.

This also applies to the parental leave. The parental leave is largely unpaid and has a tax reduction of maximum 50% of the minimum wage during the period of leave. For this reason the use of the parental leave entitlement is low given the need for it. This is also the reason why men make less use of the parental leave entitlement. As they mostly are still the person in the family providing the larger part of the family income, taking parental leave would mean too large a reduction of this income. Parents prefer to reduce or adjust their working hours or to work one or more days from home. The draft law mentioned above also proposes to make the parental leave more flexible and to allow taking the leave in parts.

However, the Government is proposing to abolish the tax reduction during parental leave. The FNV is of the view that parental leave and long-term leave to take care of a seriously ill relative or close friend should be paid leave. Leave for fathers after childbirth in the Netherlands is only two days of paid leave. FNV finds this far too short and thinks it should be increased to 10 days of paid leave.

4 Child care

Ever since the introduction of the Wet Kinderopvang (Law on Childcare) the entitlements and regulations for childcare have been changed every year. Therefore the costs of childcare for parents are very insecure. For this reason many parents in the Netherlands are still making use of informal child care. In addition, the quality of the child care facilities is not always good and monitoring of the quality is insufficient. Because of the uncertainty over the costs ad sometimes the quality as well as the long waiting lists that still exist in certain parts of the Netherlands, parents still choose to make use , at least partially, of informal child care facilities.

Since the introduction of the Wet Kinderopvang in 2005 the use of informal child care arrangements has been reduced. Not because more parents use the formal childcare, but because informal arrangements have been formalised. The Wet Kinderopvang allows that child care by family and friends be brought under formal care by 'host parents' and become eligible for government subsidy. So, while informal childcare was reduced the formal ised care by family and friends as host patents (gastouders) took a sharp increase.

Unlike the Government Report states the contribution by the employers to the costs of childcare is not one-third but 22% only.

In cooperation with other parties, employers and employers associations, parents, educational and childcare organisations, FNV has developed a comprehensive plan for the future of the formal child care in the Netherlands . This advice to the Government for qualitatively high standards and affordable childcare puts the children at the center. Children from 0 to 12 years of age would go to integrated child care centers and receive a varied program of education, care, sports and games. The new structure would provide security for children as well as parents and children could fully develop their talents.

5 The Government wishes to reduce its spending on child care by stimulating employers and workers to take responsibility for combining work and care. If employers and workers agree on part time work, tele-work from home, reduction or adjustment of working hours and paid leave, their will be less need for Government provided child care facilities. However FNV favours a combination of these measures with childcare. In the view of FNV child care should not just allow both parents to work, but should also have additional value for the upbringing of the children. It should therefore be accessible and affordable to all parents. Entitlement to paid leave is necessary to allow for the combination of work and care. Because of a lack of good quality and affordable facilities women in the Netherlands chose to work in small part time jobs. This hinders their careers and prevents them from being economically independent.

FNV thinks that the Government puts the responsibility for the combination of work and care too much with the employees and the social partners.

6 Some research suggests that part time workers in particular have less access to training and schooling within a company. Employers invest more in full time workers, still largely men, and less in part time workers who combine work and care.

8 The Government mentions the legal protection of workers exercising their right to leave but fails to explain how the protection of these workers is implemented in practice.