Pressing issues

South African wine farms and the responsibility for due diligence by Dutch supermarkets

SOMO & TCOE

January 2020

Colophon

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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world.

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The Trust for Community Outreach and Education was established by the late Steve Biko in 1983. TCOE is a national organisation that operates mainly in the rural areas of South Africa. TCOE stimulates building local organisations, local leadership and assists these associations to access land and productive assets to improve their livelihoods.

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Glossary

Bulk wine
Wine that is traded in bulk, transported in big tanks and bottled close to consumer markets.

Casualisation
"A process where workers no longer enjoy full-time, permanent employment, but are appointed on part-time, seasonal, fixed term or temporary contract. They are however still in a direct employment relationship with their employer."[1]

Externalisation
"A process where workers are not directly employed by the main provider of employment, but through an intermediary, who is a 'labour service provider' of the main provider of employment. Labour brokering is an example of externalisation."[2]

Farm dwellers
This term includes farm workers, their family members, pensioned farm workers and former farm workers.

Private label
A retailer's own brand (in Dutch: 'huismerk')

1 Visser, M. and Ferrer, S., "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", report commissioned by the Pretoria Office of the International Labour Organization, February 2015, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>.

2 Ibid.

Acronyms

BAWUSA	BAWSI Agricultural Workers Union of South Africa
BCEA	Basic Conditions of Employment Act
BSCI	Business Social Compliance Initiative
COIDA	Compensation for Occupational Injuries and Diseases Act
COSATU	Congress of South African Trade Unions
CSAAWU	Commercial, Stevedoring, Agricultural and Allied Workers Union
CSOs	Civil Society Organisations
DoL	Department of Labour
ESTA	Extension of Security of Tenure Act
ETI	Ethical Trading Initiative
FAWU	Food and Allied Workers Union
GC	Groot Constantia
HRW	Human Rights Watch
ILO	International Labour Organization
IRBC	International Responsible Business Conduct
ITUC	International Trade Unions Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KASA	Kirchliche Arbeitsstelle Südliches Afrika
KVNW	Koninklijke Vereniging Nederlandse Wijnhandelaren
LRA	Labour Relations Act
NGOs	Non-governmental organizations
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
PPE	Personal Protective Equipment
RBC	Responsible Business Conduct
RW	Robertson Winery
SA8000	Social Accountability Standard
SADC	Southern African Development Community
SAFTU	South African Federation of Trade Unions
SAWIS	South African Wine Industry Information and Systems
SOMO	Stichting Onderzoek Multinationale Ondernemingen/Centre for Research on Multinational Corporations
TCOE	Trust for Community Outreach and Education
UIA	Unemployment Insurance Act
UIF	Unemployment Insurance Fund
UNGP	United Nations Guiding Principles on Business and Human Rights
Vinpro	(Non-profit company which represents 2,500 South African wine producers, cellars and industry stakeholders)
VL	Van Loveren
VOC	Dutch East India Company/Vereenigde Oostindische Compagnie (1602-1800)
WFP	Women on Farms Project
WIETA	Wine and Agricultural Ethical Trade Association
WOSA	Wines of South Africa (non-profit organisation owned by the South African wine industry)

1 Executive Summary

In the Netherlands, a handful of supermarkets dominate food sales. The Big Five control 78 per cent of the grocery market, and their power allows them to set profitable terms and conditions when buying from producers. By putting a pressure on prices, these supermarkets play a large role in influencing under what conditions food is grown and produced. Studies show that this results in unethical trading practices, generates downward pressure on prices, and leads to detrimental effects for suppliers, workers and consumers.

SOMO has been researching supermarket supply chains for over 20 years. Following recent investigations of the supply chains for green beans from Morocco, orange juice from Brazil and sugar from Malawi, this report focusses on wine from South Africa. In this country, the vast majority of agriculture workers do not earn enough money to make a decent living. Exposure to pesticides seriously compromises their health. Workers depend on farmers for housing, which is generally substandard. Moreover, workers who try to organise themselves and stand up for their rights often face serious obstacles.

Over the past 15 years, research into wine production in South Africa has produced a steady stream of reports, documentaries and articles by NGOs and others. The research clearly shows the dire labour conditions faced by workers in this industry. However, Dutch supermarkets seem to be unaware of the situation and do not undertake proper measures when sourcing wine from this high-risk country.

This study shows the need for Dutch supermarkets to shoulder their responsibilities regarding human rights and labour rights abuses in the supply chain of wines from South Africa, and to start due diligence practices according to OECD standards. This is crucial: the Netherlands is a very important market for South African wine, and supermarkets are the most powerful players in this supply chain. The study also shows that when workers get the chance to organise themselves they have a stronger position and are able to negotiate better terms with farmers.

An industry under stress

An estimated 20-25 percent of all wines sold in the Netherlands come from South Africa. In addition, 80 per cent of these wines are sold in and through supermarkets, mostly as private label wine. It is important to realise that supermarkets do not only resell bottled wine; for their private labels, which are generally bottled in Europe, they determine how products look and taste. For example, the top-selling South African wine in the Netherlands is Kaapse Pracht, a private label wine by ALDI. This wine is sourced from multiple vineyards in South Africa, then shipped to Europe and bottled in Germany.

In terms of volume, South Africa is the eighth largest producer in the world. In 2018, wine exports amounted to US$ 785 million. Europe is the main export destination, and the UK, Germany and the Netherlands are the biggest buyers. Although South African wines are highly appreciated around the world, much of it is sold very cheap: the price per hectolitre is among the lowest in the world.

In comparison with other major wine-exporting countries, South Africa is thus at the bottom of the pile as far as profits are concerned. This puts producers under a great deal of pressure. According to Vinpro, the South African wine industry association, 37 per cent of wine producers are making a loss.

Research methodology

In this report, SOMO and the Trust for Community Outreach and Education (TCOE) built on a selection of reports published by other NGOs over the past 15 years. Together, these reports give a good description of the persistent issues in the supply chain of South African wines. In addition, SOMO researchers spoke to workers and union representatives in South Africa, visited farms and vineyards, researched concrete links between vineyards and Dutch supermarkets, and asked six supermarkets in the Netherlands about their policies and practices regarding wines from South Africa. All of the researched supermarkets were invited to read and comment on the draft report, and as many of these comments as possible were incorporated in the final report.

Although there are thousands of grape farms and wineries in South Africa, it was only possible to look at a very small sample for this report. The selection was based on past and/or existing links with Dutch supermarkets as well as on contacts provided by CSAAWU, a South African labour union that operates in the Western Cape, the country's largest wine-producing region. Furthermore, CSAAWU gathered additional information from workers on five specific farms and shared its experiences and local knowledge.

It proved to be very hard to speak to workers without the help of local unions. Outsiders are generally not granted easy access to farms, and workers are reluctant to speak about working conditions. It is challenging even for union organisers to gather information, since farms are geographically distant and unionisation levels remain low among farm workers in general (5-8 per cent compared to 25 per cent for the formal work force as a whole). Another difficulty lies in the fact that many workers are seasonal, and are only at the farm during harvest periods.

These factors all bring limitations to the outcomes of the field research. Nonetheless, the field research underpins and illustrates the previously drawn conclusion from the steady stream of information that forms the backbone of this report. This conclusion is that labour conditions, living conditions and freedom of association are all contested subjects in South Africa.

Wage pressure, labour brokers and pesticides

The biggest issue concerning *labour conditions* is the ongoing externalisation and casualisation of labour. Farm owners employ fewer and fewer workers themselves, instead outsourcing work to so-called labour brokers. These intermediaries only hire casual workers, which makes it harder for workers to obtain permanent contracts. Labour brokers move people around from farm to farm and ensure that they never work at the same site for more than three months.

These casual and seasonal workers are very often migrants without residence and working permits. They are vulnerable, and not in the position to demand any rights. Given the already high levels of poverty and unemployment in South Africa (at the end of 2019, the official unemployment rate was over 29 per cent), this regularly leads to tensions between the different groups seeking to earn a living.

Wages in the wine sector are low; the minimum wage in the agricultural sector is by law lower than the official South African minimum wage in other sectors. Given this downward pressure on wages, it is worth noting an exceptional development at one of the wine farms researched for this report: Groot Constantia. Here, the demands of the labour union were very recently met and wages were raised by 15 per cent. CSAAWU and Groot Constantia also reached an agreement that labour brokers will be phased out in two years' time.

Another important labour issue is occupational health and safety. There are general long-standing issues in the sector as a whole concerning the unsafe use and storage of pesticides. This was confirmed during the field research for this report by at least two farms and by the official audits of the WIETA certification scheme. The findings around the inadequate handling of pesticides also corroborated the findings previously identified by CSAAWU.

Housing stress

Housing for farm workers is a particularly complicated and problematic issue in South Africa, and can only be properly understood from a historical perspective. In the period between 1984 and 2004, nearly 4.2 million people were displaced from farms, often ending up in informal settlements without basic facilities like clean drinking water, sewage and electricity. Given this fact, it is no wonder that farm workers cling to one of the few rights they have in this respect: the right to live on the land under the Extension of Security of Tenure Act (ESTA, 1997). The ESTA was introduced to protect farm workers and people living in rural areas, including their right to live on the land.

The skewed land-holding pattern in South Africa means that poor people in rural areas have very few options for creating food security and sufficient livelihoods. Affordable and decent housing near the remote farms is nearly impossible to find. At the same time, depending on farm owners for housing makes workers vulnerable to the possibility of eviction and homelessness.

Several reports show that farm owners are becoming less inclined to provide housing for workers and are unable to provide suitable alternative accommodations. This is particularly discriminatory for women, as housing is often tied to a permanent contract and women seldom receive housing rights under their own names. Furthermore, housing is often reported to be substandard and lacking in adequate sanitation.

Workers at all of the five farms that were part of the field research fear evictions for the following reasons: houses are left vacant by the management when a tenant leaves; permanent housing rights are not granted when due; and houses are not kept up. WIETA audits partly confirmed these findings. However, all of the interviewed farm owners contest these allegations and state that they respect the ESTA.

Opposition to trade unions

The last issue highlighted in this report is *freedom of association*. As stated earlier, the level of unionisation remains extremely low for farm workers in the Western Cape due to historical, geographical, social and economic reasons.

Before 1994, farm workers were not incorporated into South Africa's labour legislation and therefore could not legally form or join trade unions. Today, labour relations on farms are characterised as being oppressive. Dependency on housing adds to unequal power relationships, and hinders social dialogue, freedom of association and collective bargaining.

The literature and field research show that there is deep mistrust between farm owners and union organisers. Farmers try to restrict access to their property, and attempt to dissuade workers from joining a union. They do so by offering benefits if workers refrain from unionising, or by threatening workers or the union organisers that work for them. The fear of reprisals may make workers reluctant to join unions. The interaction between CSAAWU and farm owners can be characterised as confrontational, and union actions (strikes, calls for boycotts, media outreach) have been met with aggression.

The way forward?

Several initiatives have tried to improve the situation for workers on grape farms, most notably the local improvement scheme WIETA, the Wine and Agricultural Ethical Trading Association. WIETA was set up in 2002 as an association for wine producers, and started to work at the farm level just ten years ago, in 2010. They currently have around 1,500 members. Over 1,000 of these members are certified, meaning that they are regularly audited and rated between A (good) and E (bad). In May 2018, 20 per cent of all certified members were rated D or E.

WIETA is by far the biggest certification scheme for wine producers and grape farmers in South Africa. Other certification schemes are Fairtrade, Amfori BSCI and Fair for Life. For all Dutch supermarkets with the exception of Lidl, WIETA is the most important auditing organisation when it comes to South African wine.

WIETA recognises that audits have their limitations. At this moment, audit reports are the property of the WIETA member that has 'bought', or paid for them. They are not shared with others nor are they made publicly available. It is therefore very hard for workers and unions to establish what has happened with the issues and complaints that have been raised.

The field and literature research shows that workers find it hard to trust WIETA auditors; they are viewed as being too close to the management. Workers report that management picks out the workers the auditors should talk to and the houses that WIETA may visit. Although WIETA acknowledges the need to involve trade unions and NGOs – "They are our eyes and ears" – the relationship between these parties is currently laborious.

WIETA reports that it takes a lot of perseverance for improvement initiatives to acknowledge problems and to undertake action to address them. In a few cases for example, additional audits needed to be performed before many of the issues raised by CSAAWU were eventually confirmed. It should be noted structural issues were initially not detected through regular audits in the cases covered in this report.

The most problematic issue with WIETA, and with certification schemes in a broader sense, is that they cannot guarantee that the situation for workers will improve. Corrective action plans may be drawn up, but they will not always lead to the solution of problems with a structural nature such as discrimination, lack of freedom of association, and wages that are too low to live on. Due to their voluntary nature, certification and improvement initiatives have no enforcement power. In the most extreme case, non-compliance could result in the revocation of the certificate, but this usually does not lead to remedy for the affected workers.

This is why supermarkets' due diligence cannot be fulfilled by simply sourcing certified wines. Due diligence is a continuous process to achieve sustainable supply chains, and supermarkets need to be proactive and report on this process. Supermarkets – most notably Albert Heijn and Jumbo – are showing a willingness to implement due diligence policies, including risk analyses. However, the steps to seriously improving local working conditions have not yet been taken. Albert Heijn and Jumbo (as well as PLUS and ALDI) put blind trust in WIETA, without carefully examining the benefits of this certification scheme. Jumbo, ALDI and Lidl also mention Fairtrade, which has by far the best standards and is multi-stakeholder. Even with the Fairtrade scheme however it is essential that the systems are improved and that there is transparency concerning the results, even if they are disappointing.

There is no simple answer to the problems faced by workers on wine farms in South Africa, but disengagement is not the solution. This also applies to other supply chain actors such as European importers, bottlers and traders. Dutch supermarkets need to take their role in the supply chain seriously, to pay fair prices so that farmers can pay a proper wage, and to actively engage with their local suppliers – the unions and certification and improvement schemes – to actually improve the situation of workers.

In the absence of binding regulations on due diligence and powerful government control on labour regulations, and given the skewed power relations in the supply chain, supermarkets have to step up their efforts to improve labour conditions in their supply chains. This is particularly the case in countries and sectors that are known for their labour and human rights violations like the wine sector in South Africa.

2 Introduction

Millions of people around the world enjoy drinking wines from South Africa, which is the world's eighth biggest producer and sixth biggest exporter of wine. The majority of South African wines are exported to Europe, and approximately 20-25 per cent of the wines on Dutch supermarket shelves come from South Africa.

Despite South Africa's prominent role in the production and export of wine, farm workers in the country's vineyards are not reaping the benefits of the nation's prime position and often experience substandard conditions. Many workers do not earn a decent living, and exposure to pesticides seriously compromises their health. Workers who attempt to organise, demand their rights or bargain collectively often face serious obstacles.

This report has been written by the Centre for Multinational Corporations (SOMO) and the Trust for Community Outreach and Education (TCOE), with the help of CSAAWU (the Commercial, Stevedoring, Agricultural and Allied Workers Union), an independent trade union that is mainly based in the Western Cape Province of South Africa.

While the Netherlands is a significant importer of South African wine, there has hardly been any discussion – let alone action – regarding the abuse of both human rights and labour rights in this industry. Through this research, SOMO and TCOE want to raise awareness about workers' rights violations in the South African wine industry and at the same time support the work of CSAAWU.

First of all, SOMO and TCOE are making an appeal to Dutch supermarkets to ensure that wines sourced from South Africa are produced under decent conditions. However, in addition to supermarkets, there are other crucial players: governmental actors in both South Africa and importing countries, corporate actors along the supply chain, trade unions and civil society all have a role to play.

Do supermarkets need to clean up their acts?
In line with the United Nations Guiding Principles on Business and Human Rights (UNGP)[3], Dutch supermarkets are responsible for identifying, preventing and mitigating risks and remediating any negative impacts on human rights that occur through their own activities, or as a result of their business relationships with other parties, including their supply chains. This means that Dutch supermarkets have the responsibility to ensure that human rights are respected in the supply chain of the wines they are selling. Moreover, with their considerable buying power, they have the leverage to make a significant impact.

3 United Nations, "Guiding Principles on Business and Human Rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework", 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

This report scrutinises the human rights due diligence policies and practices of the five leading Dutch supermarkets – Albert Heijn, ALDI, Jumbo, Lidl and PLUS – regarding their sourcing of wines in South Africa to see if they are up to standard, and looks at how they can contribute more to sustained improvements in working and living conditions on South African wine farms.

2.1 Background

Over the past few years, South African and international trade unions and civil society organisations have been drawing attention to the exploitative working and living conditions for workers on South African farms. These organisations have engaged in multiple actions to urge government and corporate actors to respect workers' fundamental rights. Despite some wins – notably an increase in the minimum wage after mass worker protests in 2012-13 (see Box 5) – there have hardly been any sustained improvements.

The production of wine and grapes for wine has a long history in South Africa: a history that is closely linked to colonialism, apartheid and land dispossession. There is also a strong historical association with the introduction of slavery by the Dutch East India Company (VOC) in the 17th century. The VOC brought and employed slaves, and slaves were also employed by 'free burghers' (Dutch VOC employees who were released from their contracts and permitted to establish farms to supply the VOC).

Although legally abolished in 1834, slavery-like conditions remained entrenched in South Africa for many decades. Forced labour, bonded labour and debt servitude were rampant in the agricultural sector throughout the country throughout the 19th century. From the 1930s onwards and during the period of apartheid that was ended in 1994, black prisoners – often jailed for violating the pass laws designed to segregate the population – were also supplied to white famers as cheap labour.

White-owned farms became both a place of work and a place for workers to live after they had been dispossessed of their land. Often, generations of the same families worked on the same farms. Even today it is possible to meet workers whose parents and grandparents have worked and lived on the same wine farms. This has given farmers a great deal of control over workers and their families, and has created a dependency on the 'white boss' for a place to live. These historical patterns still impact working conditions today.

The market
Europe is the largest market for South African wines, and supermarkets represent the main avenue for wine sales across the continent. Today, European supermarkets are demanding increasing volumes of bulk wine (wine that is shipped in tanks and then bottled at its destination).

South African wines are among the top-selling wines in the Netherlands; some 20-25 per cent of all wines sold in the country originate in South Africa. As is the trend in other European countries,[4] a few big retailers are increasingly dominating the market: the five leading supermarkets control 78 per cent of the grocery market in the Netherlands.[5] The buying power that this creates can be used to push down prices, creating adverse impacts on working conditions throughout the production chain. Alternatively, supermarkets could use their influential position within the supply chain to help contribute to sustained improvements for workers.

2.2 The research objectives

This research aims to help bring about sustained improvements in working and living conditions on South African wine farms. The results will be used to raise awareness: amplifying campaign efforts in the Netherlands and South Africa, and supporting the work of trade unions in South Africa, particularly CSAAWU.

The research questions are the following:

- What are the human rights and labour rights risks in the South African wine industry?
- Can Dutch supermarkets be linked to human rights and labour rights violations on the farms of South African wine producers?
- Do the researched Dutch supermarkets have risk-based due diligence policies and practices in place that are effectively addressing human rights risks in the supply chain of South African wines?

2.3 Methodology

This report is based on a mixture of field research, desk research and literature research.

2.3.1 Literature research

To gain an overview of human rights and labour rights risks in the South African wine industry, researchers consulted reports from non-governmental organisations (NGOs), civil society organisations (CSOs), trade unions and improvement initiatives. Box 1 provides an overview of the reports consulted.

4 In the UK, Tesco, Sainsbury's and Asda control nearly 60 per cent of the grocery market. In France, Carrefour, E. Leclerc and Intermarché have a combined market share of 55 per cent. Source: Politico, "Brussels declares war on supermarkets", 10 September 2017, <https://www.politico.eu/article/carrefour-tesco-asda-sainsbury-leclerc-intermarche-brussels-declares-war-on-supermarkets/>.

5 Based on figures by Nielsen, FoodPersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/>.

Box 1 Reports about labour rights and human rights issues in the South African wine industry

Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://www.oxfam.de/system/files/20171010-oxfam-wine-study-english.pdf>.

Women on Farms Project, "The farmer doesn't recognise who makes him rich: Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <http://www.wfp.org.za>.

T**om Heinemann,** "Bitter Grapes", documentary, 2016, <www.bittergrapes.net>.

KASA, "The South African wine industry and the living and working conditions of its farmworkers", Factsheet, November 2016, <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>.

Visser, M. and Ferrer, S., "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", report commissioned by the Pretoria Office of the International Labour Organization, February 2015, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>.

Institute for Poverty, Land and Agrarian Studies (PLAAS), "Farm Workers' Living and Working Conditions", September 2013, <http://repository.uwc.ac.za/xmlui/handle/10566/4582>.

Afrikagrupperna (AGS), "Gendered value chain analysis in wine: from farm worker in South Africa to consumer in Sweden", 2012, <https://www.researchgate.net/publication/277989194_Gendered_value_chain_analysis_in_wine_from_farm_worker_in_South_Africa_to_consumer_in_Sweden_AGS_report>.

Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries, 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811web-wcover.pdf>.

War on Want, "Sour Grapes – South African wine workers and British supermarket power", 2009, <https://waronwant.org/sites/default/files/Sour%20Grapes%20wine%20report.pdf>.

ActionAid, "Rotten fruit – Tesco profits as women workers pay a high price", 2005, <https://www.actionaid.org.uk/sites/default/files/doc_lib/14_1_rotten_fruit.pdf>.

Black Association for Agricultural Sector (BAWSI), "Farmworker Voices – Reflections of Worker Conditions on South African Farms (Western Cape Sample Study), no date, <http://www.bittergrapes.net/wp-content/uploads/2016/10/BAWSI-report.pdf>.

Social Surveys and Nkuzi Development Association, "Still searching for security – The reality of farm dweller evictions in South Africa", December 2005, <http://lamosa.org.za/resources/EVICTIONS%20BOOK.pdf>.

Information about the South African wine industry and the European wine retailing market was gathered from reports by industry bodies – the South African Wine Industry Information and Systems (SAWIS)[6] and wine producers associations Vinpro[7] and Wines of South Africa (WOSA)[8] –as well as sector information from the European Commission and other sources. Import and export information was gathered from the UN Comtrade database.[9]

2.3.2 Supply chain research

In order to identify supply chain linkages – direct connections between South African wine producers and Dutch retailers – SOMO carried out store visits to check the labels on wine bottles. In addition, the online shops of supermarkets were visited to check whether information about the origin of wines was provided.

Furthermore, the website of the Directorate of Food Safety and Quality Assurance for the Wine Industry proved to be useful. This website, developed by South Africa's Department of Agriculture and Department of Trade and Industry, includes a database in which names of producers are linked to the codes published on the labels of wines that are bottled in South Africa.[10]

2.3.3 Field research

Field research was carried out from May 2018 to August 2019. First-hand information about employment and working and living conditions was collected through interviews with CSAAWU organisers (see below) and with workers. Group interviews with workers and farm dwellers at the farms of five wine and grape producers were held in May and December 2018. Additionally, group interviews took place in June and August 2019. There were 11 group interviews in total. For an overview of the worker interviews, see Table 1.

Limitations
This research has made great use of the research reports published by international trade unions and civil society organisations over the past years (see Box 1). These reports highlight a range of human rights and labour rights issues in the South African wine industry. To illustrate some of the persistent issues as identified by various South African and international labour rights and human rights organisations, and to link these issues to Dutch retailers, SOMO and TCOE researched practices at five production units (grape plantations and wine cellars) belonging to four South African wine producers (see Table 3). The intention of this research is neither to be representative for the sector nor to be quantitative, but only to bring the persistent issues in the supply chain of South African wines closer to the Dutch retailers and their responsibilities.

6 Sawis, <http://www.sawis.co.za/>.
7 Vinpro, <https://Vinpro.co.za/>.
8 WOSA, <https://www.wosa.co.za>.
9 UN Comtrade, <https://comtrade.un.org/>.
10 Department of Agriculture website, "A/B code search", <http://www.dawineonline.co.za/login/frm_abCodesSearch.cfm>.

SOMO often uses the field research methodology of interviewing workers without the involvement of factory or farm management in order to increase the chance that workers will speak freely. However, establishing contact with workers and accessing them for interviews often proves to be very difficult, and often cannot be done without the help of the trade unions that are active in the facilities. In this case, SOMO and TCOE highly value their cooperation with the CSAAWU trade union, which has organised workers at some of the South African wine production sites. Supply chain linkages to the Netherlands and possible access to workers were decisive in the selection of producers for this research.

The field research was carried out at five production units belonging to four wine producers, all of which export to the Netherlands. The researched production locations are located in the Western Cape, the most important wine production province in South Africa, accounting for 90-95 per cent of the country's wine production. CSAAWU is active at all five of these facilities, and helped TCOE and SOMO to establish contacts with workers as well as providing additional information about the sites.

Carrying out the field research was very challenging. It was difficult to establish contact with workers, especially those working and living on the plantations, as farm owners do not easily grant access to their farms. Even in cases where CSAAWU has organised the majority of workers, it is difficult for officials of the union to visit their members. In addition, workers' fears of losing their jobs and their houses may prevent them from speaking freely about their employment, working conditions and living conditions.

Box 2 About CSAAWU

CSAAWU is an independent trade union, established in 2006 and formally registered with the Department of Labour in South Africa in 2007. It was formed in response to the appalling poverty, working and living conditions of farm workers and farm dwellers, and the lack of employers' compliance with labour and human rights in the agricultural sector. CSAAWU is affiliated to the South African Federation of Trade Unions (SAFTU) and to the global union federation IUF (the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations).

CSAAWU has organised workers at more than 160 workplaces and currently has more than 4600 members. It aims to organise all workers: permanent, contract (employed via labour brokers), seasonal and both local and migrant workers (although it is challenging to organise casual and migrant workers). It tries to reach and educate migrant workers about their rights by distributing pamphlets at the 'pickup points' where labour brokers collect workers. CSAAWU's organisers speak several languages to help overcome language barriers.

CSAAWU operates a Rural Legal Centre in Nkqubela, a township outside Robertson that was established for African people during apartheid. Many evicted farm workers live here, and workers seeking advice or assistance can also come to the centre.

Table 1 Overview of worker interviews

Company name	Units where interviews were carried out	Number of workers interviewed
Groot Constantia *Cape Town*	Groot Constantia	May 2018: 10 workers December 2018: 4 workers June 2019: 14 workers
Robertson Winery *RW, Robertson*	Robertson Winery *cellar*	May 2018: 5 workers December 2018: 3 workers
	Goree *grape producer supplying RW*	May 2018: 12 workers December 2018: 12 workers
Leeuwenkuil *Stellenbosch*	Leeuwenkuil	2018: 10 workers August 2019: 37 workers
Van Loveren *Robertson*	Vinkrivier *grape plantation owned by Van Loveren*	April 2018: 4 workers May 2018: 4 workers

Interviews with different stakeholders
In addition to the worker interviews, information about employment, working conditions and living conditions was provided by CSAAWU organisers and officials. They have been in contact with workers at the researched production locations for years, and have been gathering information on labour rights issues. Researchers spoke at length and on many different occasions with the CSAAWU General Secretary, the Deputy General Secretary and four organisers. There was also contact with FAWU (Food and Allied Workers Union).

A number of industry representatives and representatives of multi-stakeholder initiatives were also interviewed, including the following organisations: Wine and Agricultural Ethical Trade Organisation (WIETA); South Africa Wine Industry Information and Systems (SAWIS); the Robertson Wine Valley marketing association; Wines of South Africa (WOSA); Koninklijke Vereniging Nederlandse Wijn-handelaren (KVNW); and JF Hillebrand (logistics company).

Researched wine producers
In October 2018, TCOE interviewed both the Managing Director and the HR Manager of wine producer Van Loveren. TCOE also reached out to Groot Constantia with an interview request, but the company did not reply. The request to review the draft of this report resulted in a meeting between SOMO and the CEO of Robertson Winery in December 2019 in Amsterdam.

Research about supermarket policies and practices
The five leading Dutch supermarkets – Albert Heijn, ALDI, Jumbo, Lidl and PLUS – each received a questionnaire from SOMO. All supermarkets responded, although they provided varying degrees of information. This feedback has been included in Chapter 5 of this report.

Deen Supermarkten BV is a rather small supermarket, and therefore initially not included in the research. However during the research it became clear that this supermarket has been selling, at least until very recently a Leeuwenkuil wine. Chapter 5 therefore also contains a paragraph on Deen.

Company review
SOMO offers all of the companies mentioned in our research reports the opportunity to review, respond to and comment on draft passages in these reports that directly relate to the company

in question. This opportunity to respond is intended to avoid publishing inaccuracies and is, as such, an essential element of ensuring high-quality research. Nonetheless, it is important to note that even if a draft research report has been reviewed by a company or companies, the authors of the report remain solely responsible for its contents.

All of the researched wine producers and grape farms made use of the opportunity to respond to and comment on the draft report in November 2019, and input from Robertson Winery, Ashton Goree (a supplier of Robertson), Leeuwenkuil, Van Loveren (for the Vinkrivier farm) and Groot Constantia has been processed in the report.

All of the researched Dutch supermarkets reviewed the report and sent in their comments: Ahold Delhaize (for Albert Heijn and Gall & Gall), ALDI, Deen, Jumbo, Lidl and PLUS. Their comments and suggestions for correcting and improving the report have been incorporated into the final version.

Other stakeholders that reviewed specific chapters of the report upon request are certification bodies WIETA, Amfori BSCI and Fairtrade. There was a joint response by industry associations Wines of South Africa (WoSA) and Vinpro.

2.4 Outline of the report

This report is structured as follows:

- Chapter 3 presents information about the South African wine industry. It includes information about the size, type of companies that are active, export revenues, export markets, etc.
- Chapter 4 provides information on employment, working conditions and living conditions on South African wine farms. It is based on the field research carried out by TCOE and SOMO with the support of CSAAWU. In addition, it also presents the main findings of previous research reports about human rights and labour rights issues in the South African wine industry and highlights the relevant legislation.
- Chapter 5 focuses on the five leading Dutch supermarkets and their policies for addressing human rights and labour rights in their South African wine supply chains. This chapter presents the results of the survey that was sent to the supermarkets.
- Chapter 6 provides an analysis and offers a set of recommendations, mainly directed towards Dutch supermarkets.

3 The South African wine industry

3.1 Introduction

With the transition to a parliamentary democracy in 1994, South Africa became part of the global market for goods including fruit and vegetables. For many years it had been excluded from these markets due to the economic and trade sanctions that had been imposed by several governments in response to the apartheid regime. According to WOSA, the wine industry as a whole – farm work, packing, retail and wine tourism – currently offers employment to around 300,000 South Africans.[11]

In 2018, South African wine production volumes fluctuated in both quantity and quality. Due to the recurring drought and water crisis, production declined by 14 per cent in comparison with the previous year,[12] while grape flavours improved.[13] In 2018, export volumes dropped 6.3 per cent from 2017 levels.[14] However, export revenues increased by almost 9 per cent (from US$ 721 million in 2017 to US$ 785 million in 2018), indicating an increase in the price per litre of exported wine.

3.2 An industry being squeezed?

The largest wine-producing countries in the world are Italy, France and Spain. In terms of litres produced, South Africa is the eighth largest wine producer in the world.[15] In 2018, wine exports amounted to US$ 785 million.[16] Of the total production, 51 per cent was exported that same year, according to statistics from SAWIS.[17]

South African wines are among the lowest priced wines in the world. Table 2 provides data about the 11 main wine exporting countries. It shows that while South Africa is the sixth largest exporter by volume, in terms of value it comes at the bottom of the pile. According to Vinpro, the South African industry association for wine producers, 37 per cent of South African wine producers are making a loss.[18]

11 WOSA website, The Industry Overview", <https://www.wosa.co.za/The-Industry/Overview/> (accessed on 10 January 2020).

12 Organisation Internationale de la Vigne et du Vin, "Aspectos de la conyuntura mundial – Situación del sector en 2018", April 2019, <http://www.oiv.int/public/medias/6680/es-oiv-aspectos-de-la-coyuntura-mundial-2019.pdf/>.

13 Daily Maverick, "Lacklustre season for Western Cape agriculture expected", 2018, <https://www.dailymaverick.co.za/article/2018-04-23-lacklustre-season-for-western-cape-agriculture-expected/>.

14 Organisation Internationale de la Vigne et du Vin, "Aspectos de la conyuntura mundial – Situación del sector en 2018", April 2019, <http://www.oiv.int/public/medias/6680/es-oiv-aspectos-de-la-coyuntura-mundial-2019.pdf/>.

15 Vinpro, "South African wine harvest report 2018 – Big challenges in the vineyard, big surprises in the cellar", 5 May 2018, <http://Vinpro.co.za/wp-content/uploads/2018/05/SA-WINE-HARVEST-2018-REPORT.pdf>.

16 Figures from UN Comtrade Database, export figures for product groups 2204 and 2205 for the year 2018, reporting country: South Africa, <https://comtrade.un.org/data> (accessed on 8 August 2019).

17 SAWIS, "SA Wine Industry 2018 Statistics Nr 43", 2019, <http://www.sawis.co.za/info/download/Book_2018_statistics_year_english_final.pdf>.

18 Vinpro, "Production Plan Survey – The 2017 Vintage", no date, <Vinpro-Production-plan-2017_English.pdf>.

Figure 1 Wine regions of South Africa

Source: http://www.regencywines.com/south-africa/

Table 2 Main wine exporting countries

Country	Volume *mill. hL*		Value mill. EUR)	
	2017	2018	2017	2018
Spain	23	21	2,861	2,916
Italy	21.5	19.7	5,952	6,148
France	14.9	14.1	9,083	9,336
Chile	9.8	9.3	1,773	1,680
Australia	7.8	8.6	1,773	1,829
South Africa	4.5	4.2	632	663
Germany	3.8	3.8	1,006	1,032
United States	3.5	3.5	1,307	1,226
Portugal	3	3	780	804
Argentina	2.2	2.8	713	674
New Zealand	2.6	2.6	1,060	1,011

Source: Data derived from the Organisation Internationale de la Vigne et du Vin, "Aspectos de la conyuntura mundial – Situación del sector en 2018."[19]

19 OIV, http://www.oiv.int/public/medias/6680/es-oiv-aspectos-de-la-coyuntura-mundial-2019.pdf, visited 10 January 2020.

In September 2018, DGB – one of South Africa's largest wine producers – released a 15-minute documentary on YouTube called "The Inconvenient Truth about South African Wine".[20] This video features five South African wine producers; in addition to DGB (part of Jumbo's supply chain), these included Eikehof Farm, Weltevrede Wine Estate, Haskell Vineyards and Kanonkop (part of Ahold's supply chain). Industry representatives from Vinpro and WOSA and wine expert Micheal Fridjhon were also featured. In the video, the producers sound the alarm bell about the detrimental impacts of the low prices paid by international buyers.

Johann Krige from wine producer Kanonkop says in the video:

"A lot is expected from South African wine producers in terms of certification and traceability. In terms of rules and regulations, South Africa is probably most progressed, specifically in terms of traceability. But we don't get the recognition for traceability, for our wine of origin system, for the compliance with the Wine and Spirit Board. Someday, we are going to start asking ourselves, how far can we go?"

The NGO Afrikagrupperna (Africa Groups of Sweden), had already concluded in a 2012 report on the South African wine industry that:

"workers, farm owners and importers accrue a relatively small portion of the final value of wine" and that *"prices on the shelves do not reflect costs of production that are socially and ecologically sustainable. The result is that grape growers will cut corners in the short term to make ends meet."*[21]

However, current trends and developments – including increased demand from China and low levels of wine stock – provide the opportunity for the industry to raise the bar in terms of pricing. In a news article from January 2019, Vinpro Chairman Anton Smuts was quoted as saying: "We have already seen an increase of 35% to 50% in the prices of bulk wine over the past two years, and 10% in packaged wine."[22]

3.3 The rise of bulk wines

There are two distinct international trade markets for wine: wine that is already bottled and labelled in the country of origin; and wine that is traded in bulk, transported in big tanks and bottled close to consumer markets.

Bulk wine is usually cheaper and of lower quality than bottled wines. Wines bottled in the country of origin provide more local jobs and revenues. However, South African wine exports currently consist of around 60 per cent bulk and 40 per cent bottled wines. This is a recent development: in 2010,

20 DGB video, "The Inconvenient Truth - The South African Wine Industry", uploaded 12 September 2018, <https://www.youtube.com/watch?v=ENZ92zcSHAE>.

21 Afrikagrupperna, ""Gendered Value Chain Analysis of Wine – From Farm Worker in South Africa to Consumer in Sweden", 2012, <https://www.researchgate.net/publication/277989194_Gendered_value_chain_analysis_in_wine_from_farm_worker_in_South_Africa_to_consumer_in_Sweden_AGS_report>.

22 Business Day, "Wine grape producers are struggling to make a profit", 21 January 2019, <https://www.businesslive.co.za/bd/national/2019-01-21-wine-grape-producers-are-struggling-to-make-a-profit/>.

it was the other way around.[23] The increase of bulk wines at the expense of bottled wines has led to job losses on farms, in processing facilities and throughout the rest of the supply chain in South Africa.

Europe is the main export destination for South African wine, with the UK, Germany and the Netherlands as the biggest buyers.[24] However, it is important to note that official export figures do not give a complete picture. A large share of South African wine is re-exported after it has been bottled in major bulk importing countries such as Germany, the UK and France, which makes it impossible to determine where South African wines eventually end up by referring to public trade statistics. Store visits in the Netherlands revealed that a considerable share of the South African wines sold in Dutch supermarkets are bulk wines bottled in Germany, the UK and France.

Bulk wine is a substitutable raw material: in other words, it is a commodity.[25] South African wine producers are not only in competition with each other, but they also face stiff competition from bulk wine producers in other countries such as Argentina and Chile. This suggests that the wines from these countries are to some extent interchangeable. This poses a risk for South African producers, since retailers and importers can easily change their suppliers. In short, while South African exporters are becoming increasingly dependent, European importers and retailers are gaining more bargaining power.[26]

Importing bulk wine is about half as expensive as importing bottled wine.[27] The increase in the demand for bulk wine is strongly related to the rising number of products with private labels (a retailer's own brand) in supermarkets. In most European countries, supermarkets with private label wines account for much of the demand for bulk wine.[28] Even traditional wine-producing countries such as France, Italy and Spain are currently looking for bulk wine suppliers.[29]

The South African government is not happy with the increasing pressure from international buyers and traders to produce more and more bulk wine, claiming that this strategy is leading to considerable job losses in the domestic industry and could eventually damage the country's image and 'Brand South Africa'.[30] With the goal of reversing the current trend, South African wine producers have therefore jointly set the goal of producing 60 percent branded wines and 40 percent bulk wines by 2025.

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23 SAWIS, South African Wine Industry Statistics, 2016, p. 22.

24 The Observatory of Economic Complexity website, figures from 2017, <https://atlas.media.mit.edu/en/visualize/tree_map/hs92/export/zaf/show/2204/2017//> (accessed on 10 January 2020).

25 Visser, M. and Ferrer, S., "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", report commissioned by the Pretoria Office of the International Labour Organization, February 2015, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>.

26 Ibid.

27 Oxfam, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, p. 9, <https://www.oxfam.de/system/files/20171010-oxfam-wine-study-english.pdf>.

28 CBI, "Product Factsheet: Bulk wine in Europe", 2016, p. 5, <https://www.cbi.eu/sites/default/files/market_information/researches/product-factsheet-europe-bulk-wine-2016.pdf>.

29 Ibid., p. 2.

30 COGEA, "Study on the competitiveness of European wines", 2014, p. 36, <https://ec.europa.eu/agriculture/sites/agriculture/files/external-studies/2014/eu-wines/exec-sum_en.pdf>.

Figure 2 Example of South African bulk wine, bottled in Germany by Tophi and sold in the Netherlands by Albert Heijn.

Box 3 The bulk route - destination unknown

As mentioned above, the largest importers of South African bulk wines are the UK, Germany and France, and these countries all have massive bottling facilities. Germany in particular has emerged as an important bottling and redistribution hub; the main players include full-service provider Tophi (which also owns Wein- und Sektkellerei Ostrau) and Reh Kendermann. The UK is home to Europe's biggest bottling facility, Accolade Park owned by Accolade Wines.[31]

In 2017, the UK imported 1.3 billion litres of wine of which 100 million litres came from South Africa (the seventh largest sourcing country). The same year, the UK exported 99 million litres of wine, with the Netherlands as the biggest export destination.[32] The UK itself is a minor producer of wine, meaning that the lion's share of exported wines are produced elsewhere and re-exported to other destinations after being bottled in the UK. It is not possible for SOMO and TCOE to determine what percentage of the imported South African bulk wines are sold on the UK market after bottling and what percentage is exported.

31 The Drinks Business, "Europe's largest wine bottling facility expands", 22 March 2016, <https://www.thedrinksbusiness.com/2016/03/europes-largest-wine-bottling-facility-expanded/>.

32 UN Comtrade database, data for 2017, product group 2204, <https://comtrade.un.org>.

3.4 Increasing concentration

Due to low prices for their wine, some South African producers are reportedly struggling to make a profit. This is particularly the case for those who only grow grapes and do not make their own wine. Although there are advantages for producers in the production of bulk wine (including quicker cash flow), the return per litre is significantly lower than for bottled wine. Consequently, more and more grape growers are not able to make a profit and are selling their farms to big wine producers. According to South African Wine Industry and Information and Systems (SAWIS), the number of grape producers in the country has decreased from 3,839 in 2008 to 3,029 in 2017.[33]

Wine cellars are becoming more closely involved in the grape production process to ensure appropriate quality, especially for the export market. The cellar market has become increasingly concentrated amongst large producers.[34] In fact, 48 so-called producer cellars – cooperatives where grapes are collected and processed on behalf of a group of wine producing members – press about 80 per cent of South Africa's total wine harvest.[35] The other 20 per cent is processed by 472 private wine cellars (independent wine producers) and 26 wholesalers (which buy both grapes and wine in order to produce wines under their own brand names, although they may also produce wine from grapes grown on their own wine farms).[36] A vast majority of producer cellars (34 out of 48) crush more than 10,000 tons of grapes per year, while almost half of the private wine cellars produce just between 1 and 100 tons.[37]

According to an ILO study, South African wine producers are currently in competition with each other and retailers (supermarkets) encourage this competition in order to bring about lower prices. This is a significant departure from the period before the deregulation of the agricultural sector in 1997, when wine producers could negotiate as a collective with powerful retailers. As a result, "prices have eroded over time and have not kept up with input costs".[38]

33 SAWIS, "Macro-economic Impact of the Wine Industry on the South African Economy", December 2009, <http://www.sawis.co.za/info/download/Macro-economic_impact_study_-_Final_Report_Version_4_30Jan2015.pdf> and SAWIS, "SA Wine Industry 2017 Statistics Nr 42", 2017, <http://www.sawis.co.za/info/download/Book_2017_statistics_year_english_final.pdf>.

34 Afrikagrupperna, "Gendered Value Chain Analysis of Wine – From Farm Worker in South Africa to Consumer in Sweden", March 2012, <https://www.researchgate.net/publication/277989194_Gendered_value_chain_analysis_in_wine_from_farm_worker_in_South_Africa_to_consumer_in_Sweden_AGS_report>.

35 WOSA website, "The Industry – Overview", no date, <https://www.wosa.co.za/The-Industry/Overview/> (accessed on 11 January 2020).

36 SAWIS, "SA Wine Industry 2017 Statistics Nr 42", 2017, <http://www.sawis.co.za/info/download/Book_2017_statistics_year_english_final.pdf>.

37 Ibid.

38 ILO, "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", 2015, p. 214, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>.

3.5 Europe: the powerful end of the supply chain

Both the bulk and bottled wine chains are buyer-driven, with dominant retailers in most European countries. Large European supermarkets and their buying groups enjoy great negotiating power because they can buy significant amounts of wine. This means that they have a strong position in the retail market and that they wield significant financial power.[39]

In addition, supermarkets often require 'listing fees' (or slotting allowances): payments by manufacturers to retailers in order to appear on their shelves. Listing fees can cost up to 28 percent of the retail price,[40] and there may be other costs involved as well. In 2018, Albert Heijn required its Argentinean wine producers to pay €50,000 for the promotion of their wines on the shelves for one week.[41] According to Albert Heijn, there is a standard tariff list which is shared openly with all suppliers that want to promote their products.[42]

3.6 Lack of transparency

European supermarkets generally do not disclose their entire wine supply chain. The supply chain of South African bulk wine from grape grower to retailer can be complex, with many different actors involved: grape growers, wine producers, exporters, importers and retailers (see Figure 3). The supply chain is often shorter in the case of bottled wine: the grape grower, wine producer and exporter might be one company.[43] The labels of bottled wines may contain some information about the origin of the grapes, for example the name or number of the exporter or importer.[44] Due to South African labelling requirements, producers of branded wines can be identified in most cases. Each label contains a code starting with an A, followed by a series of numbers. The name of the producer appears when this code is entered into the public database operated by the Department of Agriculture.[45]

Figure 3 Supply chain from grape grower to retailer (example)

Source: SOMO

39 CBI, "Product Factsheet: Bulk wine in Europe", 2016, <https://www.cbi.eu/sites/default/files/market_information/researches/product-factsheet-europe-bulk-wine-2016.pdf>.

40 BASIC, "Analysis of agricultural value chains between South Africa and Germany: Case studies of table grape, wine and rooibos", 2015 , p. 40, <https://www.oxfam.de/system/files/basic_south_african_value_chains_study_final.pdf>.

41 De Volkskrant, "Albert Heijn laat leveranciers fors betalen voor bonusaanbieding (en uiteindelijk draait de klant daar voor op)", 5 July 2018, <https://www.volkskrant.nl/economie/albert-heijn-laat-leveranciers-fors-betalen-voor-bonusaanbieding-en-uiteindelijk-draait-de-klant-daar-voor-op~b1d5dea7/>.

42 Reaction to review, Ahold Delhaize, 11 November 2019.

43 BASIC, Analysis of agricultural value chains between South Africa and Germany: Case studies of table grape, wine and rooibos, 2015, <https://www.oxfam.de/system/files/basic_south_african_value_chains_study_final.pdf>.

44 CBI, "Product Factsheet: Bulk wine in Europe", 2016 p. 2, <https://www.cbi.eu/sites/default/files/market_information/researches/product-factsheet-europe-bulk-wine-2016.pdf>.

45 Department of Agriculture website, "A/B code search", <http://www.dawineonline.co.za/login/frm_abCodesSearch.cfm>.

4 Employment, working conditions and living conditions on South African wine farms

4.1 Introduction

This chapter draws upon research reports published by international trade unions and civil society organisations over the past few years (see Box 1 in Chapter 1 for a full list). These reports highlight a range of human rights and labour rights issues in the South African wine industry. While South African wines are among the top-selling wines in Dutch supermarkets, these retailers have paid almost no attention to the exploitative working and living conditions on South African farms.

In addition, this chapter presents findings from the research of SOMO and TCOE into human rights and labour rights practices at five production units (grape plantations and cellars) belonging to four South African wine producers (see Table 3). These research findings illustrate some of the persistent issues as identified by various South African and international labour rights and human rights organisations.

Each section starts with a short introduction about the relevant South African laws and regulations. A summary of pressing issues identified by previous research efforts follows. Each section then concludes with illustrations from SOMO and TCOE's field research.

4.2 Introduction of the researched South African wine producers

4.2.1 Groot Constantia

Groot Constantia, located in Cape Town, is South Africa's oldest wine farm. The roots of Groot Constantia go back to the arrival of white settlers in the Cape, when the Dutch East India Company granted 2,454 hectares of farmland in 1685 to Simon van der Stel, who had served as the Governor of the settlement at the Cape of Good Hope. The farm produced vegetables and fruit, bred cattle and supplied passing European ships. After Van der Stel's death, Constantia was divided into three portions and sold off. The part on which the Van der Stel's house stood, which later became known as Groot Constantia, was sold several times over the years and has been government-owned since 1885. Since 1993, the Groot Constantia Trust – a not-for-profit company – has been running the farm.[46]

46 Iziko, "Groot Constantia", no date, <https://www.iziko.org.za/museums/groot-constantia> (accessed on 11 January 2020).

Table 3 South African wine producers researched by TCOE and SOMO with links to Dutch retailers

Groot Constantia	Leeuwenkuil	Robertson Winery	Van Loveren
Researched farm: Groot Constantia	Researched farm: Leeuwenkuil	Researched farm: Goree	Researched farm: Vinkrivier
Located in Cape Town	Located in the Swartland Wine Region	Located in Robertson Valley	Located in Robertson Valley
Export to EU includes Germany, Sweden, Norway, the UK and the Netherlands	Export to EU includes Sweden, the UK and the Netherlands	Export to EU includes Sweden, Denmark, Germany and the Netherlands	Export to EU includes Sweden, Germany, Norway and the Netherlands
Sold in NL:  Groot Constantia (Range of GC wines)	Sold in NL:  Leeuwenkuil Chenin Blanc	Sold in NL:  Robertson Winery (Range of RW wines)	Sold in NL:  Van Loveren (Range)  Four Cousins*  Beacon Hill*  Tangled Tree (2018)
Imported by Gall & Gall B.V. 	Imported by Delta Wines Netherlands, Waddinxveen 	Imported by Unique Holland Wijnimport B.V.	*Imported by Ahold European Sourcing B.V. Zaandam 
Sold by: Ahold Delhaize	Sold by: Deen (and Lidl in the recent past)	Sold by: Online wine retailer Henri Bloem	Sold by: Ahold Delhaize
Certification: WIETA	Fair for Life and Fairtrade certification as trader/ manufacturer (not as grape grower)	Certification: WIETA	Fairtrade certification as trader/ manufacturer (not as grape grower) and certified member of WIETA

Source: compiled by SOMO

Groot Constantia exports to countries including Germany, Sweden, Norway, the UK and the Netherlands. In the Netherlands, Gall & Gall (Ahold Delhaize) sells a range of Groot Constantia wines.

Groot Constantia is a member of the Wine and Agricultural Ethical Trade Association (WIETA) and, since May 2019 has been WIETA certified again following a period of suspension starting in June 2018. During the suspension, which stemmed from official complaints filed by CSAAWU, the company underwent corrective actions and was re-audited.[47]

The majority of Groot Constantia workers are casual workers brought in by two labour contractors. In addition to the casual workers, there are about 30 permanent workers who live with their families on the farm. A number of them were interviewed for this report.

Developments
It is important to note that as of October 2019, negotiations between CSAAWU and Groot Constantia had resulted in an agreement that was to the union's satisfaction and that, according to CSAAWU, positively distinguishes Groot Constantia from other producers. One of the achievements was a 15 per cent wage increase[48] in year one, whereas most cellars offer a 6-6.5 per cent wage increase in the first year and a 9 per cent increase in year two. Other important achievements include a permanent employment contract for five additional workers and a framework agreement to phase out labour brokers in two years.[49] Furthermore, a process has been started to guarantee that employment will be offered to the children of Groot Constantia workers upon reaching adulthood. CSAAWU has fought for the employment of the children of farm workers for some eight years.[50]

4.2.2 Leeuwenkuil

Leeuwenkuil, situated in the Swartland wine region, was founded by Dutch settlers in 1705. Over the years, the farm expanded to its current 1,250 hectares.[51] In recent years, Leeuwenkuil has acquired four new farms; two adjacent to the original property and two in the Paarl district.

According to its corporate website, one-third of the grapes processed in Leeuwenkuil's cellar are grown by the company itself, and two-thirds are supplied by other grape growers. Part of the grapes supplied by external grape producers are used for Leeuwenkuil wines, and another portion is processed for other wine producers. Leeuwenkuil produces bulk wines as well as bottled wines.

47 According to WIETA's correspondence with CSAAWU, Groot Constantia was not certified in March 2019 but was certified again in May 2019. CSAAWU requested access to the corrective action undertaken after the last audit, but WIETA replied that this can only be done with the consent of Groot Constantia.

48 An increase of R 377.24 per person, with effect from 1 July 2019. In the "Comprehensive agreement including wages and conditions of service", signed 28 October 2019 by CSAAWU and Groot Constantia.

49 "Comprehensive agreement including wages and conditions of service", signed 28 October 2019 by CSAAWU and Groot Constantia.

50 Email, CSAAWU, 17 October 2019.

51 Leeuwenkuil website, "Our Story", no date, <http://www.leeuwenkuilfv.co.za/our-story/> (accessed on 11 January 2020).

Leeuwenkuil wines are exported to countries including Sweden, the UK, the US and the Netherlands. In the Netherlands, Leeuwenkuil wine is sold by supermarket Deen and – at least in the past – by Lidl.

Leeuwenkuil was a WIETA member and was WIETA certified until June 2018. The certification was suspended after issues raised by CSAAWU and poor audit results after consequent WIETA audits. The Leeuwenkuil farms are currently not a WIETA member. The company is Fairtrade certified as 'trader, manufacturer/processor' and has Fair for Life Social & Fair Trade Certification.[52] (see also section 5.3.3)

A total of 39 workers reside on the Leeuwenkuil farm, and more than 100 casual workers are brought in during harvest periods.

Developments
The CSAAWU union wants Leeuwenkuil to comply with the required corrective actions from the 2017 WIETA audit, and is campaigning for a boycott. Workers are currently afraid to speak out, and Leeuwenkuil is actively intimidating workers to prevent them from speaking to the media. This is also the result of an article published in September 2019 about harsh labour conditions at Leeuwenkuil.[53] According to CSAAWU, Leeuwenkuil is actively attempting to weaken and marginalise the union.[54]

4.2.3 Robertson Winery

Robertson Winery (RW), located in the Robertson wine valley, was established in 1941. The company is 50 per cent owned by the Robertson Kooperatiewe Wynmakery Beperk (Robertson Koop), and 50 per cent by Vinimark Trading (Pty) Ltd.[55] In turn, Robertson Koop is owned by 27 grape farmers[56] who deliver their grapes to the cooperative. The grapes are pulped at Robertson Koop and the resulting wine is subsequently bottled at the Roberson Winery. In principle, Robertson Winery buys all of the wine from the Robertson Koop farms and blends it with wines from other areas in South Africa. If domestic supply is not sufficient, the company also imports bulk wines from Spain or Argentina. The company does not export bulk wines.[57]

RW oversees 7.5 million vines grown on over 40 farms.[58] Export destinations include Sweden, Denmark, Germany and the Netherlands; however the overwhelming majority is sold domestically. In the Netherlands, Robertson Winery wines are not sold by supermarkets, but through wine

52 Leeuwenkuil responded that this section of the report is not correct; however, they did not clarify exactly what was incorrect. Response to review by Leeuwenkuil, November 2019.
53 Inter Press Service (IPS), "Farm Workers Paying the Price for Cheap South African Wine", 9 September 2019, <http://www.ipsnews.net/2019/09/farm-workers-paying-prize-cheap-south-african-wine/> (assessed on 11 January 2020).
54 Skype call with CSAAWU and TCOE, 9 December 2019.
55 Vinimark is one of South Africa's largest wholesale wine companies, marketing and distributing over 50 SA wine brands locally and abroad. <http://www.vinimark.co.za>.
56 SOMO meeting with André Engelbrecht, CEO Robertson Winery, 2 December 2019 in Amsterdam.
57 Ibid.
58 Robertson Winery website, "Our story", no date, <https://www.robertsonwinery.co.za/#our-story> (accessed 11 January 2020).

specialty stores and online wine retailers (specifically through the Henri Bloem franchise stores).[59] The Robertson Winery cellar is a member of WIETA and is WIETA certified.

Workers from the Robertson Winery cellar were interviewed for this research, as were workers from the Goree grape farm, which supplies Robertson Winery.

Developments
Whereas the management of Robertson Winery is of the opinion that there has been a dramatic improvement in employee relations since the workers striked in 2016[60] and feels that communication with the union is much more open,[61] the union feels differently. According to CSAAWU, RW is tightening its policies and its lack of communication with the union implies that the company is not interested in building a relationship. At the end of 2019, picketing actions were taking place every weekend at Robertson.[62]

4.2.4 Van Loveren

Van Loveren is South Africa's largest family-owned wine business.[63] The company reportedly owns more than 20 different farms, and employs approximately 200 permanent workers at its various units.[64] The permanent workforce is supplemented by hundreds of seasonal workers, many of them migrant workers who are hired through labour brokers.

The grapes grown on Van Loveren farms are used not only for the company's own branded wines, but are also supplied to other producers. Van Loveren produces a range of wines under different brand names, including Van Loveren, Wolverine Creek, Papillon, Four Cousins, Tangled Tree, Beacon Hill and Five's Reserve.

Export destinations in Europe include Sweden, Germany, the Netherlands and Norway. In the Netherlands, Van Loveren wines are sold by Gall & Gall and Albert Heijn where SOMO found a range of wines including the Van Loveren, Four Cousins, Tangled Tree and Beacon Hill brands.

Van Loveren is a certified member of WIETA, and the Van Loveren Vineyards is certified as a Fairtrade 'trader, manufacturer/processor'.

The workers interviewed were employed at Vinkrivier, one of the grape farms owned by Van Loveren.

59 Wijnkoperij Henri Bloem, <https://www.henribloem.nl/>.
60 Response to review by Robertson Winery, 11 November 2019.
61 SOMO meeting with André Engelbrecht, CEO Robertson Winery, 2 December 2019 in Amsterdam.
62 Skype call with CSAAWU and TCOE, 9 December 2019.
63 Cape Country Routes, "Van Loveren wine estate", no date, <https://www.capecountryroutes.com/van-loveren/> (accessed on 11 January 2020).
64 TCOE interview with Van Loveren managing director.

4.3 Introduction to the legal framework in South Africa

During the apartheid era, farm workers were not incorporated into South Africa's labour legislation and they therefore lacked the legal right to form and join trade unions. Only post-1994 were they incorporated into different labour regulations, including the Labour Relations Act (LRA, 1995). The LRA lays down the rights to freedom of association and collective bargaining as well as the Basic Conditions of Employment Act (BCEA, 1997) that regulates leave, working hours, employment contracts, deductions, pay slips, termination, and so on. Other relevant laws and regulations are included in Sectoral Determination 13, which sets minimum wages, working hours, leave days and termination rules for farm workers.

South Africa has ratified all eight fundamental conventions of the International Labour Organization (ILO). These conventions cover the right to freedom of association and collective bargaining, the prohibition of forced labour, the prohibition of child labour and the prohibition of discrimination in employment.

While South African labour law guarantees rights for workers in fundamental areas, enforcement is a problem. The Department of Labour (DoL) has a poor track record, partly due to its being severely understaffed. In addition, the DoL has low inspection rates and targets: one inspector for every 120,000 economically active persons (versus one for every 20,000 as recommended by the ILO). In the Western Cape Province, 107 inspectors are responsible for some 6,000 farms as well as all other workplaces in the area. The role of the labour inspector is also undermined by the fact that the state has agreed with Agri SA (the largest farm owners' association in South Africa) that DoL inspectors will give notice to farm owners before an inspection.

Recently, the DoL announced that it would employ an extra 500 health and safety inspectors and broaden its scope of work by focusing on small, medium and micro enterprises as well as the informal sector.[65]

4.4 Externalisation and casualisation of labour

4.4.1 Legal framework

In addition to a high number of seasonal (or casual) workers,[66] farm owners, including grape farmers, increasingly rely on external labour. To arrange these external workers, they use intermediaries called labour contractors and labour brokers. South African labour legislation also applies to these labour contractors and labour brokers.

65 Government of South Africa, "Employment and Labour employs occupational health and safety Inspectors", 24 July 2019, <https://www.gov.za/speeches/department-employment-and-labour-employ-ohs-inspectors-24-jul-2019-0000>.

66 According to CSAAWU, there are around 750,000 permanent agricultural workers nationwide. In high season, the number doubles to some 1.5 million workers.

Amendments to the Labour Relations Act (LRA, Section 198) in 2015 stipulate that clients of labour brokers must hire workers with annual earnings below R 205,433 after three months.[67] This means that by law, workers who have worked for or at a company for more than three months are permanent workers and are entitled to the same benefits as others who are directly employed by the company.

4.4.2 Findings from the literature research

According to a 2016 KASA Factsheet, seasonal workers who arrive at farms with the help of labour brokers are paid much lower wages and "are only paid by quantity not by the working hours". Furthermore, "claiming social or health insurance, or paid holidays is beyond their capabilities". Finally, the "seasonal workers are usually migrants without a residence and working permission. As they do not have a legal status they are not in the position to demand any rights."[68]

Women in the wine industry tend to be involved in harvesting, weeding, sorting, bottling, labelling and packing. These jobs are mostly seasonal and casual. Compared with men, women are over-represented in casual and seasonal jobs in this sector.[69] This is confirmed by the KASA Factsheet, a report by War on Want,[70] and an AGS report.[71] Moreover, "although they do the same work they earn less than men".[72]

According to a report commissioned by the ILO, the Labour Relations Act includes provisions regarding the right not to be unfairly dismissed. However, seasonal workers are not protected against unfair dismissals as they can be easily laid off at the end of the season: "in the case of seasonal workers who are employed by labour brokers (or contractors), employment may be terminated by the farmer simply instructing the labour broker not to include any worker he or she does not want in the team".[73] In addition, labour brokers often move workers around from farm to farm to ensure that workers never work on the same farm or for the same employer for more than three months in order to avoid their becoming entitled to the status of permanent worker.

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67 Business Day, "New court ruling will change the nature of labour broking in SA", 26 July 2018, <https://www.businesslive.co.za/bd/national/labour/2018-07-26-new-court-ruling-will-change-the-nature-of-labour-broking-in-sa/>.

68 KASA, Factsheet, November 2016, "The South African wine industry and the living and working conditions of its farmworkers", <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>.

69 Author, interview with CSAAWU.

70 War on Want, "Sour Grapes – South African wine workers and British supermarket power", 2009, <https://waronwant.org/sites/default/files/Sour%20Grapes%20wine%20report.pdf>.

71 "Women are concentrated in these more precarious types of employment, while men are concentrated in permanent work, especially in the processing facilities", and "Women only earned 65% of men's average wages". In Afrikagrupperna (AGS), "Gendered Value Chain Analysis of Wine – From Farm Worker in South Africa to Consumer in Sweden", 2012, p. V.

72 KASA, Factsheet, November 2016, "The South African wine industry and the living and working conditions of its farmworkers", <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>.

73 Visser, M. and Ferrer, S., "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", February 2015, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>, report commissioned by the Pretoria Office of the International Labour Organization.

4.4.3 Findings from the field research

All researched farms make use of casual and seasonal labourers that are brought in by labour brokers.

According to CSAAWU, the trend of externalisation and casualisation has coincided with the integration of farm workers into South African labour legislation, the setting of a minimum wage for farm workers and the introduction of tenant security under the Extension of Security of Tenure Act. This suggests that farmers are adopting strategies of externalisation and casualisation to avoid responsibility for the rights of their employees. The move away from permanent workers has also happened hand in hand with the eviction of farm dwellers.[74]

A visit by SOMO researchers to CSAAWU's Rural Legal Centre shed a light on the position of migrant workers. A growing number of migrant workers from countries including Lesotho and Zimbabwe are finding work in South Africa's agricultural sector. Unemployment, land grabs, hunger, poverty and conflicts across the Southern African Development Community (SADC) region have led to the migration of the most vulnerable, who are seeking a way to survive. Many of these migrants end up working on South African farms – also wine farms – via labour brokers. Given the high levels of poverty and unemployment in South Africa itself, this has often led to tensions, setting the stage for conflicts along language and cultural divides amongst different groupings in South Africa (e.g. Afrikaans speakers in the Western Cape and isiXhosa speakers from the Eastern Cape Province). 'Nationality' divides are manifested in what are called 'xenophobic' incidents.[75]

Migrant workers typically end up at the bottom of the pyramid: living in cardboard houses and trying to support families and children back home while surviving on a few dollars a day. Many do not have a work permit, and most do not even know if there will be room for them in the back of the labour broker's truck the next morning.

Migrant workers without legal status face additional exploitation and abuse, as they are not able to claim any rights. Employers are even known to have called the police when wages are due and to denounce them as undocumented in order to avoid payment.[76]

Female migrant workers in particular may be exposed to sexual harassment and exploitation – including sex for employment – in the labour broker context. CSAAWU has assisted in opening three cases (two in Robertson and one in Barrydale) at police stations, but the families of the women were paid by the labour brokers to withdraw the charges.[77]

74 Author, interview with CSAAWU.

75 Based on information provided by CSAAWU's Rural Legal Centre during field research in May 2018. The Rural Legal Centre provides support for migrant workers.

76 Ibid.

77 Author, interview with CSAAWU.

Groot Constantia

Groot Constantia uses workers hired through labour brokers throughout the year. According to CSAAWU, some 30-40 full-time seasonal workers are brought into the vineyards, mainly during harvest season. Most of these workers are migrants. According to CSAAWU, although some of these workers had been at Groot Constantia for over a year, they did not receive permanent worker status despite the fact that the law states that they should become permanent workers after working at the same company for more than three months at the same company. The WIETA audit report from October 2017 reports in its findings related to the 'Temporary Employment Service' (TES) workers that '*the group of workers range from 15 to 50 that work at the site most of the year*'[78], which makes the claim of CSAWUU plausible.

WIETA imposed corrective actions following the audit concerning unpaid leave, copies of contracts, copies of payslips, and the presence of a trained first aider.[79] Although the audit report did not have any findings related to the status of seasonal workers, it indicated that the management of TES workers is still insufficient and ineffective. In addition, based on their visit of 4 December 2018, CSAAWU ascertained that the TES/labour broker workers did not receive appropriate clothing or uniforms, nor did they have access to proper lunch facilities.[80]

Groot Constantia responded that this was misleading: "The workers are informed about the facilities but should they choose to sit outside on their own accord this should not be misrepresented to mean that they have no alternatives". Further, the company commented that the Department of Labour had conducted a site inspection in February 2017 and addressed the issuance of safety clothing. The matter was corrected within 60 days, and they were found compliant. In September 2017, Groot Constantia claims that they were also found compliant with regard to safety clothing during another site inspection.[81]

The status of labour broker workers is part of ongoing negotiations between CSAAWU and Groot Constantia. In October 2019, these negotiations resulted in a framework agreement on phasing out labour brokers, called 'service providers' by Groot Constantia, within two years. Groot Constantia emphasised in its review of the SOMO/TCOE report that the framework agreement is "ground-breaking in nature and that CSAAWU would confirm that it is one of the very few (if any) such arrangements which CSAAWU has been able to conclude in the wine producing sector"[82] (also see Section 4.2.1.). CSAAWU also speaks of the magnitude of this agreement, which distinguishes Groot Constantia from other producers in a positive way.[83]

In general, Groot Constantia's response to the SOMO/TCOE report was that the issues raised in the 2017 audits have been addressed and resolved.[84]

78 Information provided by CSAAWU, based on the WIETA October 2017 audit report, email 18 December 2018.

79 Ibid.

80 Report of a visit by CSAAWU to the farm on 4 December 2018, sent to SOMO on 18 December 2018.

81 Response to review by Groot Constantia, 18 November 2019.

82 Ibid.

83 Email from CSAAWU, 24 October 2019.

84 Review of the chapter by Groot Constantia, 18 November 2019.

4.5 Housing, living conditions and land evictions

4.5.1 Legal framework

The Extension of Security of Tenure Act (ESTA, 1997)[85] was introduced with the alleged intention of protecting the tenure of farm workers and people living in rural areas, including their rights to live on the land. It provides guidelines for access to water, health and education, for receiving visitors, and so forth. The Act is supposed to protect workers against arbitrary evictions. Furthermore, it spells out the rights of farm owners.[86]

According to Human Rights Watch, based on ESTA "a farmer cannot terminate the residence rights of a person who has lived on the land for at least 10 years and who either reaches the age of 60 or is the farmer's employee or former employee and can no longer work due to ill health, injury, or disability". When the employment of a farm worker who does not fall into these categories comes to an end, the farmer is entitled to start a legal eviction process through the courts. Furthermore, according to Human Rights Watch, "although farmers are not obliged to allow former workers who do not fall into the protected class to remain on the land indefinitely, it is a crime to evict farm dwellers without a court order". This includes undertaking acts that amount to evictions, such as cutting off the water supply.[87] While ESTA should protect the rights of farm dwellers, it has been widely criticised for being completely ineffective in that regard.[88]

When farm workers live in employer-provided housing, the farmer must ensure that the house meets the basic standards as stipulated in Sectoral Determination 13. These regulations also specify which requirements must be met by employers in order to make deductions for accommodation and/or food. Deductions for accommodation may not exceed 10 per cent of the workers' wage and can only be made if the following requirements are met: the house has a roof that is durable and waterproof; the house has glass windows that can be opened; availability of electricity inside the house; availability of safe drinking water inside the house or within 100 meters from the house; availability of a flush toilet or pit latrine in or in close proximity to the house; and the house is not less than 30 square meters in size.[89]

85 Republic of South Africa, "Extension of Security of Tenure Act", Act No. 62, 1997, <https://www.justice.gov.za/lcc/docs/1997-062.pdf>.

86 TCOE, "We also want land – A PAR and Land Use Workbook, no date, <https://www.landportal.org/library/resources/mokoro5732/we-also-want-land-par-and-land-use-workbook>.

87 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

88 See for instance: "Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change", November 2017, <https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf>.

89 Government of South Africa, "Basic Conditions of Employment Act, No. 75 of 1997 - Sectoral Determination 13, Farm Worker Sector, South Africa, 1997, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104356/127264/F1307311202/ZAF104356.pdf>.

4.5.2 Findings from the literature research

As a result of the 1913 and 1936 Land Acts and the racist politics of the apartheid regime, around 3.5 million black South Africans were forcibly removed from their homes and their lands. The Natives Land Act (1913) limited African land ownership first to 7 per cent and later to 13 per cent through the Native Trust and Land Act of South Africa (1936). The Natives Land Act restricted black people from buying or occupying land except as employees of a white master. Once the law was passed, the apartheid government began the mass relocation of black people to poor homelands and to badly planned and serviced townships.[90]

Moreover, in the past few decades, millions of farm dwellers have been displaced from the farms they were living on. A 2005 study by the NGO Nkuzi found that about 1.7 million farm workers had been displaced in the preceding two decades. The vast majority of these evictions were illegal.[91] This skewed land-holding pattern means that poor people in rural areas have very few options for security of food and livelihoods. Affordable and decent housing near the remote farms is nearly impossible to find. At the same time, farm owners are becoming less inclined to provide housing for workers: in fact, they are actively pressuring workers to vacate the houses on their land.

Eviction risks
The National Evictions Survey (2005) indicated that in the period from 1984 to 2004 a total of nearly 4.2 million people were displaced from farms; an estimated 1.7 million of them were evicted. Many former farm dwellers ended up in dusty, informal settlements where even basic services such as water, sewage and electricity are often not available. Peak eviction periods occurred in 1994 (when the new government came into power), between 1996 and 1997 (with the introduction of ESTA), and in 2003 (when minimum wages were introduced and there was draft policy that proposed shared ownership of farmland depending on the number of years of service spent on the farm: 10 per cent share if 10 years; 25 per cent if 25 years and 50 per cent if 50 years). Women are particularly vulnerable, as farmers tend to evict them as soon as their male partners die.[92]

While ESTA should protect the rights of farm dwellers, it has been widely criticised for being completely ineffective in that regard.[93] According to HRW, at the time of their 2011 report an estimated 3 to 4 million farm dwellers were living on South African farms. However, according to the organisation, "the practice of on-farm housing is diminishing, in part due to farmers' concerns that farm workers

90 South African Government website, "1913 Natives Land Act Centenary", no date, <https://www.gov.za/1913-natives-land-act-centenary> (accessed on 11 January 2020).

91 Social Surveys and Nkuzi Development Association, "Still Searching for Security: The reality of farm dweller evictions in South Africa," 2005, p. 47, <https://www.researchgate.net/publication/327401799_Still_searching_for_security_The_reality_of_farm_dweller_evictions_in_South_Africa>.

92 Nkuzi Development Association and Social Surveys Africa briefings, "National Evictions Survey", 2005, <https://pmg.org.za/committee-meeting/5447/>.

93 See for instance: "Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change", November 2017, <https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf>.

will gain land tenure rights". Farm dwellers include farm workers, their family members, pensioned farm workers and former farm workers.[94]

HRW notes that depending on a farm owner for housing, while helpful to the worker, also makes the worker vulnerable to the possibility of eviction and homelessness. Consequently, evictions without due process, adequate compensation, or suitable alternative accommodations have taken place.[95]

War on Want reported in 2009 that "housing is often tied to permanent contracts which means that workers who are no longer working on the farm are often expected to leave". Women seldom receive housing rights on the farms under their own names, and are dependent on the housing rights of their partners. The wives of permanent workers often only get seasonal work on the farm.[96]

According to a HRW report, farm owners "sometimes offer incentives such as payments or temporary housing structures off the farm to entice farm dwellers to leave, or they may commence eviction proceedings under the Extension of Security of Tenure Act. Other farmers resort to non-legal tactics to force farm dwellers to leave." The report further described a range of tactics used by farmers, including "threatening dwellers, cutting off electricity, and limiting water supplies".[97]

In March 2019, TCOE and the Women on Farms Project reported that evictions were taking place at such a fast rate that the organisations could not keep up. The Drakenstein municipality for example, which covers areas such as Paarl and Wellington in the Cape Winelands, had up to 1,200 eviction cases on the court roll. This could mean that as many as 20,000 people were or are still facing evictions.[98]

HRW further reported that many farm workers and farm dwellers live in "shelters on farms that are not fit for human habitation". Housing is often substandard, unsafe, lacking adequate sanitation and water, and "fails to provide protection from the elements or other threats to health". In the most extreme cases, "farm workers live in places not designed to shelter humans".[99]

94 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

95 Ibid.

96 War on Want, "Sour Grapes - South African wine workers and British supermarket power", February 2009, <https://waronwant.org/sites/default/files/Sour%20Grapes%20wine%20report.pdf>.

97 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

98 TCOE, "Farmworkers speak out on human rights", March 2019, <http://tcoe.org.za/2019/04/03/farmworkers-speak-out-on-human-rights/>.

99 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

4.5.3 Findings from the field research

Groot Constantia
Among the resident workers, there are fears that Groot Constantia (GC) management is slowly trying to force workers to vacate the houses on the farm. During a group interview in May 2018, workers told researchers about a colleague who was a permanent worker who had worked at the farm for over five years and had been denied a house even though there were four empty ones. Management told him that the houses were in poor state and that they would collapse; however other workers are living in the same houses.

During the interview, workers explained that when somebody resigns and leaves the farm, the house stays empty. Workers think that this is because management wants them to eventually leave and live away from the farm. Approximately two years ago, management announced that it had a plan to open a bed and breakfast, which would involve converting the workers' houses into cottages for tourists. The workers felt that this was the reason that the houses stayed vacant. This, together with the lack of structural repairs on the houses, led workers to speculate that management is planning to vacate these properties.

According to workers, although management was not undertaking any eviction procedures at the time of the interviews, they were applying a strategy to make workers leave of their own accord. During the visit in May 2018, workers showed the researchers mouldy ceilings and rotten windows and doorframes. "Recently, management came and fixed some stuff but it is only done superficially," one of the workers explained. "Ceilings have been painted two weeks ago but the mould has already reappeared." During a visit in June 2019, some improvements were observed. Some, but not all of the roofs had been replaced.

Groot Constantia commented on this section of this report that the company has absolutely no intention to force workers off the farm, to create holiday cottages or to make workers leave of their own accord. The previously mentioned permanent employee was appointed with a contract that clearly indicated that housing did not form a part of his employment. According to GC, "the state of the housing on the Estate exceeds the average standard in the industry by far". GC also recently "created a new position on the farm that is dedicated to maintenance with a strong focus on maintenance of labourers' cottages". GC further commented that the company "has made it very clear to all employees that Groot Constantia will honour the current rights of occupation workers in terms of the ESTA Act." However, new contracts will be made without providing housing to avoid increasing the company's liability.[100]

Drinking water quality
In 2018, workers and CSAAWU submitted complaints to GC management that the drinking water had a blue colour. Management originally claimed that the water was safe to drink (and that the problem could be coming from the water pipes). However, the company eventually sent water to a laboratory for analysis. The report showed only the net measurements without any explanation, but CSAAWU's own investigation showed that colour and phenol measurements had values above

100 Response to review by Groot Constantia, 18 November 2019.

the limits set out in the South African water quality standards (21 versus the recommended <15 for colour; 27 versus the recommended <10 for phenols), and that both colour and phenol levels in the water were not up to standard. Subsequently, management took steps to eliminate any chemical reaction that may have given rise to the colouring of the water. During a farm visit in December 2018, workers confirmed that the water problem had been resolved.[101]

Lack of privacy

During a group interview in May 2018, workers said that they no longer felt comfortable. They felt that their privacy was being compromised, as the company had recently installed cameras everywhere to monitor the activities of workers. These cameras are not only installed in the workplace, but also where the workers live. The workers experience this as complete surveillance and as a breach of privacy. The cameras give rise to situations in which workers are lectured by the management about how they behaved on the weekend (for example, when a husband and wife got into an argument). "You have no privacy if you live on the property," one of the workers said.

Groot Constantia's response to this privacy issue was that the cameras were installed with the consent of the workers, who were concerned about their own safety at the time. Groot Constantia claims to respect the rights of its workers under the ESTA, but also reserves the right to notify them when they are in contravention with company regulations, for example in the case of alcohol abuse, domestic violence or damage to company property.[102]

Leeuwenkuil

During a visit to Leeuwenkuil in December 2017, CSAAWU noted poor living and housing conditions. The walls of the houses had cracks and holes and were mouldy. There were defective water heaters, broken toilets and problems with the water supply. The houses of older people and former workers were in particularly bad condition, with cracked walls, broken windows, and mouldy ceilings. Workers complained about nasal congestion, wheezing, chest tightness, throat irritation and coughing (although it cannot be ruled out that these complaints were related to pesticide spraying on the farm). Houses had not been painted for a long time and there was no regular rubbish collection.[103] CSAAWU further reported that Leeuwenkuil was slowly evicting people who were no longer working on the farm. The company's response was that these evictions were through due processes and that they concerned workers who were not entitled to reside on the farm. They also claimed that retired families who were entitled to reside on the farm were doing so.[104]

Workers also reported that children are forced to leave the farm when they reach the age of 18. They can only stay if there is a job for them on the farm and if they are willing to take that job.

101 Groot Constantia's response was everybody on the Estate is supplied from the same water source and that the water never posed a health threat. (Response to review by Groot Constantia, 18 November 2019).

102 Response to review by Groot Constantia, 18 November 2019.

103 Leeuwenkuil's reaction was that a maintenance reporting system, house inspections and a maintenance plan had been implemented and carried out. Response to review by Leeuwenkuil, November 2019.

104 Response to review by Leeuwenkuil, November 2019.

Goree (supplier of Robertson Winery)
At the time of the interviews in May 2018, workers at Goree said that some of the houses on the farm had cracks in the walls and that they feared that these houses might collapse. After a WIETA audit was conducted, the farm owner was requested to fix the houses. However, according to the workers, nothing had happened and the farm owner had told them that he was not going to do anything about the houses. The workers thought that the houses were no longer being fixed because the farm owner wanted them to leave the houses. One of the workers commented: "They [the farm owners] are buying up shacks in townships for the workers in order for workers to vacate the houses on their land."

Goree's comment on this was that "formal housing inspections take place once a year where all defects are recorded and a maintenance plan draw up to plan all the repairs. In between the formal inspections employees who legally occupy a house are required to report defects and damages so repairs can be scheduled."[105] Subsequently, Goree stipulated in reference to the law that an "occupier" (the employee who occupies a house) may not cause damages to the house "intentionally and unlawfully", and on this basis the owner "has the right to deduct the costs of the repairs, which he had not done until now […] but based on the current situation he will take this into review since the spend on housing repairs for the last three years, totalling R 128,127, is most on repairs on damages done by the occupants".[106]

Vinkrivier (van Loveren)
During the interviews conducted at Vinkrivier in May 2018, workers were frustrated about management's refusal to sign a form allowing workers to apply for an electricity subsidy. When a worker earns less than R 3,500 (approximately € 210) per month, he or she is eligible to receive a subsidy for electricity costs. Ultimately, the farmer had refused to sign the necessary form stating that the wages were less than R 3,500.

Vinkrivier workers suspect that it was management's strategy to neglect the houses in order to make future evictions easier. The workers also said that management wanted to evict the older people who were no longer working on the farm.

Workers at Vinkrivier also shared their concerns about the drinking water. They reported that children had fallen ill, and they suspected that this was caused by contaminated drinking water. They also noted that WIETA audits test the water that comes from the mountains (and which is subsequently redirected to the basin), but not the water in the basin itself.

Van Loveren responded that the allegation that management did not want to cooperate with the application forms for electricity subsidies was not true. The application was submitted; however the response of the municipality was that they did not approve the subsidy for 2019 as the workers earned R 10 too much per month to be eligible. Furthermore, the company stated that it complies with the ESTA law pertaining to worker houses on the farm, and that the allegation about the suspected eviction strategy was thus unfounded. The company stated that it had not received

105 Response to review by Goree, November 2019.
106 Ibid.

reports that children or workers were falling ill from the drinking water and that "the water test results for Vinkrivier indicated that the water passed all the compliant water checks".[107]

4.6 Freedom of association

4.6.1 Normative framework

The rights to form and join trade unions and to bargain collectively are essential enabling rights and part of the ILO's eight fundamental Conventions, all of which have been ratified by South Africa. The South African Labour Relations Act (1995) incorporates the ILO Convention on Freedom of Association and Protection of the Right to Organise (No 87) and the Convention on the Right to Organise and Collective Bargaining (No 98). It further regulates the right to strike and the recourse to lockout; provides procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration; and prohibits discrimination against employees for exercising their rights of freedom of association.[108]

4.6.2 Findings from the literature research

Despite legal provisions, very few farm workers belong to a trade union. Nationwide, it is estimated that less than 5 per cent of farm workers are unionised.[109] In the Western Cape region, unionisation of farm workers is estimated to be slightly higher, albeit still dramatically low at 5-8 per cent. For South Africa as a whole, trade union membership stands at around 3.1 million, representing around 25 per cent of the formal work force.[110]

107 Response to review by Van Loveren for Vinkrivier, 11 November 2019.

108 Government of South Africa, "Labour Relations Act, [No. 66 of 1995], 13 December 1995, <http://www.saflii.org/za/legis/num_act/lra1995188/>.

109 Visser, M., "Going nowhere fast? Changed working conditions on Western Cape fruit and wine farms: A state of knowledge review", Working Paper 41, 2016. Cape Town: PLAAS, UWC and Centre of Excellence on Food Security, <http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/4529/wp_41_going_nowhere_fast_changed_working_conditions_2016.pdf?sequence=1&isAllowed=y>.

110 WageIndicator, Mywage.co.za website, "Trade unions", no date, <https://mywage.co.za/decent-work/legal-advice/unions-in-south-africa> (accessed on 11 January 2020).

Box 4 Unions in the Western Cape

The following unions organise agricultural workers in the Western Cape:

- BAWSI Agricultural Workers Union of South Africa (BAWUSA)
- Commercial, Stevedoring, Agricultural and Allied Workers Union (CSAAWU)
- General Industries Workers' Union of South Africa (GIWUSA)
- Food and Allied Workers Union (FAWU)
- National Union of Food, Beverage, Wine, Spirits and Allied Workers (NUFBWSAW)

There are different factors that explain the low level of unionisation among farm workers. These factors have been highlighted by various studies, and were also discovered during the field research carried out for this report. These factors include:

Historical factors: Prior to 1994, farm workers were not incorporated into South Africa's labour legislation and therefore lacked the legal right to form and join trade unions. This means that there is no long history of unionisation in the agricultural industry. The heritage of the apartheid years lingers in relations between farmers and farm workers. Most farm owners are white, while workers are black. Threats, physical violence and racist comments directed at workers are not uncommon.[111] KASA (Kirchliche Arbeitsstelle Südliches Afrika) describes the relationship between farmers and workers as one characterised by racism, paternalism and an oppressive leadership style: "The workers are still treated like serfs".[112] Dependency on on-farm housing adds to these unequal power relationships, and hinders social dialogue, freedom of association and collective bargaining.

Restricted access to farms: Farm owners restrict and even prohibit access to farms by union organisers[113] and, in some cases, threaten union organisers and workers who seek their assistance.[114] Union organisers do not have the right to access farms for recruitment or to communicate with members until the union becomes "sufficiently representative" at the workplace, rendering it difficult for union organisers to contact possible members. Even when unions manage to organise a majority of workers, free access is often not granted.

111 Afrikagrupperna, "Ethical Wine Trade - the responsibility of the Swedish alcohol retail monopoly".

112 KASA, Factsheet, November 2016, "The South African wine industry and the living and working conditions of its farmworkers", <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>.

113 Reported by: Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>; Women on Farms Project, "'The farmer doesn't recognise who makes him rich': Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>.

114 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

Isolation of farms and lack of public transport: Farms are often located in isolated areas where there is a significant lack of public transport. It is difficult for union organisers, representing trade unions with scarce resources and dependent on membership contributions, to get to remote and isolated farms.[115]

Employer dissuasion: Farm owners discourage workers from joining trade unions by offering benefits (financial or in-kind), or by favouring workers who do not join trade unions, or by threatening to dismiss workers if they join trade unions.[116] At the same time, employers intimidate trade union members: taking away benefits from workers who are members of a union (e.g. transport service, which is of vital importance to workers living on isolated farms), giving difficult tasks to union members (e.g. hard manual work), dismissing union members and blacklisting practices.[117]

Structural obstacles: Farm owners may also circumvent unions by setting up structures that do not provide workers with any bargaining power, for instance by setting up workers' committees that are dominated by management.[118]

Fear and reluctance among workers to join trade unions: Fear of reprisals makes workers reluctant to join unions. Low wages in the sector also undermine the ability and willingness of workers to pay trade union fees. In addition, the limited resources and capacity of trade unions, coupled with their difficulties in accessing the farms, means that there are limited opportunities for union organisers to meet and support their members. This has left some workers disillusioned and has led them to renounce their union membership.[119] Lack of knowledge about trade union rights is also a factor.[120]

Increasing casualisation and externalisation of labour: Increasingly, workers are employed through labour brokers. These labour brokers often move workers to different farms every few days. Sometimes workers do not even know the name of the farm where they are working. There is no

115 KASA, BAWSI Agricultural Workers Union of South Africa.

116 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

117 Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>.

118 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

119 Women on Farms Project, "'The farmer doesn't recognise who makes him rich': Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>.

120 Reported by: Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>; KASA, Factsheet, November 2016, "The South African wine industry and the living and working conditions of its farmworkers", <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>; Women on Farms Project, "'The farmer doesn't recognise who makes him rich': Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>.

job security. Due to the high unemployment rate in South Africa, labour brokers can easily get rid of workers and hire new ones. In this context, it is very difficult for casual workers to join a trade union.

Increased employment of migrant workers: By law, migrant workers with work permits have the same rights as South African workers. However, organising migrants presents additional challenges. On the practical side, different languages may create a barrier. More importantly, migrant workers may be reluctant to join trade unions as they fear losing their jobs or having to face other reprisals. This fear certainly also factors into decisions by South African workers about whether or not to join trade unions, and being far away from home and not having a social network in South Africa also reinforces these fears.
Where trade union representation does exist, it is dominated by the interests of permanent male workers. Like elsewhere in the world, traditional trade union strategies have not been sufficiently adapted to cater to the needs of casual and migrant workers.[121]

Box 5 Farm workers' uprising 2012-2013

Despite the many obstacles preventing workers from speaking out, a historic farm workers' uprising took place between November 2012 and January 2013. The aftermath lays bare a recurring trend: although hard-fought demands may lead to some improvements for workers, these improvements are not structural. Moreover, some of the workers and union leaders who actively participated in the uprising were dismissed.

Female seasonal workers in the De Doorns area laid down work to demand better pay and improved working conditions. The uprising soon spread to other areas in the Western Cape. Whereas the workers organised the strike themselves, a number of trade unions soon supported them, including COSATU and CSAAWU.
According to the Women on Farms Project (WFP), "thousands of striking workers were not paid during this period. Tragically, two striking workers were killed by police actions during the strike. Isolated incidents of violence also resulted in damage and destruction of property on farms."[122]

121 War on Want, "Sour Grapes – South African wine workers and British supermarket power", 2009, <https://waronwant.org/sites/default/files/Sour%20Grapes%20wine%20report.pdff>; Afrikagrupperna (AGS), "Gendered Value Chain Analysis of Wine – From Farm Worker in South Africa to Consumer in Sweden", 2012, <https://www.researchgate.net/publication/277989194_Gendered_value_chain_analysis_in_wine_from_farm_worker_in_South_Africa_to_consumer_in_Sweden_AGS_report/link/560a436e08ae1396914baf26/download>.

122 Women on Farms Project, "'The farmer doesn't recognise who makes him rich': Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>.

Box 5 Farm workers' uprising 2012-2013

The workers demanded a wage increase from R 69 to R 150 per day. Other demands included equal pay for equal work, paid maternity leave, the end of the use of labour brokers, a moratorium on evictions, improved living conditions, and an end to piece work on farms.[123]

On 4 February 2013, the Minister of Labour announced that the minimum wage would increase from R 69 to R 105. Although workers did not obtain the R 150 they had demanded, the strike did result in a 52 per cent increase in the minimum wage. Moreover, as reported by WFP, "the unity, power and confidence which the strike awakened among workers cannot be underestimated". "For the first time, workers had leverage to use against farmers; for the first time, they had bargaining power: both farmers and the government were forced to the negotiating table and agreed to the wage increase." The strike also developed workers' abilities to organise, strategise and negotiate.

Backlash

Despite the positive outcomes of the strike, farm workers, especially the leaders of the strike, experienced direct victimisation afterwards. Many permanent workers were fired and replaced with seasonal workers.[124]

Some 100 members of CSAAWU were fired, as were many workers belonging to other unions. "Employers tried to break down the unions as they saw that once workers got organised they managed to achieve an increase in the minimum wage. We won the fight but the battle was lost for the longer term," said CSAAWU General Secretary Trevor Christiaans.[125]

Many women leaders of the uprising reported to WFP that they were "blacklisted" by all of the farmers in the valley, which made it impossible for them to find work. CSAAWU reported similar practices. According to CSAAWU, the network and connections among farmers ensured that workers and union shop stewards who played an important role during the strike were laid off and could not find work afterwards. In addition, some farmers started charging workers for items for which they had not paid before – e.g. housing rent, electricity, water and transport.

123 Ibid.

124 Ibid.

125 Author interview with CSAAWU.

4.6.3 Findings from the field research

The following illustrations from TCOE and SOMO's research show how union organising is frustrated in practice. These examples were gathered by SOMO and TCOE with the help of CSAAWU, which has members on all of the farms where research took place. The information comes from workers (some of whom are members of CSAAWU, others not) and CSAAWU officials.

Leeuwenkuil
All of the permanent resident workers (around 33 in total) at Leeuwenkuil are members of CSAAWU.[126] In November 2016, CSAAWU and Leeuwenkuil signed a majority recognition and procedural agreement. However, despite the company's formal recognition of the union, the union's work is obstructed in various ways. Specifically, the owner has an anti-union attitude.[127]

A worker was dismissed when he refused to sign a warning letter without first speaking to the trade union: "My father was driving a tractor. The owner thought the loading of the grapes was taking too long and started to scream and swear at my father. My brother and I went to talk to the owner and requested him not to speak to our father that way. Later, I was summoned to a disciplinary hearing for this and I had to sign a written warning. Not only for this incident but also for something that happened weeks earlier when I was sick at home without reporting it to management. I told the owner that I first wanted to talk to the trade union before signing any warning letter. Then the owner told me: 'Do it! Call that pussy from Cape Town.' He gave me another warning for not signing the previous one and dismissed me."[128]

In September 2018, a CSAAWU officer – who was accompanying an inspector from the Department of Labour – was forced to leave the Leeuwenkuil premises when the farm owner refused to grant him access to the farm. Leeuwenkuil's explanation was that the Department of Labour had a formal appointment and CSAAWU was not part of the meeting.[129] Even though CSAAWU as the recognised majority union has the right to access the farm, the union official saw no other possibility but to leave due to the aggressive atmosphere.[130]

Groot Constantia
CSAAWU became active at Groot Constantia in 2011, after workers reached out to the union with a number of concerns. A majority of the permanent workers are now members. While at first workers feared repercussions by management when they joined the union, they say that since the majority of permanent workers have joined the union, management has not taken an overtly anti-union stance. CSAAWU organisers, on the other hand, have experienced many difficulties throughout the years in accessing the farm and in raising issues with Groot Constantia management.

126 Leeuwenkuil reacted by saying that "all" is not correct and that the number 33 is not correct. Response to review by Leeuwenkuil, November 2019.
127 Leeuwenkuil "strongly reject this statement". Response to review by Leeuwenkuil, November 2019.
128 Leeuwenkuil stated that this section is not correct. Response to review by Leeuwenkuil, November 2019.
129 Response to review by Leeuwenkuil, November 2019.
130 Leeuwenkuil added to this that this is the "perception of the union". Response to review by Leeuwenkuil, November 2019.

In March 2017, CSAAWU's organiser carried out a field inspection at the farm. This, together with concerns raised by workers throughout the year, revealed a series of labour rights infringements. A follow-up investigation by the union, particularly focusing on occupational health and safety issues, was frustrated by company management but eventually took place in December 2017.

CSAAWU officials continue to experience difficulties in supporting their members. For instance, their organisers are not able to access the farm without first informing management. When they contact management with proposed dates, management is slow to respond or responds that the suggested dates are not convenient. There are cameras installed throughout the farm, including where the workers live, which enables management to monitor the workers' private lives and the union's activities.

While the company has been slow to address issues – and various issues remain unaddressed – some steps have been taken. Also, since May 2018, monthly meetings have been taking place between the union and Groot Constantia, which offers an opening to raise issues of concern on a regular basis. Negotiations in 2018 resulted in GC agreeing to a 10 per cent wage increase across the board and a transport allowance of R 18 for residing workers when they need to go to the doctor. Negotiations for 2019-2020 are ongoing. In October 2019, negotiations between CSAAWU and Groot Constantia resulted in a comprehensive agreement and a positive outcome for the workers.

Groot Constantia responded that the assertion by the union that it has difficulties in accessing the farm and in contacting the management is not correct: "GC has been willing and forthcoming to meet with the union since the onset." According to GC, the reason that communication has been problematic is due to the following reasons: several different union officials have been communicating with management without coordination between themselves; union requests for access or availability of union shop stewards is too short notice; and union officials have challenges in receiving emails or messages, which has resulted in delays.[131]

Robertson Winery

In September 2016, some 230 workers at Robertson Winery (RW) embarked on a strike that eventually lasted for three months. The main demand of the workers was a living wage of R 8,500 per month. At the time, close to half of the workers were earning R 3,200-3,400 per month, which is not enough to live a decent life.[132] Another concern raised by the protesting workers was the inequal treatment of black and white workers.

CSAAWU's General Secretary explains how things took a bad turn: "Soon after the strike started, things got out of hand because the private security company hired by the farmer and the police started to use violence against the workers". In addition, the company tried to recruit strike breakers. In response to RW's actions, CSAAWU called for a boycott of RW wines. The case of the RW workers was featured in the documentary "Bitter Grapes" (2016) made by Danish filmmaker Tom Heinemann. This created a lot of sympathy in some Scandinavian countries for the striking workers. As a result

131 Response to review by Groot Constantia, 18 November 2019.

132 Robertson Winery commented that at the time, the minimum basic wage was R 3,405.39 and no employee earned less than this wage; 120 of the 290 employees (41%) were paid at that level. Response to review by Robertson Winery, 15 November 2019.

of the campaign, Danish supermarkets took RW wines off their shelves.[133] The strike finally resulted in an immediate 8 per cent pay increase and the granting of an annual increase, while once again raising awareness about structural exploitation in the wine industry.[134]

Notwithstanding, worker action was followed by reprisals and workers said that the situation deteriorated after the strike. Some 20 union members were dismissed. The union members that are still working at Robertson Winery have said that they face discriminatory practices: "Today, it looks like we are in jail," said one of the workers during an interview in May 2018. "We start at 7:30 and finish at 17:15. At 12:30 we have a 45-minute lunch break. This is the only time we are allowed to eat. We are not allowed to eat during work, which is difficult, as some of us have to do physically demanding work. We used to have a 20-minute tea break, but after the strike they [the management] took that away. Also, the lunch break was shortened from an hour to 45 minutes. There are also a lot of cameras everywhere monitoring our movements."

Union members at RW feel that management is trying to break down the union, or at least attempting to get membership down to less than 51 per cent so that they no longer have to negotiate with CSAAWU. One of the union members described how they were called in for disciplinary meetings: "They target outspoken workers and union members who ask questions. They can always find a reason to start a disciplinary hearing and to issue warnings and then to fire you."

In addition, interviewed workers described how union members were separated from the other workers, preventing them from talking to each other. Union members were also given harder tasks. At the same time, workers who were not members of CSAAWU were favoured, for example receiving support for their children's' studies or being granted leave more easily.

The response of Robertson Winery to these reflections on the situation after the strike included that "not a single employee was dismissed for any misconduct during the strike" and that following the agreement of February 2017 with CSAAWU the company "agreed to withdraw further disciplinary action against CSAAWU members involved in the unprotected industrial action in December 2017". RW said that it has a Disciplinary Code and Grievance Procedure in place "to ensure fair and reasonable treatment of, and behaviour by, all parties at all times". The removal of the 20-minute break and the shortening of the lunch break were according to RW intended to enable the workforce to end their shift at 17:15 instead of 17:45. In the meantime, following various discussions and negotiations, workers have now 20 minutes paid time to use the toilet facilities whilst still maintaining the shortened workday. Since 2018, workers can use the toilet facilities without clocking: "employees have therefore not been monitored via the clocking system as to the time utilised for toilet breaks since then", and "as with other business, any abuse of the toilet breaks are dealt with in terms of the RW Disciplinary Code". The unpaid lunch break is still 45 minutes. Regarding the on-site cameras, RW says that "camera surveillance is used as management tool and [to] assist with matters relating

133 SOMO, interview with CSAAWU, May 2018.

134 Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>.

to health and safety; employee wellbeing; and security and productivity. There are no cameras in the restrooms or the toilet facilities."[135]

Regarding the treatment of union members, RW responded that the company "recognises all employees' right to Freedom of Association", and that "CSAAWU is presently fully recognised by Robertson Winery for purposes of collective bargaining and the Union has additionally been granted full organisational rights within Robertson Winery." Furthermore, "Robertson Winery is committed to ensuring that the representatives of employees or any person engaged in organising employees are not subjected to discrimination, harassment or intimidation and have access to members in the workplace within the Parameters of the Law." And finally, "All external audits [WIETA and BSCI] show that freedom of association and fair labour practices are applied."[136]

Goree (a supplier of Robertson Winery)
At the time the interviews were conducted (May and December 2018), although 28 of the 70 permanent workers at Goree were members of CSAAWU, it was very difficult for the union's shop steward to organise meetings on the farm. Moreover, it had been challenging to get more workers to join the union.

During the interviews undertaken in 2018, workers described several practices that they saw as attempts of management to weaken the union. They said that the farmer intimidated workers to make sure they did not join CSAAWU, and offered all kinds of benefits to workers if they did not become members of the union. Workers who did not join the one-day national 'stay-away' work strike in April 2018 (organised by SAFTU, the South African Federation of Trade Unions, of which CSAAWU is an affiliate) were paid an extra R 50 for the day. Furthermore, there was a difference in the way union and non-union members were treated. For instance, all of the houses of the drivers (who were not members of the union) were repaired whereas other houses were not.[137]

During a group interview in May 2018 in the presence of SOMO researchers, union members described how the owner was dragging his feet on transferring the union fees to CSAAWU. (Union fees are deducted from members' wages and should be transferred by the employer to CSAAWU on a monthly basis). At a certain point, when the farmer had not transferred the union fees for a year, he approached the workers and asked if they would prefer that he give the money to them rather than transferring it to the union. The workers rejected the proposal. In a meeting in July 2019, workers reported that the issue had been resolved.[138]

135 Response to review by Robertson Winery, 11 November 2019.

136 Response to review by Robertson Winery, 11 November 2019.

137 Goree's response to this was that "house repairs are done according to the maintenance plan and evidence is available that repairs were done to all houses except the two houses occupied by illegal occupants". Response to review by Goree, November 2019.

138 Goree stated that this allegation is baseless, that all member fees were deducted and transferred on a monthly basis, and that bank details are available as proof (the bank details were not sent with the review). Response to review by Goree, November 2019.

Van Loveren
Van Loveren (VL) owns more than 20 grape farms and operates its own cellar. According to the managing director of Van Loveren in an interview with a TCOE researcher in October 2018, three different unions are active at the various Van Loveren units. FAWU has members in Van Loveren's cellar; BAWUSA has members in one of his grape farms, and CSAAWU has members at two of his other grape farms (including Vinkrivier, see below).

Van Loveren's managing director stated that the company is open to building relationships with trade unions, but that unions sometimes break the "relationships and trust" that has been built with workers over time and generations. In VL's opinion, some unions are very populist and aggressive. "It might be a struggle but at Van Loveren we are not against unions," according to the company. "Unions can add values if interventions are structured and planned, but some individuals can be opportunistic and create animosity." VL's managing director stated that he has a good relationship with FAWU and BAWUSA but not with CSAAWU.

Vinkrivier (Van Loveren)
Some 30 permanent workers are employed at Vinkrivier. In the high season, the number of casual workers on this farm can increase to up to 400.

Van Loveren bought the Vinkrivier farm in 2015. Workers thought that conditions might improve since Van Loveren is a major player. However, they saw conditions deteriorate. Some benefits that workers enjoyed (for instance a yearly outing) disappeared. Workers indicated that they were scared to join a trade union, as they feared that more benefits would be taken away in reprisal. In particular, they were afraid that the employer would stop providing a truck to take workers to town. Transport to shops and state services is vital for workers, and the fact that they are completely dependent on the farm for transport makes this a major issue for them. Workers also indicated that Van Loveren's previous human resource manager had told some workers not to join a trade union and, that if they did, then at least they should not join the CSAAWU as they were – in her words – "troublemakers".

The response of Van Loveren was that all of the contractual employment conditions stayed the same when they bought the Vinkrivier Farm in 2015. The company offers free transport to town for employees every second week and when they must go to the doctor or to a funeral, as well as daily transport for children to go to school. Further, the company stated that it welcomes freedom of association and complies to the labour law concerning union membership.[139]

139 Response to review by Van Loveren for Vinkrivier, 11 November 2019.

4.7 Occupational Health and Safety

4.7.1 Legal framework

The Occupational Health and Safety Act (OHSA, 1993) regulates workplace health and safety. It stipulates that employers should provide and maintain a safe workplace. The labour inspectorate is tasked with ensuring that employers comply with health and safety regulations. Employers who fail to comply with occupational health and safety (OHS) regulations may be subject to penalties. The Act also requires that health and safety representatives are appointed at workplaces with more than 20 employees.[140]

The Hazardous Substances Act (1973) sets requirements for the control of substances "which may cause injury or ill-health to or death of human beings by reason of their toxic, corrosive, irritant, strongly sensitizing or flammable nature". The Act stipulates that where hazardous substances are used, health inspectors are tasked with ensuring that requirements for the use, storage and disposal of the chemicals are followed.[141]

The Compensation for Occupational Injuries and Diseases Act (COIDA) "provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment". If workers die as a result of injury on duty, their dependants are also entitled to claim compensation.[142] Employers are required to register with the Compensation Fund and to pay annual fees. However, most of the registered cases and the focus of compensation arise from injuries rather than from illnesses. It is very difficult for workers to prove that they have become ill as a result of exposure to poisonous materials at work, such as asbestos or pesticides. Even if this is proved, it is uncommon for compensation to be paid. COIDA does not clearly describe who is meant to follow up once a claim for compensation has been accepted, in order to ensure that the compensation is paid. The Department of Labour apparently does not have the capacity to carry out follow up.

4.7.2 Findings from the literature research

Pesticide exposure

Agricultural work can be dangerous and can pose various health risks when proper protective measures are not taken into account. One of the major risks is the danger of exposure to harmful

140 Republic of South Africa, "No. 85 of 1993: Occupational Health and Safety Act as amended by Occupational Health and Safety Amendment Act, No, 181 of 1993", 23 June 1993, <http://www.labour.gov.za/DOL/downloads/legislation/acts/occupational-health-and-safety/amendments/Amended%20Act%20-%20Occupational%20Health%20and%20Safety.pdf>.

141 Republic of South Africa, "Act No. 15, 1973, Hazardous Substances Act", 26 March 1973, <https://www.gov.za/documents/hazardous-substances-act-16-apr-2015-1120>.

142 Republic of South Africa, "No. 130 of 1993: Compensation for Occupational Injuries and Diseases Act as amended by Compensation for Occupational Injuries and Diseases Amendment Act, No. 61 of 1997", 24 September 1993, <http://www.labour.gov.za/DOL/downloads/legislation/acts/compensation-for-occupational-injuries-and-diseases/amendments/Amended%20Act%20-%20Compensation%20for%20Occupational%20Injuries%20and%20Diseases.pdf>.

chemicals. The production process for wine involves several pesticides that are harmful both to humans and to the environment.

Farm workers on grape vine plantations are exposed to various agricultural chemical pesticides, some of which are banned in the European Union but allowed under South African law. One such pesticide is Paraquat (see section below on Groot Constantia for more information about the risks associated with the use of Paraquat). Pesticides, which can enter the body through the skin, mouth, lungs or eyes, can cause severe health impacts. In 2011, Human Rights Watch (HRW) reported that exposure to pesticides "may be the cause of a range of different health problems, from rashes and non-specific symptoms such as burning eyes, dizziness, nausea, vomiting and headaches, to acute intoxications, particularly with organophosphate pesticides, which may result in fatal poisonings."[143] Furthermore, pesticide exposure can cause chronic lung and skin illnesses.

HRW also points to the risk of persistent pesticide exposure, which can increase the risks of development problems in children born to mothers exposed to pesticides or children exposed to pesticides as they grow up. Persistent pesticide exposure can further cause "reproductive disorders in both men and women; disruption of the immune and endocrine systems; nervous system toxicity manifesting in damage to nerves, brain injury, or impaired function; and increased risk of certain cancers".[144] Adequate health and safety procedures such as the proper use of safety equipment and guidelines regarding when workers can re-enter fields after spraying can minimise exposure to pesticides.

HRW also describes how on some farms, workers were not provided with proper safety equipment and did not receive training regarding the safe use of chemicals. A report by the Women on Farms Project (WFP) sheds some light on the extent of this problem; two out of three of the respondents (343 in total) were exposed to dangerous pesticides at work. Half of the interviewed workers came into contact with pesticides less than an hour after they were applied. And two-thirds of the workers who were exposed to pesticides were not provided with protective clothes by the farmer. In the case of seasonal workers, the figure was as high as 73 per cent.[145]

Oxfam Germany's research found that workers were also exposed to pesticides at home by virtue of the proximity of their houses to the vineyards where pesticides are sprayed. The wind can carry the spray into the buildings, and clothing that is hung outside to dry can be covered with pesticides.[146]

Access to toilets, washing facilities and clean drinking water

HRW reports that farmers often fail to provide workers with sufficient and proper toilets, hand washing facilities or drinking water. WFP reports that almost two-thirds of the female workers they

143 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

144 Ibid.

145 Women on Farms Project, "'The farmer doesn't recognise who makes him rich': Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>.

146 Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017,

surveyed did not have access to toilets in the vineyards where they worked, and about half of the interviewed workers did not have access to washing facilities.[147]

Injuries
Accidents with machines are not uncommon in vineyards, but it is difficult for workers to claim the compensation they are entitled to. In 2017, Oxfam Germany reported that many farm owners benefit from the fact that workers are unaware of their right to compensation, and that they fail to report accidents. Furthermore, 62 per cent of the female seasonal workers in their sample reported that wages were withheld if an injured worker went to the hospital.[148]

4.7.3 Findings from the field research

Leeuwenkuil
At the end of 2017, CSAAWU gathered information about health and safety issues at Leeuwenkuil. Through contact with its members employed at Leeuwenkuil farms, CSAAWU identified the following concerns:

- The tractors used for pesticide spraying had no or inadequate netting for the protection of the drivers, and the drivers had never received training on the handling of hazardous substances.[149]
- The drivers had no drivers' licences.
- The drinking water provided in the tractors was contained in dirty plastic bottles.[150]
- Workers did not have regular medical examinations to assess pesticide exposure.[151]
- Some of the tractors' barrels showed signs of leaking chemicals.[152]
- Empty pesticide barrels were carelessly discarded and not secured, meaning that workers who entered the farm via labour brokers could potentially take the barrels home for water storage.[153]
- The person responsible for mixing the agrochemicals had had no training or supervision, and neither he nor the workers who were spraying (other than the tractor drivers) had adequate protective gear.[154]
- An outdoor shower for workers outside the storeroom had no cover,[155] and there was a lack of sanitation facilities and changing rooms. There was only one toilet for about 30 workers (men and women) and it was not serviced regularly.

147 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011 <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.
148 Oxfam Germany, "Sold Cheap and Paid Dearly - The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>.
149 This is not correct, according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
150 Leeuwenkuil reponded that these are employees' own bottles and therefore their own responsibility. Response to review by Leeuwenkuil, November 2019.
151 This is not correct, according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
152 This is a perception, according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
153 This is not correct, according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
154 This is not correct, according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
155 Leeuwenkuil reacted that this is the emergency shower and that therefore no cover is required. Response to review by Leeuwenkuil, November 2019.

CSAAWU compiled a report in which it listed all of these problems, and sent it together with photographic evidence to WIETA, Amfori BSCI, Fair for Life, Fairtrade and the Department of Labour in February 2018. Due to the subsequent lack of improvement, another letter was sent to these organisations in April 2018.[156]

The Department of Labour referred the complaints to the National Prosecution Authority (NPA). At the time of writing, the NPA is still looking into the matter.[157]

WIETA informed CSAAWU that their audit revealed similar non-compliances with the WIETA code, and that Leeuwenkuil's certification had been suspended as of June 2018.[158] It is unclear what action has been undertaken by Amfori BSCI.

Leeuwenkuil remains Fair for Life certified (Fair for Life Social & Fair Trade Certification).[159] Fair for Life responded they could not identify major non-compliances.[160] Leeuwenkuil's own grape plantations are not Fairtrade certified; Leeuwenkuil buys grapes from other Fairtrade certified grape producers although it is not known who these producers are. Leeuwenkuil has a Fairtrade certification as 'trader, manufacturer/processor' and this is not affected by any problems on its own grape plantations. This difference between the Fairtrade certifications is often confusing for outsiders. (see also section 5.3.3)

During an interview in August 2019, workers reported that some changes had been implemented by the company. They said that they now receive two hours of training on pesticides every year, and that they are supplied with gloves and masks. However, inadequately netted spraying trucks[161] and improper storage of chemicals were still visible during the visit.[162]

Groot Constantia
CSAAWU, with the support of an adviser from the Industrial Health Research Group from the University of Cape Town, investigated OHS conditions at Groot Constantia throughout 2017. This investigation revealed concerns regarding the use of hazardous chemicals.

Among the agrochemicals and pesticides used at Groot Constantia is Paraquat, a herbicide used to control weeds. Paraquat has been banned in the EU since 2007 due to its serious health risks but

156 Leeuwenkuil reacted that "continuous improvement is part of any certification process and the farm had a number of inspections by Department of Labour without any major issues". Response to review by Leeuwenkuil, November 2019.
157 Leeuwenkuil reacted that this is "highly unlikely, because we have not received any notification from any department on any matters". Response to review by Leeuwenkuil, November 2019.
158 This is not correct, according to Leeuwenkuil, as "certificate expires after 3 years and Leeuwenkuil cancelled WIETA membership". Response to review by Leeuwenkuil, November 2019.
159 Fair for Life website, "Certified Operators - Leeuwenkuil Family Vineyards Pty Ltd", no date, <http://www.fairforlife.org/pmws/indexDOM.php?client_id=fairforlife&page_id=certified&lang_iso639=en&company_id=605> (accessed on 11 January 2020).
160 Email Fair for Life.
161 This is "not a legal requirement", according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.
162 This is a "perception", according to Leeuwenkuil. Response to review by Leeuwenkuil, November 2019.

is allowed under South African regulations. According to Pesticide Action Network (PAN), "exposure to Paraquat during mixing and spraying can in the short term produce acute toxic effects including nosebleeds, eye injuries, irritation and burns to the skin. Chronic exposure to Paraquat can affect the lungs." Paraquat also appears to be connected to chronic bronchitis and shortness of breath, as well as to damage to the nerve system or brain. According to PAN: "In epidemiological studies long-term exposure to low doses of Paraquat has been associated with an increased risk of developing Parkinson's disease."[163]

These high risks make the safe use and storage of these materials of upmost importance. However, workers at Groot Constantia were not properly informed nor protected against these risks. In March 2017, CSAAWU informed the Department of Labour and WIETA about non-compliances with South African health and safety regulations and the WIETA code at Groot Constantia. In response to these concerns, WIETA conducted an investigation audit in May 2017 and a verification inspection to check the remedial plan in October 2017.

The WIETA audit in May 2017 identified major non-compliances with the WIETA code and confirmed many of the issues flagged by CSAAWU, such as an insufficient health and safety system in terms of training and safe use of chemicals and the lack of a well-functioning health and safety committee. The findings also included inadequate handling, storage and disposal of agrochemicals and deviations regarding the issuing of personal protective equipment (PPE) such as protective clothing and appropriate goggles.[164]

The verification inspection in October 2017 found that although it discoloured workers' clothes, the drinking water provided to Groot Constantia workers was safe for consumption. But according to an article in the Mail & Guardian, "petrol and other flammable substances were still being stored haphazardly" and safety measures to protect workers who handled toxic chemical products were still not implemented correctly.[165] As the remedial actions were not undertaken within the required six months, GC's WIETA certification was suspended.

Furthermore, according to CSAAWU's research throughout 2017, the workers had to go back into the fields shortly after the spraying of pesticides (without respecting the required waiting period), and the spraying also happened near workers' homes, which led to concerns about pesticides entering their houses. Workers reported health problems that, in their opinion, were related to the use of pesticides: skin problems, irritation of the eyes, lips and nose, coughs and headaches. They also felt that doctors did not take their concerns seriously, saying that their skin problems were due to sunburn.[166]

Groot Constantia responded in their review that in general, the issues raised in the 2017 audits are historic and have been addressed and resolved. Further, they responded that the described health

163 Berne Declaration, Pesticide Action Network UK and Pesticide Action Network Asia and the Pacific, "Paraquat - Unacceptable health risks for users", September 2006, <http://www.pan-germany.org/download/paraquat_report0609.pdf>.

164 Information provided by CSAAWU, based on the WIETA audit reports of May 2017 and October 2017, email 18 December 2018.

165 Mail & Guardian, "Constantia leaves bitter aftertaste", 16 March 2018, <https://mg.co.za/article/2018-03-16-00-constantia-leaves-bitter-aftertaste>.

166 Research CSAAWU throughout 2017.

and safety issues were incorrect.[167] The company requested a new periodic full audit, which took place in May 2018 (this audit report has not been shared with CSAAWU).[168] After the corrective actions for non-compliances were signed off by the auditor, the company was recertified in May 2019.[169]

Goree

Workers at Goree raised concerns about pesticide exposure. They said that among the agrochemicals used are Roundup and Paraquat.[170]

While male permanent workers are known to refuse to go into the fields immediately after the spraying of pesticides, women are sent in, especially those employed via labour brokers. During a group interview in May 2018, one of the Goree workers explained: "The pesticides are sprayed by tractors. When the fields are being sprayed workers have to leave the fields. You should wait 12 to 24 hours before entering the fields after they have been sprayed. But the women immediately return after spraying when the fields are still wet. We men, we tell them [the farmer] that we don't go in the fields when the pesticides have been sprayed but the women don't dare to do so."[171]

Another worker added: "When the pesticides are on your hands and you touch your face it will leave stains. Some of the female migrant workers paint their faces to protect their skin from the pesticides." During the group interview, workers said that they were not provided with adequate protective equipment: "We are not provided with masks and protective glasses. One of the workers even had to use Roundup without gloves."[172]

Workers also reported that they were not provided with information on the risks and safe use of the chemicals: "There are no health and safety instructions with regard to the use of pesticides. The only thing we are being told is: 'the pesticides will not kill you.'"[173] When some workers reported to the

167 According to Groot Constantia, the company does give health and safety trainings, they do provide PPEs, and although safety measures were in place to protect workers procedures were not adhered to. "The matter of employee training was addressed but it is a natural occurrence to find human error in any workplace but we have never shifted our responsibility to minimize these risks." The incorrect storage of chemicals were isolated incidents which were corrected. The company said that it always adheres to the prescribed waiting period after spraying and that tractor drivers normally advise residents to close windows and to remove washing from the lines before spraying. The company states that employees undergo annual medical checks and those working with chemicals undergo additional blood testing at company cost. All results have returned clear to date. Groot Constantia response to review, 18 November 2019.

168 SOMO correspondence with CSAAWU.

169 Response to review by Groot Constantia, 18 November 2019.

170 Goree commented that "Roundup and Paraquat are legal substances in South Africa and are allowed [for] use." Response to review by Goree, November 2019.

171 Goree commented that "no person is allowed to enter the area until the red flags are removed". Response to review by Goree, November 2019.

172 Goree commented that "all employees received the required PPE and records where they signed receipt of the clothing & equipment are on record". Response to review by Goree, November,2019. Goree did not provide these records with the review.

173 Goree commented that "all spray operators are formally trained on the danger, use and handling of chemicals by the chemical supplier". Response to review by Goree, November 2019. However, the section is about all workers, not only the spray operators.

farmer that they were having stomach problems and that they thought it might be work-related, the farmer responded that they drank too much.

Workers further added that an empty pesticide can was used for their drinking water even though it stated clearly on the can that it should never be used for storing drinking water.[174]

Vinkrivier (van Loveren)
Similar to the account from workers at Goree, workers at Vinkrivier also said that female workers went back into the fields after the spraying of pesticides while male workers refused to do so. Unlike the men, the female workers were apparently not in the position to be able to refuse to do this.

Van Loveren responded that the management of Vinkrivier "complies with the prescriptions on the MSDS [material data safety sheet] sprayed in the fields and the supervisors must ensure that employees (male and female) are aware and do not enter the field within the prescribed timeframe".[175]

4.8 Wages

4.8.1 Normative framework

Sectoral Determination 13, the Farm Worker Sector of the Basic Condition of Employment Act, provides for a minimum wage for farm workers. However, this still allows a number of "exemptions", one of the grounds for which is the "financial viability" of the employer.

As of 1 January 2019, the minimum wage for farm workers is set at R 18 (€ 1.05) per hour. For farm workers, for whom a 9-hour workday is the norm, this translates into R 162 (€ 9.50) per day and R 3,509 (€ 206) per month.[176] The minimum wage for farm workers is below the national minimum wage of R 20 per hour [177] that applies to all other sectors.

4.8.2 Findings from the literature research

Oxfam Germany cites a 2016 report by the Pietermaritzburg Agency for Community Social Action (PACSA) that states that an average family of five in South Africa should spend R 3,125.87 per month on food in order to eat a reasonably healthy and balanced diet. This means that the minimum wage does not allow workers to cover their basic needs: housing, nutrition, clothing, healthcare, education, drinking water, childcare, transport and savings.

174 Goree commented that it is against farm rules to re-use empty pesticides containers for drinking water and that disciplinary actions will be taken against an employee who breaks this rule. Response to review by Goree, November 2019.

175 Response to review by Van Loveren for Vinkrivier, 11 November 2019.

176 Conversion rate of 9 August 2019, <www.xe.com>.

177 WageIndicator, Mywage.co.za, "Minimum Wage – National Minimum Wage", 2019, <https://mywage.co.za/salary/minimum-wages/6226-national-minimum-wage>.

The Decent Standard of Living Index by the Studies in Poverty and Inequality Institute sets a decent standard of living at R 7,043 in 2018 prices.[178] This is roughly double the monthly minimum wage for South African farm workers.[179]

Oxfam Germany reported that 20 per cent of the interviewed workers in their sample received wages below the legal minimum. Seasonal workers are much more likely to be paid below the minimum wage. In Oxfam Germany's sample, 73 per cent of permanent workers received the minimum wage, while this was only the case for 51 per cent of seasonal workers, who represent an estimated 70 per cent of the agricultural workforce.[180] Oxfam Germany further noted that payment of the minimum wage is often made subject to the condition that workers reach high targets. This is a common strategy used by farmers to circumvent the payment of the minimum wage. According to CSAAWU, labour broker workers are often paid according to a target or piece rate system.

CSAAWU also reported that a known effect of minimum wage increases is that employers cut back on or withdraw benefits that had previously been provided (e.g. occasional transport to town) and demand (higher) payment for housing or services such as electricity and water. Even if they are permanent workers, females tend to earn less than their male colleagues for the same work. Women are also not considered for extra piecework, which could enable them to increase their income.

4.9 Social security

4.9.1 Legal framework

Sick leave

As specified by the Basic Conditions of Employment Act, workers are entitled to "take one day's sick leave for every 26 days worked during the first six months of employment and thereafter an employee may take the number of days he/she normally works in six weeks during every three-year cycle". Basically, an employee is entitled to 36 days of paid sick leave (if she or he works six days

178 Studies in Poverty and Inequality Institute, "Towards a Decent Life for All – Decent Standard of Living Index, Final Report", October 2018, <http://spii.org.za/wp-content/uploads/2018/11/DSL-Report-SD-v3.doc.pdf>.

179 There are different living wage calculations. Trade union SAFTU is calling for a general living wage of R 12,500 per month. WageIndicator comes to a living wage between R 8070 and R 11,200 per month, and the Global Living Wage Coalition calculated that a living wage in the Western Cape province would entail R 4,056 per month. Sources: SAFTU website, "SAFTU rejects poverty minimum wage", 7 December 2018, https://webcache.googleusercontent.com/search?q=cache:aHkcYxGYi8sJ:https://saftu.org.za/saftu-rejects-poverty-minimum-wage/+&cd=11&hl=en&ct=clnk&gl=nl&client=firefox-b-d; WageIndicator, "Living Wage Series - South Africa", December 2018, https://wageindicator.org/salary/living-wage/south-africa-living-wage-series-december-2018; and Gobal Living Wage Coalition, "Living Wage for Western Cape Province, South Africa", May 2018, <https://www.globallivingwage.org/living-wage-benchmarks/rural-south-africa/>.

180 Oxfam Germany, "Sold Cheap and Paid Dearly – The Market Power of German Supermarket Chains and Women's Working Conditions on Wine and Grape Farms in South Africa", 2017, <https://lebasic.com/wp-content/uploads/2017/11/Oxfam_South-African-Wine-Study_2017.pdf>.

per week) for every three-year sick leave cycle. Employers may require a medical certificate from workers who apply for sick leave.[181]

Maternity leave
According to the law, farmworkers are "entitled to at least four consecutive months of maternity leave. Maternity leave may start from four weeks before the expected date of birth or at a date deemed necessary for health reasons." A farm worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so. Employers may not "require or permit a pregnant farm worker or a farm worker who is nursing her child to perform work that is hazardous to her health or the health of her child".[182] In terms of maternity benefits, depending on their contributions to Unemployment Insurance Fund (UIF), women can get paid 38-58 per cent of their salary for a maximum of 121 days.

It is not compulsory for farmers/employers to contribute towards pension or provident funds or medical aid. There is no provision that obliges farmers to contribute towards any form of security for the future of farm workers.

State welfare
State welfare pensions are provided monthly for old age pensioners (R 1,500 per month for people older than 60); children (R 350 per month for children under the age of 18); people with disabilities who are unable to work; war veterans; foster care; and care dependency. The amounts paid are subject to a means test and to the maximum income thresholds of the families concerned.
The Unemployment Insurance Act (UIA, 2001) provides for the payment of unemployment benefits from the UIF to certain workers. The amount and period during which payments are received depends on the amount and the length of time the worker has contributed towards the fund, subject to a limit of a total of eight months payment. The UIA also provides for the payment of illness, adoption, maternity and dependents' benefits related to the unemployment of workers. The UIA was amended in 2003 to allow seasonal workers to contribute to the UIF. For every four days worked, one day's credit is received, subject to a maximum of 365 credits.

4.9.2 Findings from the literature research

Human Rights Watch research revealed that farmers almost uniformly fail to provide workers with the legally required sick leave.[183] Likewise, research commissioned by the ILO found that "only 35 per cent of farm workers were entitled to paid sick leave". However, when disaggregated "for permanent and seasonal workers the incidence ranged from 58.7 per cent for workers with

181 Republic of South Africa, "Basic Conditions of Employment Act", 1997, <http://www.labour.gov.za/DocumentCenter/Acts/Basic%20Conditions%20of%20Employment/Act%20-%20Basic%20Conditions%20of%20Employment.pdf#search=Basic%20Conditions%20of%20Employment%20Act"%2C%201997>.

182 Republic of South Africa, "Basic Conditions of Employment Act, No. 75 of 1997 - Sectoral Determination 13, Farm Worker Sector, South Africa, 1997, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104356/127264/F1307311202/ZAF104356.pdf>.

183 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

employment of a permanent nature to approximately 10 per cent for workers with employment of a limited or unspecified duration".[184]

Women who are pregnant often lose their jobs. According to research by KASA, only 5 per cent of women received paid maternity leave.[185] Similarly, HRW notes that farmers sometimes dismiss workers when they are pregnant. Pregnant seasonal workers "are in the most precarious position; once they are denied work, they cannot expect to return later to their seasonal jobs, and they will likely have to hide their pregnancy in order to find a new job".[186]

4.9.3 Findings from the field research

Vinkrivier
Workers at Vinkrivier said that they face difficulties in applying for sick leave. The workers cannot freely choose a doctor; they have to use the private doctor that is chosen by the manager. The workers then feel that they have no privacy as a patient, as the doctor allegedly works closely with the manager. According to the workers, the doctor is instructed by the farm manager to send the patient back to work after one day. The advised duration of the sick leave is written in the letter from the doctor that the workers receive after the visit. They need this letter to receive sick leave payment. Workers also said that R 370 was deducted from their wages when they visited the doctor. At the time of the interview, this amount was more than twice the daily wage of a worker (around R 150). Consequently, if a worker is sent back to work after one day (as is usually the case), the doctor's visit will cost more money than one day of sick leave.

Van Loveren commented that employees are free to visit any doctor of their choice, and that the allegation that the manager influences the duration of the sick leave is not true. Furthermore, the company assists the employee by paying the full amount of the doctor's appointment and then deducts the percentage, as prescribed by law,[187] every two weeks from their salary.[188]

184 Visser, M. and Ferrer, S., "Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems", report commissioned by the Pretoria Office of the International Labour Organization, February 2015, <https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf>.

185 KASA, Factsheet, November 2016, "The South African wine industry and the living and working conditions of its farmworkers", <https://www.kasa.de/fileadmin/user_upload/downloads/publikationen/kasa/kasa_2016_factsheet_south_african_wine_industry.pdf>.

186 Human Rights Watch, "Ripe with Abuse - Human Rights Conditions in South Africa's Fruit and Wine Industries", 2011, <https://www.hrw.org/sites/default/files/reports/safarm0811webwcover.pdf>.

187 Republic of South Africa, Sectorial Determination 13, <https://www.gov.za/documents/basic-conditions-employment-act-sectoral-determination-13-farm-worker-sector-investigation>.

188 Response to review by Van Loveren for Vinkrivier, 11 November 2019.

5 Dutch supermarkets and their policies to address labour rights issues in the South African wine industry

5.1 South African wines on the Dutch market

Alongside France, South Africa is the largest wine supplier to the Netherlands, and an estimated 20-25 per cent of wines sold in the Netherlands come from South Africa.[189] Accurate figures are hard to come by as a considerable share of South African wines are exported in bulk to Germany, the UK and France, where they are bottled and then re-exported to the Netherlands. In official import figures, these wines are classified as imports from the countries where they were bottled. Supermarkets are the main sales outlet for wine in the Netherlands; around 80 per cent of the South African wines sold in the country are sold through supermarkets.[190]

Most of the South African wines sold in Dutch supermarkets are private label wines, which are brands created by the retailers themselves.[191] In the Netherlands, the private label wines of leading retailer Albert Heijn accounted for an estimated 50 per cent of total wine sales in 2016.[192] The private label wines sold in supermarkets are predominantly bulk wines, and are often bottled in Germany or the UK.[193]

The top-selling South African wine in the Netherlands is Kaapse Pracht, a private label wine by ALDI that is sold for € 3.99 per litre.[194] Kaapse Pracht is a bulk wine, mainly bottled in Germany and sourced from multiple producers.[195]

All of the supermarkets discussed in this chapter have (or have had) South African wines as part of their selection (branded wines, private label wines and/or bulk wines). Wines produced by one or more of the South African wine companies that were part of the field research of this study were found at Albert Heijn, Gall & Gall and Deen.

189 Koninklijke Vereniging van Wijnhandelaren, interview with Koninklijke Vereniging van Wijnhandelaren by SOMO, 20 February 2019.
190 WOSA representative in the Netherlands, interview with WOSA by SOMO, 31 July 2018.
191 Euromonitor, "Wine in Western Europe", 2017, slide 21.
192 CBI, "Product Factsheet: Bulk wine in Europe", 2016, p. 5, <https://www.cbi.eu/market-information/wine/bulk-wine/>.
193 Ibid.
194 ALDI website, "Witte wijnen – Kaapse Pracht", no date, <https://www.ALDI.nl/onze-producten/wijnen/witte-wijnen/kaapse-pracht-1122.article.html> (accessed on 12 January 2020).
195 Interview by the author with WOSA representative in the Netherlands, 31 July 2018.

5.2 Dutch retailers' policies

This section looks into the policies and practices of the five leading supermarkets/retailers in the Netherlands.

Table 4 Researched supermarkets/retailers

Supermarket /retail chain	Parent company	Market share in the Netherlands196
Albert Heijn and Gall & Gall	Ahold Delhaize	34.7%
Jumbo	Jumbo Groep Holding	19.1%
Lidl	Schwarz Gruppe GmbH	10.9%
ALDI	ALDI Nord	6.8%
PLUS	Sperwer Groep	6.4%

For the research, a questionnaire was sent to each of these five companies with questions about the origin of their South African wines and their policies and practices to address human rights and labour rights issues in their South African supply chain. All five companies responded to the questionnaire. The following paragraphs present the information that was provided by the supermarkets.

The questionnaire contained questions about the variety of South African wines that supermarkets include in their selection (branded wines, private label wines and bulk wines) and the sourcing models that they use. It also included questions about traceability, transparency and how supermarkets assess risks and possible adverse impacts in their South African wine supply chain. Furthermore, it asked whether they work with certain certification or improvement schemes, how they engage with relevant stakeholders, and what other steps they take to prevent adverse human rights impacts or mitigate the risks thereof. A draft version of the report was sent to the supermarkets. All five responded, and all of their relevant comments and corrections have been incorporated into this chapter.

Apart from the big five Dutch supermarkets, Deen Supermarkten was also contacted in a later stage due to the Leeuwenkuil Chenin Blanc wine that it sold until very recently. The company did not receive a questionnaire, but it responded to a request to reflect on the issues at Leeuwenkuil and the steps they take to prevent or mitigate adverse human rights risks in a broader sense for all of its wines from South Africa. This information has also been incorporated into this chapter.

196 Distrifood, "Marktaandelen – Marktaandelen 2008-2018 Nielsen", no date, <https://www.distrifood.nl/food-data/marktaandelen?vakmedianet-approve-cookies=1>.

Box 6 Due diligence for Responsible Business Conduct (RBC)

In their responses, supermarkets said that they carry out 'due diligence'. This term requires some explanation. Risk-based due diligence is an essential characteristic of Responsible Business Conduct (RBC) norms such as the United Nations Guiding Principles on Business and Human Rights (UNGP) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. Due diligence is understood as a process through which enterprises actively identify, prevent, mitigate and account for how they address and manage the actual and potential adverse impacts of their operations, including in the value chain and through other business relationships.

The main characteristics of due diligence are as follows:[197]

- Due diligence is a **continuous** process, in which companies continuously and proactively identify, prevent and/or mitigate potential negative impacts on society, remediate actual negative impacts, and report on this process.
- Due diligence concerns the responsibility of a business for its own operations and its **entire supply chain**. This includes the purchase of raw materials and outsourced business activities.
- Due diligence does not focus on the risks for and rights of the company, but on the **risks of business activities for society** as a whole and, in particular, for those **who are directly impacted**.

5.2.1 Ahold Delhaize (Albert Heijn and Gall & Gall)

Albert Heijn supermarkets and Gall & Gall (the leading wine and liquor retailer in the Netherlands) are both operating under the banner of the Ahold Delhaize Group. There are 970 Albert Heijn stores in the Netherlands.[198] Gall & Gall has 600 stores in the Netherlands.[199] Ahold Delhaize filled out the questionnaire, providing information about Albert Heijn and Gall & Gall wines.

South African wines and sourcing

Together, Albert Heijn and Gall & Gall have 51 different types of South African wines in their selection[200] (note that there may be different varieties of each wine type, e.g. white, red and rosé, so the total amount of bottes from South Africa on the shelves could actually be higher). Ahold

197 United Nations, "Guiding Principles on Business and Human Rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework", 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

198 Foodpersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/>.

199 Gall & Gall, "Over Gall & Gall", no date, <https://www.gall.nl/over/> (accessed on 12 January 2020).

200 Ahold Delhaize, answers to questionnaire, 15 February 2019.

Delhaize expressed concerns about the availability of wine in the long term due to climate change and increasing demand from China, arguing that this will become a factor in (fair) price setting.

Ahold Delhaize reported that they select bulk wines that are bottled in Germany by Wein- und Sektkellerei Ostrau GmbH (Tophi) and by Wine Excel from the Netherlands. These companies also take care of the financial stream, and are *de facto* the importers. Ahold Delhaize also wrote that it seeks direct and long-term contact with its wine suppliers.

Traceability and transparency
Ahold Delhaize says that it has mapped the supply chain as far back as the grape plantations for 90 per cent of its bulk volume. In response to the questionnaire, the company provided the names of the producers of the branded wines in their range. This information is also given on the bottle label or elsewhere, and due to South African legislation on traceability the producer's name can be retrieved using the Department of Agriculture's public database.[201] Ahold Delhaize did not provide the names of the producers of their private label (bulk) wines.

Due diligence for RBC
Ahold Delhaize reports that it visits its bulk wine suppliers every year in order to create a new blend for the coming years. The purpose of these visits does not include engaging with the supplier or other stakeholders, such as workers or trade unions, on RBC. Ahold Delhaize argues that "sustainability" is covered during these visits by the sourcing managers. [202] However, the company did not provide further information about the outcomes of these conversations.

Ahold Delhaize relies on WIETA (see Section 5.3.1) and Amfori BSCI (see Section 5.3.2) to monitor human rights and labour conditions. The company requires its suppliers to be audited by either one of these initiatives. It also reports that it randomly asks for audit reports. It is seemingly not a common practice for Ahold Delhaize to automatically receive audit reports regarding their suppliers and thus to be structurally aware of the findings.[203] After Ahold Delhaize raised this issue with WIETA, the organisation promised to send audit reports structurally in the near future.[204]

From the questionnaire, it became clear that 97 per cent of Ahold Delhaize's South African branded wines are WIETA certified and that 90 per cent of its bulk volume is also certified by WIETA. After SOMO raised questions about whether their WIETA suppliers are actually certified or only members, Ahold Delhaize received a list from WIETA indicating that all of their suppliers are certified members. (As explained in Section 5.3.2, there are two types of membership: WIETA members and WIETA certified members). WIETA also announced that it would adjust its sourcing policy to reflect the new Risk Rating that was recently introduced and that it would take necessary actions where appropriate (see Section 5.3.1).[205]

201 According to South African regulations, all wines produced and bottled in South Africa have a code (starting with an A) on the label which refers to the producer. Entering the code in this database <http://www.dawineonline.co.za/login/frm_abCodesSearch.cfm> leads to the producer's name.

202 Ahold Delhaize, email in response to review request, 11 November 2019.

203 Ahold Delhaize, answers to questionnaire, 15 February 2019.

204 Ahold Delhaize, email in response to review request, 11 November 2019.

205 Ibid.

Ahold Delhaize says it wishes to have a better understanding about the performance of its suppliers and has requested more detailed insight from WIETA. As a first step, WIETA was asked to provide an overview of the level of compliance of Ahold Delhaize's suppliers.

Box 7 Albert Heijn announces improved human rights due diligence policy

Albert Heijn announced a new human rights due diligence policy in February 2019. The company made a commitment to conduct due diligence in accordance with the six steps defined in the OECD Due Diligence Guidance. It also committed to carrying out at least six impact assessments per year in supply chains where human rights are at risk. Albert Heijn also stated that it would involve local workers, trade unions, farmers and representatives of communities (including women) and NGOs in these impact assessments.[206]

The company published an interactive map in 2019 with up-to-date information about private label suppliers ('Last Stages of Production' locations).[207] For fresh products, the map shows the farms that produce the products. The company committed to making human rights part of the standard training for its own buyers.

Albert Heijn appointed CEO Marit van Egmond as the person ultimately responsible for respecting the environment and the rights of people and animals in the company's supply chain and procurement processes.
The company will publish its first Human Rights Due Diligence Report by 2020 at the latest.[208] How this policy translates into good day-to-day business practices remains to be seen. Also, South African wines were not on the 'short list' of important products and ingredients until very recently.[209] However, Albert Heijn will do a "due diligence deep dive" on South African wines in 2020, together with a partner organisation.[210] The company did not elaborate on who this partner organisation is and whether it represents stakeholders.

206 Oxfam Novib, "Albert Heijn commits to become a leader on human rights", 19 February 2019, <https://www.oxfamnovib.nl/kenniscentrum/blog-kenniscentrum/albert-heijn-commits-to-become-a-leader-on-human-rights>.

207 Albert Heijn, Wereldkaart, August 2019, <https://www.ah.nl/suppliers/map>.

208 Albert Heijn, "Van de wereld voor de wereld", February 2019, <https://static.ahold.com/media/002099800/000/002099838_001_Albert_Heijn_Due_Diligence.pdf>.

209 Albert Heijn, "Van land tot klant", March 2019, <https://nieuws.ah.nl/van-land-tot-klant/>.

210 Ahold Delhaize, email in response to review request, 11 November 2019.

5.2.2 Jumbo

Jumbo Supermarkten is a fast-expanding private company run and owned by the Van Eerd family. It operates 618 stores in the Netherlands.[211]

South African wines and sourcing
Jumbo reported that it carries five South African private label wines,[212] which are all bulk wines. In addition, it has a number of South African branded wines in its selection. Information on the labels shows that most of these branded wines are produced by DGB,[213] one of South Africa's largest wine producers. DGB Europe is based in the UK.

Jumbo wrote that they source their private label bulk wines themselves and have them bottled in Germany. According to Jumbo, the bottling company takes care of the bulk transport from the South African vineyards to Germany.[214]

Traceability and transparency
Jumbo did not provide details about the suppliers of its private label wines from South Africa. In response to the review request, it stated only that it sells two private label wines. The company stressed that it has mapped it out its entire supply chain with information about social compliance in the vineyards.[215] However, this is not public information.

As for the branded South African wines on Jumbo's shelves, the producers can be retrieved by typing the A-code on the label into the WOSA database. Apart from DGB, Jumbo sources branded wines from KWV International, Burgershof and Warshay Investments.

Due diligence for RBC
Jumbo reports that even though its private label wines do not have a Fairtrade seal, the production location and the vineyards are in fact Fairtrade certified. As SOMO does not know which wine producers and vineyards Jumbo sources its wines from, it is impossible to verify this claim. Moreover, if it were true that Jumbo is sourcing from Fairtrade vineyards but not under Fairtrade terms, this means that Fairtrade price premiums are likely not being paid. This means that Jumbo is benefitting from better conditions through Fairtrade certification on farms while not actively contributing to them nor enabling them through better purchasing conditions.

211 Foodpersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/> .
212 Jumbo, email in response to review request, 20 November 2019.
213 SOMO store visits.
214 Jumbo, email in response to review request, 20 November 2019.
215 Ibid.

Box 8 Jumbo launches a human rights due diligence policy

Jumbo published a human rights policy in March 2019.[216] This policy announces a due diligence approach for the company's supply chains and refers to the UN Guiding Principles and the OECD Due Diligence Guidance for Responsible Business Conduct. This human rights policy will first be applied to private label products, as this is where the company has the most leverage. With brand suppliers, Jumbo will begin by discussing the issue of human rights. The company plans to conduct an impact analysis and improvement plan for its private label products, indicating step-by-step how it will tackle the identified risks. It has the intention to follow all six steps of the due diligence process.

In May 2019, Jumbo indeed published a map with a global picture (although it only mentions the total number of suppliers per country) of the locations of its first-tier private label suppliers (mainly in Europe and Asia) and production locations (on an aggregated level covering countries in all continents). The map also identifies high-risk products.[217] Although Jumbo states that it knows if its orange juice comes from Spain or Brazil, for example, it does not however disclose this information. This also applies for the names of suppliers.

This step was followed by an explanation and prioritisation document about these high-risk products. Behind each category, there is a general description with countries of origin, issues and what Jumbo is already doing about it.[218] For wine production in South Africa, Jumbo acknowledges that there are large risks for the violation of human rights in both grape growing and wine production. It refers to the use of SIZA and WIETA standards.[219] However, it does not elaborate on the follow-up of non-conformities or how they meaningfully engage with stakeholders. The steps towards mitigating risks and impacts, tracking implementation and providing for remediation when appropriate still need to be taken (or at least there is room for improvement).

In response to the review, Jumbo emphasised that they have long-term agreements with their suppliers, with the goal of ensuring some level of security for them. The company also carries out regular visits and audits in the Western Cape. Jumbo states that during the last visit it entered into discussions and shared information about human rights, crop protection, training, schools

216 Jumbo, "Jumbo en mensenrechten", <https://www.jumborapportage.com/FbContent.ashx/pub_1007/downloads/v190328134223/@SlVNQk8zMDk2X01WT2JlcmljaHQrQ292ZXIucGRm>.

217 Jumbo, "Jumbo en due diligence deel A – Ketentransparantie en risicoanalyse –Toplijst van risicoproducten en ingrediënten", May 2019, <https://www.jumborapportage.com/fbcontent.ashx/pub_1009/downloads/Rapportage%20website%20risicoanalyse%20deel%20A.pdf>.

218 Jumbo, "Jumbo en due diligence deel B – Toelichting op de toplijst risicoproducten en -ingrediënten – Prioritering van risicoproducten en -ingrediënten op toplijst", <https://www.jumborapportage.com/FbContent.ashx/pub_1009/downloads/v191030165050/Rapportage%20website%20risicoanalyse%20deel%20B.pdf>.

219 <https://jumborapportage.com/fbcontent.ashx/pub_1009/downloads/8_Dranken%20en%20vruchtensappen.pdf>.

for children and developments at the social, economic and political levels.[220] The company did not give further information about the outcomes of these conversations, nor about whether a corrective action plan was put into place. It is also not clear whether trade unions or other civil society organisations were consulted.

For products sourced from high-risk countries – such as South Africa[221] – Jumbo requires suppliers to submit an audit report. The company accepts audit reports from the following organisations: Amfori BSCI, ETI (Sedex Members Ethical Trading Audit), SA8000, ICS, SIZA, Fairtrade, Rainforest Alliance, UTZ, WIETA and IMO. Jumbo wrote that in conversations with wine suppliers, the topic of pesticide use is part of their sourcing policy. The company also wrote that it has not received any signals about labour rights violations connected with its South African private label wine suppliers.[222]

5.2.3 Lidl

Lidl Netherlands (hereafter referred to as Lidl) is a private company, owned by the German Schwarz Gruppe. Lidl is a discount supermarket chain, offering products at mostly lower prices than regular supermarkets with correspondingly limited in-store service. Lidl exclusively sells private label products. It has 417 stores in the Netherlands.[223]

South African wines and sourcing
Lidl did not provide any information about its South African wines, except for the fact that its South African selection includes Fairtrade certified wines. Lidl also did not provide any information about its sourcing practices.

Traceability and transparency
Lidl did not provide any information about the origin of its South African wines. The labels on the bottles mention Vineris GmbH as the distributor. This German wine producer seems to exclusively supply Lidl.

Due diligence for RBC
Lidl reports that it works with Fairtrade, SIZA, Amfori BSCI, GIZ and the German Institute for Sustainable Development (Deutsches Institut für Nachhaltige Entwicklung - DINE) connected to the University of Heilbronn to ensure that working and living conditions improve in the long term. The international department of Lidl (not the Dutch one) worked with DINE on a pilot on a South African wine plantation.[224] The company did not provide any further information about the results of this cooperation.

220 Ibid.
221 Amfori BSCI, "Country Risk Classification", 2019, <https://www.Amfori.org/sites/default/files/Amfori%20BSCI%20CRC%20V2019%20Final.pdf>.
222 Interview.
223 Foodpersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/>.
224 Lidl, email in response to review request, 12 November 2019.

In response to the review request, Lidl stated that Fairtrade wine suppliers are certified as 'producer', which would mean that the Fairtrade certification covers the entire company and that these suppliers must comply with norms for workers at plantations. (Apart from the certification as 'producer' companies can also be certified as 'trader', which means that audits take place under another standard.

5.2.4 ALDI

ALDI Einkauf GmbH & Co. OHG (operating as ALDI) is a global discount supermarket chain headquartered in Germany. The chain is made up of two separate groups: ALDI Nord and ALDI Süd, which operate independently from each other within specific areas. The Dutch ALDI stores –currently 495 in total[225] – belong to the ALDI Nord Group.

South African wines and sourcing
ALDI reports that it has the following South African private label wines on its shelves:

- Kaapse Pracht (various types of red and white wines, available per bottle and as bag-in-box). This is a bulk wine, bottled by the Andreas Oster Weinkellerei based in Germany and by Castel in France.226
- MooiBerg (red and white), bottled in South Africa.
- Jonkersdal (red and white), bottled in South Africa.
- Crafted, a Chardonnay-Viognier imported by Weinkellerei Einig-Zenzen GmbH & Co. KG.

All wines are sourced by third parties, according to ALDI. Kaapse Pracht labels mention Andreas Oster Weinkellerei as the importer and bottler. Labels on Jonkersdal mention Rostberg (Pty) Ltd (a bottling company in Stellenbosch) as the bottling company and Andreas Oster Weinkellerei as the importer.

Traceability and transparency
ALDI writes that it is able to trace its wines back to the level of the grape plantations. The company did not disclose information about the producers of its South African wines. The A-code (A874) on the bottles of MooiBerg and Jonkersdal leads to producer Zidela Wines Pty Ltd (Stellenbosch).

Due diligence for RBC
ALDI wrote that all of its South African wines are WIETA certified. In the review, it elaborated on the type of certification by stating that it deals with suppliers that have different WIETA 'rankings', thus not only the highest. ALDI states that the audit reports are accessible for them.[227] However, this does not mean that the company receives audit reports automatically and that they are thus structurally aware of the findings.

225 Foodpersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/>.
226 ALDI, email in response to review request, 20 November 2019.
227 ALDI, email in response to review request, 20 November 2019.

Some of ALDI's wines are also Fairtrade certified. However as the supplier of these wines sources from a Fairtrade 'trader', this could mean that the whole supply chain is not covered (only if these traders source the wine from certified 'producers' is the wine is also produced under norms for workers at the plantations). ALDI does not work with Amfori BSCI in the certification of its wine from South Africa (even though the company is a member of Amfori BSCI). It claims to prefer WIETA, which is a local initiative.

According to ALDI, suppliers visit the wine producers on a weekly basis and therefore have an insight into the working conditions. ALDI did not specify what these visits entail or if the grape plantations supplying the wine producer are also visited. The company did not provide any further information about whether and how it maintains an overview of human rights and labour conditions at the production sites.

5.2.5 PLUS

PLUS is a cooperative of supermarket holders. In the Netherlands, 263 stores operate according to the PLUS formula.[228] PLUS is part of Sperwer Holding.

South African wines and sourcing
In response to the SOMO questionnaire, PLUS sent an overview of its South African wines. The company has in total 31 wines from South Africa in its selection. Seven of these wines are private label wines. Two of these private label wines are bottled in South Africa. The others are bulk wines, bottled in Europe. PLUS does not import the wines directly. Two-thirds of its wines are imported by Superunie, a combined buying association. The other importers that PLUS works with are LFE, Delta Wines Nederland and Jean Arnaud. PLUS wrote that South African bulk wines compete with bulk wines from countries like Chile and Spain. These countries produce high-quality bulk wines at competitive prices, which puts pressure on prices elsewhere.

Traceability and transparency
PLUS reported that the importers it works with are able to trace the wines back to the level of the grape plantations. The company also sent some information about its supply chain: an overview showing its South African wines and the importing companies. PLUS also disclosed the name of the producer of one of its private label bulk wines (PLUS Fairtrade Merlot is produced by Cilmor Winery).

Due diligence for RBC
In 2017, PLUS published a due diligence policy document ("Ken de Keten", or "Know the Chain"). The company described its approach to identifying, preventing and addressing social and environmental issues in its supply chain. PLUS started with a risk assessment and action plan for products deemed as high risk: bananas, coffee, cocoa and fish. No specific risk assessment has yet been made for wine. With regard to private label brands, where possible, PLUS works towards a 100 per cent certified assortment, preferably Fairtrade. This policy has already been implemented for bananas;

228 Distrifood, "Nieuws over Plus", no date, <https://www.distrifood.nl/formules/plus?vakmedianet-approve-cookies=1> (accessed on 14 May 2019).

all bananas currently sold by PLUS are Fairtrade certified. Since 2015, PLUS has had a strategic partnership with Fairtrade Netherlands.

With regard to its South African private label wines, three of them have a double certification (Fairtrade and WIETA) and another is WIETA certified. Three of their private label wines have no certification. Seven of the branded wines from South Africa are Fairtrade and WIETA certified. PLUS wrote that its category managers are in close contact with the importers and that these category managers also occasionally visit South Africa to gain insight into the conditions there. Importers pay regular visits to the wine producers and discuss labour conditions. The company did not give further information about the outcomes of these conversations, or whether a corrective action plan was put in place. Nor is it clear whether trade unions or other civil society organisations were consulted.

As South Africa is considered a high-risk country, the buying organisation Superunie requires a BSCI audit report (or another comparable audit). In addition, PLUS mentioned that producers receive the Fairtrade premium for the Fairtrade wines (see Section 5.3.3). However, in reaction to the review request, PLUS stated that the company was not aware of the distinction between 'producer' and 'trader', and referred to the Max Havelaar certification organisation for further questions.[229] This is not how the company should interpret its responsibility to respect human rights. It must continuously make efforts to reduce risks. If a certification system is used for this, the company should at least know how it works.

5.2.6 Deen

Deen Supermarkten BV is a rather small supermarket; it operates 81 stores in the Netherlands[230] and has a 2.1 per cent market share.[231] The company was therefore initially not included in this research. During the course of the research however, it became clear that Deen has been selling, at least until very recently, a Leeuwenkuil wine.[232]

South African wines and sourcing
In its response, Deen Supermarkten stated that it does not source its wines directly. The purchasing of wine is done either by Superunie or through various wine importers in the Netherlands.
The Leeuwenkuil Chenin Blanc wine is imported by Delta Wines and exported by Vinimark, the export partner of Leeuwenkuil.[233] This information was shared as part of the research; the company does not disclose supply chain information publicly.

229 PLUS, email in response to review request, 25 November 2019.
230 Foodpersonality, "Marktaandelen supermarkten volgens Nielsen; AH gedaald, discounters gestegen", 24 January 2019, <https://www.foodpersonality.nl/marktaandelen-supermarkten-volgens-nielsen-ah-gedaald-discounters-gestegen/>.
231 Distrifood, "Marktaandelen - Marktaandelen 2008-2018 Nielsen", no date, <https://www.distrifood.nl/food-data/marktaandelen?vakmedianet-approve-cookies=1>.
232 Shop visit, August 2019.
233 Deen, email in response to review request, 21 November 2019.

Due diligence for RBC
According to Deen, its importers monitor and supervise their supply chains. They added that all of these companies have to sign a declaration in which they are bound to observe requirements stemming from RBC norms, including the OECD Guidelines, established by the umbrella organisation for wine merchants (KVNW). The supermarket does not have a human rights policy and does not explicitly acknowledge its own responsibility for taking a proactive approach towards respecting human rights.

In the case of the Leeuwenkuil wine, Deen asked Delta Wines to respond to the research findings. This company stated that they are in close contact with all of their suppliers and that they only enter into business relationships with producers that they trust to act in accordance with RBC standards. Working conditions are discussed and assessed by their team on every visit to producers. However, Delta Wines forwarded a statement by Leeuwenkuil (in reaction to recent Swedish media reports) in which it stated that it has no comment on the "unverified reports by journalists, mainly fed by CSAAWU" and that the company's audit results are sufficient.[234] It seems that after this email the case was closed.

The reaction of Deen (at first only through Superunie, but later directly) does not show that the company has any intention of taking responsibility for its South African wine supply chain. Even if its South African wines are sourced through Superunie, the supermarket should still respect human rights and conduct due diligence. Their leverage on suppliers (both positive and negative) is only greater, as the buying alliance represents 13 smaller supermarket chains in the Netherlands. Furthermore, Superunie is part of an international buying alliance called EMD. Deen could actually use this leverage to adopt fair purchasing policies and increase transparency about the origin of (private label) products.

5.3 Auditing and certification systems

Dutch supermarkets rely on the various certification and improvement initiatives that are active in the South African wine industry. These initiatives monitor human rights and labour rights issues in production chains and work towards workplace compliance of basic human rights and labour standards. This section discusses the main auditing, certification and improvement initiatives that are used by Dutch supermarkets to monitor their South African wine supply chain: WIETA, Amfori BSCI and Fairtrade.

5.3.1 WIETA

The Wine and Agricultural Ethical Trading Association (WIETA) was set up in 2002. Currently WIETA has around 1,500 South African wine producers as members. WIETA has a multi-stakeholder board comprised of ten members representing wine producers, industry associations, trade unions and civil society organisations.[235]

234 Deen, email in response to review request, 21 November 2019.
235 WIETA website, "WIETA Board Members", no date <https://wieta.org.za/our-board/> (accessed on 12 January 2020).

WIETA aims to improve working conditions in the wine industry, mainly through auditing and corrective action plans. Members are audited against the WIETA code of conduct, which is based on South African legislation, the International Labour Conventions and the ETI Base Code. The code covers the following issues: prohibition of child labour, prohibition of forced labour, a safe and healthy working environment, freedom of association and the right to bargain collectively, fair treatment and fair disciplinary measures, working hours, living wage, regular employment, housing and tenure security, community and social benefits.[236]

It is important to note that there are two types of membership: WIETA members and WIETA certified members. Audited WIETA members without certification do not comply with the WIETA code.

Audited producers receive a rating between A (good) and E (bad), depending on the number and severity of non-compliances with the WIETA Code and Standard. Only producers with a rating between A and C are certified. Audits with an A rating are valid for three years; a B rating is valid for two years; and a C rating is valid for one year. Producers with D and E ratings are considered to have high labour rights risks. Although they do not receive certification, they can still be a member of WIETA. They need to improve, and after a year they are re-audited. Even if they are still rated D or E after a year, these producers can remain members of WIETA. As of May 2018, 20 per cent of WIETA members fell into the D and E category.[237] Producers that are rated B or C also need to show improvement, and there are annual milestones that these producers must meet. According to a 2019 list on WIETA's website, there are currently 1,078 certified members.

Certification is automatically renewed every year, but only if no complaints have been submitted that have led WIETA to conclude that the code has been breached. If no problems have been reported, a re-audit is done after three or two years, according to the rating. South African wine producers who meet WIETA criteria may use a Fair Labour Practice Seal on wine products if the wine is fully traceable. In order for this to happen, SAWIS has to confirm that the whole supply chain (including bottling facilities and wine producers) of a product has Ethical Certification in place. Cellars that hold Ethical Certification are not automatically allowed to use the seal. A separate application must be requested for each specific product and all *producer* sites that are supplying the cellar have to be certificated with an A, B or C rating.[238]

In addition to audits, WIETA organises sessions with workers to inform them about the WIETA code and its procedures.

WIETA audits

WIETA's audits generally consist of one-day visits to wine farms, announced to the farmers a few days in advance. Depending on the size of the business as well as the number of permanent, seasonal and

236 WIETA, "The WIETA Ethical Code of Best Practice", Version 3.0, 2016, <https://www.wieta.org.za/documents/WIETA%20Code%20Version%203%20(2016).pdf>.

237 Interview by SOMO with WIETA, 14 May 2018.

238 WIETA, email in response to review request, 19 November 2019.

contracted workers as well as temporary employment services an audit can also take several days. The amount of audit days needed is stipulated in WIETA's Audit Process and Methodology.[239]

According to WIETA, as of 1 September 2019 WIETA shifted from being a certification scheme to becoming a 'standards owner'. Consequently, WIETA has outsourced the audits to three external and independent certification bodies whose auditors are recognised by APSCA (Association of Professional Social Compliance Auditors).[240]

In its early years, WIETA only audited wine producers and not grape farms. A few years ago it was decided that WIETA should also audit at the farm level as that is where most problems are found. The first supply chain audits were carried out in 2010 at grape farms. However, it has not been easy to convince farms that they should be audited. Currently, some of the WIETA brand members (including Distell, DGB and Accolade) have included in their supplier contracts a requirement that grape farms must undergo WIETA audits. Otherwise, these farms cannot supply grapes for these brands.[241]

In principle, all workers are covered by the WIETA code, including seasonal workers and workers hired through contractors. According to WIETA, auditors take a random sample of a minimum of 15 per cent of the workforce that include a sample of each category of worker: seasonal, permanent and workers from a labour contractor.[242]

Importantly, workers interviewed for this report complained about the lack of serious engagement by WIETA with them during the audits. WIETA is not trusted by workers; in their eyes, the association is very close to the farm managers. At two of the farms where field research was conducted for this report, workers reported that management picks out the workers the auditors should speak to as well as the houses that WIETA may visit. At another farm, workers said that they were preparing for a WIETA audit that was due to take place the following week. Workers were told to clean the houses, to put up warning signs ('no drinking water', 'no swimming'), to place firefighters (buckets full of sand), and so on.

A survey among 343 farm workers in the Northern and Western Cape conducted by the Women on Farms Project (WFP) revealed similar concerns. WFP wrote that WIETA auditors "only speak to workers selected by the farmer or else conduct interviews with workers in the offices of the farm's management, where workers feel too intimidated and fear victimisation if they report on the violations on the farm."[243]

WIETA recognises that audits have their limitations, and that the involvement of trade unions and NGOs is crucial in order to move beyond auditing: "They are our eyes and ears."[244] However, as only

239 Ibid.

240 Ibid.

241 Interview by SOMO with WIETA, 14 May 2018.

242 WIETA, email in response to review request, 19 November 2019.

243 Women on Farms Project, "The farmer doesn't recognise who makes him rich": Understanding the labour conditions of women farm workers in the Western Cape and the Northern Cape, South Africa", August 2017, <https://www.groundup.org.za/media/uploads/documents/WFP%202017%20-%20Labour%20Rights%20report%20v7%2024-aug-2017.pdf>

244 Interview by SOMO with WIETA, 14 May 2018.

4 per cent of farm workers are organised in unions, it is a huge challenge for trade unions to carry out their designated roles. Audit reports are the property of the WIETA member that has paid for them. They are not shared with others, and they are not publicly available.

The distinction between certified and non-certified WIETA members can be confusing to outsiders. Additionally, it is difficult to understand the point at which a producer loses its certification. Groot Constantia, for instance, remained certified despite major non-compliances identified through WIETA audits in March, May and October 2017. After another audit in December 2017, the company's certification was suspended in February 2018. In response to a query by CSAAWU on 12 March 2019, WIETA replied that Groot Constantia was currently not certified and that the company was busy implementing corrective actions. The certification was reinstated by WIETA in May 2019, when the company had reportedly implemented the required corrective actions. CSAAWU does not have access to the audit reports and corrective action plans, which makes it difficult to assess whether corrective actions were indeed satisfactorily implemented.

5.3.2 Amfori BSCI

Amfori BSCI is a Europe-based business initiative that brings together over 2,400 retailers, importers, brands and associations from more than 40 countries. Members include Ahold Delhaize, ALDI, Lidl and Jumbo. Although trade unions and civil society organisations are not represented in decision-making bodies, they are represented in Amfori's Stakeholder Advisory Council.

Amfori BSCI is an audit-driven initiative that is actively working towards becoming a human rights due diligence scheme. In October 2019, it published a document that outlines how Amfori supports companies in advancing human rights due diligence in their supply chains, including supply chain mapping and early detection, monitoring, remediation and capacity building.[245] Social compliance audits are used in an effort to identify human rights and labour rights issues in members' supply chains. Amfori does not organise audits itself, but provides a network of external accredited auditing companies. When issues are identified, remediation plans are drawn up and follow-up audits are carried out to verify whether or not the audited producer has implemented the required remedial actions. In contrast to WIETA and Fairtrade, Amfori BSCI is not a certification scheme.

Amfori BSCI has a sustainable wine programme that addresses both social and environmental sustainability in the wine production industry and is aimed at continuous improvement. Industry-specific labour challenges include seasonality and freedom of association, according to Amfori BSCI.[246] Amfori BSCI also has programmes to promote labour rights improvements through trainings

245 Amfori BSCI, "Explaining Amfori's approach to Human Rights in Global Supply Chains", October 2019, <https://www.Amfori.org/resource/explaining-Amforis-approach-human-rights-global-supply-chains>.

246 Amfori BSCI, "Amfori BSCI Sustainable Wine Programme", no date, <https://www.Amfori.org/content/bsci-sustainable-wine-programme>.

and by stimulating collaborations between Amfori BSCI members, producers and international, national and local stakeholders.[247]

Amfori BSCI audits

There are two types of audits: internal audits and external audits. Internal audits are self-assessments meant for members and their business partners to evaluate their own social performance. External audits are conducted by approved auditing companies. External audits are for producers engaged in the supply chain of Amfori members participating in Amfori BSCI. Two types of external audits are distinguished: full audits and follow-up audits. Full audits cover all 13 areas of the Amfori BSCI Code of Conduct. When a full audit reveals non-compliances with the Code of Conduct, a follow-up audit must be organised within 12 months to cover the areas where the auditor has identified issues. Since December 2018, all Amfori BSCI audits have been semi-announced by default, with the only exception being the very first audit for a producer, which can be classified as fully announced. Amfori has developed a plan, currently being implemented, to put into practice further limitations to fully announced audits.[248] Amfori BSCI specifies that subcontracted workers should also be part of the audit.

Audited producers receive a rating between A and E. An E rating refers to an unacceptable level of social performance and requires regular monitoring of the producer by Amfori members participating in Amfori BSCI. Producers with a C or D rating require a follow-up audit. When producers are rated A or B, no follow-up action is required. Full audits rated A or B are valid for two years. C, D or E ratings must be followed up within 12 months or less. Additionally, there is a 'zero tolerance' category, which requires immediate action. Zero tolerance issues include child labour, bonded labour and inhumane treatment; occupational health and safety violations that pose an imminent and significant threat to workers' health, safety and/or lives; and unethical behaviour (attempted bribery of auditors and intentional misrepresentation in the supply chain). Amfori has also introduced a precautionary principle, meaning that a zero tolerance alert can be triggered based on serious suspicions of a severe violation, even if there is not sufficient evidence to prove the violation at the time of the audit. Subsequent steps facilitated by Amfori BSCI include a conference call with all relevant Amfori members participating in Amfori BSCI (within 72 hours), a definition of the investigation and remediation steps (if relevant and possible), and a request for support from local authorities (if relevant and possible).[249]

Audit reports are not publicly available. This makes it difficult for rightsholders and stakeholders to assess the effectiveness of audits. Moreover, workers and trade unions at the audited sites do not have access to audit reports. Although CSAAWU requested to see the audit reports of Leeuwenkuil and Groot Constantia, the reports were not shared. The Amfori BSCI approach is primarily focused on social compliance auditing and has been widely critiqued (see Box 9) for not being able to detect and address labour rights violations. There are several cases where Amfori BSCI audits did not detect serious issues. Most notably, two factories in the Rana Plaza building in Bangladesh went through the

247 Amfori BSCI, "Labour Issues", <https://www.Amfori.org/content/focus-areas-0>.

248 Amfori BSCI, email in response to review request, 19 November 2019.

249 Amfori BSCI, "Annex 5 – How to Follow the Zero Tolerance Protocol", July 2018, <https://www.Amfori.org/content/Amfori-bsci-system-manual-annexes>.

Amfori BSCI auditing process before the collapse in 2013 that cost over 1,100 lives. Nonetheless, no workplace safety risks had been identified in the audits. In response to the review request, Amfori BSCI referred to their statement from 2013, explaining that the reasons for the collapse of the factories were related to the poor infrastructure of the Rana Plaza building and that BSCI relies on local authorities to ensure that construction and infrastructure is secure.[250]

Box 9 Weaknesses of social compliance auditing

Social auditing as a means of verifying the implementation of corporate social responsibility (CSR) codes of conduct has been widely criticised. A major problem is that these tools are voluntary. Additionally, social auditing does not encourage host state governments to take responsibility for labour inspection and workplace health and safety systems. Social audits have limited validity when it comes to the actual status of working conditions, and are even prone to incorrect representation of the reality in factories.[251] In summary, these are some common points of critique of social auditing:

- Audits are announced in advance, which gives factory managers time to prepare and to convey a false impression of working conditions.
- Management may hand pick workers to participate in worker interviews. Workers may be pressured and/or trained by management to give certain answers.
- Worker interviews are not conducted in a safe space, which prevents workers from speaking up.
- Audits often only involve short factory visits, and do not give enough time to uncover underlying mechanisms such as possible oppressive relationships between brokers or employers and workers.
- Audits are usually too short and too superficial to identify certain types of code violations. For example, sensitive issues such as sexual harassment are very hard to detect, as workers feel ashamed about speaking out on these issues.
- Auditors may not have the right qualifications to check building and fire safety, chemical use, etc.
- Auditors may be unreliable or corrupt. Field research by unions has uncovered audits that were demonstrably incorrect or that were not done seriously until the union stepped in.
- Records (working hours, wages) may be falsified.
- Audits are often not followed by effective remediation.
- Audit reports are not shared with workers, trade unions or the wider public.

Source: Friedrich Ebert Stichting/SOMO

250 Amfori BSCI, "BSCI saddened by the collapse of Rana Plaza in Savar, Bangladesh", April 2013, <https://www.Amfori.org/news/bsci-saddened-collapse-rana-plaza-savar-bangladesh>.

251 Friedrich Ebert Stiftung (FES), "Liability of Social Auditors in the Textile Industry," Terwindt, C. and Saage-Maass, M., December 2016, <http://library.fes.de/pdf-files/iez/13041.pdf>.

5.3.3 Fairtrade

Fairtrade aims to address the imbalance of power in trading relationships, unstable markets and the injustices of conventional trade.[252] Fairtrade sets social, economic and environmental standards for companies, farmers and workers. For farmers and workers, the standards include protection of workers' rights and the environment; for companies, they include the payment of the Fairtrade Minimum Price and an additional Fairtrade Premium to invest in business or community projects of the community's choice.[253]

Fairtrade further positively distinguishes itself from the other initiatives discussed here due to the fact they are a multi-stakeholder initiative. The quality of the code is better than any other certification. In addition, they conduct research: for example on living wages. They are the only certification body focusing on the strengthening of employees through the premium committees.

For producers, Fairtrade has two standards. The Standard for Small-scale Producer Organisations for farmers and farmer organisations, and the Standard for Hired Labour for workers. All certified wine producers in South Africa are large plantations and are certified under the Fairtrade Standard for Hired Labour. This standard applies to organisations that employ hired labour to supply Fairtrade-certified products.

Following the successful certification of a producer, a three-year certification cycle starts. During this period, up to two more confirmation audits may take place depending on FLOCERT's (the certification body for Fairtrade) assessment of the producer's situation. A renewal audit is conducted during the third year. If the renewal audit is concluded successfully, FLOCERT issues a new certificate and the next three-year certification cycle begins.[254]

Audits are often announced in advance. Unannounced audits are conducted if there are indications of additional risk, e.g. via allegations, scope extensions, product/country specific risks, etc. Certified producers are suspended when major non-conformities or repeated non-conformities with the standards are found during the audits. During the suspension period, the organisation must continue to fulfil existing Fairtrade contracts signed prior to suspension, but is not allowed to sign contracts with new buyers. Once the organisation has submitted satisfactory evidence that it has taken appropriate corrective measures to deal with the non-conformities, the suspension is lifted. If no satisfactory evidence is submitted within six months, the organisation is decertified.[255]

There are 63 Fairtrade-certified wine producers, traders, processors and licensees in South Africa. (Note: at the time of writing, four of these producers had been suspended).[256] It is important to note

252 Fairtrade International website, "What is Fairtrade?", no date, <https://www.fairtrade.net/about-fairtrade/what-is-fairtrade.html>, (accessed on 31 August 2018).

253 Max Havelaar/Fairtrade Netherlands, email to SOMO, 24 July 2019.

254 Max Havelaar/Fairtrade Netherlands, email to SOMO, 24 August 2018.

255 Ibid.

256 FLOCERT website, "Customer Database", database search conducted on 8 August 2018, <https://www.flocert.net/about-flocert/customer-search/>.

that depending on the type of certification, Fairtrade certification may not cover the entire company. For instance, both Van Loveren and Leeuwenkuil are certified as 'trader, manufacturer/processor, licensee' and not as 'producer/ grower'. This means that FLOCERT audits the company under the trader standard only for the Fairtrade wines that it produces, and not for all of its wines.[257] Trader and processor standards do not include requirements for farmers or for workers on plantations, but are mainly financial requirements such as the payment of the minimum price and premium and requirements for workers at the processing plant.[258] It also means that the grapes are not produced by for example Van Loveren and Leeuwenkuil in this case, but that they are sourced from other producers that have a Fairtrade producer certification.[259] In the case of Leeuwenkuil, this means that while the company had lost its WIETA certification due to serious non-compliances, it could still retain its Fairtrade certification as 'trader, manufacturer/processor, but not as 'producer'. As a result its own plantations do not need to comply with the Fairtrade norms and Leeuwenkuil needs to source grapes from Fairtrade-certified producers for the Fairtrade wines that it has in its selection.

Compared to WIETA with its 1500 members, Fairtrade-certified producers represent a very small percentage of the South African wine industry.

5.3.4 Analysis of the certification bodies and improvement initiatives

In the context of weak government enforcement and the lack of an effective international regulatory framework, sustainability certification and improvement initiatives have gained popularity over the past few decades. These systems of private regulation were introduced to address the numerous social, ecological and economic problems associated with agricultural production. Food and retail companies perceive these systems as a credible and practical way to ensure and communicate good social, economic and environmental conditions in agricultural commodity supply chains.

However, SOMO research into the effectiveness of sustainability certification and improvement initiatives conducted over the years has concluded that there is little evidence that conditions have improved for workers on farms that have adopted sustainability certification initiatives. Moreover, SOMO research has highlighted numerous cases where working conditions on certified farms were not on a par with the internationally-agreed labour standards they aimed to uphold. The analysis of the characteristics of these problems has led to the conclusion that such transgressions are symptomatic of more structural and systemic issues with sustainability certification in large-scale agricultural production.[260]

257 Max Havelaar/Fairtrade Netherlands, email to SOMO, 24 August 2018.

258 Max Havelaar/Fairtrade Netherlands, email in response to review request, 18 November 2019.

259 It also needs to be noted that it is not uncommon for companies to sell fair trade products without having their own fair trade production.

260 SOMO, "Looking good on paper - Review of recent research on the impact of sustainability certification on working conditions on large farms", October 2018, <https://www.somo.nl/looking-good-on-paper>, and SOMO, "Goodness Guaranteed - Assessing the impact of sustainability certification on the labour conditions of farm workers", May 2015, <https://www.somo.nl/goodness-guaranteed-2/>.

Before discussing some of the concrete shortcomings of these systems, it is crucial to understand the boundaries of their roles. The role of certification and improvement schemes must be seen as additional to – and certainly not as a replacement of – the role of governments in monitoring and enforcing labour standards. Likewise, sustainability certification and improvement initiatives may have a complementary role in improving working conditions at certified producers. However, in doing so, they cannot and should not replace the legitimate process of dialogue and collective bargaining between employers and employees' legitimate representatives.

Numerous sustainability certification initiatives and improvement initiatives are active in the South African wine industry. This report highlights three of them, as they are widely used by the Dutch retailers discussed in this report – namely Amfori BSCI, WIETA and Fairtrade. It does not, however, mean that the issues raised are limited to these initiatives.

South African wine grape farms and wine producers may hold various certifications and may be audited by a range of different auditing firms. As this research shows, some facilities may lose their certification due to poor audit results while still maintaining other certifications.

As a number of cases discussed in this report show, CSAAWU has addressed problematic labour rights situations on farms with WIETA certifications. However, the trade union also reported that it took great perseverance to get the involved initiatives to acknowledge these problems and to have them undertake action to address them. In a few cases, such as Groot Constantia and Leeuwenkuil for example, additional audits had to be performed that eventually confirmed many of the issues raised by CSAAWU. It should be noted that at least in these cases, problematic structural issues were initially not detected through these initiatives' audits.

Even if certification and improvement initiatives identify problems, there is no guarantee that they will be resolved. Corrective action plans may be drawn up, but they will not always lead to the solution of problems that have a structural nature such as discrimination, lack of freedom of association, and wages that are too low to live on. Because of their voluntary nature, certification and improvement initiatives have no enforcement power. In the most extreme case, non-compliance could result in revocation of the certificate, but this usually does not lead to remedy for the affected workers.

A common critique of certification and improvement initiatives is the lack of genuine worker involvement.[261] This was also voiced by workers on the researched farms. As seen in this report, interviewees reported that workers are often handpicked by management to participate in WIETA audits. Moreover, audit reports and corrective action plans are not made publicly available, and are not even shared with workers and trade unions. In response to the review request, WIETA stated that workers and shop steward representatives were involved in the opening and closing sessions of the audit so that findings would be transparent and corrective actions could be collectively discussed.[262]

261 SOMO, "Looking good on paper - Review of recent research on the impact of sustainability certification on working conditions on large farms", October 2018, <https://www.somo.nl/looking-good-on-paper>.

262 WIETA, email in response to review request, 19 November 2019.

5.3.5 Analysis of the actions taken by Dutch supermarkets

Albert Heijn published an interactive map in 2019 with information about private label first-tier supplier locations, and for some products the map also shows the farm locations. Jumbo has also taken steps in this direction. But in general, the same level of transparency arises from the answers to the questionnaire given by all of the Dutch supermarkets. Most supermarkets disclose the names of their direct suppliers of private label South African wines, often bottling companies in Germany or the UK, on their labels or in reaction to the requests as part of this research. However, Dutch consumers are still not provided with sufficient information about the origin of South African wines. The packaging does not state the source of either the wine or the grape, nor can this information be found on these (interactive) websites.

This lack of transparency does not mean that Dutch supermarkets consider it unimportant that their products are produced with respect for human rights. In general, they are slowly beginning to recognise their responsibility for human rights in the supply chain and to formulate policies in line with the due diligence approach as stipulated in the OECD Guidelines and the UN Guiding Principles. This is certainly the case for Albert Heijn and Jumbo. Albert Heijn will publish its first Human Rights Due Diligence Report by 2020 at the latest. Jumbo has also taken serious steps in identifying their risks. However, the step towards the prevention of negative consequences still leaves room for improvement. Although PLUS, Lidl and ALDI are not as far, these supermarkets do sell some South African wines with Fairtrade certification (currently the most qualified certification system).

However, the reliance of supermarkets on external certification systems and auditing initiatives to monitor human rights and labour rights – such as WIETA and Amfori BSCI, and to a lesser extent Fairtrade – is problematic for a number of reasons.

First of all, having certified production is not the same as fulfilling a companies' human rights due diligence responsibilities. For companies, although sustainability certification can be a key instrument, it is not a replacement for due diligence. Due diligence is a continuous process to achieve sustainable supply chains, and companies need to be proactive in this process and report on their progress. More information about this can be found in the "MVO Platform position paper on certification and due diligence".[263]

Secondly, it has been widely acknowledged that social compliance auditing, for example as used by BSCI, fails to bring structural improvements for workers[264] (for more information see Box 9). An auditing/corrective action approach does not take into account the root causes of systemic human rights and labour rights violations.

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263 MVO Platform, "MVO Platform position paper on certification and due diligence", <https://www.mvoplatform.nl/en/mvo-platform-position-paper-on-certification-and-due-diligence/>.

264 See for instance: Friedrich Ebert Stiftung (FES), "Liability of Social Auditors in the Textile Industry," Terwindt C., and Saage-Maass, M., December 2016, <http://library.fes.de/pdf-files/iez/13041.pdf; Garrett Brown, "Fatal flaws of foreign factory audits", February 2013, <http://www.ishn.com/articles/95045-fatal-flaws-of-foreign-factory-audits?v=preview>; Clean Clothes Campaign, "Looking for a quick fix. How weak social auditing is keeping workers in sweatshops", November 2005, <https://cleanclothes.org/file-repository/resources-publications-05-quick-fix.pdf/view>.

Thirdly, workers and workers' organisations are marginalised in the social audit process.

Fourthly, voluntary certification and improvement initiatives have failed to bring sustained improvements for workers.

And lastly, because of the proliferation of initiatives with varying standards, there is a risk that retailers will shop around and choose for the initiative that sets the bar the lowest. The risk is also created that more progressive initiatives will not raise the bar, as they fear that members may turn to less ambitious initiatives.

6 Conclusions and recommendations

6.1 The South African wine industry shows high human rights and labour rights risks

The four most pressing human rights and labour rights risks in the South African wine industry are the following:

1. **The serious hampering of trade union rights**
   Not only are the rights to join and form trade unions and to bargain collectively fundamental internationally agreed upon rights, but they are also key 'enabling rights' that allow workers to defend their rights, voice grievances and negotiate recruitment and employment conditions.

   One of the most pressing issues uncovered in this research was the dramatically low level of unionisation (an estimated 5-8 per cent of workers in the Western Cape agricultural sector are unionised) and the active obstruction of organising efforts.

   Even though the trade union CSAAWU has a presence at the researched farms, they find it challenging to expand membership, to raise issues, and to ensure that issues raised by the union are effectively addressed.

   The research shows that employers are using different tactics to dissuade workers from joining unions or to weaken existing unions. These tactics include not granting union organisers access to farms, or offering only very limited access; offering benefits to workers if they refrain from joining a trade union; removing benefits (e.g. transport services) if workers join unions; disciplinary actions targeted at shop stewards; and, in some cases, the dismissal of shop stewards.

   It is an enormous challenge for CSAAWU (and other trade unions active in this sector) to establish contact with and to support workers at the vast majority of farms where there is not yet an active union. It is especially challenging to organise labour broker workers, seasonal workers and migrant workers, who all face additional barriers in terms of exercising their trade union rights. Principally they are often moved from farm to farm, making it difficult for union organisers to reach them.

2. **Increased labour casualisation**
   Increased casualisation of labour leads to silenced workers. For temporary workers, there is the threat that employment will not be renewed. Workers feel that they have to accept whatever management and labour brokers ask from them, as otherwise they may lose their source of income. This also places a significant obstacle in the way of organising efforts. Workers are not inclined to join trade unions as this might limit their chances of getting work. Moreover, workers are reluctant to express any grievances or complaints as they fear repercussions in the form of non-renewal of their employment.

3. **Housing issues and eviction risks**
   Resident workers at different farms reported that houses are poorly maintained. Common issues include cracks in the walls and mould on the walls and ceilings. Workers often view lack of proper maintenance in relation to a perceived strategy by management to make people leave the houses. The workers suspect that it is the strategy of the farm owner to neglect the houses in order to make future evictions easier.

   Housing on the farm is essential for workers, as farms are often located in remote and isolated areas. There is a serious lack of affordable and decent housing in the nearby surroundings. In addition, living off-farm would mean that workers would have to spend money on transport and childcare. This would have a heavy impact given their low wages.

4. **Occupational health and safety issues**
   Workers in the South African wine industry risk exposure to hazardous agrochemicals. At various farms, workers reported having to work with dangerous chemicals without proper instructions and sometimes without the appropriate protective equipment. Also reported was the fact that workers, and especially female (migrant) workers, felt obliged to work in fields that were freshly sprayed with pesticides, without waiting for the legally-prescribed waiting period to lapse and without proper protective materials. There are also reports of inadequate education and training on the health and safety measures required for handling pesticides.

6.2 The effectiveness of the risk-based due diligence policies and practices of Dutch supermarkets is lacking

The second research question, whether Dutch supermarkets can be linked to the described human rights and labour rights violations on the grape farms of South African wine producers, can be answered with a simple yes. Some 20-25 per cent of all wines sold in the Netherlands come from South Africa, and supermarkets are by far the most important sales channel. All supermarkets discussed in this report have South African wines on their shelves (branded wines, private label wines and/or bulk wines). At Albert Heijn, Gall & Gall and Deen, wines produced by one or more of the South African wine companies that were part of the field research of this study were found. This leads to the conclusion that Dutch supermarkets sourcing from wine from South Africa have the responsibility to conduct human rights due diligence for RBC; they have the responsibility to identify, prevent and mitigate risks and remediate negative impacts on human rights that occur through their sourcing practices.

However, are the risk-based due diligence policies and practices of Dutch supermarkets of sufficient quality? Are they effectively addressing human rights risks in the supply chain of South African wines? This study concludes that some of the biggest Dutch supermarkets are taking the right steps towards a due diligence for responsible business conduct approach. Albert Heijn and Jumbo, and to a lesser extent Plus, conduct risk analysis, prioritise high-risk products and provide supply chain information on an aggregated level. They also make an attempt to communicate about how they prevent adverse impacts or what actions they take. However, steps to truly cease, prevent and mitigate

adverse impact; to track implementation and results; to communicate how impacts are addressed; and to provide for or cooperate in remediation when appropriate leaves room for improvement or has yet to be worked out at all. Although ambitions and intentions are certainly increasing, how their policies translate into good day-to-day business practices remains to be seen. ALDI and Lidl in particular are lagging behind in this respect.

This study also concludes that the supermarkets rely mostly on external certification systems and auditing initiatives such as WIETA and Amfori BSCI, and to a lesser extent Fairtrade, to monitor human rights and labour rights. This is problematic, as having certified production is not the same as fulfilling a company's human rights due diligence responsibilities. Sustainability certification can be a key instrument for companies, but it is not a replacement for due diligence. Due diligence is a continuous process to achieve sustainable supply chains, and companies need to be proactive and report on this process.

Although the sourcing practices of Dutch supermarkets have not been part of this research, it does echo their powerful position in the food supply chain in general and in the wine supply chain specifically. Retailers have a great influence over which wine products are sold and at what price, and they could and should use this influential position within the supply chain to help contribute to sustained improvements for workers, instead of pushing prcies down.

6.3 Discussion and recommendations

This report demonstrates the urgent need for immediate and structural changes in the practices of government and business actors along the South African wine supply chain. The production of wine and grapes in South Africa has a long history, which is closely linked to the history of colonialism, apartheid and land dispossession. This historical heritage lingers on today in relations between farm workers and farm owners. It is important that all involved actors take into account the historical context that has shaped current dynamics in the South African wine industry. There is a strong but silent unequal power relation that continues to exist on many wine farms. This is linked to the legacy of the past, but is also due to the dependence of workers on housing and employment.

The role of trade unions and NGOs such as CSAAWU and TCOE, and collaborations with international NGOs such as SOMO in monitoring the role of ethical standards are crucial in raising awareness about this situation and in pushing for improvements. The role of trade unions in ensuring decent work for their members cannot be underestimated.

6.3.1 Recommendations for Dutch supermarkets

Responsible purchasing practices and fair prices
In order to bring about structural improvements, supermarkets must adopt purchasing policies and practices that incorporate fair purchase prices. They need to make sure that pricing policies result in a fair price for produtradercers that enables them to pay their workers a living wage. Pricing policies should take into account the social and environmental 'costs' of sourced products.

The bottling of wines in South Africa is preferable, as more value is added in South Africa and jobs in the bottling sector are retained.

Greater transparency about the origin of (private label) products
Thanks to South African labelling requirements and the public database that links codes printed on labels to the producer, it is possible to identify the producer of wines bottled in South Africa. However, supermarkets generally do not provide any information about the producers of their private label bulk wines. Dutch supermarkets should be more transparent about the chain of suppliers involved in producing these products. They should publish or make available supply chain information that includes the names and locations of the producers of private label wines. Supply chain transparency enables different actors to fulfil their respective roles in ensuring that workers' rights are respected (for more information see Box 10).

Box 10 The case for supply chain transparency

Workers need information about the buyers connected with the farms where they work. In cases where workers come away empty-handed after approaching their employers, they may need to contact buying companies to push claims for redress or compensation. Local labour unions and labour NGOs need this information in order to fulfil their designated roles of supporting workers effectively. Local and international CSOs need detailed supply chain information, including corporate auditing results, in order to independently verify claims made by the industry about labour conditions. Without this information, CSOs cannot effectively assume their role as a countervailing power.

Consumers are entitled to know the origin of and the conditions under which products they buy are made so that they can make informed purchasing decisions. Investors and public authorities need detailed information about various sustainability aspects for responsible investment and procurement decisions. This includes supply chain information. Last but not least, transparency is good for companies, as it enhances the quality of management and ultimately the company's value. If a company is able to generate information with regard to the possible impacts of corporate actions on society, management will be better positioned to value and address risks.

Source: SOMO, ALR & LRDP, "The Myanmar Dilemma - Can the garment industry deliver decent jobs for workers in Myanmar?, August 2017, <https://www.somo.nl/the-myanmar-dilemma/>.

Enable workers to stand up for their rights
This research reveals that workers on South African grape and wine farms are prevented from claiming their rights. They face many obstacles in exercising their rights to join and form unions and to bargain collectively. There are hardly any farm-level trade unions active in this industry, as organising efforts are actively suppressed. And where unions are active, they are often hindered in their work.

In order to enable workers to stand up for their rights, supermarkets should take action to make sure that the rights of workers to form and join trade unions and to bargain collectively are truly respected. As enabling rights, these rights are at the core of responsible business conduct. Good relations between workers and employers are crucial. Government, trade unions, employers and employer organisations all have a role in working towards mature industrial relations (see Annex 1 for practical advice).

Identify, prevent and remediate human rights risks and actual abuses
This study has concluded that the Dutch supermarkets sourcing wine from South Africa are insufficiently fulfilling their human rights due diligence responsibilities, and that they have the responsibility to identify, prevent and mitigate risks and to remediate the negative impacts on human rights that occur through their sourcing practices. They should take into account the active involvement of workers, trade unions and human rights and labour NGOs in monitoring and improvement: from design to implementation and evaluation. Monitoring and improvement efforts should cover the entire supply chain and should not be limited to first-tier suppliers only.

A thorough risk assessment of human rights and labour rights violations is essential before sourcing decisions are made, and it should be periodically repeated during sourcing. Companies should make an effort to fully understand the socio-economic environment in which they are operating. When assessing risks, companies should consult local labour unions and NGOs.

Supermarkets should develop and adhere to stricter selection criteria than what they currently use to identify wine producers in compliance with international standards, local labour law and their own corporate code, and this should happen before they start sourcing. Indicators include a good labour rights record, safe working conditions, the presence of a democratically-elected functioning union, etc.

Supermarkets should develop and implement a strategy to adequately address identified risks and actual violations. The effectiveness of actions taken should be monitored. The use of existing high quality sustainability certification can be a key instrument In the due diligence policies and practices of supermarkets. The certification that is currently most qualified for this is Fairtrade.

Supermarkets should provide information about their due diligence procedures, offering enough detail for others to be able to assess the adequacy of the steps taken by the enterprise.

6.3.2 Recommendations for the South African government

The South African government should ensure that the rights of workers are protected through appropriate policies, regulation and adjudication. It should develop, implement and enforce national labour and human rights laws and legal regulations to address the labour issues described in this report. Importantly, the rights of workers to organise themselves, to bargain collectively and to strike should be better protected. Union busting should not be tolerated. Upholding the observance of regulations with regard to pesticide use is another urgent issue.

The South African Department of Labour (DoL) should be sufficiently capacitated to fulfil its role. Labour inspectors should always speak with workers (in a safe space) and – if workers are unionised – with union representatives when they conduct inspections. Labour inspection reports should be made publicly available upon request from the unions. It is further recommended that the DoL publishes a list of all wine and wine grape producers and indicates whether or not an independent, democratically-elected union is active at the workplace level.

In addition, the South African government should implement these concrete recommendations:

- Ratify and implement Convention 129 of the International Labour Organization (ILO), which deals with labour inspection in agriculture. This convention requires ratifying states to establish and maintain a system of labour inspection in agriculture. The convention, similar in content to the Labour Inspection Convention (No. 81), "sets out a series of principles respecting the determination of the fields of legislation covered by labour inspection, the functions and organisations of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations. The labour inspectorate has to publish and communicate to the ILO an annual report indicating the general functioning of its services on a number of issues."[265]

- The South African government should ensure that the capacity of the Department of Labour to monitor farms is increased and that inspection reports are released to workers and trade unions. The appointment of 500 extra health and safety inspectors announced recently by government is a positive step. Adequate penalties should be imposed on employers that violate the law.

- Greater focus must be given to the implementation of the Compensation for Occupational Injuries and Diseases Act in relation to illnesses related to the use of and exposure to pesticides by capacitating state medical staff.

- A moratorium should be declared on evictions from farms and land reform, and the implementation of security of tenure for farm workers should be improved.

265 ILO website, "International Labour Standards on Labour inspection", no date, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm> (accessed on 12 January 2020).

- The provision of state-owned transport in rural areas to rural communities in general should be increased, and the grip the farmers have over workers – by providing or withdrawing occasional transport from isolated farms to towns and thus controlling workers' movements and access to services – should be stopped.

- Compulsory contributions should be made to a pension or provident fund by farmers, as well as contributions to a medical fund to ensure some form of long-term security for farm workers.

- Workers' rights to land and security of tenure should be strengthened.

6.3.3 Recommendations for the Dutch government

Due to the urgency of the adverse risks and impacts highlighted in this report, and because the Dutch government officially considers the food sector as a "high-risk sector",[266] the Dutch government should live up its commitment to implement the OECD Guidelines for Multinational Enterprises. This involves ensuring that companies operating on Dutch territory observe the Guidelines. Therefore, the Dutch government should require all Dutch supermarkets to conduct risk-based due diligence in line with the 2018 OECD Due Diligence Guidance.[267] It should verify that companies have conducted due diligence, that it is of sufficient quality, and that the results are publicly available.

A 'smart mix' of policy instruments that aim to improve responsible business conduct should include binding measures. This will increase the impact and reach of voluntary policy measures such as the sectoral agreements that are currently being implemented. Recently, the Netherlands adopted a child labour due diligence law. However, in addition to child labour, companies should also be required to address other risks in their supply chains connected with negative impacts on labour standards, human rights and the environment. The Dutch government should therefore investigate the possibility of broadening the scope to due diligence legislation that is in accordance with the OECD Guidelines.

Sector and civil society organisations, trade unions and the Dutch national government have signed the International Responsible Business Conduct (IRBC) Agreement for the Food Products Sector. The aim of this agreement is to minimise the risks of negative impacts, including human rights violations and environmental damage, and to work towards a more sustainable production chain in the food products sector.[268]

266 KPMG, "MVO Sector Risico Analyse, Aandachtspunten voor dialog", September 2014, commissioned by the Dutch Ministries of Foreign and Economic Affairs.

267 OECD Due Diligence Guidance for Responsible Business Conduct, 2018, <http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

268 IRBC Agreements, "Agreement for the Food Products Sector, " no date, <https://www.imvoconvenanten.nl/foodproducts?sc_lang=en> (accessed on 12 January 2020).

In the meantime, the Dutch government should take the initiative to make sure that the IRBC agreement for the Food Products Sector holds signatory companies legally responsible for the commitments they make. In addition, the agreement should be signed by all Dutch supermarkets individually, rather than only by business associations. The Dutch government should ensure that the IRBC agreement achieves its intended goal: *substantial improvement of specific risks for groups facing adverse impacts, such as workers in the supply chain and local communities in areas where resources are extracted, within an ambitious yet realistic time frame of three to five years.*[269]

The Dutch government should also undertake action to address the lack of supply chain transparency provided by Dutch companies. It should develop, adopt and implement legally binding rules on supply chain transparency. In addition, the Dutch government should provide full, detailed public transparency on wine imports.

6.3.4 Recommendations for South African grape and wine producers

South African grape and wine producers should comply with national laws and regulations and internationally accepted human rights and labour rights norms. The corporate responsibility to respect human rights applies to all enterprises. Economic difficulties – if applicable – can never be an excuse to disrespect human rights and labour rights.

Importantly, South African grape and wine producers should respect and facilitate workers' rights to organise and bargain collectively. Dismissal, demotion, transfer or other reprisals against shop stewards and organisers is unacceptable at any stage during the establishment and functioning of a union. Healthy labour relations should be the norm in the sector.

Producers should guarantee that unions can operate without hindrance. They should provide access to trade unions and labour CSOs to inform workers about their rights and to organise workers. Where workers are unionised, union representatives should be free to visit their members. Producers should proactively support organising and union activities with concrete measures. Unions should be given their own premises. Union leaders should get time off for union work. Workers and union members should not be the victim of discrimination or individual or collective punishment.

Furthermore, employers should:

- Ensure that workers who live on the farm enjoy full freedom of movement. They should be able to freely enter and leave the premises. The installation of cameras in workers' living areas is unacceptable.
- Comply with tenure rights and ensure that workers' houses are safe and hygienic and that they provide adequate protection.

269 SER, Advisory Report 14/04, "Agreements on International Responsible Business Conduct", April 2014, <https://www.ser.nl/-/media/ser/downloads/engels/2014/international-responsible-business-conduct.pdf>.

- Ensure that pesticide use is undertaken in a way that minimises health hazards, including providing workers with proper safety equipment and providing training on the health risks associated with pesticide exposure and the safe use of pesticides and other agrochemicals.
- Provide sufficient toilets, hand washing facilities and clean drinking water.
- Pay wages for a regular working week that enable workers to provide a decent living for their families.
- All companies and farms must have a well-resourced education and training programme in place to ensure that workers are adequately trained on health and safety aspects and receive ongoing upskilling.
- Migrant workers must enjoy full labour and human rights where they are employed.

6.3.5 Recommendations for certification and improvement initiatives

Initiatives that aim to improve conditions for workers – like Amfori BSCI, Fairtrade and WIETA – cannot be effective as long as there is no central role for workers and their representatives in monitoring workplace conditions, expressing grievances and finding solutions to the problems they face.

As a first step, workers should be made aware of the sustainability initiatives that their employers have signed up to. On the one hand, these initiatives should provide for awareness-raising trainings to workers on certified farms, explaining the rights covered by their codes and the avenues to raise non-compliances. On the other hand, these initiatives should require certified companies to actively inform their workforce about the rights covered by the codes they signed up to.

A trade union, if present at the site, should be involved in any audit. Audit reports should be shared with workers and trade unions. Sufficient time should be allocated for the conducting of meaningful interviews with workers. These interviews should take place in a safe space (which may mean that they have to be conducted off-site) and without the interference of management. Workers should have a role in the prioritisation of the problems to be addressed and in discussions about how their problems can be addressed.

Certification and improvement initiatives should engage regularly with a wide range of relevant stakeholders such as trade unions and labour rights organisations to get a good and updated understanding of relevant issues and developments.
Ideally, workers, or their legitimate representatives, should be included in the governance structures of these initiatives.

Sustainability certification and improvement initiatives should also take action to ensure that the rights of workers to form and join trade unions and to bargain collectively are truly respected.

Sustainability certification and improvement initiatives should provide public access to details of the complaints they receive, how they follow them up and the outcome of the complaint and remedy process. In addition, it is recommended that these initiatives disclose information about the performance of certified/audited operators as well as information about cancelled operators.

Annex 1 Steps supermarkets can undertake to support freedom of association

Steps supermarkets can undertake to support freedom of association[270]

Be informed about the prevailing trade union situation in the countries sourced from:

- Consult relevant reports about the regulatory framework, political environment, business climate, ability of public institutions to uphold the rule of law, etc. A good source of information is the International Trade Union Confederation (ITUC) survey of violations of trade union rights (http://survey.ituc-csi.org/).
- Engage with trade unions in headquarter and production countries.

Strengthen monitoring mechanisms around freedom of association:

- Is there a union active at the factory, or possibly several unions? Is the union independent, free and democratic? Is the union registered? Is the union affiliated to a union federation? How many workers are members of a trade union? Are there any signs that the employer is favouring one union above the other? Is there evidence that the union holds worker assemblies?
- If there is no active union, have there been any attempts to organise an independent union or coalition of workers in the factory? What was the management's response?
- Is there a collective bargaining agreement at factory level? If so, is it renegotiated periodically? Do workers have access to copies of their collective bargaining agreements?
- Investigate possible cases of unjust dismissal.
- Companies should involve local trade unions in their supply chain monitoring.

Engage with factory management and ensure that:

- Management respects the rights of workers to form and join unions of their own choosing and to bargain collectively.
- Discourage the use of short-term contracts and the use of external contractors.
- Ensure that corrective action is taken if monitoring activities lead to concerns, particularly if there is evidence that there has been discrimination in hiring, transfers, disciplinary action or dismissals or pressure or inducements for workers to resign in response to workers' efforts to freely associate and bargain collectively. Buyers should demand an immediate cessation of such practices and that appropriate corrective action be taken, including immediate reinstatement with full back pay for workers who have been unjustly dismissed or coerced to resign.

270 Some of the recommendations below are based on recommendations from the Maquila Solidarity Network, in "What can brands do to support freedom of Association in Mexico?", October 2009.

Facilitate training for workers and management:

- Training for workers and management is essential in raising awareness and understanding of international norms regarding freedom of association and collective bargaining. Buyers should facilitate trainings on freedom of association, collective bargaining and social dialogue. Such trainings should be carried out by credible and independent trade union organisations or labour rights NGOs.
- Collaborate with other international buyers and address legal barriers to freedom of association with the South African government.

With regard to what freedom of association means in practice, the Indonesian Freedom of Association Protocol contains useful guidance.[271]

271 IndustriALL website, "Adidas and Nike told to meaningfully engage in Indonesia", 17 July 2012, <http://www.industriall-union.org/adidas-and-nike-told-to-meaningfully-engage-in-indonesia>.