

Taking Women's Rights Seriously?

an examination of
**The Fourth Report by the Government of The Netherlands
On Implementation of the
UN Convention on the Elimination of all Forms of Discrimination against Women
(CEDAW), 2000-2004**

This report is submitted on behalf of the following NGOs:

- Algemene Onderwijsbond (General Union of Educational Personnel)
- BLinN (Bonded Labour in the Netherlands)
- Commission for Filipino Migrant Workers
- COS West en Midden Brabant (Centre for International Development)
- E-Quality (Expertise on women's emancipation in a multicultural society)
- FemNet (Feminist Network of the Greens in the Netherlands)
- FNV-vrouwensecretariaat (Women's Department of the Netherlands Trade Union Confederation FNV)
- Genderlinc Platform
- Hivos (Humanist Institute for Cooperation with Developing Countries)
- HOM (Humanist Committee on Human Rights)
- Humanitas (prostitution social work)
- La Strada International (Prevention of Trafficking in Women in Central and Eastern Europe)
- IRENE (International Network Labour and Development)
- Landelijk Bureau ter bestrijding van Rassendiscriminatie (National Bureau against Racial Discrimination)
- NJCM (Dutch Section of the International Commission of Jurists)
- NVR (Dutch Women Council)
- Oxfam Novib
- Stichting Gender budgeting promotion
- Stichting Kezban
- Stichting Proefprocessenfonds Clara Wichmann (Clara Wichmann Legal Test Case Fund)
- Stichting voor Onderzoek en Voorlichting Bevolkingspolitiek (Foundation for Research and Information on Population Policy)
- Stichting Tegen Vrouwenhandel (Dutch Foundation Against Trafficking in Women)
- Tiye International (Platform of organisations of black, migrant and refugee women)
- TransAct (Expertise on gender based violence and gender specific health)
- Vereniging voor Vrouw en Recht Clara Wichmann (Association for Women and Law Clara Wichmann)
- VON (Refugee Organisations Netherlands)
- VVAO (Netherlands Association of Higher Educated Women/International Federation of University Women)
- WGNRR (Women's Global Network for Reproductive Rights)
- Wij Vrouwen Eisen (Dutch Abortion Committee We Women Demand)

Written by **Margreet de Boer en Marjan Wijers**
on behalf of the **NJCM** (Dutch Section of the International Commission of Jurists, www.njcm.nl) and the '**Netwerk VN-Vrouwenverdrag**' (Dutch CEDAW-Network),
with the support of Saskia Bakker and Zahra Achouak, of the Humanist Committee on Human Rights.

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Introduction

This report was created with input and effort on the part of a wide variety of organisations and individuals. Its preparation, writing, and presentation in New York was funded by the Ministry of Social Affairs at the request of the Humanist Committee on Human Rights (HOM) on behalf of the Dutch CEDAW Network and the Dutch Section of the International Commission of Jurists. This financial assistance made it possible to convene meetings and consultations among NGO representatives and experts.

Once the Dutch government published its Fourth Dutch Implementation Report on the UN Convention on the Elimination of all Forms of Discrimination of Women 2000-2004 in January 2005, we established a multi-track policy to collect input for this shadow report. The major themes contained in the government report were discussed within the CEDAW Network and the NJCM. This led to the identification of topics for our analytical chapters. A questionnaire based on the ABA/CEELI CEDAW Assessment Tool was distributed to over 80 NGOs, of whom nearly 20 responded. In addition, we drew on other sources and publications, including the Beijing +10 NGO shadow report. In November 2005, an expert meeting discussed the main themes of the report: 'the role of the government in the emancipation process' (articles 2-4), 'the position of migrant, refugee and minority women' and 'employment and economic live' (article 11). On the basis of this, a preliminary draft of this shadow report was written, discussed within the NJCM and CEDAW Network, and sent for comments to experts. The revised draft was widely distributed among NGOs for subscription. The presentation of the final report took place on June 1st at a broad NGO meeting.

Most of the organisational work involved in this process was carried out by the Humanist Committee on Human Rights, one of the partners of the CEDAW Network.

Relationship to the Beijing +10 process

In March 2005 the Dutch Beijing +10 NGO report was published. As the aim of both the Beijing process and CEDAW is the elimination of discrimination against women and the advancement of women, there is a lot of overlap. CEDAW and the Beijing process can strengthen each other. A crucial difference, however, is that CEDAW is legally binding for signatory states, so our focus in this current report is on the obligations assumed by the Dutch government. Despite this, the Dutch Beijing +10 NGO report provided valuable information for assessing the implementation of CEDAW. In this document we frequently refer to the Dutch Beijing +10 NGO Report, but we recommend that it be read in its entirety. It is available at <http://www.beijing10.nl/beijing10/schaduwrapportage-eng.html>.

The Dutch Antilles

The Dutch government report omits information on the implementation of CEDAW in the Dutch Antilles. In early 2005, the government informed the CEDAW Network that there would be a separate report on the Antilles, which was ready but had to be translated. Up to now, that report has not been published either on the website of CEDAW or on those of the Dutch or Antillean governments. The Humanist Committee on Human Rights made efforts to contact the largest women's NGO in the Dutch Antilles, the Caribbean Association for Feminist Research and Action

(CAFRA), who apparently are preparing a shadow report, but without result. We are therefore unable to include information on the implementation of CEDAW in the Dutch Antilles. Dutch NGOs want to stress the need for such a report, as well as a shadow report by Antillean NGOs, and hope they will be submitted in time for the constructive dialogue.

Structure of this shadow report

This document consists of two parts. The first opens with remarks on the structure of the government report (chapter 1). It is followed by an analysis of Dutch emancipation policies, including the emancipation of migrant, refugee and minority women, and of the general attitude of the Dutch government towards women's rights and its obligations under CEDAW (chapter 2 and 3). It then presents a summary of the main issues raised in part II (chapter 4), followed by the conclusions of the Dutch NGOs on the question: does the Dutch government take its CEDAW obligations seriously? (chapter 5).

The second part of the document examines the various individual articles of CEDAW and their implementation in the Netherlands.

PART I

GENERAL REMARKS AND ANALYSIS

1. Shortcomings in the Dutch report

Lack of clear structure and conceptual approach

In its Concluding Observations of 2001, the CEDAW-Committee commended the Dutch government on its conceptual approach to the implementation of the articles of the Convention. This approach distinguished, wherever possible, three levels of policy: achievement of complete equality for women before the law; improvement of the position of women; and efforts to confront the dominant gender-based ideology.

This conceptual approach is absent from the 4th government report, which lacks a clear structure. It appears as if the government just collected descriptions of projects focused on women's issues and sorted them into a list. There is no overall analysis of the Dutch situation in light of the government's obligations under CEDAW. Policy objectives and results are hardly mentioned, descriptions of the concrete situation are incomplete, measures are not linked with objectives, etc. These inadequacies make it difficult to evaluate whether or not the Dutch government meets its obligations under CEDAW. Similar shortcomings are repeatedly mentioned at different places and in different articles in this report, for example the lack of disaggregated statistical information, the absence of objectives, and the fact that no attention is paid to the results or effects of measures and policies. This repetitiveness is due to the fact that the information concerned is essential for judging the Dutch government's efforts and achievement in implementing CEDAW.

In its report, the government does not follow CEDAW's articles strictly. Sometimes this is understandable, for example where immigration law is considered together with laws on nationality, but, elsewhere, it makes analysis difficult (why combine sports with education?). Even more serious is the fact that some articles and topics are not covered by the state report at all. Article 13 is only dealt with in respect of sport, which is combined with education (art. 10), and there is no reporting on articles 2-4, which we consider a serious omission. Some relevant information can be found in the chapter on Dutch emancipation policy and under article 1, but by failing to report on article 2-4, the government avoids fulfilling CEDAW's inherent conceptual three-level approach.

In this shadow report, we will echo the structure used by the Dutch government, but will, in some cases, avoid its pitfalls by adopting the CEDAW structure.

Missing Statistics

The Dutch report contains few facts and figures on the concrete position of women in relation to the CEDAW topics. Most chapters do not contain a description of the situation on the ground, or a comparison of the current situation with that of the past. Where statistics are provided, they are not disaggregated by sex and ethnicity, they are sometimes incorrect, and they are often incomplete or outdated -even when more recent and more detailed information is available. In November 2004, for example, the bi-annual 'emancipation monitor' -which contains a wealth of

detailed information and statistics- was published.¹ One may assume its content was available to the government, but it wasn't utilised in compiling the official CEDAW report. Similarly, annual reports of the Dutch Commission on Equal Treatment contain detailed information on the cases the commission handles, disaggregated by grounds cited for discrimination. It is difficult to understand why the government report only presents overall figures on the cases referred to the commission, rather than specific cases on sex-discrimination.

Appendices

The government report contains two appendices. One is a summary of an in-depth study on the significance of article 5a of CEDAW to the elimination of structural gender discrimination, and the other is a report on the position of female foreign nationals in Dutch immigration law and policies in relation to CEDAW. However, the body of the report pays no attention to the contents of either study. It remains unknown whether the government agrees with the conclusions of these reports, or is willing to implement their recommendations in its policies. Dutch NGOs are concerned that this attitude is typical. A range of studies are referred to, but their outcomes and recommendations are rarely implemented in regular policy (see also the comments on the various articles).

¹ Wil Portegijs, Annemarie Boelens and Linda Oltshoorn: *Emancipation Monitor 2004*, Social Cultural Planning Office and Central Office for Statistics, November 2004.

2. The role of the government in the emancipation process

Two-track policy

Dutch NGOs fully endorse the two-track policy adopted by the government. This includes specific emancipation measures that promote change, place new issues on the agenda, propose new instruments, and stimulate strategic alliances with social partners and non-governmental organisations on the basis of an overall vision, as well as a range of other measures to integrate a gender perspective in all areas of regular policies (pg. 5, government report).

However, the Dutch NGOs conclude that this policy is only receiving lip service. The co-ordination and initiation role of the state regarding emancipation has been almost abandoned, instruments are hardly used, NGOs have disappeared due to state funding cuts, gender mainstreaming is failing², and government emancipation policies have shrunk to the integration of migrant, refugee and minority women (see chapter 3).

Abandoning the government's co-ordinating and initiating role

Under the provisions of CEDAW, the government is responsible for the elimination of discrimination against women, for women's improvement and advancement, and for combating gender stereotypes. But the Dutch government makes clear that emancipation is no longer a central element in its policy. The minister responsible for co-ordinating emancipation policies shifts the emphasis to other ministries, employing the magic words 'gender mainstreaming'; those ministers and departments, in their turn, refer to local authorities, more-or-less-privatised institutions and other organisations, via another magic word 'decentralisation'. The department for the Co-ordination of Emancipation Policy has not only abandoned its co-ordination role³, but, in practice, also its role as stimulator and initiator is little developed.

The Dutch government presents emancipation as a shared responsibility involving central government, local authorities and (non-governmental) organisations. It appears content to state that responsibility for gender is mainstreamed and decentralised. Naturally, local authorities, institutions and other organisations must be involved in the process, but it has to be clear that the main responsibility lies with the State. Dutch NGOs believe this means the government has to set objectives and ensure these objectives are achieved. Other organisations and local authorities can be called in, but it cannot be left to them alone to achieve the set objectives. It is not sufficient to say emancipation is decentralised and mainstreamed, to design grant schemes and facilitate projects. The government has to monitor progress towards achieving objectives and take additional measures when efforts by local institutions and other organisations fall short.

The state's obligations under CEDAW go even further. In addition to responsibility for the achievement of its own objectives, the government has to take all appropriate measures to eliminate all forms of discrimination by any person,

² See for more information on Dutch emancipation policy: Mieke Verloo and Ilse van Lamoen: *Policy Frames and Implementation Problems: The Case of Gender Mainstreaming, State of the Art and Mapping of Competences in the Netherlands*, July 2003, www.mageeq.nl

³ Staatscourant, 28 October 2004, no. 208, pg. 45, see also government report pg.7.

organisation or enterprise (art 2e CEDAW). In the view of Dutch NGOs, this means the government has to monitor the results and effects of measures and policies adopted by local governments, organisations and enterprises. It also means the government has to take additional measures if gender equality, improvement of the position of women, and combating gender stereotypes is not achieved by and within local governments, organisations and enterprises.

These obligations are insufficiently acknowledged by the Dutch government, which uses 'decentralisation' and 'division of tasks' as an excuse to avoid being accountable for achieving CEDAW objectives.

Shrinking support for non-governmental organisations

Within the two-track policy, strategic alliances with NGOs are of crucial importance. However, in the period 2002-2004, the Dutch government cut structural funding for many NGOs, including the Clara Wichmann Institute, Expertise Centre on Women and Law, the Mr. A. de Graaf Foundation, Institute on Prostitution Issues, and the Women's Alliance, an umbrella organisation of women NGOs. These organisations all closed in 2004. This did not only result in a loss of expertise on women's issues, but also of a network with both grassroots women's organisations and professionals in the field of prostitution and women and law. Overall, the non-governmental field is severely weakened. The government no longer funds organisations; it only funds projects within the specific scope of its own priorities.⁴ Although, in some areas, the government is -or has been- working with NGOs and other institutions (e.g. on domestic violence, see art. 1), in other areas co-operation is minimal (for example with organisations of immigrant, refugee and minority women).

Gender mainstreaming and the disappearance of emancipation

Since 1998, gender mainstreaming has become official government policy. Up to 2002, this policy was accompanied by an interdepartmental plan of action, which set goals on which all departments had to report annually. Although the government states that goal setting has proved to be a useful instrument for achieving gender mainstreaming (state report, pg. 6), this method was abandoned in 2002. The 2001 government position paper identified the principles of gender mainstreaming, but targets and obligatory structures and mechanisms to implement it were missing. The goal established in this position paper, to achieve gender mainstreaming within ministries and inter-ministerial organisations by the end of 2006, will not be achieved. In 2004, an Inspection Commission on Emancipation was established whose task was to evaluate gender mainstreaming efforts in all ministries. Its interim report was published in February 2006.

'In summary,' this report stated, 'the commission has to conclude that the situation is worrying. Often, there is no adequate internal infrastructure to bring the gender dimensions of the policies sufficiently to the attention of policymakers of the departments and to integrate these gender dimensions in their general policies, as is requested by the government position paper. In light of the time and efforts it took within most departments to find people who are able to provide information in the area of emancipation policies and gender mainstreaming, and to cooperate with the formal inspection, it is doubtful whether emancipation has any priority'.

⁴ See for more information on the funding of NGOs and the problems the funding system causes, the Beijing shadow report: *Did the Beijing Platform for Action accelerate progress?, Dutch Beijing +10 NGO report, 2005.*

This conclusion confirms the observation of NGOs that, although the intentions might have been good, the policy of gender mainstreaming functions as the 'disappearance trick' they had warned about. Gender mainstreaming cannot work without strong, obligatory instruments and mechanisms, a vigorous national machinery that contains a co-ordinating and initiating department, an interdepartmental infrastructure, as well as an 'outer peel' of critical NGOs.

3. The position of immigrant, refugee and minority women

In its Concluding Observations on the 2nd and 3rd state report, the CEDAW Committee expressed its concern about the continuing discrimination against immigrant, refugee and minority women, manifestations of racism and xenophobia, and the lack of information in the state report on the *de facto* situation of these groups, including their freedom from violence. It urged the government to provide detailed information in its next report, information disaggregated by sex and ethnicity, as well as to take effective and pro-active measures to eliminate discrimination and violence against immigrant, refugee and minority women.

Lack of statistics

In its report, the government does not provide statistics disaggregated by sex and ethnic background. The statistics on participation of women in public life, for example, do not contain specific information on ethnic minorities, nor does the chapter on violence against women contain information on the prevalence of different forms of violence disaggregated by ethnicity. In the chapter on Dutch emancipation policy (chapter 2) no specific attention is paid to immigrant, refugee and minority women. Official government reports, in general, predominantly focus on the largest groups of migrants, notably Turkish, Moroccan, Surinamese and Antillean immigrants. Information on other groups is scarce or non-existent.

At several places, the government mentions the ACVZ-report on the implementation of CEDAW in relation to immigration law and policies (e.g. on pg. 3).⁵ Dutch NGOs welcome this initiative. However, the ACVZ-report does not contain statistics. In fact, the ACVZ observes, referring to the Concluding Observations of the CEDAW-Committee, that the available statistics fail to provide sufficient insight on the impact of law and policies, and urges the government to collect such information. Finally, it should be noted that the ACVZ-report is limited to immigrant, refugee and minority women in relation to immigration law, and does not cover the position of established immigrant, refugee and minority women, the majority of whom are nationals.

Emancipation or integration?

In its report (p. 22 -23) the government mentions that 'women and girls from ethnic minority groups still lag behind in terms of empowerment and integration'. It is illustrative that the government speaks about 'integration', rather than 'emancipation'. In addition, questions can be posed with regard to the (white, dominant) standard that is used to measure the 'lagging behind' of immigrant, refugee and minority women. However, at the same time, the government considers the improvement of their present disadvantaged situation to be largely 'their own responsibility'. The view of Dutch NGOs is that this does not relieve the government from its responsibility to create and enhance the conditions under which women can take 'their responsibility' by removing obstacles in the structure of society.⁶

⁵ Advisory Board on Immigration Affairs (ACVZ). *The UN Women's Treaty in relation to the position of migrant women in Dutch immigration law and policies*, The Hague 2002. A summary is attached as appendix to the state report.

⁶ See also *State of the Art and Mapping of Competences in the Netherlands*, Mieke Verloo and Ilse van Lamoën, www.Mageeq.net.

Moreover, by considering improvement in their current disadvantaged situation to be mainly their own responsibility, the government denies the existence of structural power differences and pretends that all citizens –male or female, majority or minority, white or coloured - have an equal voice. 'Own responsibility' appears to be used as a justification for the government to withdraw from its own responsibility in actively developing and implementing emancipation policies.⁷

In this regard, it is important to mention the principle, formulated by the ACVZ in its report on the implementation of CEDAW (see above) that policy measures, where possible, should give immigrant, refugee and minority women a strong and independent position vis-à-vis the state or another private party whose position is strengthened by immigration law. When this is not possible, the state should provide protection. Significantly, the official government response to the report (as well as the attached summary) keeps silent on this basic principle formulated by the ACVZ.

The principle is also absent in policies connected with immigrant, refugee and minority women. Instead they contain a range of legal and other measures that make it more difficult for immigrant, refugee and minority women to emancipate themselves and strive towards an independent position. Some examples are:

- The mandatory requirement in the new Integration Act for migrant women to follow expensive 'integration courses' and to pass 'integration exams' to qualify for an independent residence permit rather than offering free and easily accessible language courses and child-care facilities. The result is that acquisition of an independent residence permit for migrant women without independent incomes is dependent on the co-operation of their husbands/partners (see art. 1 and 9);
- The requirement for migrant victims of domestic violence to press charges against their husband/partner in order to qualify for an independent residence permit, when it is widely known that 88-90% of all such victims - regardless of their ethnic background or residence status- are unwilling or unable to do so (see art. 9);
- The introduction of (even) more restrictive requirements for family reunification, partly justified with the argument of 'preventing forced marriages'. A rise in the income requirement for family reunification disproportionately affects women because of their generally weaker position on the labour market and the child-rearing responsibilities that reduce their earning potential. This seriously affects their right to family life, which, according to the ACVZ, might amount to a violation of article 16 (1) under a and d CEDAW (see art. 9).⁸

Moreover, migrant women, in particular Muslim women, are increasingly confronted with discrimination and stereotyping. Women who wear head-scarves are frequently refused as trainees and discriminated against in the labour market, which is one reason for their lower job participation (see also art. 2, 10 and 11). In the political debate, they are systematically presented as 'backward', 'suppressed' and 'in need of liberation'. Cliché concepts of sexual equality and integration are used to justify marginalising them and deny them opportunities, regardless of their own views about why they dress in the way they do. This seriously restricts the space for

⁷ See also *Have the expectations of Beijing been realised?* Dutch NGO shadow report Beijing +10, pg. 14.

⁸ Report ACVZ, pg. 18.

Muslim women to strive for emancipation on their own terms, without being forced to distance themselves from their community, their families and their religion. It is not unthinkable that, given the present xenophobic climate in the Netherlands, women choose to wear a head-scarf as an act of protest, a symbol of solidarity with their community and as a rejection of the general hostile attitude towards Islam.⁹

Rather than acting against these stereotypes, the government tends to reinforce them by narrowing down its emancipation policies to 'migrant women'. By this means, it suggests that discrimination against women is typically a problem linked with migrant communities and ethnic minorities. Moreover, the stereotype of migrant women as passive victims is used to take measures which negatively affect their rights. Examples are the argument of prevention of forced marriages to further restrict family reunification and the argument of trafficking in women to exclude migrant women from legally working in the sex industry. Statements about 'women's rights' and 'emancipation' are actually being misused to defend very different interests, notably that of a restrictive immigration policy. A true emancipation policy would do the reverse: strengthen the rights of women, create space for women to emancipate themselves in their own way and empower women to do so.

Finally, it needs to be mentioned that, apart from discrimination as women, immigrant, refugee and minority women are confronted with discrimination on the basis of ethnicity or religion. Dutch NGOs urge the government to incorporate into its policies an exploration of the implications of the intersection of various forms of discrimination, and to recognise intersectionality as a critical component.

⁹ See also editorial *NJCM Bulletin* No. 2, 2006.

4. Summary of part II

In part II of this report, we will systematically examine the articles of CEDAW and present our comments and questions with regard to the government report. Here, we don't aim to cover all the topics and questions discussed in part II, but only to list key points of concern: areas where NGOs believe the Dutch government fails to comply with its obligations under CEDAW. We will also touch on areas where the Dutch government failed to act on the Concluding Comments of the CEDAW Committee (2001).

Various articles

Lack of detailed information, disaggregated by sex and ethnicity

The CEDAW Committee urged the Dutch government 'to provide in its next report detailed information, including statistics disaggregated by sex and ethnicity, on the implementation of the Convention with respect to different ethnic and minority groups resident in the territory of the State party'. But this information is largely absent in the government report. Such information is indispensable to monitoring the situation of women, including immigrant, refugee and minority women, and evaluating the impact of policies.

Article 1

Violence against women: denial of its gendered character?

Dutch NGOs are extremely concerned about the fact that the government has deliberately formulated its policies on domestic violence, sexual violence and sexual harassment in a gender-neutral fashion. This fails to reflect the structural and gendered character of these forms of violence. NGOs are interested to learn how the government will ensure that gender issues remain visible within gender-neutralised policies.

No free legal assistance to victims of domestic violence

NGOs urge the Dutch government to ensure that victims of domestic violence and other forms of gender-related violence are entitled to free legal advice by specialised lawyers. They are also interested to learn how the Committee sees the relation between the failure to provide free legal aid to victims of gender-related violence and article 2c of the Convention, which obliges states to establish legal protection of the rights of women on an equal basis with men and to ensure the effective protection of women against any act of discrimination.

Failure to provide undocumented women with protection against gender-based violence

Under CEDAW, the government is obliged to protect *all* women on its territory against gender-based violence, regardless of their residence status. Dutch NGOs would like to know what measures the government intends to take to ensure that victims of gender-based violence with insecure residence status or without residence status have access to women's shelters. They are also interested in the opinion of the Committee as to whether the current failure of the government to provide shelter and protection to undocumented women constitutes a violation of article 1 of the Convention.

Article 2

The nature of CEDAW obligations: strong or weak?

Within the Dutch legal system, individual citizens can directly invoke and have enforced rights deriving from international conventions before national courts. The notion that (provisions of) CEDAW give rise to rights of individual citizens also underpins the CEDAW Optional Protocol. However, both in its policy document *A safe country where women want to live*,¹⁰ and in the SGP law case¹¹, the Dutch government states that (provisions of) CEDAW cannot have direct effect. In the same policy document, the government states that CEDAW obligations are obligations 'to make an effort', instead of obligations to achieve the elimination of all forms of discrimination. Dutch NGOs disagree with both of these opinions, and are very interested to learn the opinion of the CEDAW Committee on these topics.

Dissemination of CEDAW

Apart from funding a brochure on the Optional Protocol, the Dutch government did not conduct any activities to disseminate CEDAW and its related documents. Knowledge of the CEDAW obligations amongst governmental administrators and politicians is scarce to absent. Dutch NGOs wish to know what activities the government will conduct to properly disseminate CEDAW and its related documents, in particular the Concluding Observations and General Recommendations, among governmental administrators, politicians and NGOs. They are also interested to know why the government abandoned its plans to establish an information centre on women's rights.

Article 2 and 5

Insufficient assessment of the gender impact of policies and laws

Although both article 2f and article 5a of CEDAW oblige the government to assess existing and new laws and policies with regard to their impact on the position of women as well as on the existence of underlying stereotypes, the Dutch government hardly conducts gender impact assessments. Moreover, the government does not implement the recommendations of the few gender impact assessments that were conducted (see for example art. 11: the life course saving scheme).

Article 3

Improving women's position no longer seems a real aim

Dutch NGOs have the impression that improvement of the position of women is no longer a real aim in government policy. The issue of economic independence illustrates this. In recent years, the content of this concept has changed totally. Whereas economic independence used to be seen as an instrument to advance the position of women, it now serves mainly the economic interest of increasing labour participation of women to counter the effect of the general ageing of the population. Dutch NGOs are interested to learn whether the advancement of all women is still an aim of the Dutch government, and how this is expressed in its policies and measures, for example in relation to the concept of economic independence.

¹⁰ *A safe country where women want to live*, Ministry of Social Affairs, December 2002.

¹¹ Case against the Reformed Political Party (SGP) for excluding women from its membership, see art. 7-8, under c.

Do CEDAW obligations extend to foreign policy?

The text of CEDAW does not make clear whether CEDAW obligations extend to the foreign policies of the state, that is, policies which do not effect women within the state's territory, but on the territories of other states. NGOs are interested in the view of the CEDAW Committee as to whether CEDAW obligations extend to the foreign policies of the state.

Article 4**Different approaches to temporary special measures by CEDAW and EU**

The government's policy on 'preferential treatment' follows the strict, symmetric approach of the European Court of Justice, instead of the CEDAW principles on temporary special measures as laid down in article 4-1 and General Recommendation 25. NGOs would appreciate it greatly if the CEDAW Committee provides some guidance to the Dutch government on how to cope with the different obligations regarding temporary special measures under CEDAW on the one hand, and EU-legislation on the other. In addition, NGOs would like to know what measures the Dutch government will take to meet the obligations of CEDAW on temporary special measures as laid down in article 4 and General Recommendation 25. They are also interested to learn what steps the Dutch government will take to achieve compliance of EU-legislation with CEDAW in this respect.

Article 5**Government policies reinforce stereotyping of minority women**

NGOs are concerned about the increasing stereotyping of immigrant, refugee and minority women, and in particular Muslim women. Rather than acting against this, the repressive measures taken by the government under the heading of 'integration and participation', along with public statements by politicians, reinforce these stereotypes. Examples are the stereotyping of female migrants as (potential) victims of domestic violence, forced marriages and trafficking in women, which are used as arguments to further restrict their right to family reunification and exclude them from legally working in the sex industry where they are protected under labour and civil law.

Article 6**Lack of protection for victims of trafficking**

Since 1987, The Netherlands has acquired a special chapter in the immigration law on victims of trafficking (B9-regulation). But, despite improvements, serious problems still exist with regard to the implementation of the B9-regulation. The regulation itself also contains serious shortcomings, the most important of which is the lack of protection of victims after the closure of the criminal case. NGOs would like to know what measures the government is planning to take to adequately implement the B9-regulation, in particular with regard to the identification of possible victims, the procedure for granting a temporary residence permit and informing victims about their rights. Moreover, they are interested to know if the government is willing to solve the serious and structural shortcomings of the current policies, in particular the exclusion from assistance and protection of victims who are not able or willing to act as a witness, the extremely restrictive and unrealistic policies in granting a permanent residence permit to victims who might lack effective protection of their government on their return, and the lack of long term perspectives for victims of trafficking.

Lack of protection for unaccompanied minor asylum seekers

In general, minor unaccompanied asylum seekers are a group vulnerable to trafficking. Moreover, if they turn 18 and they are not recognised as asylum seekers, they lose their residence status in the Netherlands, even if, in practice, it is not possible for them to return to their home country. NGOs would like to know what measures the government is willing to take to protect minor unaccompanied asylum seekers (ama's) against becoming victims of trafficking. In particular, they are interested to learn what measures the government wants to take to prevent minor unaccompanied asylum-seekers being sent out onto the streets without access to support and protection when they turn 18.

Exclusion of migrant prostitutes from the legal sex sector and labour-law protection

NGOs share the concern of the CEDAW Committee about the effects of the lifting of the ban on brothels on the position of undocumented migrant prostitutes and victims of trafficking. Non-EU migrants are by law excluded from legally working in the sex sector. Prostitution is the only kind of work for which a legal prohibition on the issue of working permits exists. Thus migrant prostitutes are per definition forced to work in the illegal and unprotected sector. According to the evaluation report on the lifting of the ban on brothels, this sector is characterised by 'a lack of supervision and poor accessibility for social and health workers, as a result of which these prostitutes are extra vulnerable for exploitation and their position has worsened rather than improved'. NGOs are interested to learn how prohibition of working permits to prostitutes and the effects thereof relate to the obligation under article 6 of CEDAW to take adequate measures to combat trafficking and the exploitation of prostitution by others. They would also like to know how the categorical exclusion of migrant prostitutes from the legal sex sector and its related (labour law) protection relates to the obligations under article 11 of CEDAW (equal treatment in employment), given the fact predominantly women work in the sex sector.

Article 7 and 8**Stagnation of the number of women in top positions**

The percentage of women at the top of the public service has barely increased over the last years (10%). Only 4 % of the members of the boards of directors and management in trade and industry are female. The percentage of female professors has increased only slightly, from 5% in 1996 to 9% in 2005. Only 19% of mayors and 8% of Queens Commissioners were women in 2003, and these are both government-appointed positions. There are very few women working in the police and the military. Only 14% of employees in the higher-paid salary scales of the Ministry of Foreign Affairs and 11% of the ambassadors, permanent representatives and consuls-general are female. Noting that existing policies have not been very effective, NGOs would like to know what additional measures the government intends to take to increase the number of women in high-ranking posts in the civil service, academia and government-appointed, high-ranking (international) positions, for example through temporary special measures.

Exclusion of women from the Reformed Political Party (SGP)

In its consideration of the previous report, the Committee concluded that the existence of a political party (SGP) which excludes women from membership constitutes a violation of article 7 and urges the state to take adequate measures.

Following the continuing failure of the government to do so, a number of NGOs brought the case to court. In September 2005, the court held that, by not taking adequate measures the state acted in violation with its obligations under article 7 CEDAW; moreover, it held that by funding the SGP the state actively contributed to the continuing existence of an unlawful situation; and ordered the state to immediately stop funding the SGP. The Dutch Minister of Internal Affairs has decided to appeal against this judgement of the district court.

Article 9

Independent residence permit for victims of domestic violence

NGOs consider it an important improvement that the period of dependency has been reduced from 5 to 3 years, and that women are entitled to an independent residence permit in case the relation is severed within the first three years because of 'demonstrated domestic violence'. However, they are concerned about the requirement that the domestic violence has to be demonstrated by means of an official police report or an official report of the prosecution of the offender, as it is a known fact that generally women do not easily report domestic violence to the police for a variety of reasons. NGOs are interested to know if there are figures available about the number of migrant women who actually applied for and were granted an independent residence permit on grounds of domestic violence. They are also interested to learn if the government is willing to liberalise the requirement to demonstrate the violence through an official police report if it appears that, in practice, this functions as an insurmountable barrier.

New requirements for family reunification disproportionately affect women

Since the introduction of the new Immigration Act the requirements for family reunification have severely tightened. Despite strong indications that the new, more restrictive, requirements disproportionately affect women, no gender impact assessment has been made. NGOs would like to know if the government will evaluate the impact of the new requirements on women, and take adequate measures if it appears that they indirectly discriminate against women.

Lack of policies to ensure that immigrant women who are abandoned abroad can return to the Netherlands

NGOs would like to know if the government is willing to implement the recommendations of the Commission PaVEM so as to prevent women who are intentionally abandoned by their husband in their home country losing their residence permit and being unable to return to the Netherlands. They are also interested to know if the government has figures at its disposal with regard to the scale of the problem.

Human Rights Watch criticises Dutch procedures on traumatised female asylum seekers

General asylum policies hold that a second asylum request is only taken into consideration when there are 'new facts', i.e. facts that were not and could not be known during the first procedure. For women who are not able or willing to talk about their experience of sexual violence during the first interview, this means that they have no possibility to submit a second application. Following criticism by Human Rights Watch that the Dutch policy is too formal, leaves almost no space for traumatised female refugees unable to speak about their trauma during the first procedure, and risks violation of the principle of non-refoulement, the government adapted its policy slightly. In the case of a repeated asylum request, the INS now

has the possibility to take into account new aspects if it is plausible that these aspects were not put forward because the asylum seeker was suffering from trauma. However, judicial review is still not possible. NGOs are interested to know in how many cases the INS considers a repeated asylum request by female asylum seekers undergoing trauma; and in how many cases this leads to the granting of refugee status. They would also like to know if the government intends to adapt the law to allow for judicial review of the decision not to take a repeated asylum procedure into consideration. In addition they are interested to learn in how many cases where sexual violence plays a role female asylum seekers are referred to the accelerated 48 hours-procedure.

No recognition of sexual violence as a ground for asylum

NGOs would like to know how the government aims to solve the problem that victims of sexual violence do not qualify for refugee status, while at the same time they do not qualify for a regular residence permit because their application is 'asylum related'. They would also like to know if the government keeps statistics on the number of asylum requests on the basis of domestic violence, female genital mutilation, fear for honour killings and other forms of sexual violence, and the percentage of applications in which asylum status (or residence on another ground) is granted.

The new Integration Act: obstacles to the participation of immigrant, refugee and minority women

Under the new Integration Act, all immigrants are obliged to follow a mandatory 'integration course' followed by a mandatory 'integration test'. Immigrants have to pay for the course and the exam themselves, which can run up to 6,000 Euros, though under certain conditions (partial) compensation of the costs is possible for specific groups, including specific groups of women. The new requirement disproportionately affects women since they generally earn less than men do, and those without an independent income are dependent on their partner's willingness to pay for the course and exam. Moreover, women have to pass the 'integration test' before they qualify for an independent residence permit. NGOs are interested to know if the government is aware of the negative effects the new Integration Act can have for women and if it is willing to undertake a gender impact assessment on the law.

Article 10

No comprehensive set of measures to achieve equal representation in education

Although not mentioned in the report, the emancipation-objective of the government in the field of education is 'equal representation of male and female students in all types of education'. However, the government does not present a comprehensive set of measures to achieve this objective. NGOs are interested to learn whether the CEDAW Committee agrees that failure to institute measures to achieve equal representation of male and female students, and male and female personnel in management positions, amounts to failure to comply with article 10 of CEDAW, which obliges governments to take all appropriate measures to ensure not only *de jure*, but also *de facto* equal access to all curricula.

No measures to combat segregation in education

In all forms of secondary education, very few girls (less than 5%) choose technical study trajectories, while boys hardly take up care and welfare ones. At the moment,

the government does not take appropriate measures to change this. NGOs are interested in the opinion of the Committee as to whether the failure to take such measures can be considered not only a violation of article 10 of CEDAW, but also of article 5, which obliges the government to take all appropriate measures to combat existing stereotyped roles for men and women. They are also interested to learn what measures the Dutch government plans to take to combat this segregation within secondary education, and how it will monitor the results.

Discrimination against minority girls in teaching practice

In recent years, an increasing number of girls with immigrant, refugee and minority backgrounds report discrimination when they apply for trainee posts. Sometimes this discrimination is linked to the head-scarves they wear; the ground of the discrimination can be ethnicity, religion or sex, and, in reality, is often a combination of these grounds. Under CEDAW, the Dutch government is obliged to eliminate this form of discrimination against women, and therefore has to undertake measures. NGOs would like to receive detailed information on discrimination against immigrant, refugee and minority girls in teaching practice. They are also interested to learn what measures the government will take to combat this discrimination.

Unequal representation of male and female personnel in education

Most teachers at primary schools are women while the majority of headmasters are men. NGOs would like to know how the Dutch government regards this, given its obligations under article 5a of the Convention, and what measures it will take to change this situation. Moreover, they would like to receive statistical information on university staff, disaggregated by gender and ethnicity, and focused on numbers of working days and salaries. They are also interested in learning what the government's targets are regarding equal representation of men and women at senior academic levels, and what measures it intends to adopt to achieve these targets. In particular, NGOs would like to know whether the government is willing to prolong the (apparently successful) Aspasia program to the point where the targets are achieved.

Article 11

High female unemployment levels require special measures

In recent years the position of women on the labour market, particularly of black, migrant and refugee women, has worsened. CEDAW requires effective measures by the state to put an end to this, where necessary via temporary special measures. Government policies of the last years have obviously been ineffective. NGOs would like to learn what measures, including temporary special measures, the government aims to put into place to achieve equal employment of women, and in particular of immigrant, refugee and minority women and women re-entering the labour market.

Still no equal pay

The figures on equal pay presented in the government report are rather dated (2000), and are not disaggregated by sex and ethnicity. More recent figures show no improvement. Current measures are largely 'soft' ones -research, development of instruments and raising awareness - and are not effective. NGOs want to know what concrete initiatives the government will take to overcome the stubborn salary gap within a given period.

Life course savings system does not contribute to a more balanced division of paid work and care

The new 'life course savings system', which has been presented by the government as an instrument for a more balanced division of paid work and care, has been subjected to a Gender Impact Assessment. The main conclusion was: 'All in all, the Life-course Savings Scheme is more important for the possibilities it offers for funding pre-pension arrangements (particularly for the higher income groups) than for combining work and care. The Scheme does virtually nothing to bring closer the government's emancipation objectives'. The Assessment further states that if the government wants the life course savings scheme to contribute to the goals of emancipation policy, more substantial measures are needed. In particular, it would help to make its use financially more attractive: a structurally advantageous arrangement for both parental leave and care leave is legitimate.

The government reacted to this Gender Impact Assessment by saying it saw no reason to adjust the life course savings scheme. NGOs find this incomprehensible, especially since the government is not taking any other action to achieve a more balanced division of work and care. The Life-course Savings Scheme certainly cannot be seen as an effective policy to ensure a more balanced division of paid work and unpaid care, as is required by the CEDAW Committee. Either adjustment of the scheme or additional measures are needed. NGOs are interested to learn if the government is willing to implement a parental leave allowance, as recommended by the Gender Impact Assessment on the Life-course Saving Scheme.

The new Child-care Act causes a decrease in the use of child-care

The new Child-care Act (2005) has profoundly changed the system of child-care. People with higher incomes are now confronted with higher costs of child-care, which are not (fully) compensated by employers' contributions or tax rebates. The system discourages women from working more days a week. After the change of the Child-care Act, 7,5 % of parents reduced the use of child-care, 6% terminated it, and only 1,4% increased (or started) the use of child-care. One of the problems regarding child-care is that the government presents it solely as a condition for the 'higher economic goal' of women's participation in the labour market. No attention is paid to the educational aspects of good child-care. The government does not set quality standards; this is left to the social partners (in the Collective Agreement in the child-care sector) and local authorities. NGOs want to stress that good child-care is of great importance for children, for parents and for society, and not only because of its economic benefits for society. The importance of child-care for society should imply that a larger part of the costs of child-care is taken by society, instead of by individual parents.

No long uninterrupted school days

Instead of ensuring a long, uninterrupted school day, as required by CEDAW in its Concluding Comments, the government has developed plans regarding the care for children before, in between, and after school-hours. From August 2006, schools will be responsible for providing care at noon. Although this is an improvement, it is not sufficient. School hours will not change, which means that it will continue to be standard for children to go home for lunch, and staying at school remains the exception. In addition, costs will probably rise (while no compensation for these costs is available), which will raise the barriers to making use of this provision even higher. There are no quality standards for the stay-over lunch break at schools. According to the NGOs, ensuring a long uninterrupted school-day entails that the

regular school-day would be from approximately 8.30 a.m. until 5 p.m., and that all children have a program of education, sports and cultural activities during this time. Before and after those hours, additional care should be provided for parents who need it.

Segregation of the labour market

The Dutch government does not report on this topic. Although, in its 2001 Concluding Observations, the CEDAW Committee urged the government to increase its efforts to eliminate stereotypes relating to traditional areas of employment for women, the government did not take any measures. Since 1996, hardly any changes have been registered in the top 10 of male occupations (building sector, technical sector), of which 99% of the workers are male, or in the top 10 of female occupations (care and health sector and administrative work). Figures for 2002 show that in the health sector nearly 80% of the employees were woman. In occupations requiring higher educational qualifications, there is more equal participation of men and women. Given this persistent segregation of the labour market, increasing efforts by the government are needed

No rights for migrant domestic workers and au pairs

Despite the growing demand for domestic workers, which is increasingly met by migrant women, they have no access to work permits. Their only option is to acquire a one-year, dependent-resident permit. This 'au pair' status, however, is not considered work but 'cultural exchange', notwithstanding the fact that au pairs are legally allowed to work 30 hours per week. Moreover, research shows that many au pairs work (far) more than 30 hours, have less than 2 days off, and perform work that goes beyond the au pair contract. NGOs are interested to know what measures the government is taking to enforce proper observance of au pair contracts. They also want to know if the government is willing to consider changing the au pair contract into a labour contract. Finally they would like to know what measures the government intends to take to improve the position of migrant domestic workers, including access to legal working permits and regularisation schemes.

Lack of efforts to improve the position of sex workers

After lifting of the ban on brothels, the authorities predominantly focused on regulation, repression and control of prostitution, rather than on the empowerment of sex workers and improvement of their position. NGOs are interested to learn what concrete and practical measures the government intends to take to: support the (labour) emancipation of prostitutes; overcome existing barriers that prevent prostitutes from standing up for their rights; protect their privacy in relation to brothel owners; clarify labour relations in the sex sector; increase possibilities for sex workers to work independently or in small women-owned brothels, effectively develop programs for prostitutes who want to change profession; combat discrimination against prostitutes; and, in general, to actually improve the position of prostitutes.

Termination of maternity allowance of independent entrepreneurs

In 2004, the Dutch government repealed the Invalidity Insurance (Self-employed Persons) Act; part of this Act was a financial allowance related to pregnancy and maternity for female entrepreneurs. Contrary to its statements in its report to CEDAW, the government did not consider how to organise such payments after the Act's repeal. During the Parliamentary debate on the repeal of the Act, the government stated that article 11-2 of CEDAW does not imply an obligation to maintain a pregnancy and maternity allowance for female entrepreneurs. In the

Senate, the government stated that CEDAW obligations do not extend beyond the obligations of ILO Conventions No. 102 and 128, that the state therefore is not obliged to protect all its (working) citizens, and that, accordingly, some groups might be excluded. NGOs challenge this. Their position is that CEDAW obliges the government 'to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances' (art 11-2). No exception is made for female entrepreneurs. Such an exception would, in the NGOs' view, be in contradiction to the main aim of CEDAW: the elimination of all forms of discrimination against (all) women. They are also of the opinion that article 11-2 requires a result (introduction of leave with pay or benefits); the state's obligation is not limited merely to making an effort. Moreover while the convention requires introduction of maternity leave with pay or benefits, it is clear that it prohibits termination of an existing provision to achieve that aim. NGOs would be interested to learn the opinion of the CEDAW Committee as to whether the termination of the maternity allowance for independent entrepreneurs constitutes a violation of article 11-2.

Major changes in social security law, but no gender impact assessments

In recent years, a number of social security laws have been revised. No gender impact assessments have been or are being conducted regarding those changes, although some affect women more than men. NGOs would like to know if the Dutch government recognises the gender-specific effects of the changes in the social security system, in particular regarding the Unemployment Act, the Invalidity Insurance Act and the Work and Welfare Act. They are also interested to learn what measures the government will take to overcome the negative effects on women.

Concerns about the financial position of elderly women

Despite the concerns of CEDAW regarding the marginalisation of elderly women in the pension system, expressed in its 2001 Concluding Observations, the Dutch government has ignored this topic in its report. It is clear that there is reason for concern. Migrant, refugee and minority women face an extra problem. Not only do they often have insufficient pension provisions, but the state allowance for elderly people depends on the number of years a person has been resident in the Netherlands. NGOs would like to know what measures the government will take to overcome the disadvantages that women in general, and migrant, refugee and minority women in particular, experience in the allowance- and pension-system.

Article 12

Concerns about the effects of the new health-insurance system

Recently, the health insurance system in the Netherlands has been totally reformed. No gender impact assessment was carried out on the potential effects of these reforms. NGOs are concerned that the new system will have particularly negative effects on people with longstandingly low incomes. Women are over-represented in this group. NGOs would like the Dutch government to monitor the gender impacts of the new health system, with special attention to single mothers and elderly women, and to provide findings on this in its next report.

New Law on Social Support has negative effects for women

In 2007, the new Act on Social Support will enter into force. The Gender Impact Assessment on this Act concluded that the law has negative effects for women, both as care-providers and as care-receivers. The government failed to amend the (draft) law to take into account the findings of this Assessment. NGOs consider the pushing

through of this law, without measures to prevent or overcome the negative effects on women's health, working conditions and possibilities, as a violation of CEDAW obligations under article 12. NGOs would like to know if the Dutch government intends to institute measures to ensure that the new Act on Social Support does not weaken the position of women, and, if so, what these measures will be. If the government is unwilling to undertake such measures, NGOs would be interested to learn how the CEDAW Committee regards this in light of the state's obligations under CEDAW.

Linkage Act limits access to health for undocumented women

In light of article 12 and General Recommendation No. 6, NGOs believe further research on the health situation of undocumented women, and their access to pregnancy and maternity care, is necessary, as has been recommended in the report of the Advisory Board on Immigration Affairs (ACVZ). Moreover, the government should consider excluding health care from the 'linkage principle', which would also serve the general interest of public health. In particular, NGOs would like to know if the government is willing to exclude services in connection with pregnancy, confinement and postnatal care from the 'linkage principle', in order to ensure access to these services for all women in the Netherlands.

Sexual and reproductive rights: access to contraception limited

In 2004 the government terminated Public Health Service compensation of the costs of contraception for women over 21. Since 2003 NGOs have been arguing that this measure is a violation of CEDAW since it affects only women, limiting their access to contraception and thereby their sexual and reproductive freedom. NGOs would be interested to know how the CEDAW Committee regards this termination of compensation for contraception in view of the state's obligations under CEDAW. NGOs would also like the government to start research on the effects of this change and the exclusion of contraception from the basic health insurance policy, to report on these effects in the next official report, and to reconsider the measure if negative effects for women are reflected.

Article 16

Parental access legislation ignores the interests of the caring parent

In the legislation on parental access, only the rights (family life, privacy) of the non-caring parent (mostly the father) and the child are recognised. The interests of the caring parent, most often the mother, are not taken into account in court decisions on parental access, while her family life and privacy are clearly at stake. In many cases, paternal parental access will be a justified encroachment on the family life of the mother, but in some situations, for example in cases of domestic violence, it should be possible that the rights of the caring partner prevail over the rights of the other parent. The total exclusion of the possibility to weigh the interests of both parents is discriminatory against caring parents, and, because these are mainly women, indirectly discriminatory against women. NGOs are interested to know whether the government acknowledges these discriminatory effects and recognises that the interests of the caring parent are ignored in the relevant legislation, and, if so, what measures the government will take to eliminate this discrimination.

Intimate partner violence and parental access

When the father of a child is not the legal parent, he can apply for parental access on the grounds of family relations with the (unborn) child. When the child is born out of a relationship in which the man used violence against the woman, this is

considered irrelevant in relation to family life between the father and the (as-yet-unborn) child. The family life of the mother (which is affected by both the violence and the parental access) is completely ignored. Violence between partners is commonly considered as having nothing to do with the children, custody issues and parental access. Moreover, the violence often continues after the divorce; the situation in which it occurs is often related to parental access. Being safe from violence is not only in the interest of the children, but also of the women involved. Judges (in many cases advised by the Child Care and Protection Board) usually label the domestic violence as 'relational problems', which should be overcome by the parents in the interests of their children, instead of a serious crime against which the victim(s) need to be protected. NGOs would like the Dutch government to carry out research on the way intimate partner violence is dealt with in family court, as well as research on the prevalence of intimate partner violence connected with arrangements for parental access. NGOs are also interested to know whether all family judges and advisors of the Child Care and Protection Board are trained in domestic violence issues, and if not, what measures the government will take to ensure such training.

Law on Names still not in accordance with CEDAW

In its 2001 Concluding Observations, the CEDAW Committee argued that the current Law on Names (1998) contravenes the basic principle of equality, in particular article 16g, and recommended that the government review this legislation to bring it in line with the Convention. However, the current government report refers to this legislation, without stating that no action has been taken to implement the Committee's recommendation. If parents cannot come to agreement on a child's family name, the father still has the ultimate decision. This problem has become more urgent since the government intends to introduce the same rule for non-married couples in place of the current provision, which defines that in case of disagreement the child gets the name of the mother. Moreover, an evaluation of the effects of the law, promised in the previous state report, has not been carried out thus far.

The *Mudawwanah*: problems for Moroccan women in the Netherlands

Although the recent changes in the *Mudawwanah*, the Moroccan family law, slightly improves the position of women, many Moroccan women in the Netherlands are confronted with problems because of this law. It is very difficult, and in some cases impossible, to have a Dutch court decision on divorce recognised by the Moroccan authorities. NGOs would like to know what efforts the Dutch government will undertake to improve the position of divorced Moroccan women in the Netherlands, and of women of other Islamic countries, with regard to the recognition of Dutch court decisions in their countries of origin.

5. Conclusions: Not taking CEDAW-obligations seriously

After thorough examination of recent action and inaction by the Dutch government, the NGOs have to conclude that the government is not taking its CEDAW obligations seriously. This judgement is based on the following grounds:

1. the government did not follow the recommendations of CEDAW in its 2001 Concluding Observations (see chapter 4);
2. in its report, the government does not account for its failure to fulfil objectives related to CEDAW obligations; it merely sums up projects and policies which are somewhat related to the position of women (see chapter 1);
3. the government does not acknowledge its national responsibility for achieving gender-equality, improving the position of women, and combating gender stereotypes, despite decentralisation or gender mainstreaming (see chapter 2);
4. the government has adopted the legally indefensible position that the CEDAW Convention is not legally binding and cannot be cited in national courts (see article 2);
5. the government wrongly assumes that CEDAW obligations are obligations to make an effort, instead of obligations to achieve the elimination of all forms of discrimination against women (see article 2);
6. it has not implemented in its policies the conclusions and recommendations of studies on the implementation of CEDAW (see article 2);
7. it rarely assesses its (existing and proposed) policies and legislation for gender impacts; recommendations of the few conducted Gender Impact Assessments are not followed (see article 2 and the various thematic articles);
8. it does not disseminate CEDAW and related documents (see article 2);
9. it does not assess policies and legislation on gender stereotypes and structural discrimination against women (see article 5a);
10. in many areas, Dutch government measures, and the results achieved by these measures, do not fully comply with CEDAW obligations. The government does not acknowledge these shortcomings, and does not indicate what measures it will take to overcome them (see chapter 4, and Part II, articles 1-16).

PART II

REMARKS PER ARTICLE

Article 1, including gender-based violence

a. The Structure of the Report

The Government does not report on the implementation of articles 2-4 of the Convention. Some issues that belong under those articles are placed under article 1. In this shadow-report, we do not follow that schema. Paragraphs on 'discrimination and equal treatment', the Optional Protocol and the in-depth studies are placed under article 2. Paragraphs on international policy are mainly under article 3. Integration and emancipation is discussed in part I and in several paragraphs in part II, mainly under article 9. Violence against women is discussed in this chapter under article 1.

b. The definition of discrimination

Article 1 of CEDAW contains a wide definition of the concept of discrimination against women, and does not limit the term to unequal treatment before the law (formal equality) but also encompasses *de facto* inequality (in material terms). The latter is not recognised by the Government in its report. Policies relating to alimony and parental access after divorce, for instance, ignore the concrete inequality that exists between men and women in marriage and family relations (see art. 16).

c. Violence against women: lack of detailed information, in particular regarding minority women

Despite the concerns of the CEDAW Committee about 'the limited information on their (women of ethnic and minority communities) freedom from violence, including through female genital mutilation, domestic violence and honour crimes ..' and the recommendation to provide this information in the next report, the Dutch report only contains limited and generalised statistical information on domestic violence against ethnic minority women (p. 17). With regard to the other forms of violence against women, statistical information disaggregated by ethnicity is completely absent. Where the state report contains information on the prevalence of violence against women in general, and the prevalence of specific forms of violence, many of the figures are outdated (1989). Moreover, statistical information is only provided on a limited number of issues. Information disaggregated by ethnicity and age can be helpful to monitor the situation of women and the results of the measures taken by the government. At this moment such monitoring is not taking place.

A related problem is that popular assumptions concerning ethnically-determined gendered violence help legitimise restrictive immigration policies which can impede the freedom of migrant women as well as that of migrant men. This is, for example, the case with the recently introduced requirement that family members of migrants from non-western countries must pass an integration test before they can be admitted into the country (see article 9). Reliable statistics are important for two reasons: they can provide the information needed to develop effective measures to

prevent gendered violence against immigrant, refugee and minority women, and they can serve to debunk unfounded assumptions concerning prevailing practices within minority communities.

d. Failure to follow-up on studies and reports on violence against women

As the government indicates, the study 'The prevention and combating of domestic violence against women' (2000¹²) gives a detailed and thorough overview of Dutch policy and legislation in the light of the CEDAW obligations. However, the government has failed to present the conclusions and recommendations of this study to the CEDAW Committee, along with the measures it has taken or will take in response to those recommendations. That a study has been carried out, and that the government reacted to it is good to know, but what really matters are the outcomes of the study, what measures are taken and what the results of these measures are. The same goes for the AIV report *Violence against women: legal developments* (2000)¹³: it is good that the study has been carried out and that the government reacted to it, but more important are the outcomes of the study and the measures the government took and will take in response. According to the government report, the motion on violence against women submitted to the Parliament¹⁴ led the government to react by providing a broad overview of its measures to combat sexual violence. It is exactly this broad overview of measures, along with an overview of the results of these measures, which is missing in the current government report.

e. Violence against women: gender mainstreaming or denial of its gendered character?

In its report, the government explains that its policy on violence against women and girls has been successfully mainstreamed. However, NGOs have the impression that the government calls mainstreaming 'successful' when a policy which was first directed specifically at women and girls has been broadened to include men and made gender-neutral. This is an extremely risky attitude: attention to gender issues can disappear very easily. According to NGOs, gender mainstreaming should mean that gender issues become part of regular policies, and that regular policies have – where and when necessary- an eye for gender aspects. It should also mean that, where necessary, special measures are taken, within or alongside, the regular policy. A gender-neutral definition of sexual violence, including domestic violence, should not conceal the fact that sexual violence is related to the balance of power between men and women, as well as to gender stereotypes. Precisely this lack of awareness and denial of unequal power relationships imply structural shortcomings in Dutch state policies. Combating violence against women, which is a form of discrimination against women, should include specific measures aimed at improving the position of women, re-balancing the power between men and women, and combating dominant gender stereotypes.

¹² *The prevention and combating of violence against women*, Netherlands Institute of Human Rights, April 2000.

¹³ *Violence Against Women: legal developments*, Report no. 18, Advisory Council on International Affairs, February 2001.

¹⁴ Motion on violence against women, submitted by MP Hirsi Ali, in response to the policy document *A safe country where women want to live*, state report, p. 14.

In practice, the de-feminisation of sexual violence, in combination with policies that define gender-based violence predominantly as an 'ethnic' issue, has the following consequences:

- violence against women becomes individualised and regarded as a personal problem of the women concerned against which they need protection, rather than as a structural problem embedded in society;
- violence against women is reduced to a question of cultural or religious background (not western or Christian);
- Violence against white women is denied, and violence against immigrant, refugee and minority women is trivialised.

The mainstreaming of policies on gender-based violence – coordinated by the ministry of Justice¹⁵ – has meant that the focus is mainly on criminal measures and not on prevention. Violence against women hardly figures in emancipation documents at other ministries and, when it is, it is limited to women from ethnic minorities. When a policy is gender- mainstreamed, it is important to collect data, disaggregated by sex (and ethnicity, age, and other relevant factors). Only then it is possible to evaluate and monitor the policy and its gender impacts, and to acquire information necessary for launching appropriate measures to combat discrimination.

f. Domestic Violence: great efforts and concerns

Need to ensure the integration of measures against domestic violence in regular policies

In the period 2000-2005, the Government made a great effort to combat domestic violence. A major interdepartmental project was launched and carried out in co-operation with various institutions and NGOs. This deserves appreciation. NGOs are concerned, however, about whether the focus on domestic violence will last after the projects (carried out or funded by the government) are completed. Measures to combat domestic violence need to be integrated into regular policies and budgeted for. When combating domestic violence is delegated to local authorities, it is still the central government that is responsible for meeting its obligations under CEDAW, in addition to its responsibility for legal measures and for the activities of the police and public prosecutors. The government should therefore ensure that those who have to carry out policies, in particular local authorities and NGOs, have sufficient financial means to do so.

As for the figures mentioned in the state report (p.15), research among the police shows that 80% of the victims of domestic violence are women and 98% of the perpetrators are men.¹⁶

Sanctions imposed in cases of domestic violence

Along with the increasing focus on domestic violence, the number of cases in which perpetrators are prosecuted and sentenced has increased. NGOs would like to know if the government can provide statistics on the sanctions imposed in cases of domestic violence as compared to the sanctions imposed in cases of public violence.

Lack of free legal assistance to victims of domestic violence

Not all measures that were recommended in the policy document *Private Violence - a Public Matter* (2002)¹⁷ have been implemented. In particular, a number of

¹⁵ The co-ordination of emancipation policies used to be a task of the Department for Coordination of Emancipation Policies (DCE). In 2004 this co-ordination task has been abolished. See chapter 2.

¹⁶ See http://www.politie.nl/nieuws/nieuws/landelijk_32_199315.asp.

measures that aimed at strengthening the position of victims in the legal process - which is an important aspect of empowerment of victims - have been dropped. In the Dutch legal system, under certain conditions, suspects are entitled to free legal aid. Victims are not. The subsidised legal aid system does not provide for legal aid to victims in criminal proceedings. After a number of successful pilot projects, the policy document included a proposal to provide two hours of free legal advice to victims of domestic violence, after which they had to make use of the regular legal aid system. As domestic violence can have many legal consequences (regarding criminal proceedings, family law, housing rights, aliens law), it is important that victims are informed about their rights and the legal possibilities. Free legal advice by specialised lawyers therefore constitutes an important provision. NGOs wonder how the failure to provide free legal aid to victims of gender-related violence relates to article 2c of the Convention, which obliges states to establish legal protection of the rights of women on an equal basis with men and to ensure the effective protection of women against any act of discrimination.

Risks attached to the shift in focus from criminal procedures to the mandatory treatment of perpetrators of domestic violence

Recently, increased attention is being paid to the treatment of perpetrators of domestic violence. Although, in general, this is a positive development, there are a number of risks attached to this change in focus. In cases of domestic violence, the prosecutor has the option to drop the case if the offender subjects himself to treatment. If he does, the case does not go to court so it is never proven that the violence indeed took place. This means the wife has no possibility to obtain compensation for damages, and also brings about complications in ensuing family-law procedures. Cases are known where the alleged perpetrator claimed not to have to pay alimony to his wife because she pressed 'false charges' of abuse against him.

Impact of dependent-residence rights on protection against sexual violence for migrant women

One of the major objections to dependent-residence rights is that it reinforces the traditionally unequal power relationship between husband and wife, of which domestic violence is one of the excesses. Moreover, it prevents women from escaping abusive relationships for fear of losing their rights of residence. Although a number of improvements have taken place over the last years, this problem is not solved. This issue will be extensively discussed under article 9b.

Domestic violence and family law is discussed under article 16.

g. Female Genital Mutilation and honour related crimes: concerns regarding participation and risk of stereotyping

NGOs appreciate the efforts of the government to combat female genital mutilation. However, many of the measures are taken with little consultation and even less participation of the groups concerned. These groups should be involved in the development, implementation and evaluation of policies. This would increase the effectiveness of measures taken and would ensure that they are well-designed and proportional to the problems being addressed.

¹⁷ *Private Violence – a Public Matter. A Memorandum on the joint approach to domestic violence*, Parliamentary Papers, House of Representatives 2001-2002, 28345, no. 1

The government policy on FGM focuses on control by institutions, mainly professional healthcare workers. Far less attention, and money, is paid to changing attitudes within the relevant minority groups. NGOs are of the opinion that attitudinal change is crucial, and that minority organisations can and must play an important role in programmes aimed at this change. The government should work together with the minority organisations to develop programmes and campaigns, and enable them (also financially) to carry out these programmes.

On the topic of honour-related crimes, minority organisations are more involved in the policy process. To some extent they are also encouraged by the ministry of Justice to work out their own roles. Of course, this could be improved, but on honour-related crimes the government shows a willingness to cooperate with NGOs. Policy on honour-related crimes will become a 'big government project' in the coming period. NGOs hope that changing attitudes towards honour-related violence, and combating the dominant ideology on gender roles that lies beneath it, will be a priority issue within this 'big project'. Of course, minority organisations have to play a major role in this, and have to be enabled to do so.

Need to avoid stereotyping and stigmatising of ethnic minorities

Although it is necessary to combat the underlying ideologies on gender roles within minority groups, care should be taken to avoid stigmatising and stereotyping ethnic minorities. For example, not all killings connected with domestic violence are honour killings. Violence against women in all its forms is a world-wide issue, and not a specific ethnic minority issue. Female genital mutilation and honour-killings are serious forms of violence against women which should be addressed and against which measures should be taken. However, care should be taken that measures are not disproportional.

Need for more expertise and safe houses

Police, service providers and schools have an important function in identifying those at risk of honour killing. But organisations that deal with (the threat) of honour killings generally lack sufficient expertise. More expertise should therefore be developed. Moreover, there are insufficient shelters and opportunities for assistance geared to this specific type of violence.

h. Sexual harassment policies: more needed than establishment of complaint procedures

The government report mainly describes whether (and how many) complaint procedures exist in the different fields concerned. Often, employers still don't take the need to establish complaint procedures seriously enough. Although they are legally obliged to institute measures to prevent sexual harassment, small and medium-sized companies, in particular, maintain that they do not have the financial means to do so. Still, in its presentation of the latest report on sexual intimidation at the workplace (2004)¹⁸, the only measure the government announced to address this problem was the collection and publication of best practices on its website, rather than making use of its legal power to oblige employers to introduce complaint procedures and impose fines on those who do not meet their obligations.

¹⁸ *Evaluation of the Working Conditions Act (Arbo-wet) concerning undesirable manners at the workplace*, Letter of the Secretary of State for Social Affairs to the Parliament of 10 December 2004.

Moreover, complaint procedures are only part of the picture. The obligation to take all appropriate measures is not met solely by putting complaint procedures in place. The government should also ensure that preventive measures are taken. In addition, the government should ensure that laws and policies preventing and prohibiting sexual harassment are enforced by the different inspections bodies (Labour Inspection, Health Inspection, Education Inspection). NGOs have the impression that the enforcement of legislation on sexual harassment is not a priority of these inspections.

The state report again lacks detailed information, disaggregated by sex and ethnicity, on the prevalence of sexual harassment in different settings. Such information is necessary to evaluate the results of measures taken to combat sexual harassment, including of complaint procedures.

Sexual harassment also occurs in fields not mentioned by the government, for example in sports and within centres for asylum seekers. In these two areas, projects have been carried out in recent years. It would be interesting to know what the outcomes of these projects are and how the results are implemented in regular policies. Other areas not mentioned include the army and other settings in which women are extra vulnerable, either because they form a (small) minority or because of the relatively closed character of the setting, such as the army. Recently, for example, a number of serious incidents, including rape, came to light in the navy. One of the striking aspects of these cases was that senior staff appeared to be informed about these incidents without having undertaken any action. In fact, the complaints were played down and at least one of the women concerned was fired. Another situation in which women are extra vulnerable are settings in which they are extremely dependent on others, such as in detention centres for undocumented migrants or female prisoners. NGOs would like to know what measures the government intends to take in these areas.

i. Failure to provide protection against violence to all women, regardless of their residence status

NGOs want to stress that even when responsibility for the provision of women's shelters¹⁹ is devolved to local governments, as described in the state report, the government itself still remains responsible for meeting its obligations under CEDAW. Apart from further research on demand and supply, measures should be taken to ensure that shelters are accessible to all women and their children who need a safe place to stay. Government is to be praised for reserving extra money (€4 million) to extend the capacity of shelters. But NGOs would like to know how many extra beds will be financed through this extra money, and how this number is related to the actual shortage, as well as what capacity is needed to provide shelter for all women and children who need it.

One of the obstacles met particularly by migrant women in getting access to a shelter is the fact that many are hesitant to receive women who lack a secure residence permit. Although an expanded category of migrant victims of domestic violence is currently entitled to independent residence permits (see art. 9), procedures may still take considerable time, during which it can be difficult to get a housing permit or access to social security. Not all women's shelters are familiar

¹⁹ The title of the paragraph in the state report is 'women's refugees', but the text makes clear that it is not about asylum seekers, but about shelters.

with the legislation and possibilities, and some avoid problems by denying access to women without an independent residence permit, or by limiting the number of migrant women they take in. Solely expanding the capacity of the shelters cannot solve this problem. It requires measures on different levels, such as streamlining the procedures of the immigration department, local housing and social security authorities, and improving the information provided to shelters and the women concerned.

A specific category is undocumented women. Under CEDAW (General Recommendation 19), the government is obliged to protect all women on its territory against gender-based violence, and to provide shelter and protection when needed. NGOs believe this includes an obligation on government to provide shelter and protection to undocumented women who are victims of gender-based violence and in need of protection. Currently, these women are excluded from most shelters (see also art. 9).

j. Public safety

Lack of information on implementation of outcomes of the Gender Impact Assessment on special planning

NGOs appreciate that the government has conducted a Gender Impact Assessment. However, the state report should document not just the fact that a Gender Impact Assessment has been carried out, but also the conclusions of the assessment and the measures taken by the government in response: how the recommendations of this Gender Impact Assessment are implemented in national, regional and local policies.

k. Sexual abuse of girls²⁰: Lack of information on the implementation of the National Action Plan to combat sexual abuse of children

Since 2002, the 'National Action Plan to combat sexual abuse of children' has been completed and a report submitted. It might be expected that the government would have drawn conclusions in this report, reported on the outcomes of projects, objectives set for the coming period, measures planned to implement the results of the projects and achieve the objectives, etcetera. However, the government report only mentions the existence of a final report.

Indications exist that, in recent years, sexual violence and involuntary sex between youngsters has become more common. The report *Sex under 25*²¹ shows that 18% of the girls interviewed experienced some form of sexual coercion, and 4% of the boys. Several cases of rape of young girls by groups of young boys (including the 'boy friend' of the girl) have been brought before court in recent years. In all those cases, the boys, and sometimes also the girls, expressed rather stereotypical ideas about the sexual roles of women and men; they did not define their own behaviour as rape. NGOs are very concerned about this development and wonder what measures the Government is planning to take. Apart from bringing cases to court, preventive measures are vitally needed, along with research on the causes of this behaviour.

²⁰ See for the topic 'lover boys': art. 6 under c.

²¹ *Sex under 25*, Rutgers Nisso Groep, 2005

In the context of prevention, sex education should be a mandatory part of the school curriculum, along with information campaigns aimed at young boys and girls. In reality, during the last years, sex education policies have been abandoned, and institutions such as the 'Rutgershuizen' which played an important role in this respect, dismantled.

I. Neglect of other forms of violence against women

With increased attention to domestic violence and 'culturally legitimised violence',²² the focus on long-recognised forms of violence against women, such as rape and assault, seems to be decreasing. Highly successful projects on legal aid for victims of sexual violence, for instance, have been terminated for financial reasons instead of being integrated into regular policies as was originally planned (see also the paragraph on domestic violence). Another example is the shift in focus within the police force to domestic violence, trafficking, honour-related crimes and child pornography, and the formation of special units around these topics. Traditional vice-units are often being split into special units or abolished. NGOs are of the opinion that continuing and structural attention is needed to maintain what has been achieved in this area, for instance in police training.

²² NGOs deem the term 'culturally legitimised violence' misleading in that sense that it suggests that other – and in the context of Dutch society better known - forms of violence against women, such as domestic violence, are not culturally legitimised and/or culturally embedded.

Article 2, Obligations to eliminate discrimination

a. Anti-discrimination policies

The government report suggests a limited interpretation of the concept of discrimination. It seems that the government believes that by establishing anti-discrimination/equal treatment legislation and the Equal Treatment Commission it has met its obligations. This is in line with the emphasis of the Government on formal equal treatment. NGOs, on the other hand, believe the obligation to ensure equal treatment can also be interpreted as a positive obligation to develop and implement pro-active policies to bring women *de facto* to an equal position.

In practice, discrimination against women is still widespread. The Dutch Equal Treatment Commission (CGB), for example, still receives many complaints about discrimination related to pregnancy (15% of its judgements on discrimination on the basis of sex) and about unequal payment (20% of its judgments on discrimination on the basis of sex).²³ In this context, it is remarkable that the government report mentions the figures of the Equal Treatment Commission (CGB) without disaggregating them by discrimination ground. Another fact not mentioned by the government is, as noted by the CGB, that judgments regarding discrimination on the basis of sex, are less often followed up by the courts than CGB-judgements regarding other discrimination grounds (see shadow report CGB). Finally, it is important to mention that the Equal Treatment Commission has a limited mandate: it does not critically examine government policies on equal treatment as, for example, the Equal Treatment Commission in the Antilles does.

b. Lack of specific policies to prevent and combat discrimination against immigrant, refugee and minority women

Another problem absent from the government report is increasing discrimination against migrant Muslim women who wear a head-scarf, both at schools and at the labour market. A substantial number of the complaints submitted to the Dutch Equal Treatment Commission (CGB) concern this form of discrimination. In 2004, for example, 60% of the complaints about discrimination on the ground of religion concerned discrimination against Muslim women wearing a head-scarf. Although, in general, educational institutions are not allowed to prohibit the wearing of head-scarves, over the last years, schools increasingly issue prohibitions on this. This seriously prevents some Muslim women from following the form of education they would otherwise choose. Research shows that discrimination is also one of the reasons why the labour participation of migrant women is lagging behind.²⁴ It is, for example, more difficult for a Muslim woman wearing a head-scarf to find a place as a trainee; employers frequently refuse job applicants wearing a head-scarf. As a consequence, Muslim women lack *de facto* equal rights to employment.

This increasing discrimination against Muslim women is connected to the general political climate. Significantly, the current debate about freedom of religion seems to be fought out – literally – over the heads of women. On this issue, NGOs would also

²³ For more information we refer to the *Comments on the fourth Dutch report on the implementation of CEDAW from the Dutch Equal Treatment Commission (CGB)*, Cgb advisory opinion/2006/03, 14 February 2006.

²⁴ *Ethnic minorities on the labour market*, Ministry of Social Affairs and Employment, 2005.

like to refer to the comments of the Dutch Equal Treatment Commission on the state report²⁵.

c. The Optional Protocol and the question of the direct effect of CEDAW

NGOs highly appreciate the contribution of the government to the realisation of the Optional Protocol. Underlying the Optional Protocol is the notion that (provisions of) CEDAW give rise to rights of individual citizens. Within the Dutch legal system, individuals can directly invoke and have enforced rights deriving from international conventions before national courts. NGOs would like to know how the Government sees the relationship between the individual right of complaint as established by the Optional Protocol, and its opinion that (provisions of) CEDAW cannot have direct effect, as expressed in the government policy paper *A safe country where women want to live*,²⁶ and the case against the SGP²⁷.

d. CEDAW: obligations to make an effort or to achieve a result?

In its reaction to two studies on violence against women²⁸, the government states that CEDAW obligations are obligations to make an effort, instead of obligations to achieve elimination of all forms of discrimination. NGOs disagree on this, and would like to know the opinion of the CEDAW Committee on this topic.

e. The status of the studies on the implementation of CEDAW is unclear

In its report, the government mentions several in-depth studies on the content and scope of CEDAW which it commissioned (pg. 11), and attaches the summary of two studies.²⁹ It should be noted, however, that the majority of the studies mentioned are rather old (1996-1998). Moreover, the report does not indicate what consequences the government has given (or is willing to give) to the conclusions and recommendations of these studies. Does the fact, for example, that the summaries of two studies are attached to the state report, mean that the government subscribes to the conclusions of these studies and is committed to implementing them? For instance, does the government subscribe to the recommendation of the Advisory Board on Immigration Affairs (ACVZ) to submit policy changes with regard to family reunification (higher income criteria, higher fees for mandatory integration courses and the requirement that applicants pay for these courses themselves) to a gender impact assessment before any final decisions are made (state report, pg. 89)? If so, why has this not been done before the changes were put into effect? (See also art. 9.) Similar questions can be asked with regard to the in-depth study on article 5a (see art. 5).

²⁵ *Comments on the fourth Dutch report on the implementation of CEDAW*, Dutch Equal Treatment Commission, CGB advisory opinion/2006/03, 14 February 2006.

²⁶ *A safe country where women want to live, policy response to the report 'The prevention and combat of violence against women, Netherlands Institute on Human Rights) and the 'Advice on violence against women' of the Advisory Board on International Affairs*, Ministry of Social Affairs and Employment, December 2002.

²⁷ See under art. 7 and 8 and the 2001 Concluding Observations of CEDAW with regard to the SGP.

²⁸ *A safe country where women want to live*, 2002

²⁹ *Towards Different Law and Public Policy. The significance of Article 5a Cedaw for the elimination of structural gender discrimination*, R. Holtmaat, 2004; *The UN Women's Convention in relation to the position of female foreign nationals in Dutch immigration law and policies*, Advisory Board on Immigration Affairs (ACVZ), 2002.

f. Gender impacts of policies and legislation are insufficiently assessed

CEDAW obliges the government to make sure its legislation and policies are in compliance with its three main objectives (*de jure* and *de facto* equality, improvement of the position of women and combat of gender stereotypes), and with the specific obligations. This implies the obligation to conduct gender impact assessments on (both existing and intended) legislation and policies which might have effect on the position of women³⁰. Although the Government states that gender impact assessments might be useful, it is very reluctant to conduct such assessments. On some major changes in law and policies, no gender impact assessment was conducted (for example the Integration Act and the policies and laws on family reintegration, see art. 9; the Linkage Act (art. 9), changes in social security (art. 11) and the health insurance system (art. 12). On other topics, assessments were conducted after pressure from parliament, but the recommendations of these assessments were not implemented in legislation and policies (life course saving system, see art. 11; Law on Social Support, see art. 12).

The availability of the instrument is not sufficient. The government should undertake structural changes within its system of operation to ensure that gender impact assessments are conducted at an early stage of the processes of legislation and policy-making, and to ensure that the recommendations of gender impact assessments are seriously considered. Not only should intended policies and legislation be subjected to gender impact assessments, but also existing laws, policies and practices should be evaluated regularly on their gender effects.

g. CEDAW is hardly used in legal practice

According to the Dutch legal system, provisions of international treaties that grant rights to individuals can be cited before national courts (see also art. 2 under c). However, CEDAW is rarely used by lawyers, and even less by judges. The government should initiate measures to make lawyers and judges more familiar with CEDAW, and encourage them to use the convention in court. Equally important, the government should stop sending the message that CEDAW has no direct effect (see art. 12 under c: Optional Protocol).

h. No effective dissemination of CEDAW

In its 2001 Concluding Observations, CEDAW requested 'the wide dissemination in the Netherlands, including in Aruba and the Netherlands Antilles, of the present concluding comments in order to make the people of the Netherlands, in particular governmental administrators and politicians, aware of the steps that have been taken to ensure *de jure* and *de facto* equality for women and of the further steps that are required in this regard'. It requests the government to continue to disseminate widely, in particular to women's and human rights organisations, the Convention and its Optional Protocol, the Committee's General Recommendations, the Beijing Declaration and Platform for Action and the results of the twenty-third special session of the General Assembly, entitled *Women 2000: gender equality, development and peace in the twenty-first century*.

³⁰ This obligation derives from art. 2f and 5a, see R. Holtmaat, 2004.

Apart from funding a brochure on the Optional Protocol, however, the government did not conduct any activities to disseminate the documents. Knowledge of CEDAW obligations amongst state administrators and politicians is practically nil. For NGOs, it is difficult to find accurate information. Beyond that, important documents like the General Recommendations and Concluding Observations have not been translated into Dutch.

Around 2001, the Government had advanced plans to establish an information centre on women's rights. Providing information on CEDAW and related documents was meant to be one of the main tasks of this centre. During the next years, the focus of the planned centre was broadened to all discrimination grounds, later the plan totally disappeared. The centre was ultimately never established.

i. All appropriate measures: soft measures are not sufficient

Although CEDAW requires 'all appropriate measures' by the state to eliminate discrimination, the government is taking mainly soft measures: monitors, studies, and temporary projects. Now that the emancipation process is stagnating (the main conclusion of the Emancipation Monitor 2004,³¹ see also chapter 2), it is clear that soft measures are not sufficient, and therefore not appropriate. The government should also take real, hard measures to eliminate discrimination, to improve the position of women, and to combat gender stereotypes. These could include obligatory gender impact assessments, including the obligation to take recommendations into account, quotas, obligations for employers and organisations to report on the participation of (different groups of) women, conditions in grant schemes and tenders regarding participation of women and gender aspects), etcetera. If necessary, temporary special measures should be taken (see art. 4).

³¹ Wil Portegijs, Annemarie Boelens and Linda Oltshoorn: *Emancipation Monitor 2004*, Social Cultural Planning Office and Central Office for Statistics, November 2004.

Article 3, Development and advancement of women

a. Improving the position of women is no longer the aim: the example of 'economic independence'.

Article 3 contains a positive obligation for the government to take measures to improve and to promote the position of women. This implies the government should have pro-active strategies and policies to combat discrimination and unequal treatment of women. Apart from some projects aimed at immigrant, refugee and minority women, the government does not take any such measures, and does not have pro-active strategies. In 2003, the Dutch minister of Social Affairs and Emancipation stated that the emancipation of Dutch women was completed. In his view, only migrant, refugee and minority women were still lagging behind. Although the minister moderated his statement later on, NGOs still have the impression that improvement of the position of women is no longer a real aim in state policy.

This can be illustrated by the example of economic independence. Until recently, economic independence of women was seen as a vital condition for the development and advancement of women, as was the re-valuation and re-balancing of care-tasks. Economic independence was viewed from the perspective of the woman; it was about independence from her husband. A woman could be economically independent via earning her own income, but also by having her own social security allowance. The individualisation of the social security and the tax-system in recent decades was in line with this perception of economic independence. Measures for reintegration of women on the labour market were mainly aimed at women re-entering after some years of caring responsibilities: they had to become independent of their partners.

In the past few years, however, 'economic independence' is used in a totally different way. It is no longer a condition for the advancement and emancipation of women, but a means to promote the economic policy of the government. It is viewed from the perspective of society as a whole, whose aging population mandates women to work. Independence now means independence from the state:³² having a social security allowance is no longer seen as economic independence. The effects of this different approach can be found within the tax- and social security systems, where individualisation is being downplayed in favour of the return of the family-approach. It also means that women with a welfare allowance are now the main target group for reintegration into the labour market; they have to become independent from state support. Re-valuation and re-balancing of care tasks are no longer connected to economic independence.

b. CEDAW obligations and foreign affairs

As the Dutch government describes in its report (under art. 1), the Netherlands has always been very active in promoting women's rights at international levels, in particular regarding reproductive rights, violence against women, female genital mutilation and honour-related crimes. NGOs appreciate these efforts. The government seems, however, to take its own responsibilities in this regard less seriously. Research by the Ministry of Foreign Affairs shows, for example, that only half of its human rights projects, which should have a gender focus, has one

³² Even if this means becoming dependent of the (ex)husband.

integrated into the project or programme. In addition, the fact that a mere 11.5% of diplomatic 'heads of mission' are women does not give a message to the international community that the Netherlands is serious about the advancement of women.

The text of CEDAW does not make clear whether CEDAW obligations extend to the state's foreign policies; which do not affect women within the state's territories, but women on the territories of other states. The Netherlands is a state that is well developed, that promotes women's human rights at the international level, addresses other states on ratification of, and compliance with, international conventions, and contributes to developing countries. Given this, NGOs are of the opinion that the foreign policies of the Dutch government should be in compliance with CEDAW, both in terms of design and concrete activities.

Development co-operation policy is based on a sector approach: the Dutch government finances sectors instead of projects. This means the receiving government largely decides where Dutch money goes. The Dutch government has less power to earmark specific amounts for the advancement and development of women. In addition, the Dutch government no longer formulates gender objectives for its development co-operation policies. The same goes for foreign policies as a whole: other policies have effects on the position of women in other countries (for example policies on trade, conflict, migration). The lack of gender data on the one hand, and the lack of gender objectives on the other, makes it difficult to monitor the effects of Dutch foreign policies on the position and rights of women. Gender impact assessments (carried out prior to the start of projects and during later evaluations) should be used to determine the gender effects of policies.

Dutch Embassies have their own budgets, and can play an important role in the advancement and development of women in foreign countries. But the government does not require gender activities and gender objectives from the embassies. Whether embassies are active in this area depends on the personal dedication of embassy personnel. The embassy can ask for a gender expert. At 20 of the 150 embassies, a gender-expert is employed. Although a combination of a Dutch and a local gender expert has proved to be most effective, the number of Dutch gender experts working at the embassies is declining.

Article 4, Temporary special measures

a. The policy on preferential treatment is not in line with article 4

In May 2005, the government sent its policy document regarding 'preferential treatment' to parliament. Although the government states that article 4-1 on temporary special measures of the Convention is involved in the policy, no attention is paid to General Recommendation 25 of CEDAW, or to CEDAW's totally different approach to that of the European Court of Justice. Where CEDAW requires the elimination of the discrimination against women, as a disadvantaged group, the European Court of Justice judged that discrimination on the ground of sex is prohibited. These different approaches have major consequences for the acceptance of temporary special measures. According to the European Court of Justice, such measures are discriminating, can only be tolerated under strict conditions, and never may exclude the (non-disadvantaged) group, while CEDAW might require special temporary measures in order to improve the position of the disadvantaged group (women). In its policy, the Dutch government follows the 'European way', without discussion. Even on the topic of discrimination on the grounds of race or ethnicity, or discrimination on more than one ground (e.g. sex and race) the government anticipates as yet nonexistent judgements of the European Court. As all European Countries are CEDAW State parties, it may be expected that the European legislation is in compliance with CEDAW. The Dutch government is also obliged to take the necessary steps to achieve such compliance.

Article 5, gender-stereotypes

a. Failure to assess laws and policies on underlying gender stereotypes

In its report, the Dutch government limits the scope of article 5 to the media and image-making, and in particular to public campaigns by the government. However, according to NGOs, article 5 covers a much wider range of obligations.

The government refers in its report to the in-depth study on the implementation of article 5³³ and even attaches it to its report. However, no attention is paid to the main conclusion of the study, notably that article 5 CEDAW contains two major obligations. Firstly the obligation to actively combat stereotype image making of men and women, for example in the media and education. Secondly, the obligation to assess legislation and government policies for the existence of underlying gender stereotypes. This second obligation is totally ignored by the government in its report. The government also ignores the more specific outcomes of the study. Chapter 15 of the study gives indications and starting points to check whether structural gender discrimination is occurring; in chapter 16 this is elaborated into a model to check the new Integration Act for structural gender discrimination.³⁴ It might be expected that the government either uses this model to assess its policies and legislation, or indicates why it will not do so. By explicitly presenting a study on the implementation of CEDAW on the one hand, but completely ignoring the outcomes of the study on the other hand, the government shows that it does not take women's rights seriously.

b. Reinforcement of stereotypes of immigrant, refugee and minority women

Although the state report mentions several measures to combat general stereotypes of men and women, current policies are remarkably careless in reinforcing stereotypes about women from ethnic minorities, in particular Muslim women. Muslim women tend to be presented, both in the media and the political debate, as uneducated and oppressed and in need of 'liberation' by others.³⁵ Rather than acting against such negative stereotypes, the repressive measures taken by the government under the heading of 'integration and participation',³⁶ along with public statements by politicians,³⁷ reinforce these stereotypes. For example, the narrowing down of emancipation policies by the government to 'migrant' women, rather than all women in the Netherlands, reinforces stereotypes about their 'backwardness': according to the minister concerned the emancipation of Dutch women has been achieved.³⁸ At the same time, 'migrant' women are treated as a homogenous group, thus denying the differences among the various groups of immigrant,

³³ *Towards Different Law and Public Policy. The significance of Article 5a CEDAW for the elimination of structural gender discrimination*, Rikki Holtmaat, Research undertaken for the Ministry of Social Affairs and Employment of the Netherlands, May 2004.

³⁴ For comments on the Integration Act, see also art. 9.

³⁵ See e.g. 'How safe is the right to safety?', Ellen-Rose Kambel, *Nemesis* no. 1, 2003.

³⁶ For a description of these policies, see art. 9.

³⁷ The stereotype of Muslim women as victims 'who need to be liberated from their suppressive culture' is often used in the political debate to underline the supposed superiority of the emancipated and enlightened West, compared to the supposed 'backwardness' of Islamic groups, thus denying that discrimination against women and domestic violence are as much a feature of native Dutch society.

³⁸ Later this remark was nuanced.

refugee and minority women, related to their history as labour, family, political or ex-colonial migrants, and their experiences in both their country of origin and in the Netherlands. By treating them as if they were one homogenous group, large groups of women are excluded and made invisible. More fundamentally, policies are developed without including the women concerned in the decision-making process. In this context, it needs mentioning that women, including immigrant, refugee and minority women, have and still are predominantly emancipating themselves and participating in society through their own efforts. NGOs and migrant organisations play an important role in this process, which is insufficiently recognised by the government.

Stereotypes are also used to negatively affect the rights of immigrant, refugee and minority women instead of strengthening them. Examples are the stereotype of female migrants as (potential) victims of trafficking in women, domestic violence and forced marriages which are used as arguments to exclude them from legally working in the sex industry and to further restrict family reunification.³⁹ Another example is the dominant representation of migrant wives as 'import brides', while migrant husbands are predominantly seen as 'men who take their chances' to come to the Netherlands. In both cases, women are depicted as passive instruments in the hands of others, while men are portrayed as active persons taking their destinies in their own hands. In the case of asylum seekers women are predominantly seen as passive followers of their male partners, rather than as autonomous migrants. Research shows, for example, that officials tend to expect that the motives of female asylum seekers are dependent on those of men.⁴⁰

c. Lack of policies to address traditional role patterns and the ideology of motherhood

An area in which stereotypes are still extremely tenacious is the division of roles between men and women in the private domain. It is true that labour participation of women increased during the nineties: 65 % of women had a paid job for at least one hour per week in 2004 compared to 53 % in 1995. However, they barely exist at top levels of the public domain (see art. 7-8). One reason is that beliefs on who is responsible for the household and care for children have not changed. The dominant ideology still is that mothers should care for their children themselves, at least for a few days a week. It is considered pitiful when children go to child-care for more than three days a week, and mothers are 'blamed' for it. Two-thirds of the women in the Netherlands start working fewer hours or quit their job when their first child is born. The more children they have, the fewer hours they work. Less than 10% of working women with children have a full-time job, compared to 90% of working men in general. The 'one and a half' employment model, in which the man has a full time job and the woman works half-time seems to have become the norm. The average salary of women is almost half that of men. This can not be explained by lower education levels: more women than men go to university and they perform better.⁴¹ The government does not take measures to combat the dominant ideology

³⁹ See art. 9.

⁴⁰ Spijkerboer, *The UN Women's Treaty and Dutch Immigration Law*, 2002, pg. 24.

⁴¹ Heleen Mees, 'Women should finally get to work', *NRC Handelsblad*, 21 January 2006.

of motherhood. On the contrary, the government seems satisfied with part-time labour participation by women. For a further discussion of women and employment, and the division of work and care, we refer to article 7-8 and article 11.

Article 6, trafficking and forced prostitution

a. B9-regulation: shortcomings in implementation and failure to provide adequate protection to victims

Since 1987, the Netherlands has a special chapter in its immigration law on victims of trafficking (B9-regulation). Under the B9-regulation, (alleged) victims are granted a reflection period of 3 months to decide whether or not they want to press charges. If they press charges they are entitled to a temporary residence permit during criminal proceedings. In 2005, a number of improvements have taken place: the chapter now applies to victims of trafficking for all purposes (including domestic labour) and victims are allowed to work under the temporary residence permit. However, despite these improvements, serious problems still exist with regard to, on the one hand, the implementation of the B9-regulation and, on the other hand, structural shortcomings in the regulation itself.⁴² According to estimates by the National Rapporteur on Trafficking in Human Beings, only 5% of the victims reports to the police and/or presses charges.⁴³ This indicates that the current regulation insufficiently meets the needs and interests of the victims.

Continuing shortcomings in the implementation of the B9-regulation

Correct implementation of the B9-regulation largely depends on the willingness and expertise of the police. If they do not correctly identify, inform and treat (alleged) victims, these victims have no access to the B9-regulation and are deported. Possibilities for victims to claim their rights are very limited: most are not aware of their rights and in several cases they have been deported without being recognised as a victim. This is especially the case during police raids in red light areas and border controls. This problem has been acknowledged by the minister concerned (TK 2004-05, 653, 21 January 2004) following questions in Parliament about the arbitrary deportation of possible victims of trafficking. However, it is not clear what measures the government intends to take to address this problem. In general, the (increasing) focus on repressive measures against undocumented migrants negatively affects the proper identification and assistance of victims of trafficking in human beings. Victims who enter the Netherlands as asylum seekers are sometimes incorrectly excluded from the B9-regulation.⁴⁴

Another problem lies with the Immigration and Naturalisation Service (INS). Formally, the decision about an application for a temporary residence permit under the B9-regulation must be taken within 24 hours after the victim presses charges. In practice, this hardly ever happens. As a consequence, access of the victim to support facilities is seriously hindered. Sometimes, the decision takes so long that the criminal case is dismissed in the interim, which means that a temporary residence permit is denied. When the victim is not granted this temporary permit, by immigration law she has no possibility to apply for a permanent residence permit on humanitarian grounds, whatever the risks she might run by returning to her home country.

⁴² See for an extensive description of the current problems attached to the B9-regulation, for example, the Third Report of the Dutch National Rapporteur on Trafficking in Human Beings, Bureau NRM, The Hague 2005, chapter 3 and 4.

⁴³ First and second report of the National Rapporteur on Trafficking in Human Beings, The Hague 2002 and 2003.

⁴⁴ See e.g. Court Amsterdam, 23 October 2002, No. AWB 02/72704.

In general, victims are insufficiently informed about their rights and the progress of criminal proceedings. In many cases, they only hear that their case has been dismissed through the INS decision not to extend their temporary residence permit.

The exclusion from protection of victims who are not able or willing to testify

The B9-regulation is based on the interests of the state rather than those of the victims. Victims only have access to a temporary residence permit, assistance and protection if they are able and willing to press charges and act as witnesses against their traffickers. Many victims are not willing to testify for fear of retaliation and the lack of protection after the conclusion of the criminal proceedings. According to NGOs, this is in violation of the obligation of the Dutch government to provide protection and assistance to victims of trafficking as a serious human rights abuse, independent of their value as an instrument for the prosecution.

The illusory character of a residence permit on humanitarian grounds for victims who might lack effective protection by their government

NGOs strongly share the concern of the Committee about the protection offered to victims who fear expulsion and who might lack the effective protection of their government on their return. Since the new Immigration Act came into force in 2001, victims of trafficking can only apply for permanent residence on humanitarian grounds following the granting of a temporary residence permit. This excludes victims who are not willing or able to press charges as well as those who have pressed charges, but whose case was dismissed before the decision of the INS on their application for a temporary residence permit.

For those victims who have the formal opportunity to apply for a permanent residence permit on humanitarian grounds, the burden of proof posed on the victim is so heavy that they are seldom able to pass the test. For example, they have to prove with 'objective and verifiable documents' that they asked for protection from the authorities of their home country, but that these are not willing or able to provide such protection. Even in cases in which it is proven that family members in their home country are threatened or abused, the state (INS) maintains that there are no 'objective and verifiable data or concrete indications' of a risk of reprisals. This means that the victim has to prove 'with objective data' that the threats to her family are related to her person.⁴⁵ These are impossible requirements. Moreover, it can be used against the victim, even when she fully cooperates with the police, that no convictions in 'her' case have taken place, a factor which is totally outside the power of the victim and is not relevant to the question whether or not it is safe for her to return to her home country.

Lack of protection is one of the reasons why very few victims dare to report to the authorities as they fear expulsion to their country of origin after conclusion of the criminal case. Until now, the government has not been able to provide figures about the number of applications for a residence permit on humanitarian grounds, the number of residence permits granted, the number of refusals, and the grounds for refusal.

⁴⁵ See e.g. Minister of Immigration and Integration, INS no. 0111-06-4002, 30 August 2005 and 13 February 2006.

In the view of NGOs, a risk assessment should be done before any decision about the expulsion of a victim or rejection of the application for permanent residence. The government should actively investigate whether the victim risks reprisals from the criminal circuit on return to her home country, whether she or her family has been threatened, whether the authorities in her home country are able and willing to provide protection, whether the victim risks prosecution by the authorities of her home country (for example for prostitution or illegal border crossing), whether there is adequate and confidential assistance available and what perspectives the victim has for social inclusion in her home community.

Lack of policies with regard to developing long term perspectives for victims of trafficking

Whereas policies provide for short-term assistance for victims during criminal proceedings, there is a serious lack of assistance with regard to the development of long term perspectives for victims. There is little assistance for victims after the trial and there are no financial means to fund programs aimed at (long-term) social inclusion of victims, either in their home country or in the Netherlands. There are no national guidelines on access to education and employment for victims of trafficking. Implementation of national legislation is left to local governments, which implies different policies in different municipalities. In some cities, for example, victims of trafficking have access to Dutch language courses, in others they are excluded.

b. Lack of protection against trafficking of unaccompanied minor asylum seekers

Minor unaccompanied asylum seekers (ama's) are a particularly vulnerable group. Some enter the Netherlands requesting asylum and then disappear into prostitution shortly after registering at a refugee centre. Others are extremely vulnerable upon reaching the age of 18. When they are not recognised as asylum seekers, they lose their temporary residence permit and are expected to return to their home country. In some cases, ama's are sent out onto the streets when they reach the age of 18 with no money, no shelter, no assistance and no possibility to return to their home country. They consequently risk becoming victims of rape, trafficking or forced prostitution.

c. Trafficking and forced prostitution among Dutch nationals

Apart from attention to the proper identification, protection and support of migrant victims of trafficking, attention also needs to be paid to national victims of trafficking and other forms of forced prostitution. Especially girls and young women are vulnerable to so-called 'loverboys' who pose as their boyfriend and then force them into prostitution. Special measures keep being needed for this group to enable early identification of possible victims and provide them with appropriate support and protection.

d. Exclusion of non-EU migrant sex workers from the legal sex sector

NGOs share the concern of the CEDAW Committee about the effects of the lifting of the ban on brothels on the position of undocumented migrant prostitutes and victims of trafficking. Non-EU migrants are excluded from legally working in the sex sector, despite the fact that it has been estimated that at the time of the lifting of the ban, more than half of the prostitutes working in the Netherlands came from a

non-EU country. Prostitution is the only kind of work for which it is prohibited by law to issue a work permit.

Though the evaluation of the lifting of the ban on brothels in 2002⁴⁶ does not show a significant shift to the illegal sex sector, it has been noted that the position of minor, illegal and trafficked prostitutes has worsened. One of the effects of the legal change is a growing division in the sex industry between, at the one hand, a legal and regulated sector where the position of (Dutch) prostitutes is slowly improving, and, on the other hand, an illegal, unregulated and unprotected sector, where, in particular, minor, illegal and trafficked prostitutes work. Due to the impossibility of obtaining a legal working permit, migrant prostitutes are per definition relegated to the illegal and unprotected sector. According to the 2002 evaluation report, the latter is characterized by 'a lack of supervision and poor accessibility for social and health workers, as a result of which these prostitutes are extra vulnerable to exploitation and their position has worsened rather than improved. They run a greater risk of being confronted with coercive situations, whether or not accompanied by abuse and threats'.⁴⁷ Other research confirms that the exclusion of migrant prostitutes from obtaining a legal working permit makes them more vulnerable to exploitation and other forms of violence than if they could legally perform their work.⁴⁸

This does not mean the ban on brothels should be reinstated. Rather, it suggests that the principles and aims underlying the abolition of the ban – *in casu* the improvement of the position of prostitutes and the treatment of prostitution as work - should also be applied to the position of non-EU migrant prostitutes. In this context, the question could be posed whether the exclusion of migrant prostitutes from the legal sex sector is in conformity with article 6 CEDAW, which obliges states to take all appropriate measures to suppress trafficking in women. The Advisory Board on Immigration Affairs (ACVZ) also noted in its report⁴⁹ that if the new policy has de facto worsened the position of non-EU migrant prostitutes in the Netherlands, this would pose tension with article 6 CEDAW, and would oblige the government to take additional measures. Moreover, it could be questioned whether it is in conformity with article 11 CEDAW (equal treatment in employment) to exclude prostitution from the possibility to get a work permit, given the fact that predominantly women work in this sector.

According to the government report, the prohibition on the issue of working permits is 'simply an acknowledgment of the special nature of employment in the prostitution sector' (pg. 35). According to NGOs, however, recognition of the special character of prostitution as work should not be used to exclude migrant prostitutes from the protection national prostitutes enjoy. Rather, ways should be found to adapt existing laws to this specific situation, in the same way as has been done and is still done for other specific professional groups. Both from the perspective of combating trafficking and the perspective of equal treatment, NGOs are of the opinion that the prohibition on the issue of working permits for prostitution should

⁴⁶ Annelies Daalder, *The ban on brothels lifted, Prostitution in 2000-2001*, Parliamentary Papers, House of Representatives 2002-2003, Just 02-80, WODC 2002.

⁴⁷ Report WODC 2002, pg. 50-51.

⁴⁸ Prof. mr. T.P. Spijkerboer, *The Women's Treaty and the Dutch Immigration laws*, Amsterdam: VU 2002, pg. 47.

⁴⁹ Advisory Board on Immigration Affairs (ACVZ), *The UN Women's Treaty in relation to the position of female foreign nationals in Dutch immigration law and policies*, The Hague 2002, pg. 11.

be reviewed. Lifting of this prohibition would contribute to reducing both the number of undocumented migrant prostitutes and their vulnerability to violence, abuse and exploitation by brothel keepers and clients.

e. Trafficking in women in other industries

Since January 2005, the definition of trafficking has been broadened to include trafficking for all purposes, including domestic work.⁵⁰ Research in other EU countries and the experiences of migrant organisations and NGOs working with migrant domestic workers in the Netherlands show that these workers are often faced with abusive conditions, which can amount to slavery-like practices.⁵¹ Till now, however, hardly any research has been done in the Netherlands on the prevalence of trafficking in this sector and/or the working and living conditions of undocumented migrant domestic workers.

f. Lifting of the ban on brothels: lack of efforts to improve the position of prostitutes

NGOs support the lifting of the ban on brothels as an important chance to improve the position of prostitutes and to better protect their human and labour rights. But they have a number of serious concerns.

Though the 2002 evaluation report did not indicate a major shift to the unregulated and/or illegal sector, by now there are powerful signals that such a shift is taking place. Moreover, it is not just (undocumented) migrant women and minors who work in the unregulated sector, but also a substantial number of Dutch women who choose to do so for a variety of reasons. A number of reasons can be suggested, including the exclusion of migrant women from the legal and regulated sector, and the closing down of street prostitution zones in a number of big cities.⁵² An important factor, however, is the lack of policies by the national and local governments to actively improve the position of prostitutes and, most importantly, to create clarity about working relations in the sex sector. This issue will be dealt with under article 11, employment.

⁵⁰ See for a discussion of the situation of migrant domestic workers and au pairs art. 11.

⁵¹ See e.g. *Doing the Dirty Work, the Global Politics of Domestic Labour*, Zed books, London/New York 2000; and the work done within the Migrants Women's Empowerment Programme of the Commission for Filipino Migrant Workers (CFMW).

⁵² See for a discussion of the impact of the closing of street zones art. 12.

Articles 7 and 8, political and public life

a. Stagnation of the percentage of women in top positions in public service and academia

Despite the formulation of targets and specific policies to increase the proportion of women in management positions, the percentage of women at the top of the public service has barely increased over the last years (10%). In the international ranking list of women at the top of trade and industry, the Netherlands occupies the last place, together with Pakistan: only 4 % of members of boards of directors and management are women. The percentage of female professors has only slightly increased (9 % in 2005 compared to 5% in 1996), despite the fact that the percentage of female PhD students has increased from 30 to 40% over the last 10 years⁵³. There are still very few women working in the police and the military. The first female general was appointed in 2005. The government report does not give information about the participation of women in labour/trade unions.

Although, according to the state report, the percentage of women in the public service as a whole may seem satisfactory (46%), women are strongly over-represented in lower-ranking positions and under-represented in senior positions (16.7% in salary scales 14-16, and only 11% in salary scale 17 and higher, according to the state report). Information on the effectiveness of instruments and strategies to realise a more proportional representation of women in higher-ranking posts is absent. NGOs observe that the under-representation of women in senior positions in the civil service is a structural problem and urge the Dutch government to take measures to bring the number of women to a more acceptable level (at least 30%).

Moreover, female civil servants still earn less per hour than men. This has only marginally improved over the last years (from 79% of the hourly wage of men in 1995 to 82% in 2002). When the civil service and commercial sector are viewed together, in 2000 women still earned, on average, 3.68 Euro per hour less than men. According to the government this is partly because women tend to work in professions that are lower paid (or perhaps those professions are lower paid because mainly women work there) and partly because women work at more part-time and flexible jobs, which 'may hinder their career opportunities'. It must be noted that the latter clearly constitutes a form of prohibited discrimination (on the issue of equal pay, see also art. 11).

The number of women in the police force and in the fire service may be on the increase, but is still very low (in 2002: 18.5% women in executive posts in the police force; 4.4% in the fire service), due partly to the fact that many women who enter the police force or the fire service leave soon afterwards. Although some measures have been taken to stimulate diversity in both forces, the masculine work sphere that largely still exists has to be actively addressed to bring the number of women to acceptable levels. The same goes for the military, in which the proportion of women is barely increasing and the percentage of women in higher ranks remains extremely low (3.8% of women with the rank of Major; 1.3% with the rank of Colonel).

⁵³ Figures from Heleen Mees, 'Women should finally get to work', *NRC Handelsblad*, 21 January 2006.

b. Government does not meet its own targets with regard to state-appointed positions

The government report mentions the setting of targets that have to be achieved by others (political parties, civil society, trade and industry). However, it does not meet its own targets. With respect to the number of female mayors and Queen's Commissioners, NGOs want to point out that they are directly appointed by the government, so there is no excuse. In particular, the continuing low percentage of female Queen's Commissioners, namely 8%⁵⁴ (one out of twelve), is worrisome. The percentage of female mayors is 19. When it comes to other appointed positions: on advisory bodies, commissions, task-forces and boards of management of (semi) public companies, the government also does not meet its own targets. In fact, the number of women appointed on temporary or permanent advisory bodies has decreased over the last years.

NGOs welcome the increase of female ministers and secretaries of state in the current government (33% and 50% respectively). However, the government indicates in its report that quantitative targets for women in elected bodies and as governors are still far from being attained. The percentage of women in Municipal Councils, for example, has been stuck around 23 % for years. Although the percentage of women in elected bodies is outside the direct influence of the government, it could play a much more active role in stimulating more female candidates to vie for positions. Apart from setting 'performance standards', the government has taken no measures to actively encourage political parties to place more female candidates in eligible positions and nominate women for political appointments, nor did it stimulate local or provincial governments to do so (see also art. 7-8 under c).

The government has put forward several proposals to change the current electoral system. However, up till now no gender impact assessment has been undertaken to forecast the effects of different systems on the participation of women, including ethnic minority women, in elected bodies.

c. Going to court: Reformed Political Party (SGP)

In its 2001 Concluding Observations, the Committee concluded that the existence of a political party (the SGP) that excludes women from membership constitutes a violation of article 7c. It recommended the government to take urgent measures to address this situation, including the adoption of legislation to bring membership of political parties into conformity with the requirements of article 7. In its report, however, the Dutch government clings to its own interpretation of article 7 and argues that the current legislation meets the obligations. In addition, the government stated in a reaction to the Committee's observation, that it was of the opinion that it met its obligations under CEDAW because 'it stood free to individual women to call upon this provision before court' (notwithstanding the fact that in the later court case the state held that article 7 had no direct effect!), thus denying its own obligations under CEDAW. This formed a reason for a number of NGOs to submit the case to the court.

⁵⁴ 2003

In its judgment of 7 September 2005,⁵⁵ the District Court of The Hague determined that the state's funding of the SGP under the Political Parties (Funding) Act was in violation of its obligations under CEDAW, and ordered the state to stop such funding immediately. It should be noted that this was the first time a court gave direct effect in national law to a CEDAW article. According to the court, the state's failure to take adequate measures could not 'be justified by the need to protect another fundamental right, and the state could not take the position that it already sufficiently had met its obligations under the Women's Treaty'. On the contrary, 'by its funding, it actively facilitated the SGP'.

The Court found that, although the treaty parties had not wanted the prohibition on discrimination in article 7 CEDAW always to prevail over freedom of association, this prohibition – in the light of its specific restriction to association in political and public life – did apply to political parties. It stated that, at the time of the realisation of CEDAW a balance of interests had been struck, in which the prohibition on discrimination ought to prevail where it concerned political parties. In addition, it noted that the Netherlands had ratified CEDAW without reservations. It concluded that 'since the SGP is a political party, the state has the unrestricted obligation to actively take measures as required by the Women's Treaty'. Moreover the court noted that the case affected not only the interest of SGP-women but 'the interests of all persons, in particular women, to live in a democratic society in which discrimination on the basis of sex – with the consequence of exclusion from the right to be eligible - is not tolerated and in which the state acts to uphold this'. The Dutch Minister of Internal Affairs has decided to appeal against the judgment.

d. No figures on the participation of immigrant, refugee and minority women in political life

Statistics on participation in political and public life do not include specific information on immigrant, refugee and minority women. There is no information about their participation rate, except that, according to the government report, '50 female politicians from ethnic minorities went through a course'. The dominant 'white male' norm, which is still standard in political life, functions as a double obstacle for immigrant, refugee and minority women. Organisations of immigrant, refugee and minority women play a crucial role in overcoming these obstacles and in their integration into Dutch politics. This role should be recognised more strongly by the government, including in its funding policies.

e. International representation: targets for participation of women not achieved

It is good that the Ministry of Foreign Affairs has an action plan to raise the number of women in senior positions at the ministry. However, the targets for 2004 have not been achieved. Currently, women make up only 14% of the employees in the higher-paid salary scales and 11% of the ambassadors, permanent representatives and consuls-general. The latter is a slight increase compared to 1998 (7.5%). There are no figures available on the percentage of women in other high-ranking international positions. Obviously, the government is unsuccessful in getting women into senior international positions. As far as it is known, there is no lobbying policy to get women appointed in high positions in international organisations. Moreover,

⁵⁵ The judgment is to be found on the Internet-site www.rechtspraak.nl, no. AU2088.

figures are absent about the representation of immigrant, refugee and minority women in international positions.

Article 9, nationality and immigration law⁵⁶

a. Lack of statistics and the failure to carry out gender impact assessments

In November 2002, the Advisory Board on Immigration Affairs (ACVZ) published a national report on the implementation of the Women's Convention in relation to the position of migrant women in immigration and refugee laws and policies.⁵⁷ NGOs strongly support the principle formulated by the ACVZ that, where possible, measures should give immigrant and refugee women a position as independent as possible vis-à-vis other private parties whose position is strengthened by immigration law. If that is not possible, the state should offer protection. They also support the recommendation of the ACVZ to carry out a gender impact assessment (GIA) before making important policy changes, for example the introduction of stricter requirements for family reunification. However no GIA has been made, either with regard to changes in laws and policies on family reunification or with regard to the new proposed Integration Act, despite the fact that there are strong indications that the new, more restrictive, requirements disproportionately affect women.

In addition, NGOs note that there is still a general dearth of figures regarding the position of immigrant, refugee and minority women. Also the ACVZ-report did not contain such statistics. Moreover, the ACVZ-report limited itself to the position of these groups in relation to immigration laws and policies. However, the majority of immigrant, refugee and minority women (around 70%) hold Dutch nationality and thus fall outside the scope of the ACVZ-report.

b. Dependent residence right: improvements but not yet solved

Since 2000 immigrants with a dependent residence permit are entitled to an independent residence permit after a period of 3 years without further requirements. Since 2003, women who leave their partner within this period of 3 years because of demonstrated domestic violence are also entitled to an independent residence permit. These are important steps forward. The dependent residence permit for marriage migrants has been a point of debate for many years. One of the arguments of the government to justify the dependent residence permit has always been that it is a necessary instrument to prevent sham marriages. However, no research has been done as to the supposed necessity and possible alternatives. This is particularly relevant given the negative effects it has on the emancipation and integration of foreign female partners, the principle of the realisation of an as independent as possible position for this group of women, as formulated by the ACVZ, and the importance the government attaches to good and quick integration of migrant women. The major objection is that it reinforces the traditionally unequal power relationship between husband and wife, of which domestic violence is one of the excesses. Apart from that, it also gives the partner an instrument to prevent their wives from following education (art. 10), finding employment (art. 11), maintaining contacts with others, etcetera. Around 70% of all

⁵⁶ The government report uses the term 'Aliens law'.

⁵⁷ Advisory Board on Immigration Affairs (ACVZ), *The UN Women's Treaty in relation to the position of female foreign nationals in Dutch immigration law and policies*, The Hague, 2002.

marriage migrants are women.⁵⁸ Many female migrants do not dare leave their partner for fear of losing their residence status.

NGOs consider it an important improvement that the period of dependency has been reduced from 5 to 3 years and women are entitled to an independent residence permit if the relationship is severed within this period of 3 years because of 'demonstrated domestic violence'. However concerns exist with regard to the requirement that the domestic violence has to be demonstrated by means of an official police report or an official report of the prosecution of the offender. Victims of domestic violence - whether migrant or native - are generally not eager to press charges against their partner because of the consequences it can have for their own safety, the situation of their joint children, and relations within the (wider) family. According to the report *Private Violence - Public Business* (TK 2001-2002, 28345 nr. 2) only 12% of the victims of domestic violence make reports to the police; only in half of these cases does the victim actually press charges. Requiring that migrant women have their (ex) partner criminally prosecuted in order to be entitled to an independent residence permit thus seems to constitute an unrealistic and extremely high threshold. An alternative would be to allow the victim to demonstrate domestic violence in another way, for example by (the combination of) a report from a medical practitioner, the police, a social worker or other persons involved, and/or by the victim's stay in a women's shelter.

There is no data on the number of applications for a residence permit on grounds of domestic violence before and after the change in the law. It is therefore impossible to judge whether this change not only *de jure* but also *de facto* has improved the situation of migrant victims of domestic violence.

Though the reduction of the period of dependency took place quite recently, there are already plans to bring this period back to 5 years (letter of the Secretary of State to the Parliament, 9 March 2005, TK 2004-2005, 29861 nr. 2). Till now, those proposals have been rejected. However, as a consequence of the new Integration Act, the position of this group of women has once more weakened, since they now have to pass an additional 'integration test' before they qualify for an independent residence permit (see art. 9 under h). This situation will once more bring newcomers into an unstable and dependent situation.

c. New requirements for family reunification disproportionately affect women⁵⁹

An issue that is not discussed in the government report are the new laws and policies relating to family reunification. Since the introduction of the new Immigration Act in 2001, the government has taken a series of measures to make family reunification more difficult:

- The Dutch partner⁶⁰ now has to earn 120 % of the minimum wage in a fixed job with a labour contract for at least a year. Until April 2004, this was 70 %;
- The age for marriage-migration has been raised to 21 (for both partners);

⁵⁸ CBS StatLine, Immigration of non-Dutch nationals disaggregates on migration motives, CBS, Voorburg/Heerlen 2005.

⁵⁹ This section is, among other information, based on: E-Quality, Factsheet marriage migration no. 1, Impact on emancipation, 12 October 2004.

⁶⁰ More accurately: the partner who is (legally) residing in the Netherlands. This can relate to partners with the Dutch nationality or partners with a residence permit for the Netherlands.

- The existing exemption on the income requirement for single parents with children under the age of 5 has been abolished;
- The *leges* to obtain or renew a residence permit are substantially heightened.

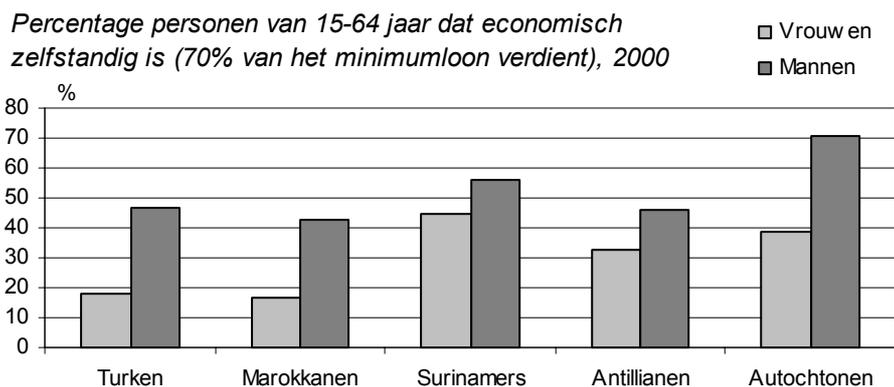
In addition, as of 15 March 2006, foreign partners are obliged to do an exam in their home country to test their knowledge of the Dutch language and culture,⁶¹ even if all the other requirements are met (the so called 'integration test'). In general, women have a weaker position than men on the labour market in terms of participation, level of income and job security, which makes it more difficult for them than for men to meet the income requirement and to have a chance to actually be reunited with a non-Dutch partner. This is even more so for women from ethnic minorities who earn relatively lower wages (compared to Dutch women and ethnic minority men) and are less often employed on a permanent basis. For single women who take care of young children it would be as good as impossible to meet the income requirement. This affects women from ethnic minorities in particular, as among this group there are considerably more single mothers than fathers (see table below).

Percentage of persons who is parent in a single parent-family, 2003

	Turkish	Moroccan	Surinamese	Total population
Women	6	5	17	3
Men	1	0	2	1

Source: Gijsberts en Merens, 2004.⁶²

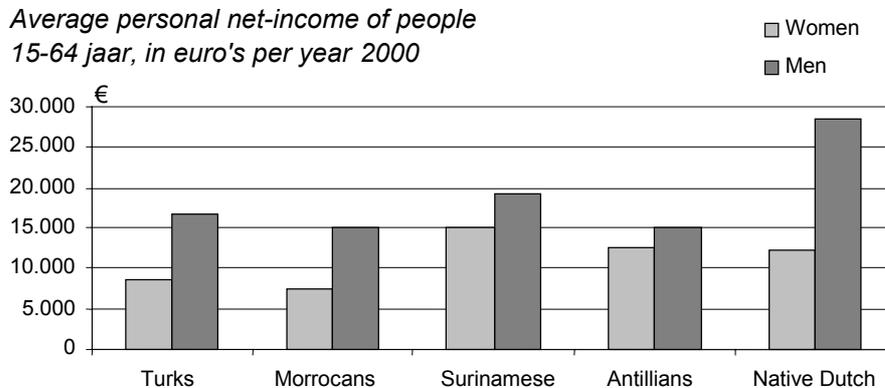
There are no figures regarding the percentage of men and women who meet the income requirement. However the figures below give an indication of differences in income based on sex and ethnicity (First figure: percentage of persons between 15-64 year that is economically independent, meaning who earn 70 % of the minimum wage (2003); Second figure: average net income of persons between 15-64, in euros per year (2000).



⁶¹ In this respect it should be noted that when trying out this exam even highly-educated Dutch nationals and students from Teacher Training Colleges failed the test.

⁶² Gijsberts, M. & A. Merens (red.), *Emancipation in Estafette, the position of women from ethnic minorities*, The Hague: SCP 2004.

Source: Gijsberts en Merens, p. 122.



Source: Gijsberts en Merens, p. 120.

Moreover, women are far more likely to hold temporary and flexible jobs, so they have more problems to meet the requirement that the partner already living in the Netherlands must have a job for at least one year after entry of the (non-Dutch) partner into the country. The table below shows the percentage of workers with a flexible working contract.

*Percentage of workers with a flexible labour relation, 2002**

	Turkish	Moroccan	Surinamese	Antillean	Moluccan	Native
Women	26	26	12	21	22	8
Men	17	16	13	14	20	5

* Flexible labour relation means a contract shorter than 1 year without perspective on a fixed labour contract.

Source: Gijsberts en Merens, p. 104.

If the new requirements indeed indirectly discriminate against women, in particular immigrant, refugee and minority women, and women with small children, this would constitute a violation of CEDAW,⁶³ and seriously affect their right to family life, one of the most fundamental human rights. Already in 2002 the Advisory Board on Immigration Affairs (ACVZ) concluded in its report on the relation between CEDAW and the Dutch immigration laws that the policies concerned might violate article 16, sub 1 (a) and (d) of the Convention. They recommended collecting statistical information on the extent to which the different groups (broken down along sex and ethnic background) are able to meet the income requirement and submitting the proposals concerned to a gender impact assessment. However, despite these recommendations and despite strong indications that the requirements concerned disproportionately affect women, no gender impact assessment has been made before their introduction. According to the government, there was no point in undertaking a GIA 'since its outcome will not affect the policy changes' (sic) as the policy concerned had already been agreed upon (minister of Immigration and

⁶³ See e.g. prof. mr. T.P. Spijkerboer, *The UN Women's Treaty and the Dutch Immigration Laws*, Amsterdam: VU 2002, pg.10 ev.

Integration, in response to the ACVZ-report). In light of the obligations of the Netherlands under CEDAW, this is, to say the least, a remarkable argument.

d. Abandoned women: no possibility to return to the Netherlands

Another issue not mentioned in the government report is the situation of ethnic minority women who are abandoned in their country of origin by their husbands, usually during a vacation. In many cases, the husband illegally confiscates the wife's passport and other identification documents, thus preventing the wife from travelling back to the Netherlands as she is unable to prove her identity to the Dutch authorities. If she is not able to return within a certain period, it will be assumed that she has given up her residence and she will lose her residence permit. In addition, the regular policies with regard to the dependent residency permit apply, that is to say: within the first 3 years she is only entitled to an independent residence permit in case of demonstrated domestic violence. This is extremely difficult to prove when she involuntarily resides in her home country. After the period of three years she can apply for an independent residence permit. But also this is extremely difficult when residing in her home country and without the co-operation of her husband and (probably) her family.

In its report, the Commission PaVEM (Participation of Women from Ethnic Minority Groups), which was established by the government in 2003, made a number of recommendations to address this situation. Among other things, the commission recommended that in case of involuntary return it should not be assumed that the woman concerned gave up her residence in the Netherlands. They recommended the development of a protocol for Dutch consulates and embassies in the countries of origin, and the establishment of a hotline in the Netherlands. Till now, the government has only 'clarified' the regulations (Immigration Circular, Chapter B1/1.2.3, WBV 2005/35). Women have the possibility to apply for a short stay visa to return to the Netherlands to arrange for a divorce. It is not known if such visas are actually granted, taking into account the presence of a contra-indication (the 'risk of establishment').

e. Serious critique of HRW on the procedure with regard to female traumatised asylum seekers

It is a positive change that the INS pays more attention to dealing with traumatic experiences. However, the state report doesn't mention the very critical 2003 report of Human Rights Watch *Fleeting Refuge; the triumph of efficiency over protection in Dutch asylum policy* (www.hrw.org). The main points of concern are:

- The 'accelerated procedure' in refugee reception centres (the so called 48-hour procedure);
- The policy regarding repeated asylum requests;
- The policy on (unaccompanied) minors.

If an asylum seeker is referred to the 'accelerated procedure' she or her lawyer has only 2 hours to prepare for the interview with the INS and 3 hours to read and comment on the report of the interview. In the case of female asylum seekers who have been victims of sexual violence, female genital mutilation, honour-related crimes or domestic violence, this is extremely short, especially when women do not easily talk about this kind of experience. Moreover, a second asylum request is only taken into consideration when there are 'new facts', i.e. facts that were not and could not be known during the first procedure. This means that if a woman is not

able or willing to talk about the sexual violence during the first interview, she has no possibility to submit a second application.

This led Human Rights Watch to observe: 'asylum seekers are not always provided with an adequate opportunity to present their claim for asylum and judicial review doesn't always ensure that the merits of the case are being examined' (pg. 15). According to HRW the Dutch policy is too formal, barely leaves space for traumatised female refugees who were not able to speak about their traumas in the first procedure, and risks violating the principle of *non-refoulement*.

Since HRW's criticism, the government has adapted its policy (TBV 2003/24): in the case of a repeated asylum request the INS now has the possibility to take into account new aspects if it is plausible that these aspects were not put forward by the asylum seeker due to trauma. However, judicial review is still not possible since the highest court in asylum matters (Afdeling Rechtspraak Raad van State) has judged that, in contrast to an administrative body like the INS, the judge does not have a discretionary competence. This means that there is no independent court which can review the enforcement of the new policy, a fundamental condition in the framework of the rule of law. This is more important since an incorrect decision of the INS can lead to a violation of the prohibition on *refoulement*.⁶⁴ To allow for judicial review, the law needs to be revised.

In addition, NGOs are of the opinion that indications of the existence of trauma should, per definition, exclude referral to the 48-hour procedure, as was recommended by the Advisory Board on Immigration Affairs (ACVZ) in its report (pg.27).

f. No recognition of sexual violence as a ground for asylum

The state report extensively describes Dutch policies on domestic violence with regard to Dutch women. However, although the EU has recommended the recognition of domestic violence as a ground for asylum, the government still categorically denies this possibility. Women are not recognised as a 'social group' according to the Refugee Convention. In contrast with British [House of Lords 25 March 1999, *Islam and Shah*] and American case law, Dutch policy doesn't offer the possibility of being granted refugee status because of belonging to the social group of 'women' or 'battered women'. The threshold for female asylum seekers to prove that they are not protected against domestic violence in their own country is extremely high and seldom met. This leaves the women concerned in the impossible position that it is not disputed that they are victim of domestic violence, but nevertheless are sent back because they cannot prove that they will not be protected by their own authorities.⁶⁵

Female genital mutilation has recently become recognised as a ground for asylum. This is a step forwards. However, this is not the case with fear of honour killings. As in the case of domestic violence, women fearing to become victims of honour killing in their own country have to prove that they are not being protected by their

⁶⁴ On 5 July 2005 the European Court for Human Rights judged for the first time that by the deportation of an Eritrean asylum seeker the Netherlands had violated art. 3 ECHR, the prohibition on torture and inhuman or degrading treatment.

⁶⁵ See e.g. District Court 's Hertogenbosch, 6 June 2005, No. awb 04/21435, Nigerian woman, rape within marriage, protection /asylum claim denied because she didn't file a complaint with the Nigerian authorities.

authorities, evidence which is often difficult – if not impossible – to obtain. According to the minister of Justice, no specific policy is needed in this respect because she takes these situations into account in her general policy. However, case law of the highest court in immigration matters (Afdeling Rechtspraak Raad van State) shows that if in a ‘regular’ procedure the woman states that she cannot return to her home country because of fear of honour killing or domestic violence, the Court holds that this motivation is refugee-related and therefore cannot be taken into account in the ‘regular’ procedure. At the same time, the Court recently ruled that sexual violence is no ground for asylum.⁶⁶ The result is that victims of sexual violence can neither qualify for refugee status nor for a regular residence permit.

The state report mentions that, at the introduction of the new Immigration Act, Instruction no. 148 had been incorporated in the Immigration Circular. However, it does not mention that a number of important aspects included in the old Instruction no. 148 have not been incorporated into the new law, notably the possibility of granting a residence permit on humanitarian grounds.⁶⁷ NGOs are of the opinion that, in serious cases of domestic violence or other forms of sexual violence, it should be possible to grant a residence permit on humanitarian grounds, as recommended by the ACVZ in its report (pg. 23). The text of the Immigration Act should be adapted to this aim.

g. Unwillingness to incorporate UNHCR gender guidelines

It is a positive change that female asylum seekers can request a female official and interpreter. However, if such request is not met, it should be standard procedure that the lawyer can ask for an additional or new interview in case of gender-related asylum claims. Children should never be present at the interview with their mother, not only because, as stated by the government, they can ‘disrupt’ the interview, but above all because women can feel inhibited to talk about experiences of sexual or domestic violence in the presence of their children.

Another problem is posed by the country reports used as background material to decide on asylum requests. These still do not systematically deal with the position of women in the country concerned and information is often inconsistent and incomplete.⁶⁸ The same goes for the Immigration Circular. Even if, as stated in the government report, the establishment of separate gender guidelines does not fit into the Dutch legal system, the UNHCR Gender Guidelines are a valuable instrument for adaptation of current provisions.

h. Obstacles to participation of immigrant, refugee and minority women

It is praiseworthy that the government pays specific attention to women in its integration policies. However, this attention is used to weaken the position of immigrant, refugee and minority women, rather than to strengthen their position. It is, for example, a justified concern that there are, in particular older, migrant

⁶⁶ A complicating factor in these cases is the legal distinction between ‘regular immigration procedures’ and ‘refugee procedures’. According to the new Immigration Act, it is not allowed to submit an application under both procedures.

⁶⁷ Exceptions are victims of trafficking and battered wives with a dependent residence permit. In such instances it is still possible to apply for a stay permit on humanitarian grounds.

⁶⁸ Spijkerboer, a.w., p. 20 ev.

women who find themselves in an isolated position⁶⁹ and lack knowledge of the Dutch language. However, rather than stimulate their (labour) participation, combat discrimination in the labour market, offer free and easily accessible language courses, and good, cheap and accessible childcare facilities, measures are being taken that reinforce the dependency of immigrant women in relation to their partners and risk increasing the barriers to their integration and participation. Under the new Integration Act, for example, all immigrants are obliged to follow a mandatory 'integration course' followed by a mandatory 'integration test'. Immigrants have to pay for the course and the exam themselves, which can run up to 6,000 Euros. Specific groups, including certain groups of women, can get (partial) compensation of these costs if they pass the test within a fixed period. If they fail to do so, they are not only not entitled to (partial) compensation, but also risk getting a substantial fine. For women, this has a number of specific consequences:

- For illiterates it is difficult, if not impossible, to pass the test in the fixed period. Women are over-represented in this group. The same goes for women who take care of young children or other family members;
- Women without an independent source of income are dependent on the cooperation of their partners to be able to follow the course and take the test. Not every partner is willing to pay the fees.
- In general, women have a lower income than men (see above). It is thus more difficult for them to pay these fees. Also, those who are offered (partial) compensation, have to pay a financial contribution themselves. Moreover, they risk being fined if they do not pass the test in time;
- Before immigrants can qualify for an independent residence permit, they must successfully pass the 'integration test'. The majority of immigrants with a dependent residence permit are women. For partners who prefer a dependent spouse this can be a reason to prevent their wife from following the course and taking the test (see also art. 9 under b).

With regard to the 'integration test' it is highly questionable what this test precisely measures.

i. Linkage Act: no protection for undocumented women

According to the new Immigration Act (art. 10, which followed up the 1998 Linkage Act) undocumented migrants have no access to healthcare and the social security system, except for 'medically necessary' care. No gender impact assessment was made before the act came into force despite indications of disproportional consequences for women.

Undocumented women who have become victims of (sexual) violence (with the exception of victims of trafficking in women) are not entitled to social assistance, medical care, and access to a safe shelter. Most shelters will not take in undocumented women because of the financial problems this poses. The women's shelters have raised this issue several times. According to NGOs, the state has the obligation to protect all women in the Netherlands against violence (General Recommendation 19). They therefore advocate a similar regulation for victims of domestic violence as exists for victims of trafficking in women (see also art. 1).

⁶⁹ 'Isolated' in this context should be interpreted as isolated from mainstream Dutch society. In most cases, there are strong family ties and networks of friends, as well as strong networks through, for example, the churches.

Moreover, there is a lack of information on the health situation of undocumented women. In its report, the ACVZ insisted that research into the health situation of this group is urgently needed (pg. 38). They also noted that for many service providers it is unclear what should be understood by 'medically necessary' care. They urged the government to clarify this concept and to ensure that service providers are reimbursed for the costs of providing healthcare to undocumented migrants in a timely fashion (see art. 12).

In practice, many undocumented migrants refrain from asking for help because they think they are not entitled to it. This is reinforced when service providers refuse to provide help either because they do not know the regulations or because of the financial risks. This enhances the vulnerability of undocumented migrant women to abuse and exploitation.

Article 10, Education

a. Shortcomings of the report

Structure of the report

NGOs do not understand why the Government reports on sports under article 10, instead of article 13, where it belongs. On this point however, NGOs follow the structure of the government report.

Lack of information disaggregated by sex and ethnicity

The only detailed information disaggregated by sex and ethnicity in the government report is the table on educational standards on page 52. But even this table fails to provide the necessary information: the category of ethnic minority is too general (it also includes western immigrants), and the figures are rather old (published in 2001, which means the statistics were gathered even before that).

On the whole, the information provided by the government is very rudimentary, while more detailed information is available. The Emancipation Monitor 2004 dedicated 30 pages containing detailed information to the gender aspects of education.⁷⁰ A small part of this information is presented in this shadow report. As the information in the Emancipation Monitor is rather alarming, one might suspect that the government deliberately withheld this information. NGOs hope that this is not the case, and that the government will provide the actual information to the CEDAW Committee. Education is one of the most important areas for emancipation, both with regard to stereotyping and conditions for career-building.

b. No comprehensive set of measures to achieve government's main objectives

In its report, the government does not mention targets and objectives of education-emancipation-policy. The Emancipation Monitor quotes the yearly report of the ministry of Education of 2003 which has a general target: 'equal representation of male and female students in all forms of education and male and female personnel in all management positions'. This general target is made operational in the following objectives: an increase in intake and continuation of female students in technical education, and of male students in teacher training and care education, and an increase in the number of women in management positions in higher education. These objectives do not relate comprehensively to the general target, for example, equal representation of male and female personnel in other than higher education is translated into an objective.

However, apart from a very specific program to promote women to senior lecturer positions at universities (Aspasia program), the government does not present a comprehensive set of measures to achieve these objectives. It uses gender mainstreaming as an excuse (general policy should be sufficient to achieve the objectives). The Emancipation Monitor 2004 shows very clearly that the objectives have not been achieved; segregation in education is still very dominant (see also the following paragraphs, in which figures are given). Both the principle of gender mainstreaming and the CEDAW Convention require measures to achieve equality of

⁷⁰ Portegijs, Wil, Annemarie Boelens en Linda Oltshoorn: *Emancipation Monitor 2004*, Sociaal Cultureel Planbureau (SCP) en Centraal Bureau voor de Statistiek (CBS), November 2004.

men and women. If general policies are not sufficient, which is the case, specific measures are obligatory. As CEDAW obligations go further than equality before the law, failure to take specific measures to achieve the objective of equal representation of male and female students in all forms of education can be seen as violation of article 10 of CEDAW.

c. Representation and performance at different levels of schooling

Primary school

Figures in the Emancipation Monitor 2004 show that the test scores of girls at the end of primary education are a little lower than the scores of boys. This also applies within most ethnic groups, except for Surinamese girls; their score is better than the score of Surinamese boys. The score of Antillean girls is considerably lower than both the scores of Antillean boys and that of other girls.

*Table 3.1 CITO-test primary education by ethnicity, 2002 (average total score)**

	girls	boys
Ethnic Dutch	535.37	536.10
Turkish	527.84	528.82
Moroccan	527.94	528.56
Surinamese	532.01	529.40
Antillean/Aruban	524.87	529.35
Total	534.31	535.08

* The average score of pupils for different types of secondary school is 547 (pre-university education), 541 (general secondary school) and 529 (pre-vocational education).

Source: Emancipation Monitor 2004

Not all students take the CITO-test: students with learning arrears of 1½ years or more do not participate. This group is of considerable size; disaggregation by sex and ethnicity within this group is relevant to ensure useful analysis. Such analysis is essential for the design of appropriate measures to make sure all students perform in accordance with their capacities.

The further schooling advice for secondary education is partly based on the CITO-test, but also on the opinion of the teacher of the last grade of primary school. No detailed information, disaggregated by gender and ethnicity, is available on this school advice, although it might be expected that, at this point, gender and ethnic stereotypes can play a role. Comparing the figures on school advice to those on the CITO test can provide information on the role stereotypes might play in the advice.

Secondary school

In the Dutch school system, girls are somewhat over-represented in the higher forms of secondary education, and under-represented in pre-vocational education, when compared to boys. This is also the case within ethnic minority groups. However, the differences between ethnic Dutch students and those of ethnic minorities is bigger than the differences between boys and girls. Turkish and Moroccan girls attend pre-vocational education much more often than ethnic Dutch girls, and less often higher education.⁷¹

Vocational Education

In 2002/2003, the number of students in 'senior secondary vocational education' (MBO) was 446,000, while the numbers for higher professional and university were

⁷¹ Emancipation Monitor 2004

respectively 261,000 and 167,000 (Emancipation Monitor 2004). Senior secondary vocational training is thus the most common form of professional training in the Netherlands. It is therefore remarkable that the Government does not report on this type of education.

Higher education

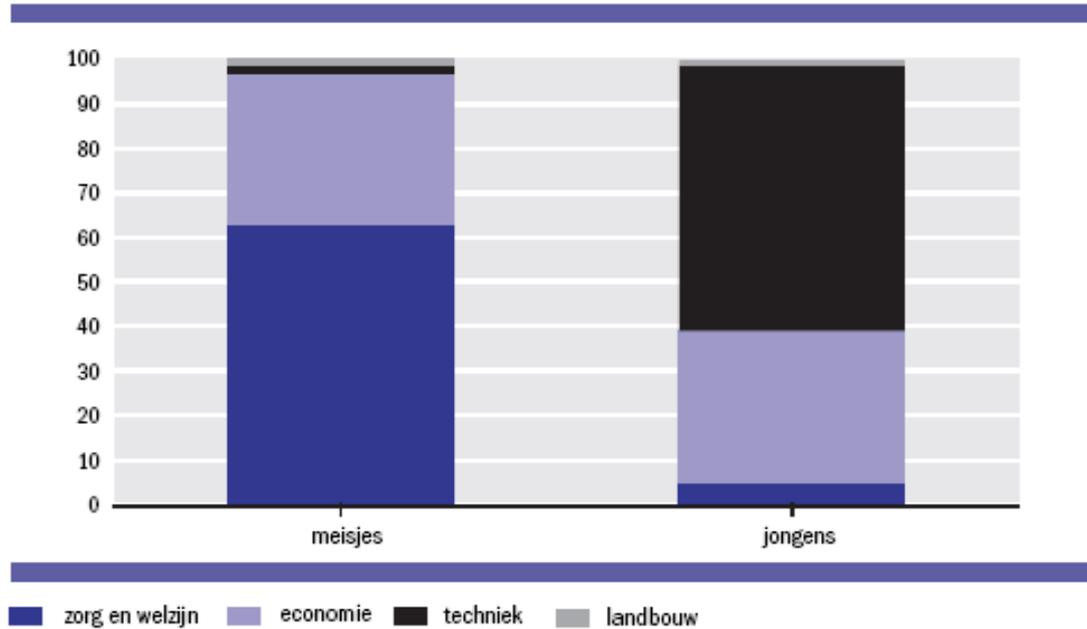
In its report, the government makes the observation that ethnic minority women fall behind to a lesser degree than men at university level, but more so in higher professional education, and that the levels of both men and women from non-western ethnic minority backgrounds attending higher education are too low. However, the government does not indicate what measures it will take to improve this situation.

d. The segregation in education is alarming

Secondary education

In all forms of secondary education, girls hardly (less than 5%) choose technical profiles while boys hardly take up care and welfare profiles. The statement of the government that 'large numbers of girls have opted for the subject combination 'Science and Health' (pg. 51) is not supported by figures from the Emancipation monitor 2004. To begin with, the profile 'Science and Health' does not exist. In senior general education and pre-university education, there is a profile 'Nature and Techniques', and a profile 'Nature and Health'. The first one is hardly chosen by girls (1-4%); the second one by around 15% of the girls at senior general secondary education, and by almost 30% of the girls at pre-university education.

In pre-vocational training, the most common type of education for most students, the situation is even worse, as is demonstrated by the following histogram:

Figuur 3.3 Profielkeuze vmbo, 2002/'03 (in procenten)

Bron: CBS (Onderwijsstatistieken 2002/'03)

profielkeuze = choice of profile
 vmbo= pre vocational education
 meisjes= girls; jongens = boys

zorg en welzijn= care and welfare; economie= economics; techniek= Technics; landbouw= agriculture

This diagram makes words superfluous.

Higher education

In higher education as well, only a small proportion of women is opting to study the exact sciences or follow technical courses. The government makes this observation in its report, but has no action plan to change this situation.

Failure to take measures

With such education statistics, segregation of the labour market is a logical consequence. The government does not undertake any specific measures to combat this segregation. Earlier projects on women and technology (like the platform Framework AXIS, as mentioned by the government) obviously did not have the expected (or wanted) results. Moreover, most projects on women and technology came to an end. The government does not provide structural finances to prolong and implement successful projects. The current alarming situation requires an action plan by the government aimed at increasing both the number of girls opting for technical profiles and the number of boys opting for care profiles. An action plan should have clear objectives, a comprehensive set of measures, and a monitoring system. At this moment, the government does nothing like this. Leaving it as it is, and not taking strong measures, also means that existing gender stereotypes are confirmed and strengthened. In the view of NGOs, not taking specific measures can therefore be considered not only a violation of article 10 of CEDAW, but also of article 5, which obliges the government to take all appropriate measures to combat existing stereotyped roles for men and women.

e. Discrimination against minority girls in teaching practice

Vocational education is very practically orientated, and includes teaching practice at companies (industry, offices, and shops). But also in higher education, teaching practice is often part of the curriculum. In recent years, many immigrant, refugee and minority girls report discrimination when they apply for trainee posts. Sometimes this discrimination is linked to the heads-carves they wear. The grounds of the discrimination can be ethnicity, religion or sex, and is often a combination of these. Under CEDAW, the Government is obliged to eliminate this form of discrimination against women, and therefore has to take measures.

f. No information on adult education and vocational training

The Government has not reported on adult education and vocational training, so it is difficult to discuss the subject. Detailed figures are needed on which discussion and analysis can be based. However, NGOs want to express some worries.

The costs of training aimed at reintegration are mostly compensated only for those who have some kind of social security or welfare allowance. For people without a job and without any allowance (mostly women who want to (re-) enter the labour market after some years of caring for children) the possibilities for financing such training are very limited. Some of these women studied and/or worked before, but need to update their knowledge and skills; others have no work experience or job-related education at all. Both groups need training or education to have real prospects on the labour market. Without funding possibilities, they are totally dependent on their partners for their education.

The concept of lifelong learning means that all employees should receive training and education during their career. To evaluate the policy, and to judge whether special measures are needed, detailed information is needed on who is making use of the possibilities for training. Many factors should be made visible: gender and ethnicity, but also level of education, position, part-time or full-time work, the combination of work and family responsibilities, the duration of the employment, the sector of work. One gets the impression that opportunities for training are more limited for people with lower positions, lower levels of education, part-time jobs, more family responsibilities, and within the 'soft' sector, all groups in which women are over-represented.

g. Participation of women is no longer an objective in the policy on 'the knowledge society'

The 'knowledge-society' is one of the bigger issues in the policy of the ministry of Education. One of the original objectives within this policy was to increase the participation of women in the knowledge-society. This objective has since disappeared.⁷² NGOs have the impression that the policy on the knowledge society, as well as the established 'platform on innovation' are rather male-dominated and (because of that?) increasing narrowed to technical and ICT-topics. NGOs see this as a missed opportunity: the original broad approach to the knowledge society and innovation had several starting points for both gender mainstreaming and specific measures aimed at emancipation.

⁷² Emancipation Monitor 2004

h. No information on gender education

In its report, the government does not provide any information on education on gender issues and the elimination of stereotyped concepts of the roles of men and women, as required by article 10c of CEDAW. Such education should also include a focus on (sexual) relationships between men and women, the right to (sexual) self-determination, the role of balances of power, etcetera.

i. No equal representation of male and female personnel in education***Primary schools***

Most of the teachers in primary schools are women, except for the heads of schools who are often men. It seems the government has no vision on this topic, for example from the educational point of view and in relation to article 5a of CEDAW. The government does not take measures to change the situation.

Female professors

In the last years, there has been some change in the number of female senior lecturers and professors, probably partly as a result of the Aspasia program, and partly as a result of programs by universities. These university programs often generate special professorships, for one or two days a week. NGOs have the impression that newly appointed female professors can be found in particular amongst these part-time professors. Another impression is that the salary of female professors is lower than that of male professors. To obtain a clear picture of developments and the actual situation, the part-time factor and salaries attached should be made visible.

If the Aspasia program is as successful as the government states, it should be prolonged up to the point where the targets on equal representation are met (and maybe even after).

j. Time for sport, a good example of gender mainstreaming

Regarding participation in sports, the government seems satisfied with the observation that men and women take part in organised sport in roughly equal proportions. However, to judge whether there is equality, more detailed information is needed on the types of sports men and women practice (gender stereotypes); statistical information disaggregated by age and ethnicity; the (state) budget allocated for sports for men and sports for women, etcetera.

In February 2006, the government signed an agreement with several sport federations and the four biggest cities of the Netherlands, called 'Time for sport, participation ethnic minority youth by sport'. In this agreement is stated that Muslim and Hindustani girls participate less in sports; the activities to be carried out within the project will pay special attention to their participation. The agreement contains targets and the results of the project will be monitored. Although the targets are rather general, and the activities within the framework of the project still have to be worked out, the structure of this plan seems good: targets, measures related to targets and monitoring are all included, as is attention to gender-aspects. A good example of gender mainstreaming (at least in the planning phase).

k. Executive members within sports federations; the government sits back

The development of instruments and support for the recruitment, training and promotion of female executive board members is a good thing. However, it is not enough to leave it to the sports federations to make use of the instruments and support. Under article 2 of CEDAW, it is an obligation of the government to make sure that discrimination by any organisation is eliminated. Therefore the government cannot sit back. It should make sure that sports federations appoint more women to executive and management positions.

Articles 11 and 13, employment and economic life

a. The report does not cover all aspects of economic and social life

Although the government claims to report on article 11 and 13, it limits this report to child maintenance, the tax system and the position of self employed entrepreneurs. It does not report on other aspects of economic or social life (only sports is included in the report under article 10).

b. Almost no information disaggregated by sex and ethnicity

Although the CEDAW Committee urged the Dutch government to provide detailed information on the implementation of the Convention disaggregated by sex and ethnicity and with respect to different ethnic and minority groups, the government report on articles 11 and 13 does not contain such detailed information. The only detailed information provided with respect to different ethnic and minority groups is a table on employment and unemployment rates on page 58. This table shows that the unemployment rate for minorities is, without exception, higher than amongst ethnic Dutch women. It also shows major differences in employment rates between the different groups. Such discrepancies require specific measures aimed at the different groups of women. The report does not make clear what measures will be taken (other than projects at the local level), how the measures are related to the specific situation of each group, and whether the effects of the measures will be monitored.

The government report does not contain detailed information disaggregated by sex and ethnicity on other important topics, such as equal pay, the use of child-care, combining work and care, and segregation on the labour market. This information is essential for analysing and monitoring the position of women, and for determining whether measures are needed, and whether the measures that have been taken are appropriate. In the Netherlands it is still not the practice to disaggregate all important statistics by sex and ethnicity.

c. High female unemployment rate requires measures involving particular focus on minority women and women re-entering the labour market

Unemployment

Information on employment and unemployment presented in the government report is from the year 2001. More recent information from the Central Bureau of Statistics (CBS) shows that, although the female employment rate (working 12 hours or more per week⁷³) rose to 59 percent⁷⁴ in 2005, women do not profit equally from the recent economic recovery and the fall in unemployment. CBS-figures show that unemployment is highest amongst young women.

The government left the issue of women's participation in the labour market to social partners and local governments. In recent years, that has failed to generate the expected results. The Central Bureau of Statistics has concluded that the government's objective - 65% of women employed for 12 or more hours a week in

⁷³ This limitation makes international comparison difficult. It would be better to present the figures in labour-years.

⁷⁴ CBS, february 2006, as presented in De Volkskrant, 7 february 2006.

2010 - will not be achieved. It is necessary that the government recognises its responsibility and its obligations under CEDAW, and takes effective measures to combat discrimination against women in employment and economic life. Taking into account the ineffectiveness of the soft measures of the past years, harder measures should be taken, including temporary special measures as mentioned in article 4-1 of the Convention.

Unemployed workers by sex and age

	15-24		25-44		45-64		Total	
	%	x 1 000						
Men								
2005 Sep-Nov	10.9	47	4.8	105	4.6	73	5.3	225
2004 Sep-Nov	13.5	61	4.8	108	4.5	71	5.6	240
2003 Sep-Nov	9.9	47	4.6	105	3.9	59	4.9	212
Woman								
2005 Sep-Nov	13.2	53	6.7	117	6.3	65	7.4	236
2004 Sep-Nov	13.8	54	6.8	118	5.6	56	7.3	228
2003 Sep-Nov	10.3	41	6.4	111	5.2	49	6.5	201
Total								
2005 Sep-Nov	12.0	100	5.6	222	5.3	139	6.2	461
2004 Sep-Nov	13.6	115	5.7	226	4.9	127	6.3	468
2003 Sep-Nov	10.1	88	5.4	216	4.4	108	5.6	412

Source: CBS

Immigrant, refugee and minority women

In most ethnic groups, unemployment⁷⁵ amongst women is higher than unemployment amongst men.⁷⁶ In the Turkish, Afghan and Somali group, the differences are large. In the Antillean, (ex-) Yugoslavian and Iranian group, there are almost no differences between men and women. Unemployment among minority youth is high (25%); with few differences between men and women. An exception is Surinamese youth: unemployment among men is 20%; among women 24%. It is the obligation of the government to take appropriate, effective measures to combat the unequal high unemployment of women, and of various ethnic groups of women. In recent years, the government terminated measures aimed at improving the position of women from ethnic minorities on the labour market, such as the Employment of Minorities Promotion Act (Wet SAMEN) and the Committee for the Participation of Women from Ethnic Minorities in the Labour Market (PAVEM). Termination of a measure is appropriate if the measure is not effective. But other, more effective measures should be initiated. The Government did not take other measures to replace the terminated ones.

Women re-entering the labour market

Local authorities are responsible for the reintegration on the labour market, both of persons with a social welfare allowance (which is paid by the local authorities), and of those without social welfare. As the local authorities do not benefit from reintegrating this second group by saving the expenses of the allowance, their efforts for this group are limited, and they often require a rather high contribution. This means that women who want to re-enter the labour market, for example after a few years of caring responsibilities, are not supported, but rather discouraged. However, it is the obligation of the Dutch government to take measures to advance

⁷⁵ Those who are registered as unemployed and are looking for a job.

⁷⁶ Social Atlas of women of ethnic minorities, SCP, March 2006

the position of women in employment. Not only women on social welfare, but also women with a working partner.

d. Discrimination in the workplace: analysis and enforcement needed

Discrimination in the workplace still occurs, as the government states in its report. The projects described by the government are very broad; they cover all discrimination grounds. To judge whether any measure is effective to combat discrimination against women (and of immigrant, refugee and minority women in particular), detailed analysis and monitoring is necessary. The equal treatment law is in place, but little is done to enforce it (see also remarks under art. 2, and the shadow report of the Equal Treatment Commission).

e. The pay-gap between men and women remains unchanged

The 2000-figures on the gap in pay, as presented by the government, show stagnation when compared to 1998: the difference between men and women in trade and industry remains 23%; 7% when corrected for personal background. The government does not mention more recent research on equal pay, while the labour inspection reports on it every two years. In 2004, the figures on 2002 were published; they show stagnation again: the average pay-gap (difference in hourly wage) between men and women was 19%; the corrected percentage was still 7%. For that matter, the personal backgrounds that are used to correct the percentage can be gender-related, and therefore contain 'hidden discrimination'. This obtains, for example, when the part-time factor is used. The average pay-gap between 'native-Dutch' women and minority women is considerable, but after correction for personal and professional backgrounds, these differences disappear.

Most measures taken on equal pay are rather soft: research, quick scans and awareness raising. Although these are conditional measures, the stagnation makes clear they are insufficient. More effective measures are necessary. The law on equal pay exists, but is rarely enforced. It is very hard for women to prove unequal payment: male colleagues are not obliged to provide information about their salaries.

f. Full time work: 32 hours or 40 hours? Effects on division of care

Despite the recommendation of the CEDAW Committee in its 2001 Concluding Observations, the government does not report on its efforts to improve conditions for working women so as to enable them to choose full-time, rather than part-time employment. NGOs have the impression that state policy is not aimed at promoting full-time work by women. No measures are taken to make it easier to work full-time. On the contrary: several measures, like very high costs of child-care where family income is above a certain level, discourage women from working more hours. The government seems to be satisfied with the '1.5-earners-model', in which the man has a full-time job, and the woman a half-time job. This 1.5 model is often the starting point of government policies.

By contrast, NGOs want to stress that a lot of larger part-time jobs entail full-time workloads, for example in health care, where the pressure of work is high, and jobs of 32 hours are rather common. NGOs therefore suggest encouraging the employment of women in jobs of 32 hours or more, instead of just 'full-time'. Few Dutch couples with young children choose to have two full-time jobs; they prefer

the 1.5-earners model; sometimes they choose that both partners work 4 days (32 hours). The latter choice provides good opportunities for a more balanced division of work and care. Measures to encourage women to choose jobs of 32 hours or more could also include measures to encourage men to choose jobs of 32 hours or less. NGOs are concerned about plans to increase the full-time norm to 40 hours a week (now 36-38 hours). It can be expected that this change would have the effect that men will be involved less in care, and women will apply for fewer full-time jobs.

g. The new life course saving system does not contribute to the division of paid and unpaid work

In its report, the government spends two paragraphs on combining work and care (par. 4 and 7). In paragraph 4, some legal measures are described; mainly old legislation. It also mentions an evaluation of the Working Hours Adjustment Act, but without mentioning the results. Most of the provisions of the Work and Care Act and the Carer's Leave Act are unpaid provisions. The new life course saving scheme makes it possible for employees to save a part of their salaries for long term leave, parental leave and/or early retirement. The expectation is that especially people with higher incomes will make use of the scheme in favour of earlier retirement: they can miss part of their monthly salaries, and they can save an amount that makes it possible to take a substantial period of leave. Under pressure of the parliament, the new life course saving scheme has been subjected to a Gender Impact Assessment.⁷⁷ The English summary of the conclusions of this assessment state: 'In general, the main users of the Life-course Savings Scheme will be employees on higher incomes, men, older people and couples without children. Use of the Scheme to fund care leave (caring for children or providing informal care) is likely to be modest. The financial benefit is generally small, and it is likely to be mainly women in the higher income groups who will use the Scheme for this purpose. The temporary parental leave allowance could however boost the use of the Scheme and increase the take-up of parental leave by men in particular. If the government wishes to support the take-up of parental leave and promote the participation by men in care tasks, this allowance needs to be given a structural character. Take-up of the Scheme for funding pre-pension arrangements is likely to be significantly higher. The wish among employees to stop work before age 65 is strong and the relatively long period involved (1.5-2.1 years) means that saving via the Life-course Savings Scheme offers a greater financial benefit. Here again, it will be largely the higher income groups who are able to benefit from the measure, and men and women who have not used the Scheme to fund care leave will have an advantage. All in all, the Life-course Savings Scheme is more important for the possibilities it offers for funding pre-pension arrangements (particularly for the higher income groups) than for combining work and care. The Scheme does virtually nothing to bring closer the government's emancipation objectives.'

It further states that if the government wants the life course savings scheme to contribute to the goals of the emancipation policy (65% participation of women on the labour market, more than 60% of women economically independent, share of men in unpaid work 40%, and share of women's income within total income out of labour 35%), more substantial measures are needed. Making the use of the scheme more financially attractive would certainly help. A structurally advantageous arrangement for both parental leave and care leave is legitimate.

⁷⁷ SCP, 2004

In its reaction to the Gender Impact Assessment, the Government stated that it saw no reasons to adjust the life course savings scheme. NGOs find this incomprehensible, especially since the government is not taking any other measures to achieve a more balanced division of work and care. Moreover, in the light of the Life-course Savings Scheme, additional arrangements of paid parental leave or care leave, which are part of some collective labour agreements, are being terminated. The Life-course Savings Scheme certainly cannot be seen as an effective policy to ensure a more balanced division of paid and unpaid care. Either adjustment of the scheme or additional measures are needed.

h. The new Childcare Act has caused a decrease in the use of childcare

The new Childcare Act (2005) changed the system of child-care, but did not make it easier for parents to arrange child-care. The paperwork, which was previously carried out by intermediaries, discourages many parents, in particular those with lower education and income, from making use of child-care. People with higher incomes are confronted with higher costs for child-care; an increase that is not (fully) compensated by the contribution of employers and tax-rebate. The system discourages women from working more days a week: the costs of child-care will increase, not only because of an extra day of care, but also because the family-income is higher, so the parental contribution per day will also increase. After the change in the Childcare Act, 7.5 % of parents reduced the use of child-care, 6% terminated it, and only 1.4% increased (or started) the use of child-care.⁷⁸ In 2005, several child-care centres had to close down. It is not unthinkable that, in particular, women with small jobs plus husbands with full-time jobs, gave up work because they had to spend 'the entire woman's income' on child-care. Starting January 2006, financial compensation for those with higher incomes improved, which immediately led to increased demand (newspaper reports, January 2006). One of the problems regarding child-care in the Netherlands is that the government presents child-care only as a condition for the 'higher economic goal' of participation of women on the labour market. No attention is paid to the educational aspects of good child-care. The government does not set quality standards for child-care; this is left to social partners (in the collective agreement in the child-care sector) and local authorities. The 'ideology of motherhood' is also rather stubborn in the Netherlands (see also art. 5) and the government has done nothing to tackle this ideology. NGOs want to stress that good child-care is of great importance for children, for parents and for society, and not only because of its economic benefits for society. The Dutch government could learn from the Scandinavian countries in this respect; in those countries professional child-care is seen as part of a good education. The importance of child-care for society should also imply that a bigger part of its costs are underwritten by society at large, instead of by individual parents.

i. No real long uninterrupted school day

Instead of ensuring a long, uninterrupted school day, as required by CEDAW in its 2001 Concluding Comments, the government developed some different plans regarding the care for children before, in between, and after school-hours. From August 2006, schools will be responsible for providing care at noon. Although this is an improvement (currently, it is the responsibility of parents, with all financial risks which come with it), it is not sufficient. School hours will not change, which means that the standard remains that children go home for lunch, and staying over is an

⁷⁸ Speech of the minister of Social Affairs on 28 February 2006.

exception. Besides that, the costs will probably rise (and no compensation for this is available), which will raise the threshold for making use of this provision even higher. There are no quality standards for the stay over lunch break at schools.

In late 2005, the government stressed that from 2007 schools have to offer child-care from approximately 7.30 to 18.30. They can co-operate with professional child-care institutions, with all quality-guarantees, but they can also work with volunteers, in which case there are no quality requirements at all. Parents have to pay for the care. Although it is a good thing that schools acquire more responsibility in this field, NGOs have doubts about the way these plans are being developed. Ensuring a long interrupted school day should mean that the regular school day is from approximately 8.30 a.m. until 5 p.m., and all children have a program of education, sports and cultural activities during this time. Before and after those hours additional care should be provided for parents who need it.

j. Destroying the glass ceiling: wishful thinking instead of measures

In destroying the glass ceiling, which has proven to be very resistant, the government provides information on social change that will emerge autonomously, but admits that additional efforts are essential. What additional efforts the government will undertake is not clear. The only concrete measures mentioned are a European project 'Mixed', and the development of a benchmark. The European project concluded at the end of 2004. The government does not look at how to translate possible positive results of the project into structural policy and measures. In establishing the benchmark, the government states that assessing their own results might encourage companies to take measures to improve women's chances of promotion. This is a lot of wishful thinking. Why should companies assess their own results against the benchmark, and why would they take measures? For real change, pressure and hard measures by the government are essential.

On the position of immigrant, refugee and minority women with respect to promotion and the glass ceiling, no information is provided by the government. Within the group of immigrant, refugee and minority women, working below level and obstacles in getting promotion are experienced as major problems. The government should focus urgently on this by providing detailed information, setting targets, taking effective measures connected to the problem and targets, and by monitoring results.

k. The segregation of the labour market is stubborn

The government does not report on this topic. Although the CEDAW Committee urged the government in its Concluding Observations of 2001 to increase its efforts to eliminate stereotypes relating to traditional areas of employment for women, the government did not take any measures. Since 1996, hardly any changes have been registered in the top 10 of male occupations (building sector, technical sector), of which 99% of the workers are male, or in the top 10 of female occupations (care and health sector and administrative work). In occupations requiring higher educational qualifications, participation of men and women is more equal. Figures from 2002⁷⁹ show that in the health sector, nearly 80% of the employees were woman, while this percentage for industry is 20%, and for the building trade less

⁷⁹ *Emancipation Monitor 2004*, SCP, pg.78.

than 10%. Given this persistent segregation of the labour market, increasing efforts by the government are still needed.

I. Lack of efforts to improve the position of sex workers

A major critique is that till now, activities of the authorities have predominantly focused on regulation, repression and control of prostitution rather than on the empowerment of sex workers and the improvement of their position. At the lifting of the ban on brothels, most municipalities maximised the number of licenses they were willing to issue. In particular, small cities have used the change in the law and the introduction of a licensing system to try to suppress the number of brothels or have them disappear completely by not issuing licenses. In practice this has meant that licenses have predominantly been received by existing brothel keepers, thus blocking any possibilities for innovation in the legal/regulated sector, in particular the establishment of small brothels run by women themselves. In general, due to the introduction of the licensing system and increased control, the possibilities for women to work independently at home or in small women-owned brothels in apartments have decreased.

Little effort has been made to properly inform prostitutes about the change in the law, to involve them in the development of (local) policies, to support their emancipation and to redress the (historically developed) unequal working relations in the sector. In the implementation of the licensing system, little attention has been paid to the interests of the women concerned, for example in protecting their privacy and maintaining their anonymity in relation to brothel keepers. Another problem is the lack of clarity about working relations, i.e. under what conditions one can speak of independent, self employed workers vis-à-vis an employment relation. In the latter case it is unclear what duties and rights are attached to the employment relation in light of the specific characteristics of the work and in particular the right to physical and sexual integrity. Different state agencies (tax department, social security agencies) can judge differently with major consequences for the position of both the prostitute and the brothel operator. As a result of this, a substantial number of women prefer to work in the unregulated sector as they feel that the regulated sector does not meet their needs and interests.

Moreover, even if, in theory, prostitutes have more rights, in practice there are still many barriers to actually claim those rights, both vis-à-vis their employers or brothel operators and the state. Although, for example, prostitutes are officially entitled to social security⁸⁰ if they get fired or become unemployed, over the last years only one prostitute claimed and got unemployment benefit. At the same time, the tax department is of the opinion that, in the majority of cases, there exists an employment relationship between the brothel owner and the prostitutes working at the establishment. The difficulties prostitutes face in claiming their rights are partly due to the unequal power relationship between the owners or operators of clubs/brothels and prostitutes, but also to the stigma on prostitution and the fact that many prostitutes, given a history of being policed rather than protected or supported by the state, are not used to think in terms of rights. All these factors act as barriers for women to organise and defend their rights.

To overcome the barriers to prostitutes claiming their rights, to support their (labour) emancipation, and to redress the unequal power relationships in the sex

⁸⁰ Assumed that there is an employment relationship.

sector, active policies are needed from the national government, in particular the ministry of Social Affairs and Employment, in cooperation with relevant state agencies, (organisations of) sex workers and other parties directly involved, and NGOs working in the field. Instead, in 2004, the subsidies of the Red Thread, the prostitutes' rights organisation, were reduced, while government funding of two expert organisations on prostitution and trafficking in women (Mr. de Graaf Foundation, Institute on Prostitution Issues, and the Clara Wichmann Institute, Expert Centre on Women and Law) was ended, leading to their closure at the end of 2004. In the case of the Red Thread, the reduction in subsidy was defended by the argument that a special organisation to defend the interests of prostitutes was no longer needed since prostitution was now normal work and labour relations could be regulated in the same way as in other sectors through (negotiations between) employers' organisations and unions. This argument goes contrary to what the government itself states in its report (pg. 33): 'legalising a sector that was illegal for nearly a century is not simply a matter of amendments to legislation and a new policy'. Redress of a situation that existed for over 100 years requires active emancipation policy from the state, e.g. information campaigns, support of sex workers' organisations and/or special provisions to support prostitutes in claiming their rights.

The government also left it to local governments to develop exit programmes for prostitutes who want to change profession. In practice this not been very successful.

Another complaint is that the police registration system to identify victims of trafficking is misused to register prostitutes who in no way give reason to suppose that they are victims of trafficking. Since 1997 the Registration Chamber (now College Persoonsbescherming) ruled that it was not allowed to register prostitutes solely on the grounds of belonging to a specific professional group, as this constitutes a violation of their privacy. In addition, prostitutes suffer from increased identity controls by the police, in some cases leading to their arrest and detention without the possibility of judicial review.⁸¹

m. Female labour migrants and working permits

Women comprise half of the migrants to the Netherlands (2003: 48%, statline.cbs.nl). A substantial number of them are labour migrants. However, precisely in those sectors where predominantly women are employed - prostitution and domestic work - there is no access to legal work permits, social security and protection by labour law. As a result, migrant women working in these sectors are especially vulnerable to exploitation and abuse. NGOs are of the opinion that this legal exclusion constitutes a form of indirect discrimination and a violation of article 11 CEDAW.

n. No labour rights for domestic workers and au pairs

The increasing labour participation of Dutch women without a corresponding increase in state provision for child care, increasing costs of child-care, push towards 'privatisation' of caring services and general ageing of the population have led to a massive increase in the demand for domestic workers in private households

⁸¹ As a result of case law of the Afdeling Rechtspraak Raad van State, the highest court in administrative law.

- particularly in the areas of child-care, the care of the elderly and the handicapped. Migrant women from Asia, Latin America and Africa, and more recently from Eastern Europe, are increasingly filling this demand. However there is no official recognition of work in the private household as official work or as a category for immigration. The majority of migrant women are therefore recruited informally and work without protection of their rights as workers, women or migrants. Domestic work in private households is now the main employment sector for migrant women in the European Union. For the newly-arrived, particularly those who are undocumented, it is virtually the only employment available apart from prostitution.⁸²

NGOs regard the failure to recognise domestic work and child-care as official employment, which qualifies for a work permit, as not only in contradiction with article 11 CEDAW (equal treatment in employment), but also with article 5 CEDAW (combating stereotypes). This is the more so because of the gendered character of the arguments that are given to justify a 30- hours work-week of au pairs, while maintaining its definition as 'cultural exchange': according to the government, the domestic labour involved only constitutes 'light' and 'additional' work. These are remarkable arguments, which do not readily appear when dealing with 'men's work'.

The only possibility to obtain a legal residence permit is a one-year, dependent staying permit as au pair. The au pair regulation, however, is not defined as work but as 'cultural exchange', though it allows for au pairs to work 30 hours per week, an almost full-time job by current standards. In practice, the workload involved is often even more. A research report (*For Money or Van Gogh*) on the position of au pairs,⁸³ showed massive violations of the rules with regard to the labour relation between the au pair and the guest family (more than 30 working hours per week, less than 2 days off, type of work performed, payment). Au pairs thus provide cheap and flexible workers who are not protected by labour law and do not build up any rights. Remarkably enough, the government itself also uses the term 'work' when discussing the au pair contract, but consequently denies the labour character of the au pair contract when it comes to attaching rights to it.

In a judgement dated 11 February 2004, the Court of Appeal in Leeuwarden decided in a case brought by the union FNV that the situation of that particular au pair was in fact equivalent to an employment relationship, and that the legal minimum wage should be paid. According to the Court, if an au pair contract meets the requirements of art. 7:610 Civil Code – that is: the performance of labour in a relation of authority against wages during a certain time period – the contract must be qualified as a labour contract.⁸⁴ That is, independent of the qualification of the contract by the parties themselves, the content of the labour or the number of hours worked. In fact, this implies that any au pair contract in which the activities of the au pair go beyond the activities of a normal member of the household should be designated a labour contract.

The above-mentioned research report *For Money or Van Gogh* shows that a large number of au pairs are in the same position as the (Polish) au pair in this court

⁸² See *A house is not a home, Enhancing Migrant Women's struggle for their rights and well-being*, Commission for Filipino Migrant Workers, <http://www.cfmw.org>.

⁸³ Frank Miedema, Bob Post, Clara Woldringh, *For money or Van Gogh? Au pairs and their guest families. Evaluation of the au pair regulation*, ITS 2003. According to this research, 14% (according to the guest family) to 69% (according to the au pair) of the au pairs work more than 30 hours.

⁸⁴ Court Leeuwarden 11 februari 2004, No. 0200379.

case. The report was discussed with Parliament, and a few measures aimed at improvement were taken. On 1 June 2004, a temporary call centre for au pairs was started at the IND. Complaints were supposed to be channelled to the police and Labour Inspectorate. As far as known, no report has yet been published. In the summer of 2005, the FNV-affiliated union, FNV Bondgenoten discovered that several au pair recruitment agencies offered au pairs for the care of elderly and disabled people. The union requested the Labour Inspectorate to look into the issue. There is no news since then.

Rather than denying the work character of the au pair-relation, it should be considered to qualify the au-pair contract as a labour contract. This would be more in accordance with the Civil Code, the Migrant Labour Act (Wav) and EG-law.⁸⁵ Moreover, it would provide au pairs with the means to defend themselves against abuse and would enable labour unions to play a role in this respect.

o. Termination of maternity allowance for independent entrepreneurs

In 2004, the Government blocked access to the Invalidity Insurance (Self-employed Persons) Act; part of this Act was a financial allowance related to pregnancy and maternity for female entrepreneurs. This allowance was only introduced in 1998, since research showed that most women entrepreneurs could not afford contributions to private invalidity insurance schemes. In 2004, the government ignored its earlier reasons for introducing the Act and the pregnancy and maternity allowance, and simply stated that it was part of the 'normal risks' of an entrepreneur to make arrangements for pregnancy and maternity-leave. Contrary to its statement in its report to CEDAW, the government did not consider how to arrange for payments after the Act's repeal. No alternative arrangements were made (except for a special group of cleaners and carers who work as self employed persons on a contract). The government keeps repeating that it is a matter of entrepreneur-risk and private insurance, which is not an option since contributions to cover maternity and pregnancy are high in invalidity policies and most insurance companies specify a waiting period of two years before pregnancy and maternity allowance can be claimed.

In the course of the relevant parliamentary discussion, the government stated that article 11-2 of CEDAW does not imply an obligation to maintain a pregnancy and maternity allowance for female entrepreneurs. In the Senate, the government stated that CEDAW obligations do not go further than obligations in ILO conventions No. 102 and 128; and that the state therefore is not obliged to protect all (working) citizens; some groups may be excluded. NGOs challenge this: under CEDAW it is an obligation for the government 'to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances' (art. 11-2); no exception is made for female entrepreneurs. Such an exception would be in contradiction to the main aim of CEDAW: the elimination of all forms of discrimination against (all) women. It is also clear that art. 11-2 requires a result (introduction of leave with pay or benefits), and is not only an obligation to make an effort. But even then: where the convention requires introduction of maternity leave with pay or benefits, it is clear that it is definitely prohibited to terminate an existing provision.

⁸⁵ See Spijkerboer, pg. 32 ff..

p. Major changes in social security, but no gender impact assessments

Many other social security laws have been revised in recent years. Individual rights and individual independence are no longer key words (as in the earlier policies on economic independence, see art. 3); people have to fall back on the incomes of their partners (or on welfare if they have no earning partner) more often and more quickly. Several of these changes affect women more harshly than men. Government and Parliament did not pay much attention to the gender specific effects of changes in the laws; no gender impact assessments were conducted. CEDAW requires that the gender-specific effects are recognized, and that appropriate measures are taken to overcome negative effects. In its report, the government does not pay attention to these aspects of social security.

The Unemployment Act

The Unemployment Act underwent several changes. Instead of a longer-term allowance comprising of a lower percentage of the claimant's former income from employment, a short-term but higher allowance is now provided. This means that women have to fall back on the incomes of their partners earlier. A longer, but lower, allowance would provide more economic independence.⁸⁶ Until recently, the period during which the allowance was paid depended on the employee's age; this has been changed to the number of years the claimant was in paid employment. This means that women who re-enter the labour market after some years of taking care of the household have lower rights to an allowance. This effect is amplified because the possibility to count 'caring for young children-years' as working years is limited.

The Invalidity Insurance Act

The Invalidity Insurance Act was also revised in several areas. People with so called 'soft diagnoses' (for example whip-lash, M.E., burn-out) have to undergo a double medical examination. This group comprises mainly women. This double examination caused many women to lose their allowances, or fail to get one. This affects not only their economic independence (they have to fall back on unemployment allowances for the first period, and after that on their partner or social welfare), but also limits their possibilities to take part in reintegration programmes. In the Invalidity Insurance Act, the allowance depends on the income the claimant should be able to earn from a job he or she is still able to do, instead of the (income of the) previous job someone did do. If someone works part-time, the comparison will be made with other part-time jobs. From October 2004, the question of whether a possible job actually exists as a part-time job is no longer relevant. This measure also unequally affects women, as they have more part-time jobs (70% of women work part-time).

Work and Welfare Act

In the Work and Welfare Act, single parents (mostly women) of young children (up to 5 years of age) are obliged to look for a job. If they do not co-operate, their welfare allowance is reduced. Although recent figures show that more single mothers are entering the labour-market, the overall effects of this measure are not known. Again, the fact that women no longer receive the allowance does not automatically mean their situation and that of their children has improved. What is the level of the jobs involved (content and income)? Are they regular jobs or mainly

⁸⁶ We use 'economic independence' in the old 'feminist' way (to have own financial means, independent from the partner) and not in the way the government uses the words (independent from state allowance or social security). See also art. 3.

temporary projects? Is the child-care sufficient? Do women manage to cope with work, care for children and for their own needs, how many fall out?

Plan of Action Women and WAO

The attention the government gives to the question why so many women became ill and took advantage of the Invalidity Insurance Act is appreciated; NGOs would like to know whether any results of the 'Plan of Action Women and WAO' can be reported. NGOs also want to point out that preventing women from taking advantage of the Invalidity Insurance Act by altering the rules does not solve the problem. Even when they are not entitled to receive an allowance, these women are unfit to work. Therefore the real problem is not that so many (young) women are in the WAO, but that so many young women are unfit to work.

q. Concerns about the financial position of elderly women

Despite the concerns of CEDAW regarding the marginalisation of elderly women in the pension system, expressed in its Concluding Observations of 2001, the Government does not report on this topic, and did not take any measures. However, the reasons for concern are still there. A lot of women have not built up full pensions, for various reasons. One major reason is that during the years women did not work but took care of the household and children (which was very common in the Netherlands up to recently; in the past women were even forced to quit their jobs when they married); they did not build up pension contributions. Part-time work also causes gaps in the pension (sometimes part-time workers were excluded from pension systems). And, until today, in some sectors pension schemes are not common, for example for administrative functions. Insufficient pension schemes are one of the major reasons for long-term poverty amongst elderly women; it is up to the government to take appropriate measures to improve their position.

Refugee, migrant and minority women face an extra problem. Not only do they have insufficient pension schemes, the state allowance for elderly people is based on the number of years a person has been resident in the Netherlands. This means most migrants do not have full rights regarding old age benefit. If they do not have sufficient pension schemes (which is more often the case for women than for men), they have to fall back on social welfare, which can mean they have to 'eat' their property (in contrast to the old age benefit, the social welfare allowance is not granted to a person holding property). Because a lot of female labour migrants came to the Netherlands several years after their husbands, they built up considerably lower rights for the state allowance for elderly people.

r. Women face accumulation of poverty risks

In its report, the government recognises that women are more likely than men to be affected by an accumulation of poverty risks. The government recognises women of ethnic minorities and single women as groups requiring extra attention. The poverty-monitor 2005⁸⁷ confirms this and concludes that in all age groups the percentage of low income earners is greater amongst women than amongst men (see table on next page).

⁸⁷ *Social Cultural Planbureau (SCP) and the Central Bureau for Statistics (CBS).*

Persons with a low income, by sex and age, 2003a (in absolute numbers and percentages of target population)

	Total x 1000	total %	men	women
Total	1338	8,8	8,1	9,4
< 18 year	431	12,5	12,6	12,5
18-24 year	81	7,4	6,9	8,1
25-34 year	184	8,8	7,3	10,4
35-44 year	222	8,9	8,3	9,5
45-54 year	148	6,7	6,5	6,9
55-64 year	153	8,4	7,5	9,4
65-74 year	67	5,5	4,0	7,0
above 75 year	52	5,8	3,3	7,2

Preliminary figures, Source: CBS (IPO '03)

The biggest differences are within the age-group above 75, where single women are over-represented, and in the group 25-34, which contains a lot of single parents.

The monitor identifies the following groups as requiring special attention in the near future:

- people between 55-64 of age (in part, single persons and people with medical limitations);
- those unable to work and people with a chronic illness;
- households with financial problems who do not make use of (legal) provisions;
- single parents and single women;
- ethnic minorities with low income.

The monitor gives no answer to the question of whether providing unpaid care is a risk factor for poverty. NGOs would like to know the role of this factor, because most unpaid care is carried out by women, and because unpaid care will become more important in the coming years (see the new law on Social Support as described under art. 12). If providing unpaid care is a risk factor for poverty, what does this mean for the policy of the government? In its report, the government states that poverty consultations are taking place within the ministries involved, where relevant, to determine ways in which differences between the problems faced by men and women can be taken into account in target objectives and measures. This sounds very good. It could well be an example of what NGOs mean when they ask for a clear structure to describe problems, set objectives and take measures. NGOs would like to know the outcomes of these consultations and the follow up of the National Action Plan. What are the targets and objectives? What measures will be taken?

Article 12, health

a. No information disaggregated by sex and ethnicity and no objectives

The government report to CEDAW should contain information on the health of, and healthcare for, women. In its 2001 Concluding Observations, the CEDAW Committee explicitly asked for detailed information, disaggregated on gender and ethnicity. The Dutch report does not give this, nor does it contain an overview of the position of women in connection with health. The report addresses some issues, but omits overall information and major developments in the health-system. Two major changes in the health system are not even mentioned. From January 2006, the health-insurance system has been totally altered, and on 1 January 2007 the new Law on Social Support (Wet Maatschappelijke Ondersteuning, WMO) will be enforced. Both changes will have an impact on women, but neither is mentioned in the report to CEDAW. These changes will be discussed in the following paragraphs.

Not only is the report thin on information, but the government does not make clear what it identifies as the main problems regarding the health of, and healthcare for, women. And, related to this, the government does not mention its objectives, measures it has taken or will take to reach its objectives or how it will monitor the results. NGOs think this should be at the heart of the government report to CEDAW.

b. Serious concerns about the effects of the new health-insurance system

Before January 2006, the Netherlands had two health insurance systems: a national system for people with lower incomes, and a private insurance system for those with higher incomes. From 2006, there is one system. All citizens have to make an arrangement with an insurance company, which is obliged to offer a basic policy to everyone. Everyone has to pay the premium; families with lower incomes receive some compensation. People who make no or little use of healthcare, receive a part of their premium back. Insurance companies and 'health providers' have to make arrangements; people can only make use of the services of 'providers' with a contract with their insurance company. Requests from NGOs and earlier recommendations to subject all major changes in health policy to a gender impact assessment have had no result. We do not know, therefore, what the impact of the new system on the position of women is and will be. But there are concerns. Part-timers are disproportionately affected as the premium is nominal (instead of related to the income). Besides that, compensation is related to family income (instead of individual income⁸⁸), which means that a second income within the family will lower compensation. Moreover, there is a general concern that people who live in near-poverty will use the compensation (which is paid per year beforehand) for other things, or to pay debts, and therefore will not be able to pay their premiums, and so will not be insured. As women are over-represented among the poor (most elderly women without pensions and single-parents); this might affect women disproportionately. As women live longer, and are often single in their last years (this might be decades), they will experience the financial effects for a longer period. For example: older people need medical treatment; and will therefore not receive part of the premium back. Given those concerns, and given the CEDAW obligation of equal access to health for women, a gender impact assessment should have been carried out. It is important that at least from now on the effects on

⁸⁸ This is an example of the change in approach towards economic independence, as described under art. 3.

women of the new health (insurance) system will be monitored, with special attention to single mothers and elderly women.

c. New Law on Social Support has negative effects for women

On January 1st, 2007, the new Law on Social Support (WMO) will enter into force. After pressure by the Parliament, a 'last minute' gender impact assessment has been carried out. Its finding is that the new law has negative effects for women, both as care-providers and as care-receivers.

Under this new law, social support will be the responsibility of local governments. In addition, support by the government is restricted: more tasks should be done by volunteers, mostly from within the family. This means an extra burden of unpaid work for especially women, who traditionally take up these duties. And when working unpaid, they cannot work paid. Another effect will be that a lot of the paid work in the care-sector, which is mostly done by women, of whom a relatively large number belong to ethnic minorities, will disappear, leaving the women unemployed. A third negative effect is on the women who need care: because women live longer than men, and often survive their husbands by many years, they are more dependent on professional care. With the limits on the support provided by the (local) government, the level of actual care they receive will be reduced.

As the gender impact assessment was carried out at a stage when the principles of the law were already accepted, and its implementation at local level was almost completed, its conclusions will have little effect. It is simply too late to change things. This is not in compliance with CEDAW-obligations. CEDAW obliges the government to work on the improvement of the position of women, and to make sure that policies and legislation do not have negative effects on them. By pushing through this law despite knowing it affects women more negatively than men, the government may be violating its obligations under CEDAW.

d. The health of immigrant, refugee and minority women

Although the government report gives some figures, it cannot be said that it provides detailed information, including statistics disaggregated by sex and ethnicity, on the implementation of the Convention with respect to different ethnic and minority groups, as requested by the CEDAW-Committee in its 2001 Concluding Observations. The same defect mentioned before occurs here: the government does not identify the main problems, does not formulate objectives etcetera. However, it does mention some problems, such as obesity among Turkish women, low participation in routine breast cancer and cervical cancer screening among some ethnic groups. But it does not make clear how serious these problems are, and what measures it will take to overcome them.

The fact that the responsibility for solving problems in health care for ethnic minorities has been assigned to bodies at local level does not release the government from its obligations under CEDAW: to take all appropriate measures and report on the implementation of the convention. Even when the responsibility for implementation has been shifted to a lower level, the state remains responsible for attaining results required by the Convention. This requires setting goals at national level (and translating these goals to quality requirements for the local bodies) as well as a solid monitoring system. The state can also demand that the collection of data regarding health is disaggregated by sex and ethnicity.

The statement of the government that the accessibility of care for ethnic minorities is good, is not founded on statistical information. Moreover CEDAW does not require accessibility in theory, but in practice. The sentence that follows in the report, which states that there are differences in the way people from ethnic minorities *make use* of the provisions, is far more important. But no figures are given on this.

e. The Linkage Act limits access to health for undocumented women

There is little information about the health situation and access to healthcare of undocumented women. Nevertheless, there are serious indications that, in particular, pregnant women and women with young children are affected by the exclusion of undocumented migrants from access to medical care (see art. 9). Although, officially, an exception is made for health care before, during and after giving birth, the available information shows that in practice the law has increased the barriers for women to make use of pre-natal care, medical checks after giving birth and infant welfare services, because they fear being registered and expelled.⁸⁹ Moreover, hospitals and medical practitioners fear they will not receive payment for medical care supplied to undocumented migrants, since they only get reimbursed if they can show that they are structurally burdened by undocumented immigrants who cannot pay the bill. In the light of art. 12 and General Recommendation no. 6, NGOs deem further research on the health situation of undocumented women, and their access to pregnancy and maternity care, necessary, as has also been recommended by the ACVZ in its report. Moreover, it could be considered to exclude health care from the linkage principle. This would also be in the interest of the public health.

f. Sexual and reproductive rights: access to contraception limited

In its report, the government recognises some trends which threaten the position of (groups of) women with respect to their sexual and reproductive rights: increasing numbers of abortions and teenage pregnancies, especially among ethnic minority girls; increasing high-risk sexual behaviour; growing numbers of sexually transmitted diseases. Regarding teenage pregnancies some coherent measures have been taken, although concrete objectives and monitoring are missing.

Recent research shows that girls are more often confronted with sexual compulsion than boys (18% vs. 4%), and that girls have more problems with accepting their own body and genitals.⁹⁰ This requires special measures. As a result of the Linkage Act, discussed earlier in this chapter, undocumented women are not entitled to have free, legal abortions, as is the case for citizens of the Netherlands.

Compensation for anti-conception terminated

The government does not report on an important issue regarding the sexual and reproductive health of women. In 2004, the government decided to terminate compensation of the costs of contraception for women over 21 by the public health service. Most health insurance-companies followed this limitation. In the new health insurance system, contraception is not included in the basic insurance policy, while most medication is. Most companies only offer compensation for contraception in extra policies, for which extra premiums have to be paid. It can be expected that this measure has a negative effect on the reproductive rights of women, especially

⁸⁹ See e.g. report ACVZ, pg. 37 and Spijkerboer, pg. 44 ff.

⁹⁰ Outcomes of the study *Sex under 25*, Rutger-Nisso Groep, 2005..

of women with lower incomes; it might even be one of the causes of the increase in abortions. Since 2003 Dutch NGO's have been arguing that this measure, which affects only women and limits their access to contraception and thereby their sexual and reproductive freedom, is a violation of CEDAW. The government should at least monitor the effects of the measure on the reproductive rights and health of women, and take measures to prevent or repair negative effects for women.

g. No statistic information on HIV/AIDS and other sexually transmitted diseases

The government report does not contain statistical information on the number of people with HIV/Aids, and on the number of new cases of HIV/AIDS and other STD's, disaggregated by sex and ethnicity. With this information missing, it is difficult to judge whether the measures taken are sufficient, and whether it is necessary to take special measures to combat HIV/AIDS and other STD's among (specific groups of) women. In general it can be said that most measures (with most money involved) are still aimed at homosexual men; but without statistical information this can not be evaluated. The standard screening of pregnant women on HIV/AIDS appears to be effective, but figures would be welcome.

h. The closure of tolerance zones for street prostitution and the right to health

Over the last years, tolerance zones for street prostitution in a number of big cities (The Hague, Amsterdam, and Rotterdam) have closed down. The tolerance zones provided street workers with a safe place to work in combination with a drop-in centre, which offered basic provisions, such as medical and social care, coffee, condoms, clean needles, sanitary provisions and information about, for example, safe sex, trafficking in women and forced prostitution, the role and possibilities of the police and of other assistance services. The Johannes Wier Foundation carried out research into the consequences of the closure of the tolerance zones in two of the big cities for the health and welfare of the women concerned.⁹¹ They concluded that the women who used to work in the tolerance zones no longer have access to the provisions mentioned, since no comparable provisions have been realised. Those women who kept on working the streets now work under less safe conditions. Moreover, it has become more difficult for them to ask for assistance or to report to the police in case of forced prostitution, trafficking or violence from clients. The decision to close the tolerance zones was taken without the participation of the women concerned. The authorities expected that by their repressive policies street prostitution would largely disappear or that women would leave prostitution. However, many women continued to (illegally) work the streets. In practice, therefore, the main effect has been that they have become invisible and unreachable for health care and social workers. The reasons for closing down the tolerance zones were mainly public order arguments, in particular the public nuisance caused by clients and pimps. However, the main people affected by the closure are not clients or pimps, but the women themselves. They are deprived of a safe working place and connected provisions. Women are thus disproportionately affected, which can be considered to be a form of prohibited (indirect) discrimination. The Johannes Wier Foundation concludes that the protection and promotion of the right to health of sex workers has been a subordinate

⁹¹ *The closing down of tolerance zones in big cities and the right to health of women*, Marianne Bruins and Joke van Erkel, Johannes Wier Stichting, Amersfoort, 2005.

consideration in the decision to close the tolerance zones. A more active coordinating and guiding role of the national authorities is recommended.

Article 14, rural areas

a. Structure of the report; information, objectives and measures

The government report on article 14 is rather chaotic. It is not comprehensive, merely comprising of some loose topics. The fact that national and international policy are combined does not help matters. The report should contain detailed information on the position of women in rural areas (although rural is relative in the Netherlands), disaggregated by age and ethnicity. The report only contains figures on female workers in agriculture and horticulture (although this has little to do with combining work and care, in which paragraph the table is placed). The report should contain information on the specific situation of women in rural areas regarding work (employment, availability and use of childcare), education (level of education, accessibility and use of all forms of education), health and health care (provisions, accessibility, and use), social life, political participation etc. The next step should be a description of the objectives of the government, the measures the government will take to achieve these objectives and the way it will monitor the results.

b. Studies and experiments are not appropriate measures

In its report on article 14, the government mentions several studies (*Space for Time, Building for Collaboration, International Good Practices, Taakcombineerders...*) and a gender impact assessment (on the fourth national environment policy plan), without mentioning the outcomes, and without mentioning whether and how the conclusions will be translated into government policy and measures. The report also describes several experiments, again without mentioning results, and with no information on whether and how the government will implement results in its own policy. For example: what will the government do to establish the 'service points' that can provide a variety of services like shops along with child-care (pg. 77)? Merely labelling this as good example will not do the trick. Under CEDAW, it is the obligation of the government to take all appropriate measures; it cannot limit itself to mentioning some nice ideas.

c. Only international policy has mainstreamed gender

The fact that within one policy strategy, only the international component has mainstreamed gender ('Sustainable Action', government report, pg. 77), is characteristic for government policy. Overall, the section for international development of the ministry of Foreign Affairs has implemented the concept of gender mainstreaming rather well (see also art. 3), while other ministries more or less fail to do so.⁹² NGOs do not understand how the government blandly acknowledges this 'double standard' without any explanation.

d. Labour participation of women lower in rural areas

Even after correction for factors such as age, education and care for young children, the labour participation of women in the agrarian rural areas in the Netherlands is considerably below the average, and far below the labour participation of women in the urban conglomeration of Western Holland.⁹³ Labour participation of men is

⁹² See also the interim reports of the Visitatiecommissie Emancipatie, February 2006.

⁹³ *Regional differences in labour supply*, CBS Social Economic Trends 1^e trimester 2006.

higher, with little variation per region. NGOs would like to know what measures the government will take to increase the labour participation of women in rural areas.

e. Participation of women in decision-making in rural interests is low

Research on the participation of women in reconstruction processes in rural areas⁹⁴ shows that the voice of women in these processes is still hardly heard, due to their under- representation in interest groups. NGOs want to know what the government is willing to do about this.

f. Social and cultural infrastructure in rural areas

The social and cultural infrastructure in rural areas is declining. Community centres are disappearing from the smaller villages, as are other meeting points, such as schools, shops and bank-offices. Women are more often working at home, and more often dependent on public transport (which is also declining). They are more dependent on provisions in their neighbourhood, and are struck disproportionately by this deterioration in provisions. NGOs would like to know what measures the government will take to ensure access for rural women to social and cultural provisions.

⁹⁴ Project 'Equal Opportunities for rural women', 2001.

Article 15, equality before the law

a. Law on Names: see article 16

Within the law on names, men and women are not equal for the law. See article 16.

Article 16, family life

a. The gap between desired equality and actual inequality

In family law, equality of men and women is the aim. However, the actual situation of men and women in marriage and family relations is unequal. Overall, women care more for the children, have less paid work and income than men, and own less property. Ignoring this inequality in family law and court practice means that women are discriminated against. Family law used to be an area with a lot of sex-discrimination, both in the law and in (court) practice. The government made many changes to eliminate this discrimination, which is a good thing. However, NGOs are concerned that, in the effort to achieve equality, the actual inequality that still exists between men and women is ignored.

Parental control and caring duties

Since 1998, the joint legal custody of both the father and the mother regarding the children is maintained after divorce. It is up to the parents to make arrangements on the place where the children live, parental access, etcetera. The court will take decisions in areas where parents cannot come to agreement. The fact that, in most marriages, women carry the responsibility for caring for the children is not acknowledged after the divorce. Often, women feel that their care for the children is not well appreciated. During marriage their husbands did not want to assume their part in care-giving, and after the divorce they claim legal custody (control) and parental access. For most women, parenthood means the actual care for the children; unpaid. For a lot of men, parenthood means the power to make decisions about the children (including influence on the way the woman is establishing her life with the children), and the right of parental access. By disconnecting rights (legal custody and parental access) and duties (actual care), this inequality is maintained by court practice.⁹⁵ See also the paragraph on parental access.

Alimony

Regarding alimony, the legislation increasingly takes the economic independence of both partners as a starting point. In practice, however, many couples agree on the woman quitting her jobs after marriage, in particular within the lower social classes. NGOs argue that it is good to want to achieve economic independence of women, but family law should not be the instrument to achieve this.

Divorce proceedings

The government is planning new legislation on divorce proceedings, in which agreements by the partners regarding the children will be a condition for getting divorced. This assumes equal positions and equal skills of the partners. In many cases this equality is a fiction. NGOs agree that equality of men and women is the aim, and is of great importance within family relations. But when the law and court practice take this equality as a starting point, where the factual situation is one of inequality, women are in fact discriminated against. Moreover, on the road to equality, the unequal position of men and women has to be taken into account, and have to be part of the weighing of interests in family law and family court. Factual equality is not achieved just by pretending it is there.

⁹⁵ An example of complete disconnection of rights and duties is the decision of the Higher Court of Amsterdam of 27 January 2005, in which the legal custody was appointed exclusively to the father, while the children remained with their mother, who cared for them.

b. The legislation on parental access does not acknowledge the interests of the caring parent

In the legislation on parental access, only the rights (family life, privacy) of the non-caring parent (mostly the father) and the child are recognized. This means that the interests of the caring parent are not taken into account in court decisions on parental access, while her family life and privacy are definitely at stake. In most cases, parental access of the father is a justified encroachment of the family life of the mother, but in some situations, for example in cases of domestic violence, it should be possible that the rights of the caring partner prevail over the rights of the other parent. The total exclusion of the possibility to weigh the interests of both parents is discriminating against caring parents, and, because these are mainly women, discriminating against women.

c. Intimate partner violence plays hardly any role in family law

Although the Government is active in combating domestic violence, intimate partner violence against women hardly plays any role within family law and family court practice. In the Netherlands, at least 21% of the adult female population suffers from intimate partner violence committed by their male (ex) partner (see also art. 1, domestic violence).

Intimate partner violence and parental access

When the father of a child is not the legal parent, he can apply for parental access on the grounds of family life with the (unborn) child. When the child is born out of rape (committed by someone other than an intimate partner), family life is considered not to exist. But when the child is born out of a relationship in which the man used violence against the woman, this is considered irrelevant regarding the family life between the father and the child (to be born). The family life of the mother (which of course is affected by both the violence and the parental access) is not taken into account at all.

In general, violence against children is often a reason to deny (unsupervised) parental access to the children by the perpetrator. Violence between partners, on the contrary, is commonly considered as having nothing to do with the children, custody and parental access. This is the case even when children witnessed the violence, although it is known that witnessing domestic violence can be about as traumatic for children as being the actual victim. Moreover, the violence often continues after the divorce; the situation in which it occurs is often related to parental access. Being safe from violence is not only in the interest of the children, but also of the women involved. Research shows that single mothers with children form a high-risk group for domestic violence; often by ex-partners. These risks for both women and children hardly are considered as relevant in court decisions on parental access. Judges (in many cases advised by the Child Care and Protection Board) usually label the domestic violence as 'relational problems', which should be overcome by the parents in the interest of their children, instead of a serious crime of which the victim(s) need to be protected.

New legislation on divorce proceedings and domestic violence

The government is planning new legislation on divorce proceedings, in which agreements by the partners regarding the children will be a condition for getting divorced. This assumes equal positions and equal skills of the partners; in many

cases this equality is fiction. Also in cases of intimate partner violence, in principal the victim has to negotiate with the perpetrator before she can get a divorce. Only under strict conditions (for example when a woman stays in a shelter), can she make a parental plan on her own and present it to the court. But even then, the parental plan has to include a provision for parental access; and the court can still refer the partners to mediation. NGOs are of the opinion that victims of domestic violence should not be obliged to mediate or negotiate with the perpetrator before being allowed to ask for a divorce.

In its report, the government states that experiences with mediation show that the question of which partner can be considered the weaker has little to do with gender, and a lot with emotional equality. But here also no word on domestic violence is uttered. NGOs are of the opinion that an evaluation of mediation in divorce cases should pay specific attention to domestic violence; both violence towards the children and violence towards the partner.

Research and training

This paragraph of the shadow report is based on information from judges, lawyers and workers within the Child Care and Protection Board; official data is not available. NGOs would welcome research on the way domestic violence is dealt with in the family court, as well as research on the prevalence of domestic violence in connection to arrangements for parental access and custody. In recent years, both family judges and advisors of the Child Care and Protection Board have become more sensitized to the seriousness of domestic violence. However, this should be improved by the training of all family judges and advisors of the Child Care and protection board.

d. Law on Names still not in accordance with CEDAW

In its 2001 Concluding Observations the Committee considers that the present Law on Names contravenes the basic principle of equality, in particular art. 16(g), and recommends the government to review the Law on Names to bring it in accordance with the Convention. However, the legislation described in the current government report is the same 1998-legislation which underlay the Concluding Observations of the CEDAW-Committee of 2001. The state report fails to mention that no action has been undertaken to bring this law in accordance with the Convention, as required by the Committee. It is still the father who has the ultimate decision if the parents cannot reach an agreement as to the family name of the child. This problem is the more urgent since the government intends to introduce the same rule for non-married couples (instead of the present provision which defines that in case of disagreement the child gets the name of the mother)⁹⁶. Moreover, an evaluation of the effects of the new law, as announced in the previous state report, has not so far been carried out.

e. Sham marriages

One of the things that is not discussed in the state report concerns the continuing critique on the gender biased application of the Sham Marriage (Prevention) Act. Research shows that Dutch women with a foreign partner are more likely to be subject of checks based on this Act than Dutch men with a foreign partner.⁹⁷ This is

⁹⁶ Bill No. 29 353.

⁹⁷ Betty de Hart, *Thoughtless women. Mixed relations in nationality and immigration law*, diss. KU

in accordance with the general stereotype that women are supposed to follow their husbands: if the couple chooses the country of the female partner as domicile this is regarded as suspicious. Moreover, a number of the indications that lead to suspicious that a sham marriage exists are gender-biased, in particular the willingness to follow the partner to his/her country and the existence of a huge age difference.⁹⁸

f. Dependent residence status, family reunification and abandoned women: see article 9

In this shadow report, the situation regarding dependent residence status, family reunification and abandoned women, are described under article 9 (migration law).

g. The Mudawwanah: problems for Moroccan women in the Netherlands

For Moroccan women, it is very difficult to have their Dutch divorces recognised by the Moroccan authorities, although the *Mudawwanah*, the Moroccan family law, has been improved in recent years. In most cases women have to have two divorces: one for the Dutch court, and one in Morocco, or at the Moroccan embassy. A Moroccan divorce takes a long time, and is very expensive. Moreover, under the *Mudawwanah*, women still do not have equal rights. Women who do not manage to get a Moroccan divorce face problems visiting Morocco. In the worst case they can be accused of adultery, or kidnapping their own children.

It is a task of the government to protect the rights of all its inhabitants, including women from Islamic countries. The government therefore has to take all appropriate measures to improve the situation of these women, and to do all it takes to have Dutch divorces recognized in Morocco, and other Islamic countries.

Nijmegen, 2002.

⁹⁸ See Spijkerboer, pg. 16 ff.

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NGOs and others who contributed to this shadow-report

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1. **HOM**, Humanist Committee on Human Rights
 2. **NJCM**, Dutch Section of the International Commission of Jurists
 3. **Network UN-Women's Treaty**, in which the following NGOs cooperate:
 - E-Quality** (expertise on female emancipation in a multicultural society)
 - FNV-women secretariat** (Trade Union Federation- women secretariat)
 - HOM** (Humanist Committee on Human Rights)
 - NVR** (Dutch Women Council)
 - Tiye International** (platform of organizations of black, migrant and refugee women),
 - TransAct** (expertise on gender based violence and gender specific health)
 - VON** (Refugee Organisations Netherlands)
- All the cooperating organisations contributed to this shadow report.

Besides the participating organisations, the following NGOs delivered input for this shadow report :

Amnesty International

- BlinN** (Bonded Labour in the Netherlands,
- Enzovoort** (Provincial emancipation organisation)
- Forum** (Institute for Multicultural Development)
- Pharos** (Refugees and Health Knowledge centre)
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The following persons provided input during an expertmeeting:

- Leontine Bijleveld** (FNV vrouwensecretariaat)
- Tanja van den Berge** (Hugo Sinzheimer Instituut)
- Keirsten de Jong** (Commissie gelijke behandeling)
- Inge Bleijenbergh** (Vrije Universiteit Amsterdam)
- Sabine Kraus** (E-Quality)
- Petra Snelders** (Komitee Zelfstandig Verblijfsrecht)
- Maria van Bavel** (Transact)
- Joke Swiebel** (Oud Europarlementariër PVDA)
- Peter Mendelts** (NJCM)
- Carien Evenhuis** (Emancipatie.nl)

Moreover, we received input on personal title, from :

- Thera van Osch**
- Lottie Schenk**